COMMONWEALTH OF PENNSYLVANIA

ORIGINAL

OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

IRWIN A. POPOWSKY
Consumer Advocate

(717) 783-5048

February 17, 1998

RECEIVED
98 FEB 17 PM 3:49
PA.P.U.C.
PROTHONOTARY'S OFFICE

James J. McNulty, Secretary
Secretary Bureau
Pennsylvania Public Utility Commission
Room B-20, North Office Building
P. O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT FOLDER

Re: Application of Duquesne Light Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code,
Docket No. R-00974104

Dear Secretary McNulty;

Enclosed please find an original and nine (9) copies of the Office of Consumer Advocate's Reply Brief in the above-captioned proceeding.

Due to a reproduction error, there may have been a problem with some of the tables attached to the Main Brief. Therefore, the OCA has attached another copy of its tables to its Reply Brief. We apologize for any inconvenience this may have caused.

Copies of the OCA Reply Brief and the corrected tables have been served on all parties of record as shown on the attached
Certificate of Service.

Sincerely,

Marisa A. Sifontes

Marisa A. Sifontes
Assistant Consumer Advocate

Enclosure
cc: All parties of record
Honorable John H. Corbett, Jr. (Via overnight mail)

50

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF DUQUESNE LIGHT COMPANY FOR APPROVAL OF ITS RESTRUCTURING PLAN UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE	:	Docket No. R-00974104

OFFICE OF CONSUMER ADVOCATE'S REPLY BRIEF

Edmund J. Berger
Marisa A. Sifontes
Tanya J. McCloskey
Assistant Consumer Advocates

Counsels for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

Dated: February 17, 1998

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

ADMINISTRATIVE DECISIONS

STATUTES AND REGULATIONS

I. INTRODUCTION

On February 10, 1998, the parties filed Main Briefs in this proceeding addressing their positions on the issues in this proceeding.

OCA's Main Brief effectively sets forth its position on the numerous issues with which it is concerned in this case. OCA's focus in this Reply Brief will, therefore, be to address arguments about which further discussion will enhance the ALJ's and the Commission's ability to make appropriate findings in this case.

That response is focused on a few issues. First, OCA would emphasize, with respect to the stranded cost issue, that while a sale of Duquesne's generating assets is perhaps the best method available to determine the market value of those assets, a sale is only being proposed by Duquesne if the proposed merger with Allegheny Power Systems is not consummated. Thus, Duquesne's repeated reliance on the "auction" method to resolve valuation questions is misplaced, and the Commission must clearly reach a stranded cost determination pending the disposition of the merger proceeding. Furthermore, with respect to the Company's suggestion that a merged-company stranded cost determination should be made in the context of the merger proceeding, OCA submits that it is the restructuring proceedings where those issues must be addressed.

Second, Duquesne repeatedly relies on Section 2804(4)(v) of the Act to support its position that the Commission may not lower its rates in this proceeding. Contrary to the Company's interpretation, that section of the Act was not intended to prevent the Commission from reducing rates as part of the restructuring, but was *only intended* to prevent certain subsequent complaints against rates from the levels established in this proceeding. Indeed, Duquesne's reading of Section 2804(4)(v) contained in the rate cap section of the Act effectively turns this section into a rate floor. This was clearly not the intention of the Act. Thus, the Company's reliance on this section of the Act is misplaced and the Commission can, and should, ensure that all customers realize significant rate savings as part of this proceeding. Consistent with OCA's proposal in this case, the Commission

should find stranded costs of $1.351 billion (after tax) and should reduce Duquesne rates by 16.9% at this time.

In addition, the Commission should adopt OCA's recommendations for a state-wide consumer education program and expansion of Duquesne's universal service and energy conservation programs, as well as OCA's recommendations with respect to consumer protection issues.

II. PHASE-IN OF CUSTOMER CHOICE

A. Method of Customer Selection

In the Company's Main Brief, Duquesne has argued that its proposal to implement phase-in of residential customers based on geographic areas of choice (GACs)includes first-come, first served "principles." DLC M.B. at 6. The Company explained that this proposal will ensure an "orderly" transition to competition. DLC M.B. at 6. In its Main Brief, the OCA addressed why Duquesne's proposed method should not be adopted for residential customers. OCA M.B. at 4-6. See, OCA St. 5 at 56-57, OCA St. 5S at 1-2. The OCA submits that Duquesne's plan does not use the first-come, first-served "principles" that it alleges. Instead, it imposes an inequitable and arbitrary system that will serve to deny sufficiently motivated individuals the opportunity to participate in the earlier phases of retail access.

As the OCA explained in its Main Brief, the residential customers selected for Duquesne's pilot program will be phased into the first phase of retail access on January 1, 1999, and these customers are not concentrated in GACs. OCA M.B. at 5-6. Instead, they are located throughout Duquesne's service territory. Thus, by limiting other customers to inclusion based on the Company's proposed GAC method, these customers will enjoy the benefits of retail access for as much as two years before their neighbors (who may have attempted to enroll in the pilot program but were not selected due to space constraints). The OCA submits that this is not an equitable outcome for residential customers. Additionally, adoption of a first-come, first-served approach, where motivated residentials can choose to participate in the competitive market, will help to create the robust market that the General Assembly has intended.

Therefore, the OCA respectfully submits that first-come, first-served method should be adopted as the preferred approach for residential customer phase-in.

B. Timetable for Phase-In -- Not an OCA issue.

III. TRANSMISSION AND DISTRIBUTION RATES; UNBUNDLING ISSUES

A. Introduction -- N/A

B. 1996 Test Year Cost Of Service -- N/A

C. Required v. Realized Rate of Return

As discussed in OCA's Main Brief, the Act requires that, in unbundling rates, the Commission establish the cap for the non-generation portion of rates at the level of such charges that has been approved for such services at the effective date of the Act. See OCA M.B. at 8-9; 66 Pa.C.S. §2804(4)(i)(B). Since non-generation charges were not specifically separated from generation charges at that date, the Company provided a cost-of-service study which separated costs associated with the generation portion of rates and those associated with the non-generation portion of rates based upon a 1996 test year cost of service study. As discussed in OCA's testimony, the problem with the Company's approach is that the Company has arbitrarily assumed that the Company was realizing its claimed rate of return on its T&D investment, but was only realizing a residual return on its generation investment. Id. As discussed in OCA's Main Brief, there is no basis for this assumption and OCA submits that it is inconsistent with the intent of the statute. Id.

In its Main Brief, the Company argues that regulated rates are set to recover required returns, not realized returns. DLC M.B. at 13. While OCA agrees with the Company that this is how rates are set in the typical rate case, rates, even one day after being set, recover costs and returns at different levels. What the Act requires is that the rates in effect, at the effective date of the statute, be maintained. Since the total level of rates on that date is known, the only question is how that total rate level is to be split between the two categories of charges in the statute -- generation charges and non-generation (T&D) charges. 66 Pa.C.S. § 2804(4)(i).

While the Company would establish non-generation charges based upon the claimed return, the result of this approach is that generation charges would then have to be established on an inconsistent basis -- the residual, producing a lower rate of return. There is no basis for

establishment of these charges on an inconsistent basis in the Act.

The Company also argues that T&D rates were set on the basis of required return in the Company's pilot program and that FERC transmission rates are set on the basis of required return, and that T&D rates should be set in a similar way here. DLC M.B. at 13. Here, however, rates are being unbundled, not set at new levels. The Act provides for a "non-generation" rate cap at the level of charges for such services as of the effective date of the Act. This clearly undermines the Company's jurisdictional issue. FERC has no jurisdiction over the level of distribution system rates and the establishment of total "non-generation" charges at the level specified in the statute does not impose on FERC's jurisdiction over transmission rates.

Finally, contrary to the Company's assertion that the objective here is to achieve lower T&D rates, the objective here is to unbundle rates in accordance with the Act. Clearly, it is the Company which has sought to misconstrue the statutory mandate to recover a higher level of costs through its charges for T&D than it is now recovering. The Company's position on this issue should be firmly rejected and OCA's position, consistent with the Commission's adoption of OCA's T&D rates in the PECO Order, adopted. See Application of PECO Energy for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement, R-00973953, slip op. (December 23, 1997) ["PECO Order"].

D. Distribution Losses

As the Company correctly notes, there is no dispute on this issue. DLC M.B. at 14; OCA M.B. at 9-10.

E. Ancillary Services

This issue is amply discussed in OCA's Main Brief. See OCA M.B. at 10-12. The issue is one of the appropriate functionalization of associated costs. Id. While OCA generally agrees with the Company's discussion in its Main Brief (DLC M.B. at 15-17), it has not addressed OCA's continuing concerns over how it has functionalized ancillary service costs. Clearly, the dollars which

are associated with ancillary services that FERC allows to provide competitively should be included in the generation function and the Company's T&D rates adjusted accordingly, as OCA witness Lee Smith proposed. Id.

F. Voltage-Differentiated Rates -- N/A

G. Other Issues -- N/A

H. Conclusion

The Commission should adopt OCA's recommended T&D rates, reflecting the realized rate of return during the test year and allocation of distribution losses and ancillary services to the generation function.

IV. TRANSITION OR STRANDED COSTS

A. Overview of Stranded Cost Valuation and Recovery Approaches

1. Duquesne's Focus On The Auction Option As A Means Of Determining Stranded Costs Ignores The Reality That This Is Not Being Offered In The Context Of The Merger With Allegheny Power Systems.

In addressing the key stranded cost issue in this case, the Company has focused on the proposal set forth in its rejoinder testimony to sell all of its generating assets,[1] concluding that this "should eliminate most disputes regarding the quantification of stranded costs and the rate methodology for recovering them." DLC M.B. at 1.

Unfortunately, while OCA agrees that a true sale would provide the most accurate means of quantifying stranded costs, Duquesne's focus on an auction ignores the realities of this case and, in that respect, is a red herring. In particular, the reality is that this proposal is only made in the context of a stand-alone Duquesne Light Company and ignores the fact that no such offer is being made if the merger proposed with Allegheny Power Systems ("APS") is consummated. DLC M.B.

[1]This proposal is to be distinguished from Duquesne's proposals for an annual auction of a block of power to set the CGC and from the proposals in the merger proceeding to "relinquish control" of a block of power as a market power mitigation measure.

at 3. As OCA has indicated throughout this proceeding, the effects of merger consummation on Duquesne's restructuring plan and its stranded costs need to be considered in the context of this case. OCA St. 1 at 38-40; Tr. at 43-45, 47; OCA M.B. at 47-48. Thus, the option to value Duquesne's stranded costs through a sale of its generating assets is only a real option if the Commission determines to reject the merger with APS. Consequently, while Duquesne would have the Commission focus most of its attention in this case on the auction option as a means to resolve these disputes, the Commission must take pains to carefully review the evidence of other valuation approaches as a means to determine stranded costs if the merger is, in fact, consummated.

2. Duquesne's Final Valuation Approach Presents More Problems Than It Resolves.

In its Main Brief, Duquesne argues that the Customer Choice Act, in calling for the Commission to establish the "known and measurable" level of stranded costs, emphasized the importance of "accuracy" over "certainty." DLC M.B. at 26-27. While OCA agrees with the Company that the General Assembly called for "accuracy," as explained in OCA's Main Brief, the General Assembly also called for a determination of stranded costs on a net present value basis as part of the restructuring plan, and stranded costs are, therefore, to be established in this proceeding. See OCA M.B. at 15. Thus, "accuracy" and "certainty" must both play roles in the determination of stranded costs.[2] Clearly, the nature of the "known and measurable" requirement in the Act must be viewed in light of the Act's other requirement to determine stranded costs in this proceeding.

Even if the postponement of the stranded cost determination were permitted by the Act, "deferring the task of performing a market valuation and convening a panel of experts will not dispel the uncertainty and controversy" that exists in making such a determination today. OCA St. 1 at 12.

[2]The Company asserts that OCA does not contend that its market price projections are sufficiently reliable to meet the "known and measurable" standard and that OCA essentially substitutes a "consistent set of planning assumptions" for this standard. DLC M.B. at 27, n.13. However, the Company never asked OCA's witnesses whether they believed that this evidence met the "known and measurable" standard, and this assertion is without justification upon the record in this case.

While the Company expects that a market will exist for futures contracts at that time that will provide what the Company believes to be "real" market evidence, such real market evidence, based as it is on investors' (rather than experts') forecasts of prices, may turn out to be just as accurate or inaccurate as experts' forecasts of market prices today. Tr. at 28-30. Thus, even if a developed futures market exists at that time, and there is no certainty of that, it may still be that the prices utilized in a final valuation may be more "inaccurate" than the prices established in the expert valuations that are being made in this proceeding. Indeed, as Company witness Marshall admitted, investors make bad decisions, i.e. they buy or sell based on mistaken forecasts of market prices or market values of assets, harming their bottom line. Tr. at 86-87. Thus, as OCA and other parties have emphasized throughout this case, Duquesne's sale of its 50% ownership interest in Ft. Martin at four times its book value indicates either that the market forecast on which that sale was based was seriously in error, or Duquesne's market valuation in this case is seriously in error.

Duquesne argues that OCA's principal objection to the final valuation approach is that it will not produce "rate reductions" because current rates are charged in the meantime. DLC M.B. at 27. This is certainly one of several problems OCA has identified with the proposal, as discussed in OCA's Main Brief. See OCA M.B. at 14-20. However, the initial problem is the legal hurdle which the Company simply has not cleared -- the Act requires that the net present value of stranded costs be determined in this proceeding. Id. at 15.

B. Generation Related Stranded Costs

1. Introduction

2. Net Book Value

a. Total Net Book Value -- No response necessary

b. Treatment of Beaver Valley 2 Lease Costs -- No response necessary

c. Recovery of Phillips and Brunot Island Costs

While OCA clearly raised this issue on the record of this proceeding and the Company filed

testimony responding to OCA's position on this issue, no discussion of this issue appears in the Company's Main Brief. Thus, it appears that the Company has either conceded this issue or failed to address it in its Main Brief. A discussion of this issue can be found on pages 26-28 in OCA's Main Brief.

3. Market Value

a. Introduction

Since Duquesne focuses primarily on alternatives to a determination of stranded costs, its Main Brief provides only very brief discussion and critique of the market value analyses performed by expert witnesses in this proceeding. DLC M.B. at 28-33. Duquesne's limited critique of OCA witness Doug Smith's market valuation on the record in this proceeding, and in the Company's Brief, clearly reflects the fact noted in OCA's Main Brief that the market prices produced in Mr. Smith's analysis and Company witness Schnitzer's valuation are in the same general ballpark. DLC M.B. at 30; OCA M.B. at 38.

b. Market Price Projections

The Company's only criticism of Mr. Smith appears in a footnote where it criticizes his assumption of an 8% reserve factor as a market rule which does not exist and which produces a significant increase in price in 2003. DLC M.B. at 31, n.22. As discussed in OCA's Main Brief, the 8% reserve factor assumption reflects Mr. Smith's judgment that customers will seek a level of system reliability comparable to historical minimum targets and is extremely reasonable given the current high levels of reserves in ECAR. See OCA M.B. at 36. For a more detailed discussion of market price issues, OCA would turn the Commission's attention to OCA's Main Brief. See OCA M.B. at 30-38.

While the Company provides few comments about OCA's market price projections, the Company has, throughout its Brief, suggested that its own witness' market price projections are superior because they rely on the best market evidence available, estimated prices for new market

entrants in 2006. DLC M.B. at 30. OCA strongly disagrees with this assertion. Effectively, Duquesne witness Schnitzer's analysis relies on only two data points: (1) the current price of gas-fired Combined Cycle plants, escalated to 2006, and (2) natural gas price forecasts. See OCA M.B. at 30-31. In contrast, Mr. Smith's ENPRO analysis incorporates not only market data regarding the cost of new entrants (both coal and gas-fired) using the same sources as Mr. Schnitzer and fuel forecast data, but utilizes a range of other data regarding the operation of the marketplace that will clearly impact on supply and demand and drive market prices. These numerous variables are summarized in detail in OCA's Main Brief and need not be repeated here. See OCA M.B. at 31-38. As discussed in OCA's Main Brief, the Commission is familiar with Mr. Smith's modeling efforts and has found his analysis to be objective, adopting his market value estimate in the PECO case. PECO Order, slip op. at 88. OCA submits that it should be utilized for purposes of determining stranded costs in this proceeding.

c. Other Evidence of Market Value

The Company claims that Duquesne's sale of its 50% interest in Ft. Martin at four times book value is not indicative of the price which could be achieved for other units. DLC M.B. at 33-34. While OCA has not suggested that all of Duquesne's plants are worth four times book value, the fact that the Company ignores this and other sales of generating assets at well above book value belies its real interest in relying on "market evidence." Clearly, the Company could have performed an evaluation of this other "market evidence" by comparing the economics of generating units such as Ft. Martin that have been purchased and the price paid for them, but failed to provide any such analysis. OCA submits that these transactions are better "market evidence" than the estimated cost of new gas-fired Combined Cycle plants in 2006 that Mr. Schnitzer used in performing his market price analysis. As Company witness Marshall recognized, Ft. Martin is a valid piece of market evidence, although only one data point. Tr. at 71. Clearly, such other market evidence should be considered in assessing the reasonableness of market value estimates made in this case.

d. Conclusion -- Not necessary

4. Other Factors Affecting Market Value

a. Life Extension

The Company criticizes OCA witness Kahal's life extension analysis, contending that it produces results which are not "known and measurable" and noting that OCA witness Smith did not specifically indicate concurrence with this analysis or provide market price projections over the life extension period. DLC M.B. at 34-36. Of course, the Company failed to ask Mr. Smith whether he concurred with this analysis and it is thus disingenuous to suggest that he didn't.

The Company also argues that OCA's analysis is not based on a life extension study of Duquesne's units. DLC M.B. at 34-35. The problem here is that the Company has not performed such an analysis even though it would have been appropriate to do one for purposes of determining stranded costs. See OCA M.B. at 39. For this reason, Mr. Kahal performed his own analysis using reasonable assumptions. These included reasonable assumptions regarding the escalation of market prices and reasonable assumptions regarding the cost of life extension.

In the PECO case, PECO Energy projected and the Commission adopted life extensions for three coal plants, and it was the study in that case which formed the basis for Mr. Kahal's adjustment here. The Company failed to provide any substantive response to OCA's position on this issue on the record of this proceeding. OCA submits that Mr. Kahal's analysis is reasonable and should be adopted.

b. Plant Shutdown

This issue was amply discussed in OCA's Main Brief. See OCA M.B. at 40-42. The Company's discussion of this issue (DLC M.B. at 36-37) provides no new argument and it need not be further addressed here.

c. Productivity Gains

In its Main Brief, the Company argues that the Commission should reject OCA's

modest $13 million adjustment to market value to reflect productivity gains. DLC M.B. at 37-38. The Company asserts that OCA's proposal must fail because it is not based on a study of the efficiencies which could be achieved from Duquesne's assets and workforce. Id. at 38. As explained in OCA's Main Brief, Mr. Kahal's efficiency adjustment is a conservative adjustment of 10% savings achieved over a 10-year period as a result of efficiencies that are normal when a market moves from regulation to competition. See OCA M.B. at 42-44. This estimate of efficiency savings is conservative in relation to estimates made by FERC staff and the Department of Energy of 15-25%, and 25-40% respectively. Id. at 43, n.6.

Duquesne also argues that OCA has failed to consider the savings already achieved by the Company and savings expected to be achieved through the merger. DLC M.B. at 38. As OCA witness Kahal testified, the issue here is not efficiencies that have been able to be achieved in a regulated forum but efficiencies brought on by the competitive market. See OCA M.B. at 44. Further, OCA disagrees that efficiencies created by the merger are the same efficiencies that will be realized through competition. Clearly, they are different and should be separately taken into consideration. OCA submits that Mr. Kahal's estimation of productivity savings, which simply reduces the annual rate of inflation in generation-related non-fuel O&M and A&G expenses by 1.0% for a 10-year period, is reasonable and should be adopted.

d. Costs Independent of Operation

The Company defends its novel claim made for the first time in rebuttal for costs that it estimates will be unavoidable if plants are shut down. DLC M.B. at 38-39. As explained in OCA's Main Brief, this claim is not reasonable or justified. It is inappropriate to assume, as the Company has, that it could only avoid 16% of overheads allocated to its generating plants if the plant were shut down. See OCA M.B. at 45-46. Again, OCA would emphasize that no other utility has claimed such costs and the claim should not be allowed.

e. Projected Capital Additions and O&M Expense -- Not an OCA issue

f. Environmental Regulations -- No response necessary

g. Other -- N/A

h. Conclusion -- Not necessary

5. Conclusion -- Not necessary

C. Merger Savings

As discussed in OCA's Main Brief, merger savings of $152.8 million should be incorporated into the stranded cost computation.

D. Decommissioning

1. Nuclear Decommissioning

In its Main Brief, Duquesne has criticized OCA witness Catlin's proposal to reduce the contingency factor in its nuclear decommissioning cost estimates to 10%. DLC M.B. at 41-42. The OCA addressed this issue in its Main Brief at pages 48-49. See also, OCA St. 3 at 18-20. OCA witness Catlin reduced the Company's contingency factor based on the Commission's complete disallowance of a contingency in PP&L's last rate case (Docket No. R-00943271), and the Commission's proposed policy statement. OCA M.B. at 49.

In addition, Duquesne's argument that the Commission in the PECO Order adopted Duquesne witness LaGuardia's contingency factor without adjustment is based on a misunderstanding of the Commission's Order and PECO's proposed methodology. DLC M.B. at 42. In that case, in which the OCA and its witness here, Mr. Catlin, participated, PECO adjusted its nuclear decommissioning claim prior to seeking recovery to only include a 10% contingency. The Commission adopted PECO's proposal in that case. PECO Order, slip op. at 78-80.

The OCA submits that based on the past treatment of contingency factors, OCA witness Catlin's adjustment sufficiently accounts for an appropriate amount of uncertainty in the decommissioning cost estimate, and as such, it should be adopted.

2. Fossil Decommissioning

The OCA set forth its discussion on fossil decommissioning in its Main Brief at pages 49-50. See also, OCA St. 3 at 20-23. The OCA submits that Duquesne's attempt to compare claims for fossil decommissioning with OCA witness Kahal's discussion of life extension is misplaced and should be disregarded. Duquesne attempts to argue that if fossil decommissioning is disallowed because it is too speculative, then life extension must also be disallowed as too speculative.

The issue at hand is not whether or not decommissioning forecasts stand alone in their fallibility, as Duquesne argues, but whether recovery of fossil decommissioning costs as a stranded cost should be permitted under the Act. The question of life extension goes to whether ratepayers are receiving the benefit of all possible mitigation steps before having to pay stranded costs.

The Commission, in PECO, clearly found that it would not provide recovery for fossil decommissioning while at the same time reflecting life extension. The Act provides that to be considered as a "stranded cost", items must be both known and measurable, and also have traditionally been recoverable under a regulated environment. 66 Pa. C.S. §2803. Duquesne, itself, admits that these costs do not meet the "known and measurable" standard and, as the Commission found, under traditional regulation, consumers do not necessarily pay any costs for fossil decommissioning. DLC M.B. at 43; PECO Order, slip op. at 91.

Additionally, the OCA submits that fossil decommissioning costs are not only applicable to Duquesne, but to every electric supplier, and it would be unfair, and provide Duquesne with a competitive advantage, to require Duquesne's ratepayers to fund these costs in advance when competitors will have to derive these funds from the market. OCA M.B. at 50.

For all of these reasons, the OCA submits that the Company's claim for fossil decommissioning costs should be denied.

E. Regulatory Assets and Liabilities

1. Introduction

The OCA's position regarding Duquesne's claim for regulatory assets is fully set out in the OCA Main Brief, pages 51-57, and OCA St. 3 and 3S. This section will address a few issues that arose in the Company's Main Brief.

2. Disputes Regarding Specific Claims

a. SFAS No. 109 Deferred Taxes

Addressed in OCA Main Brief at p. 51-52.

b. Unamortized Debt Costs

Addressed in OCA Main Brief at p. 52-53.

c. Unamortized Sale/Leaseback Premiums

Addressed in OCA Main Brief at p. 53-54.

d. Deferred Rate Synchronization Costs -- Not an OCA issue.

e. Deferred Employee Costs -- Not an OCA issue.

f. Deferred Coal Costs

In its Main Brief, the Company has sought recovery of deferred coal costs. DLC M.B. at 47. As the OCA explained in its Main Brief, these costs are not eligible for recovery as stranded costs because recovery of these costs was to take place when the Company's coal costs were less than the capped price. OCA M.B. at 54; OCA St. 3 at 13. The Company was not assured recovery of these costs, and the Settlement did not provide for recovery in the event that coal costs did not fall below the capped price. Id. Therefore, the Company's claim should be denied.

g. Deferred Caretaker Costs

In its Main Brief, the Company argues that Duquesne's claim for deferred caretaker costs for the Phillips and Brunot Island units should be accepted. DLC M.B. at 48. The OCA submits, however, that these costs are not recoverable because the Company has not proposed to return

these units to service. OCA M.B. at 55-56; OCA St. 3 at 14-15. Under the terms of the settlement, the Company was to recover these costs once the units were returned to service. Since Duquesne has not proposed to return the units to service, the condition for recovery of these costs has not been met. OCA M.B. at 55. Therefore, Duquesne's claim should be denied.

h. Pre-Accrual of Nuclear Outages

In its Main Brief, Duquesne has stated that the OCA's disallowance of this amount relates to the OCA's "fear" that recovery will result in a double-counting of these costs. DLC M.B. at 48. In fact, as the OCA explained in its Main Brief, these costs have been included elsewhere in the OCA's analysis, and as such, do not need to be included here. The OCA's treatment does not deny Duquesne recovery of these costs. OCA M.B. at 56. See OCA St. 3 at 11-12; OCA St. 3S at 2. Therefore, Duquesne's claim should be denied.

i. Transition Costs -- Not an OCA issue.

3. Conclusion

For the reasons stated above, as well as the reasons contained in the OCA's Main Brief and Testimony, the OCA submits that its position accurately reflects the amount of Duquesne's regulatory assets and should be adopted.

F. Recovery of Stranded Costs

1. Introduction -- Not Necessary

2. Proposals to Adjust the Level of Stranded Cost Recovery

a. Mitigation

Mitigation issues are generally discussed in the context of OCA's recommendations that the Company life extend its low cost coal plants and include a productivity adjustment in calculating plant margins.

b. Sharing of Stranded Costs

The Company contends in its Main Brief that there is no basis for sharing of stranded costs

because no party, other than HSS, "seriously questions Duquesne's mitigation efforts." DLC M.B. at 4-5, 51-52. In this regard, the Company argues that "the sole consideration set forth in the Act regarding the level of stranded cost recovery is mitigation." DLC M.B. at 53.

The Company is simply wrong in its interpretation of the Act. While the Act clearly indicates that the Commission must consider mitigation, it does not specifically tie the Commission's allowance of owned-generation stranded costs only to mitigation. 66 Pa.C.S. §§ 2808(c)(3) and (c)(4). Rather, the statute gives the Commission discretion in determining the level of owned-generation stranded costs that "may be recovered" and sets forth numerous interests that the Commission must balance in its decision under the Act. 66 Pa.C.S. §§ 2802(8) and 2808(c)(3). Clearly, then, the Commission has the authority to consider a division of stranded costs between shareholders and ratepayers to the extent that such division of costs is otherwise consistent with the Act, the Public Utility Code, ratemaking principles, and the Constitution. As discussed in OCA's Main Brief, OCA's argument that shareholders should bear a portion of stranded costs (through the denial of a return on those costs) turns on the fact that the Company's uneconomic nuclear generating assets, while representing only about 1/4 of the Company's generating capacity, are almost entirely responsible for the Company's stranded costs. See OCA M.B. at 58-61. As noted there, in previous cases, the Commission has determined to deny a return on uneconomic excess capacity and those determinations have been upheld by the Courts which have recognized the Commission's discretion to deny a full return on or recovery of costs even though the investments may have been prudent when made. Id. at 59-60.

The Commission's rate determinations and policy initiatives have also, either explicitly or implicitly, provided for sharing of costs. In particular, the Commission's longstanding ratemaking policy of amortizing unusual and extraordinary expenses over a number of years without an allowance for carrying costs on the unamortized balance of such expenses provides for a sharing of costs similar to that proposed by OCA in this case. Pa. P.U.C. v. Dauphin Consol. Water Supply

Co., 55 Pa. PUC 47 (1981) and Butler Twp. Water Co. v. Pa. P.U.C., 81 Pa. Commw. 40, 47-48, 473 A.2d 219, 223 (1984); *Accord* Pa. P.U.C. v. Peoples Natural Gas Co., 71 Pa PUC 135 (1989). Furthermore, in dealing with LDC recovery of natural gas utility take-or-pay costs, the Commission clearly imposed a sharing requirement for such costs, which was found to be consistent with the law. 52 Pa. Code § 69.181; National Fuel Gas Dist. Corp. v. Pa. P.U.C., 677 A.2d 882 (Pa. Commw. 1996). As noted in OCA's Main Brief, the Commission has previously determined that the denial of the return of and/or the return on the investment is an appropriate treatment of electric generation costs that are not used and useful, and those decisions have been upheld by the Courts. Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989); Philadelphia Elec. Co. v. Pennsylvania Pub. Util. Comm'n, 61 Pa. Commw. 325, 433 A.2d 620 (1980).

The Company also argues that the proposed sharing of stranded costs is arbitrary and bears no relation to Duquesne's particular circumstances, its past mitigation efforts, or the effect of the disallowance on Duquesne. DLC M.B. at 53-54. OCA submits that, to the contrary, the disallowance reflects the peculiar circumstances of Duquesne and, in particular, its history of uneconomic nuclear investments. While OCA agrees that the Company has made some efforts to mitigate some of this uneconomic value, there is still over $1 billion in uneconomic costs that ratepayers will have to pay. It simply is not equitable for ratepayers to have to pay all of those uneconomic investment costs over the next seven years and, in addition, pay a return on such uneconomic investments. The denial of a return on these uneconomic investments is a fair burden for shareholders when ratepayers are being asked to cover all the sunk cost of the investment. Furthermore, OCA's restructuring proposal would allow the Company to retain any cost savings or operational efficiencies from these nuclear plants that it is able to achieve. Since OCA has assumed operation of these plants at only a 75% capacity factor and has not included any productivity adjustment for such plants, and the Company believes that they can be operated at a higher capacity factor and may be able to lower operating costs, the Company may well realize nuclear plant margins that significantly exceed OCA's forecasts.

See OCA M.B. at 60. If that is the case, the Company will be able to reduce the carrying costs that it bears during the CTC recovery period. Id. Thus, OCA submits that the proposed sharing is reasonable and not arbitrary. This is not, as the Company argues, an attempt to "shift" costs but to provide a sharing of the burdens of restructuring in a manner that, in other contexts, the Commission has found to be appropriate.

Duquesne also argues that the proposals violate state and federal law in that the end result of the sharing proposals is a profound impact on the financial integrity of the Company. DLC M.B. at 54-55. OCA submits that its proposals are consistent with the law and would not have the profound impact on the Company's financial integrity that the Company claims.

In looking at the issue of financial integrity, the Commission must put the issue in perspective. First, it is important to recognize that while the Company's earnings may be lower in the short term with lower market prices in the early years, this situation is expected to reverse in the "out-years" (the years after the CTC recovery period) when the Company will realize greater market value from their generating plants. This sequence of events is reflected in both the Company's and OCA's market price forecasts. Thus, the result, with respect to earnings from the Company's generating plants, will be lower earnings in the early years and higher earnings in the later years.

With respect to this earnings' impact, then, the Company's argument is not with OCA but with the nature of competition and the Act's requirement that stranded costs be determined on a net present value basis over the life of the asset or liability, with recovery of those costs over a seven-year period. The result of this process is by definition lower returns in the short-term traded for higher returns in the future. Stated differently, rates during the transition period reflect the present value of future earnings streams, which when the market reverses, will exceed revenue requirements on a traditional ratemaking basis. If the Company believes that because of concerns over financial integrity, it cannot wait to recover these revenues over the life of the plants, then it could divest today and recognize that present value currently.

Second, as noted above, OCA's proposal for sharing of stranded costs is no different than other sharing proposals that have been adopted by the Commission in the past. The Company has emphasized that OCA's proposal denies it $460 million.[3] It needs to be emphasized that this is the full revenue requirements effect. The impact on earnings will be a much smaller amount, and this amount is magnified by the fact that the sharing is occurring over the seven year CTC recovery period rather than being spread out over the life of the assets, a result driven by the write-down of stranded costs over this period.

OCA also disagrees with the Company's assertion that OCA's proposal provides any "opportunistic switching" of the ratemaking standard for recovery of costs. To the contrary, this proposal continues the same treatment of uneconomic capacity costs that OCA has argued for years is appropriate and that the Commission has, on a number of occasions, implemented. There is no change here other than the fact that ratepayers are being asked to pay these costs over a shortened time frame.

OCA submits that sharing is appropriate, consistent with the Act, and will not significantly impair the Company's financial integrity.

c. Securitization (DII Proposal) -- N/A

3. Methods of Stranded Cost Recovery

a. Accelerated Amortization Under Section 2804(4)(v)

As discussed above, OCA submits that the Company has misinterpreted Section 2804(4)(v) to prohibit reductions in rates under certain circumstances. The Company argues in this section that the criticisms of the Company's ROE spillover proposal by which it flows excess earnings back to

[3]The basis for these numbers was not specified in the Company's rebuttal testimony, so it is difficult to determine whether the numbers are accurate. Other numbers in this section of Company witness Clayton's testimony are inaccurate. For example, Mr. Clayton asserts that OCA's proposal provides "a 39% disallowance of the revenue requirement that Duquesne would otherwise receive under the rate cap." DLC St. 3-R at 48. In contrast, OCA witness Lee Smith's Direct Testimony clearly shows a rate reduction from current revenue levels of 18.3%, which, as shown in Table 2 of OCA's Main Brief, is now 16.9%. OCA St. 4, Exh. LS-4.

ratepayers are a without merit. DLC M.B. at 57-58.

Duquesne argues that concerns that the Company can "hide" excess earnings through "devious accounting schemes, thereby circumventing the protective effect of the ROE spillover" are a "cloud of dust." Id. at 57. Duquesne argues that it has agreed to file the same earnings reports that it has filed historically with the Commission and to provide further information, if necessary, to "police" the process. Id. at 57-58. Duquesne significantly understates the administrative burden required to perform this review and afford parties due process. As the Commission well knows, utility earnings reports have not to date been used for the purpose of establishing rates and are certainly not reviewed with the type of detail that is typically used in a rate review. Since the ROE spillover will directly affect rates, there should be no question that parties will want to, and need to, evaluate the Company's claims and adjust the Company's claims if deemed appropriate. As discussed in OCA's Main Brief, this will create annual rate proceedings for the review of the Company's ROE spillover filings. See OCA M.B. at 19. Further, this process would be complicated by the Company's performance in the competitive generation market, which would directly impact on its earnings. For the reasons set forth in OCA's Main Brief, this entire proposal should be rejected.

b. Immediate Rate Reductions

The Company argues that OCA's proposal for immediate rate reductions conflicts with Section 2804(4)(v). As set forth above, OCA submits that this is simply not the case and that rate reductions are necessary to implement the statutory intent, as discussed in OCA's Main Brief. See OCA M.B. at 62-63. Enron has also opposed rate reductions and submits that the amount by which rates could otherwise be reduced be used as an additional "shopping credit," i.e. an addition to the CGC. As discussed below in connection with the CGC, this approach unfairly deprives customers who decide not to shop, or who cannot shop, of a rate decrease that should benefit all customers. See infra.

c. Rate Cap/CTC Extension -- N/A

d. Other Proposals -- N/A

4. Other Arguments Regarding Recovery of Stranded Costs -- N/A

5. Conclusion -- N/A

G. Conclusion -- Not necessary

V. THE COMPETITIVE TRANSITION CHARGE

A. Conceptual Disputes Regarding Calculation of CTC/CGC

1. Differences in Overall Approach

a. Response to Duquesne

Duquesne argues that its proposal will shorten the CTC collection period because any excess earnings will be used to accelerate stranded cost amortization. DLC M.B. at 60. OCA sees no benefit in this proposal. Under this approach, rather than benefitting from an immediate rate savings, customers will be required to pay current high rates until the "final valuation" and then will realize a rate reduction only if the Company admits to overearning or other parties are able to demonstrate overearning to the Commission. Furthermore, under the Company's approach, it has little incentive to lower costs and realize greater returns since the cost of higher returns will be flowed through to ratepayers. OCA submits that the better approach is to provide an immediate rate reduction to reflect the benefits of the competitive market to all customers.

The Company also argues that under OCA's approach, there is no guarantee that the shopping credit will accurately reflect market prices and will, therefore, send the wrong price signal to customers. DLC M.B. at 61-62. OCA submits that while the pre-determined shopping credit, under OCA's proposal, may not precisely track market prices, it will provide a reasonable initial proxy of such prices and sufficient certainty to enable an infant marketplace to grow. After the phase-in period, the Company will be permitted to charge "prevailing market prices" for generation and such prevailing market prices will, in effect, be the CGC. 66 Pa.C.S. § 2807(e)(3).

b. Response to Enron

In its Main Brief, Enron proposes to treat the CGC, or "shopping credit," as the residual rather than providing for rate reductions, relying on the Commission's Order in the PECO case. Enron M.B. at 24-31. For the reasons explained in OCA's Main Brief, OCA submits that this approach should be rejected. See OCA M.B. at 62-65. In particular, all customers should see their rates reduced as a result of restructuring, not just those customers who "shop." Id. at 65. Second, as discussed in OCA's Main Brief, if the residual is the "shopping credit," then remaining customers will unreasonably subsidize the collection of stranded costs by paying more total costs than are justified by cost-based rates. Id. Third, and perhaps most important, the Act is clear that after the phase-in period ending January 1, 2001, utilities may charge no more than "prevailing market prices," subject to the Act's rate caps, as discussed in more detail below in connection with Provider of Last Resort issues (Section IX(B)). Id. Clearly, Enron's approach would require the Company to charge more than this amount and would effectively cause remaining utility customers to subsidize shopping customers. This proposal should be plainly rejected.

2. Other Conceptual Disputes

a. CGC Calculation: Annual v. Fixed

As discussed in the preceding section, OCA submits that Mr. Smith's market price forecast, as adjusted by OCA witness Lee Smith provides a reasonable basis for establishing the initial shopping credit and provide certainty in the marketplace that will be helpful in growing an infant marketplace for electric generation. Then, as noted above, at the end of the phase-in period, prevailing market prices will determine the CGC. 66 Pa.C.S. § 2807(e)(3).

b. Determination of Class Responsibility for Stranded Costs

Duquesne Industrial Intervenors ("DII") argue that Duquesne's CTC residual methodology results in an appropriate determination of each class' stranded cost liability. DII M.B. at 80-82. DII opposes OCA's proposal to allocate stranded costs using a production capacity allocator. Id.; see

OCA M.B. at 66-67. DII argues that OCA's proposal to allocate stranded costs based on the utility production plant allocator "results in cost shifting and possible rate cap violations" DII M.B. at 80.

OCA submits that, contrary to DII's assertions, it is DII's proposal to not allocate class responsibility for stranded costs, but to simply make the CTC the residual, that is inconsistent with the Competition Act, which clearly requires that these costs be allocated consistent with the utility production plant allocator. See OCA M.B. at 66-67; 66 Pa.C.S. §2808(a). The Commission agreed with OCA in the PECO case and that recommendation should be adopted here. See OCA M.B. at 67. Further, with respect to DII's concern over rate cap violation, OCA submits that, if there is any such problem, Duquesne must forgo these revenues unless, for good cause, it is granted an extension of the CTC recovery period to collect any shortfall from these customers, as OCA witness Lee Smith testified. Id. at 67.

c. Levelized CTC v. Other Methods

d. Duquesne's Rate Redesign Proposal

As discussed in OCA's Main Brief, the Company has proposed to increase its fixed customer charges by collecting a portion of the CTC through a fixed charge. See OCA M.B. at 67. Simply put, this proposal is a promotional rate that rewards customers with higher energy usage by reducing the burden of the CTC for those customers. OCA disagrees with this plan because it provides greater fixed cost recovery from ratepayers than under current rates at the same time that the Company will be collecting fewer costs as some customers obtain their generation service from competitive suppliers. Id. The Company claims that the proposal has no downside and may increase revenues because usage rates are lower. While the Company argues that customer demand is relatively flat and that the fixed customer charge will have "little or no effect on Duquesne's risk," OCA submits that these claims are unproven and the proposal should be rejected in favor of a usage charge to collect the CTC. See also Environmentalists M.B. at 31-32 (urging rejection of this rate that encourages sale of additional electricity).

e. Other Conceptual Disputes -- N/A

3. Conclusion -- Not necessary

B. Other Disputes Regarding Specific Proposals -- N/A

C. Other Issues Addressed in PECO Order -- N/A

D. Conclusion

VI. RATE OF RETURN/DISCOUNT RATE

While the Company has argued in its Main Brief that it should receive a return on equity of 11.5%, OCA submits that there is no sound reason to provide Duquesne a higher return on equity than the Commission has determined to be appropriate in PECO. See OCA M.B. at 69.

VII. SPECIAL CUSTOMER CLASSES

A. Rule 4 Contracts

In this Section of its Main Brief, DII takes issue with Duquesne's proposal that Rule 4 contracts not be unbundled. DII M.B. at 89-90. While OCA does not oppose the unbundling of these contracts, OCA submits that, as discussed in the section on class responsibility for stranded costs (Section V(A)(2)(b)), stranded costs appropriately allocated to discounted rate customers based upon the utility production plant allocator should not be shifted to other customer classes. As discussed in OCA's Main Brief, if a CTC based on this allocator would violate the rate cap for these customers, OCA submits that the Company must forego these revenues unless, for good cause shown, it requests and is granted a longer collection period for these classes. See OCA M.B. at 66-67. This is consistent with the Commission's Order in the PECO case. PECO Order, slip op. at 109-13.

B - D N/A

VIII. COMPETITIVE SAFEGUARDS

A. Code of Conduct

In its Main Brief, the Company has stated that it has proposed an adequate Code of Conduct,

and that any further resolution of this issue should be decided "on a generic basis for all EDCs and suppliers in the Commonwealth." DLC M.B. at 79. Having reviewed the Company's filing, the OCA presented several specific proposals that OCA witness Alexander made to Duquesne's proposed code of conduct to supplement or clarify the Company's proposal. OCA M.B. at 70. See also, OCA St. 5 at 52-56.

These amendments are necessary to address the appropriateness of Duquesne's Code of Conduct on an interim basis. As these issues are raised in generic proceedings, the OCA will participate in those proceeding as well. However, it is necessary that an appropriate code of conduct to address interaction between Duquesne's regulated and unregulated functions be put in place at this time, since it is anticipated that these rulemakings will not be concluded prior to the implementation of customer choice. The Commission reached a similar decision in PECO. PECO Order at 129. As such, the OCA submits that the Duquesne's proposed Code of Conduct be modified as set forth in the OCA's Main Brief, as well as OCA witness Alexander's testimony. OCA M.B. at 70-71; OCA St. 5 at 34-36, 53-56.

B. Pro Forma Tariffs -- Not an OCA issue.

IX. DUTY TO SERVE

A. Service to Returning Customers

In its Main Brief, the Company has again proposed that customers returning to rate cap service be required to remain with Duquesne for 12 months after returning to address the Company's "gaming" concerns. DLC M.B. at 80. The Company criticizes OCA witness Alexander's proposal to impose a fee on anyone who switches more than twice in a given year, and complains that the OCA failed to specify what fee should be charged. DLC M.B. at 80.

The OCA submits that the Company's arguments should be rejected. The OCA's discussion of this issue was set forth in its Main Brief at pages 71-72. In short, the OCA submits that the Company's requirement that a customer returning to rate cap service remain with Duquesne for

twelve months is unduly restrictive. As OCA witness Alexander stated, there are many reasons that Duquesne customers may need to return to generation service that have nothing to do with an attempt to game the system. OCA St. 5 at 51-52. Moreover, such restrictions may hinder the development of the competitive market. Thus, the OCA submits that this requirement has not been shown to be necessary at this time.

B. Provider of Last Resort

The OCA set forth its concerns about the Company's proposal to provide Provider of Last resort (POLR) service in its Main Brief at page 72. The Company has not raised any issues regarding this in its Main Brief.

1. Better Choice Plan

In its Main Brief, the Environmentalists presented the Better Choice Plan to address issues concerning the creation of a more diverse market. Env. M.B. at 35-41. The OCA addressed its concerns with the Environmentalists' Better Choice Plan in its Main Brief at page 6. While the OCA recognizes the issues addressed by the Environmentalists through the proposal, the OCA agrees with the Commission's decision in PECO and submits that it is more appropriate to revisit this plan when the Commission addresses the issues regarding the provision of service in regulations pursuant to §2807(e)(2) and (3).

2. POLR Generation Rates

The OCA discussed, in its Brief, its concern that Duquesne has not provided the detail necessary to evaluate the Company's provision of POLR service. OCA M.B. at 72. The Company did not address this issue it its Main Brief. Enron, however, did address this issue. Enron M.B. at 47. Enron recommends that the Commission consider now how it will effectuate the requirements of §2807(e)(3) of the Act (requiring that the POLR provide electric service at the "prevailing market prices"). Enron M.B. at 48. Enron suggests that when the PUC is required to order the POLR provider to provide service at the "prevailing market prices", the PUC should order that the "prevailing

market price..." is equivalent to the generation credit set in this proceeding. Id. According to Enron, setting the market price for POLR service at the generation credit level will create an incentive for POLR customers to "shop" for a better deal. Id.

The OCA submits that Enron's proposal is both premature and inconsistent with the Act. First, the Act requires the Commission to issue regulations regarding POLR service, and the Commission has already determined that it will decide these issues via a rulemaking. PECO Order, slip op. at 135. Second, Enron's argument ignores the possibility that a POLR customer simply may not be able to "shop". When competition arrives, there will be some customers that marketers may be unwilling to serve. Enron's "incentive" will deny these customers any rate savings from this move to competition. Third, Enron's argument that if Duquesne would like to offer POLR customers a rate reduction it can make a Chapter 13 filing or the Commission can set the rate "annually after review and approval by the Commission" is untenable and inconsistent with the Act's direction to move away from the regulation of generation. 66 Pa. C.S. 2802(14). Fourth, the plain language of the statute states that POLR service will be provided at "prevailing market price". As Enron must recognize, the generation credit, set by the method it proposes, may bear no relationship to a "prevailing market price" in the future. In short, the OCA opposes Enron's position on this issue and urges the Commission to reject it as well.

C. Electric Transmission and Distribution Service

1. Unbundling Other Customer Services

a. Introduction

A complete discussion of the OCA's position on these issues can be found in the OCA's Main Brief at pages 72-76.

b. Resolution in Generic Proceedings v. Resolution in this Case

Addressed in OCA Main Brief at 73.

c. Interim Rules Applicable to Duquesne -- See Discussion in section (b) above.

d. Specific Services - Billing and Metering

The discussion regarding billing and metering issues was set forth in the OCA's Main Brief at pages 73-75. No new issues have been raised regarding this topic by the Company. The OCA submits that Duquesne be directed to adopt the OCA's proposals regarding billing and metering in its Compliance Filing.

2. Agency

In its Main Brief, Enron discussed its proposal for a Supplier Complete Bill Option, and also for a complete agency relationship between the customer and supplier, claiming that such an offering will maximize a customer's choices and options. Enron M.B. at 64, 68-71. The OCA addressed this issue in its Main Brief, stating that Enron's proposal raises a significant number of concerns that must be thoroughly explored before it is adopted. OCA M.B. at 76. OCA witness Alexander explained her concerns with the proposal:

1. Ms. Muench proposes that under a Supplier Complete Bill Option, only the supplier would be Duquesne's customer of record. In this scenario, that supplier would be the single point of contact with the customer. This would require the suppler to take complete responsibility for compliance with Commission billing and consumer protection rules, including Chapter 56. According to Ms. Muench, under this approach the supplier would be able to issue an order to the distribution utility to physically disconnect a customer. This option, if implemented as proposed, would vastly complicate the Commission's ability to monitor and assure compliance with Chapter 56 and other consumer protection provisions.

2. Ms. Muench's testimony does not distinguish between disconnection of service for failure to pay for regulated distribution services and the collection remedy of contract cancellation for failure to pay for supplier services, as required by the Commission's Licensing Order.

3. Enron's proposal does not contemplate that customers may want a supplier-only bill, but may not want to select the full agency relationship for all aspects of electric service.

4. The Supplier Bill Option, if not carefully crafted may lead customers unwittingly back to "one-stop" bundled electric services.

OCA St. 5R at 7-9.

For these reasons, the OCA submits that this proposal needs to be thoroughly evaluated

before it can be implemented, to ensure, among other things, that customers will retain the necessary consumer protections. Thus, Enron's proposal should not be adopted here.

D. Consumer Protection and Service Issues

Addressed in OCA Main Brief at p. 76-78.

X. UNIVERSAL SERVICE AND ENERGY CONSERVATION

A. Introduction

The OCA set forth its position on Universal Service and Energy Conservation in its Main Brief at pages 78-89.

B. Overall Funding and Rate Issues

1. Eligibility and Funding Levels

In its Brief, Duquesne stated that other parties have proposed that eligibility for its universal service and energy conservation programs be determined solely on the basis of income criteria. DLC M.B. at 87. The Company argues that neither the Act nor the Commission's Universal Service Guidelines require that eligibility be determined in this manner. Id.

The OCA discussed issues of eligibility and funding for the Company's Universal Service and Energy Conservation programs at pages 81-84 of its Main Brief.[4] The OCA submits that as demonstrated by the testimony of OCA witness Brockway, CAAP witnesses Wilson and Kuennen and Environmentalists witness Colton, Duquesne eligibility criteria are so restrictive that the numbers of eligible customers would be far too limited in this competitive environment. Although the OCA recommended broadening eligibility criteria based primarily on income, the OCA recognized the need to "target" limited funds and proposed criteria to properly reach customers in need. Indeed, other parties who have addressed this issue agree that the Company's eligibility criteria should be

[4] The OCA notes that its funding recommendations are related to direct program costs for CAP and LIURP. The Company's proposed Universal Service budget of $12 million includes approximately $10.8 million in low-income collection and write-off costs. The OCA's proposal is to take a portion of this amount and redirect it to provide services designed to aid low-income customers meet their service obligations.

expanded and its dollars properly targeted. See, OCA M.B. at 81-84; CAAP M.B. at 6-13; Environmentalist M.B. at 42.

In surrebuttal, OCA witness Brockway explained that, contrary to the Company's assertion that her proposal is too broad, her proposed eligibility and funding levels actually serve a conservative number of customers. She explains:

> Mr. Flynn's November 3, 1997 Universal Service program proposal identifies about 115,000 low-income payment-troubled households. These are households with incomes at or below 150% of the federal poverty guidelines who also have missed a payment in a payment arrangement. Such customers meet the terms of eligibility as defined in the Commission's guidelines. I proposed in my direct testimony to limit intake to the [CAP] program to observe a level-of-effort cap of 0.5% of gross operating revenues. This in practice limits the pool to about 24,000 customers. This is only about 20% of the low-income payment-troubled households in the Duquesne service area. It is less than the 26,000 low-income customers Mr. Flynn identifies whose arrerages are over three times the average residential bill.

OCA St. 6 at 9. Ms. Brockway continues by explaining that Duquesne's proposal would limit the pool to about 2,350 customers. She testifies, "This tiny number is only about half again as many as participate today in the pilot, and hardly represents a full scale CAP. Serving only 2,350 customers in CAP would mean only 2% of the low-income payment troubled households in the Duquesne service areas would receive CAP assistance." Id. at 9-10.

This illustration clearly shows the severe limitations that the Company has placed on eligibility for its low income programs. As discussed above, in the OCA's Main Brief, and in the testimony of OCA witness Brockway, the eligibility for Duquesne's universal service programs should be increased. The OCA submits that it is a reasonable recommendation to require that Duquesne set a goal for its CAP program of providing bill assistance to 24,000 eligible customers by the end of three years.

Additionally, the OCA submits that the funding for the Company's LIURP and CAP programs be increased commensurate with the greater eligibility as set forth in the OCA's Main Brief at pages 83-84.

2. Cost Allocation and Rate Design

a. Cost Allocation

A number of parties have addressed the issue of cost allocation and rate design in Main Briefs, in addition to the OCA. Both DII and OSBA have opposed recovery of universal service costs from all customer classes.[5] The OCA submits that recovery of universal service costs from only the residential class is improper, and that universal service costs should be collected from all customer classes, either on a per kilowatt-hour basis, or -- in the alternative-- on a non-production revenue allocator basis. OCA M.B. at 84-86.

The OCA submits that requiring the residential customer class to foot the entire bill for these important programs would violate the Act's *requirement* that universal service charges be "non-bypassable." OCA witness Brockway explains that the General Assembly's use of the term "non-bypassable" should be understood as implying that all customers share in the costs. OCA St. 6S at 12. She explained:

> The General Assembly provided for a non-bypassable charge for universal service and energy conservation programs. Sections 2804(9) and 2802(17) use this term. In the jargon of restructuring, the term "non-bypassable" has been used in a case where some customer classes (particularly those made up of larger customers with greater competitive options) are in a position to secure competitive supplies, and, by leaving the bundled electric utility's service, bypass any public benefits obligations such as universal service. Thus, use of the term "non-bypassable" by the General Assembly should be understood in this light as implying that all customers share in the costs. Section 2802(17) reads in plain language that EDCs *must* be permitted to recover their universal service costs, and that the costs shall be recovered from all customers via a non-bypassable charge.

OCA St. 6S at 12.

Second, DII's argument that the rate cap does not permit the Commission to charge other classes for universal service was rebutted by Ms. Brockway:

That section [§2804(4)] provides that during the rate cap period, for customers who

---

[5] In Main Brief, DII seems to say that Duquesne has proposed to collect universal service charges *solely from* the residential class. DII M.B. at 96-97. The OCA submits that this interpretation is incorrect, as is evidenced by the Company's Main Brief. See DLC M.B. at 88.

> take service from the incumbent utility, two restrictions generally apply: the *total charges* of the utility may not exceed the total charges approved by the PUC as of the effective date of the legislation, and the *generation component* of charges may not exceed the generation component of the rates as of the effective date of the legislation. In the case where the customer buys generation elsewhere, the statute provides that total non-generation prices (including the low-income program charges) may not exceed the non-generation charges approved by the PUC at the effective date of legislation.
>
> These provisions do not contemplate that the Commission must observe the identical cost allocation methods in effect in the last rate case (and indeed one can hypothesize cases where these provisions would be violated if the Commission were to do so). The Act is clear that the generation rates and the non-generation rates for each class cannot exceed present rates during the period of the cap. That is quite different from saying that each allocator must be the same as it was whenever the Commission last looked at a Company's rates.
>
> Aside from the Act's limitation on shifting CTC costs from one class to another, the statute is not intended to lock the Commission in to any particular form of cost allocation, but rather to limit the rates for each class. So long as rates for each class (broken out separately into generation and non-generation) do not exceed the cap, the Commission is free to apply sound ratemaking principles, and to establish a policy that all classes contribute to a non-bypassable universal service cost recovery.

OCA St. 6S at 14-15.

Additionally, as the OCA explained in its Main Brief, the costs of expanded universal service programs are new costs, and as such, have not previously been included in the rates of any class. OCA M.B. at 85. Thus, requiring all classes to pay for a share of these costs, would not shift any existing costs from other rate classes.

Furthermore, DII and OSBA's argument that universal service costs should be assigned to the residential classes, due to cost of service ratemaking principles, should be rejected. As the OCA explained in its Main Brief, and as Ms. Brockway explained in testimony:

> [T]here is again no more reason to allocate costs to non-low-income residential customers under this reasoning than there is to allocate them to non-residential customers. Non-low-income residential customers benefit, as they do, exactly and only in the ways and to the extent that non-residential customers benefit.

OCA St 6S at 16. The OCA submits that DII's and OSBA's argument would mean that low-income customers would be required to pay for the costs of low-income programs, producing no benefit at all. Such a result is not what the General Assembly nor the Commission intends.

Thus, the OCA respectfully requests that all of Duquesne's customers share in the payment of these universal service costs.

b. Rate Design

At pages 85 and 90 of its Main Brief, OTS argues that the universal service charge should appear as a separate line item on a customer's bill. The OCA submits, however, that showing the charge as a separate line item would bring disproportionate attention to the charge that is not warranted. Moreover, the Commission held in PECO that the charge would be embedded in the distribution charges, and only accounted for separately. PECO Order, slip op. at 145. For these reasons, the OCA submits that the universal service charge should not appear as a separate line item on the customer's bill.

C. Specific Programs

1. CAP Program

The OCA set forth its specific recommendations to Duquesne's proposed CAP program in its Main Brief at pages 81-84 and 86-88. See also, OCA St. 6 at 29-39. In its Brief, Duquesne has stated that a number of OCA witness Brockway's recommendations have been incorporated into Duquesne's plan, or are already sufficient. DLC M.B. at 89. The OCA submits that this is not evident from the filings that the Company has made and asks the Commission to direct Duquesne to incorporate the OCA's recommendations in a detailed compliance filing. No additional issues have been raised in the Company's Main Brief.

2. LIURP

The OCA set forth its comments on Duquesne's proposed LIURP in its Main Brief at pages 81-84 and 88. See also, OCA St. 6 at 40-43. No additional issues have been raised in the Company's Main Brief.

3. Renewables

In its Main Brief, Duquesne has argued against the inclusion of a PV pilot in its

Universal Service and Energy Conservation plan, stating that the Commission's Guidelines do not require the inclusion of a renewables pilot. DLC M.B. at 90. Addressing OCA witness Brockway's photovoltaic proposal directly, Duquesne witness Flynn stated, and the Company has argued that the proposal is not cost effective, and due to the cloudy weather in Pittsburgh, the pilot has little likelihood of being successful. Duquesne M.B. at 90; DLC St. 14-R at 25-26.

The OCA submits that Ms. Brockway's recommendation for a renewables pilot was to specifically address the inclusion of such language in the Act. The purpose of this proceeding was to consider such proposals in specific cases. Indeed, the Commission in the PECO Order, recognized the value of such a pilot and directed its implementation. PECO Order, slip op. at 147. Additionally, the Company's argument that it is "too cloudy" in Pittsburgh is misplaced with respect to the technology involved. As OCA witness Brockway explained:

> Mr. Flynn's criticisms of that PV pilot are misplaced. First, photovoltaics operate during cloudy periods. While they do not put out as much electricity, they continue to generate electricity under a cloud cover. Second, PV is most useful to the system precisely when the system is peaking from heavy air-conditioning load during hot sunny days. Finally, the objective of the pilot, in addition to exploring cost-effectiveness issues, is to explore questions of infrastructure need and suitability to low-income housing situations.

OCA St. 6R at 10-11.

Thus, the OCA submits that Duquesne should be directed to include a renewables pilot as part of its LIURP programs.

XI. CONSUMER EDUCATION

A. Scope of Customer Education

The OCA fully set forth its position on consumer education in its Main Brief at pages 89-92. See also, OCA St. 5 at 5-29; OCA St. 5S at 4-12. In short, the OCA supports the Commission's decision in PECO which provides for a two-tiered approach to consumer education: a statewide campaign coupled with local efforts by the EDC.

In its Main Brief, the Company has acknowledged the two-tiered approach. DLC M.B. at 91-

93. However, Duquesne has alleged that the OCA does not recognize the role of the EDC in consumer education. DLC M.B. at 91. This is simply incorrect.

The OCA, in its Main Brief discussed at length the role of the EDC, given the statewide approach. OCA M.B. at 90-92. The OCA reaffirms that it is critical that Duquesne play a role in local consumer education issues. However, to this point, Duquesne has submitted an incomplete consumer education plan with a number of deficiencies. OCA M.B. at 91. See OCA St. 5 at 5. Again, the OCA submits that Duquesne be directed to provide a detailed consumer education plan with its compliance filing.

B. Implementation Issues

In its Main Brief, Duquesne has stated that its consumer education plan provides sufficient evaluation procedures. DLC M.B. at 92. The OCA disagrees with this assertion, and again submits, as discussed above, that Duquesne be directed to supplement its consumer education plan, including its evaluation procedures consistent with the suggestions of OCA witness Alexander. See OCA M.B. at 91; OCA St. 5 at 5-6. Additionally, the OCA again requests that Duquesne be directed to include involvement with Community Based Organizations (CBOs) in its consumer education plan. OCA M.B. at 92.

C. Funding Levels and Recovery

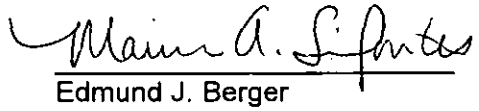
Duquesne has stated that the Company should be allowed to treat the cost of consumer education expenses as transition costs and recover these expenses through the appropriate mechanism. DLC M.B. at 93. The OCA submits that reasonable consumer education expenses should be recovered from ratepayers, but the Company has not provided sufficient detail to evaluate these costs. OCA M.B. at 92. Duquesne should be directed to submit a detailed budget in its compliance filing.

XII. MISCELLANEOUS ISSUES -- N/A

XIII. CONCLUSION

WHEREFORE, OCA respectfully submits that the Commission should adopt the recommendations of the Office of Consumer Advocate with respect to the restructuring issues discussed here and in OCA's Main Brief.

Respectfully submitted,



Edmund J. Berger
Assistant Consumer Advocate

Marisa A. Sifontes
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

Dated: February 17, 1998
45776

DUQUESNE LIGHT COMPANY

SUMMARY OF
STRANDED COSTS[1]
(millions $)

	Company Claim	OCA Adjustments	OCA Adjusted Amount
Nuclear	$ 934.40	$(92.15)	$842.25
Fossil	607.29	(429.23)	178.06
Fossil + Nuclear Subtotal	$1,541.69	(521.38)	1,020.31
Regulatory Assets	357.28	(26.44)	330.84
Total Net Present Value (NPV) in 1999 $	$1,898.97	$(547.82)	$1,351.15[2]
PUC Jurisdictional Percent	99.9%	--	99.9%

(1) All figures are net of tax.
(2) OCA results are pre-merger and should be reduced by $152.28 if merger is completed.
(3) See subsequent tables for sources.

DUQUESNE LIGHT COMPANY

STRANDED COSTS
CALCULATION-FOSSIL + NUCLEAR
(millions $)

	Company Claim[1]	OCA Adjustments	OCA Adjusted Amount
a. Net Book Value	$1,236.96	$ 37.94	$1,274.91[2]
b. (Market Value)	(27.40)	(271.67)	(299.07)[3],[4]
c. PV of Fossil + Nuclear Decommissioning	123.90	(79.43)	44.47[2]
d. PV of Costs Independent of Operation	208.23	(208.23)	0.00
e. Net Present Value (NPV) in 1999 $ (a+b+c+d)	$1,541.69	$(521.38)	$1,020.31[4]
Discount Rate	7.83%		6.88%
PUC Jurisdictional Percent	99.9%		99.9%

(1) Source: Exhibit No. DJC-10.

(2) Source: OCA Statement No. 1A, Schedule MIK-1, page 2 of 3, December 1997 update. The net book value figure on that schedule of $1,487.91 is adjusted downward in order to express the Beaver Valley 2 lease on a net of tax basis (a reduction of $213 million) to be consistent with Duquesne's presentation.

(3) Source: OCA Statement No. 1A, Schedule MIK-1, pp. 2 and 3, December 1997 update. Market value is $115.31 on page 2, plus $13.04 (productivity adjustment) and $170.72 (life extension) on page 3.

(4) If merger is completed, figures should be further reduced by $152.28. Source: same as note (3).

(5) All figures are net of tax.

DUQUESNE LIGHT COMPANY

STRANDED COSTS
CALCULATION-NUCLEAR[1]
(millions $)

	Company Claim[2]	OCA Adjustments	OCA Adjusted Amount[3]
a. Net Book Value	$788.59	+$9.19	$797.78
b. (Market Value)	(7.20)	+7.20	0.00
c. PV of Nuclear Decommissioning	57.40	(12.93)	44.47
d. PV of Costs Independent of Operation	95.61	(95.61)	0.00
e. Net Present Value (NPV) in 1999$ (a+b+c+d)	$934.40	$(92.15)	$842.25
Discount Rate	7.83%		6.88%
PUC Jurisdictional Percent	99.9%		99.9%

(1) All figures are net of tax.
(2) Figures supplied by DLC to the parties.
(3) Source: OCA Statement No. 1A, Schedule MIK-1, page 2 of 3, December 1997 update. To be consistent with the Company presentation, the Beaver Valley 2 lease is expressed on a net of tax basis, a reduction of $213.0 million.

DUQUESNE LIGHT COMPANY

STRANDED COSTS
CALCULATION-FOSSIL[1]
(millions $)

	Company Claim[2]	OCA Adjustments	OCA Adjusted Amount[3]
a. Net Book Value	$448.37	+$28.76	$477.13
b. (Market Value)	(20.20)	(278.87)	(299.07)
c. PV of Fossil Decommissioning	66.50	(66.50)	0.00
d. PV of Costs Independent of Operation	112.62	(112.62)	0.00
e. Net Present Value (NPV) in 1999$ (a+b+c+d)	$607.29	(429.23)	$178.06
Discount Rate	7.83%		6.88%
PUC Jurisdictional Percent	99.9%		99.9%

(1) All figures are net of tax.
(2) Figures are supplied by the Company to the parties.
(3) Source: OCA Statement No. 1A, Schedule MIK-1, pp. 2 and 3, December 1997 update. Market value is the sum of figures on page 2 plus the productivity adjustment and life extension on page 3. These figures do not include merger savings ($152.28 million), which must be included if merger is completed.

DUQUESNE LIGHT COMPANY

STRANDED COST CALCULATION
REGULATORY ASSETS
($000)

		Company Claim (1)		OCA Adjustments		OCA Recommendation(2)	
		Gross	Net of Tax	Gross	Net of Tax	Gross	Net of Tax
a.	Regulatory Tax Receivable (SFAS 109)	$236,480	$179,000	$0	$0	$236,480	$179,000
b.	Post 2005 Unamortized Debt Costs	29,920	19,040	(580)	(370)	29,340	18,670
c.	Pre 2006 Unamortized Debt Costs	16,760	9,800	(330)	(190)	16,430	9,610
d.	Deferred Rate Synch. Costs	25,370	23,500	1,150	1,070	26,520	24,570
e.	Deferred Employee Costs	13,830	13,830	410	410	14,240	14,240
f.	Deferred Nuclear Mainteance	3,250	1,900	0	0	3,250	1,900
g.	DOE Decommissioning	5,580	3,250	160	100	5,740	3,350
h.	Deferred Coal Costs	13,500	13,500	(13,500)	(13,500)	0	0
i.	Deferred Caretaker Costs	6,770	3,920	(6,770)	(3,920)	0	0
j.	BV2 Training Costs	2,420	1,580	0	0	2,420	1,580
k.	Low Level Radioactive Waste	2,270	2,270	0	0	2,270	2,270
l.	Coal Cost Equalization	120	120	0	0	120	120
m.	Pre-Accrued Nuclear Outage Costs	17,600	10,290	(17,600)	(10,290)	0	0
n.	SFAS No. 106 Deferral	3,280	1,920	90	50	3,370	1,970
o.	Deferred Fuel Costs	11,510	6,730	330	190	11,840	6,920
p.	Other Regulatory Assets	530	530	0	0	530	530
q.	BV2 Sale/Leaseback Premium	N/A	N/A	0	0	N/A	N/A
r.	Gain on Sale Leaseback Tax Effect	55,130	55,130	0	0	55,130	55,130
s.	Deferred Rate Synch. Tax Effect	210	210	10	10	220	220
t.	Beaver Valley 2 Tax Effect	170	170	0	0	170	170
u.	SFAS No. 109 Plant	N/A	N/A	0	0	N/A	N/A
v.	Other Transition Expenses	18,100	10,590	0	0	18,100	10,590
w.	Total Regulatory Assets	$462,800	$357,280	($36,630)	($26,440)	$426,170	$330,840
	PUC Jurisdictional Percent		99.90%		99.90%		99.90%
	Deferred Taxes on Regulatory Assets		$105,520		($10,190)		$95,330

Notes:

(1) Amounts provided by Duquesne Light Company.

(2) Gross amounts per Schedule TSC-1, with Other Transition Expenses figure corrected to match revised Company claim. Net of tax amounts per Exhibit DJC-10.

Exhibit LS-7 Revised
(Revised LS-4)

Duquesne Light Company
Retail Cost of Service
$000

	1996	1999	2000	2001	2002	2003	2004	2005
Total Retail MWh	12,393,680	12,519,000	12,727,000	12,936,000	13,153,000	13,378,000	13,615,000	13,858,000
OCA Proposed Rates ¢/kWh:								
T&D	2.211	2.211	2.211	2.211	2.211	2.211	2.211	2.211
Market Generation		2.161	2.222	2.231	2.523	3.268	3.386	3.622
Generation A&G	0.368	0.368	0.378	0.389	0.400	0.412	0.425	0.440
Avoidable Generation Component		2.529	2.600	2.620	2.923	3.680	3.811	4.062
CTC		2.683	2.613	2.593	2.290	1.533	1.402	1.151
Total Proposed Rate		**7.423**	**7.423**	**7.423**	**7.423**	**7.423**	**7.423**	**7.423**
OCA Proposed Revenue:								
T&D	273,968	276,738	281,336	285,956	290,753	295,727	300,966	306,338
Market Generation		270,541	282,735	288,538	331,837	437,179	460,939	501,924
Generation A&G	45,648	46,110	48,104	50,322	52,614	55,125	57,930	60,922
Avoidable Generation Component		316,651	330,840	338,860	384,451	492,304	518,869	562,845
CTC		335,937	332,591	335,465	301,186	205,062	190,850	159,541
Total Proposed Revenue		**929,326**	**944,767**	**960,281**	**976,390**	**993,092**	**1,010,686**	**1,028,724**
Total Revenue @ Current Rates	1,106,787	**1,117,979**	**1,136,554**	**1,155,218**	**1,174,597**	**1,194,690**	**1,215,854**	**1,237,555**
Total Average Revenue ¢/kWh	8.930	8.930	8.930	8.930	8.930	8.930	8.930	8.930
Difference (Proposed - Current)		**(188,653)**	**(191,787)**	**(194,937)**	**(198,207)**	**(201,597)**	**(205,169)**	**(208,831)**
Percent Change From Current		-16.9%	-16.9%	-16.9%	-16.9%	-16.9%	-16.9%	-16.9%

Sales and revenue per JAL-9.
T&D Revenue Requirement per OSBA-2-24 (JAL-1C, p 5-6), incl GRT.

TABLE 2
PAGE 1 OF 2

Exhibit LS-10 Revised
(Revised LS-6)

Duquesne Light Company
Unbundled Rate Design
Residential - Rate RS

		Billing Units	Revenue	Rate
1	**Customer Charges:**			
2	Customer Bills	5,955,305	$38,233,058	$6.42
3				
4	**Distribution Charges**			
5	All kWh	2,977,045,069	$81,921,607	$0.02752
6				
7	**Transmission Charges**			
8	All kWh	2,977,045,069	$9,193,572	$0.00309
9				
10	**Generation Charges (Optional)**			
11	All kWh	2,977,045,069	$76,807,763	$0.02580
12				
13	**CTC Charges**			
14	All kWh	2,977,045,069	$94,997,508	$0.03191
15				
16	**Total Proposed Energy Charges**			
17	All kWh	2,977,045,069	$262,920,450	$0.08832
18				
19	**Total Current Energy Charges**			
20	All kWh	2,977,045,069	$349,505,091	$0.11740
21				
22				
23	**Total Proposed Charges**		$301,153,508	
24	**Total Current Charge**		$387,738,149	
25	**Rate Change**		-22.33%	
26				
27				

CERTIFICATE OF SERVICE

Re: Application of Duquesne Light Company for
Approval of its Restructuring Plan Under
Section 2806 of the Public Utility Code
Docket No. R-00974104

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17th day of February, 1998.

SERVICE IN PERSON

Kandace Melillo, Esquire
Wayne Scott, Esquire
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

SERVICE BY FEDERAL EXPRESS, FEBRUARY 17, 1998

John S. Moot, Esquire
Skadden, Arps, Slate, Meagher
& Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Larry R. Crayne, Esquire
Duquesne Light Company
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, PA 15230-1930

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Angela Jones, Esquire
Office of Small Business Adv.
Suite 1102, Commerce Bldg.
300 North Second Street
Harrisburg, PA 17120

Allegheny Electric Cooperative, Inc.
212 Locust Street
P.O. Box 1266
Harrisburg, PA 17108-1266

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500

William T. Hawke, Esq.
Mid Atlantic Power Supply Association
100 North 10th Street
Harrisburg, PA 17105

Daniel Clearfield, Esquire
Gerald Gornish, Esquire
Alan Kohler, Esquire
Robert Longwell, Esquire
Wolf, Block, Schorr and Solis-Cohen
Suite 401
305 North Front Street
Harrisburg, PA 17101

Brian A. Rider, President
Pennsylvania Retailers' Association
224 Pine Street
Harrisburg, PA 17101-1325

James P. Dougherty, Esq.
Robert A Weishaar, Jr., Esq.
Pamela C. Polacek, Esq.
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Mary McFall Hopper, Esquire
PECO Energy Company
2301 Market Street S23-1
Philadelphia, PA 19103

Vickiren S. Aeschleman
QST Energy Inc.
Suite 300
300 Hamilton Blvd.
Peoria, IL 61602

David Hughes
4037 Ludwick Street
Pittsburgh, PA 15217

Jim Ferlo, Councilman
510 City-Council Building
Pittsburgh, PA 15219

Rodney R. Akers, Esq.
Assistant City Solicitor
313City-County Building
414 Grant Street
Pittsburgh, PA 15219

Howard M. Louik, Esq.
Allegheny County Law Dept.
300 Fort Pitt Commons
445 Fort Pitt boulevard
Pittsburgh, PA 15219

Margaret Peters, Esq.
The Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222-3197

John Stember, Esq.
Low Income Advocate Parties
1705 Allegheny Bldg.
429 Forbes Avenue
Pittsburgh, PA 15219

Kevin J. McKeon, Esq.
Todd Stewart, Esq.
Malatesta, Hawke & McKeon, LLP
P.O. Box 1778
Harrisburg, PA 17101

David M. DeSalle, Esq.
Terrance J. Fitzpatrick, Esq.
Ryan, Russell , Ogden & Seltzer, LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Kenneth Zielonis , Esq.
Stevens & Lee
Suite 310
208 North Third Street
Harrisburg, PA 17108

John Wilson, Executive Director
Community Action Association of PA
222 Pine Street
Harrisburg, PA 17101

Stephen L. Feld, Esquire
Pennsylvania Power Company
1 East Washington Street
P.O. Box 891
New Castle, PA 16103-0891

Sheila S. Hollis, Esquire
Mary Ann Ralls, Esquire
Stephenie A. Sugrue, Esquire
Duane, Morris & Heckscher LLP
Suite 700
1667 K Street, N.W.
Washington, DC 20006-1608

Scott J. Rubin, Esquire
3 Lost Creek
Selinsgrove, PA 17870

Joseph A. Dworetzky, Esq.
John P. Lavelle, Jr., Esq.
Hangley, Aronchick, Segal & Pudlin
12th Floor, One Logan Square
Philadelphia, PA 19103

Mark J. McGuire, Esq.
Ronald N. Carroll, Esq.
Jenner & Block, Suite 1200
601 13th Street, NW
Washington, DC 20005

Tim Merrill, Esq.
Suite 200
4 Penn Center West
Pittsburgh, PA 15276

Paul E. Russell, Esq.
Pennsylvania Power & Light Company
2 North 9th Street
Allentown, PA 18101

David M. Boonin
New Energy Ventures East, LLC
Suite 2525
1845 Walnut Street
Philadelphia, PA 19103

David Cruthirds
Electric Clearinghouse, Inc.
Suite 5800
1000 Louisiana
Houston, TX 77002-5050

Steven Baicker-Mckee, Esq.
Wanda Schiller, Esq.
Babst, Calland, Clements & Zomnir PC
8th Floor, Two Gateway Center
Pittsburgh,PA 16222

Kenneth L. Wiseman, Esq.
Mark F. Sundback, Esq.
Andrews & Kurth, LLP
1701 Pennsylvania Avenue
Washington, DC 20006

Michael L. Kurtz, Esq.
David F. Boehm, Esq.
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

Douglas F. John, Esq.
JOHN & HENGERER
Suite 600
1200 17th Street, N.W.
Washington, D.C. 20036

Roger Clark, Esq.
The Environmentalists
905 Denston Drive
Ambler, PA 19002-3901

Gary Jeffries, Esq.
CNG Energy Services, Inc.
One Parkridge Center
Pittsburgh, PA 15244-0746

Donald A. Kaplan, Esq.
Lisa M. Halpert, Esq.
Preston, Gates, Ellis & Rouvelas
Meeds, LLP
1735 New York Avenue, NW, Suite 500
Washington, DC 20006-4759

Albert M. Benincasa, Esq.
Director, Regulatory Affairs
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579

Stephen J. Baron
J. Kennedy and Associates, Inc.
Suite 475
35 Glenlake Parkway
Atlanta, GA 30328

Robert J. Stefanko, Esq.
341 South Bellefield Avenue
Pittsburgh,PA 151213

Alan J. Barak, Esq.
Environmentalists
1417 Blue Mountain Parkway
Harrisburg, PA 17112

Brian Kalcic
Excel Consulting
Suite 720-T
225 S. Meramec Avenue
St. Louis, MO 63105

Donald R. Ayersman, Jr., Esq.
1125 Denver Avenue
Morgantown, PA 26505

Robert B. Weisenmiller
MRW & Associates, Inc.
Suite 1440
1999 Harrison Street
Oakland, CA 94612-3517

Michael Reid, Director
Materials Management Services
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513

Thomas P. Gadsden, Esq.
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

Timothy Moran
986 Greentree Road
Pittsburgh, PA 15222

James D. Steffes
Enron Power Marketing Inc.
1400 Smith Street
P.O. Box 4428
Houston, TX 77002

John O'Brien, Esq.
Wheeled Electric Power Company
Suite 207
50 Charles Lindburgh Blvd.
Uniondale, NY 11553

Thomas J. Augspurger, Esq.
Midcon Corporation
Office of General Counsel
701 East 22nd Street
Lombard, IL 60148

Craig Nifong
Midcon Corporation
3200 Southwest Freeway
Houston, TX 77027

Cindy Datig, Esq.
$1 Energy Fund
P.O. Box 42329
Pittsburgh, PA 15203

Marisa A. Sifontes

Marisa A. Sifontes
Assistant Consumer Advocate

Counsel For
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048
43679

LAW OFFICES OF
STEVENS & LEE
A PROFESSIONAL CORPORATION

ORIGINAL

PLEASE RESPOND TO HARRISBURG

DOCUMENT FOLDER

February 17, 1998

RECEIVED
98 FEB 17 PM 4:01
PA.P.U.C.
PROTHONOTARY'S OFFICE

James J. McNulty
Secretary
PA Public Utility Commission
P.O. Box 3265
North Office Building
Harrisburg, PA 17105-3265

Re: Application of Duquesne Light Company for Approval of Restructuring Plan under Section 2806 of the Public Utility Code, Docket No. R-00974104

Dear Secretary McNulty:

Please find enclosed an original and 9 copies of the Reply Brief of the Pennsylvania Retailers Association for filing in the above captioned proceeding. As indicated by the attached Certificate of Service, the presiding Administrative Law Judge and all parties of record have been served a copy hereof. A copy of the brief on a diskette has been provided to the Administrative Law Judge.

Should you have any questions or comments, please feel free to contact my office.

Sincerely,

STEVENS & LEE

Kenneth Zielonis

Kenneth Zielonis

/dle
Attachment

cc: B. Rider

208 North Third Street, Suite 310, P.O. Box 12090, Harrisburg, PA 17108-2090 • 717-234-1250 Fax 717-234-1939
One Penn Square, P.O. Box 1594, Lancaster, PA 17608-1594 • 717-291-1031 Fax 717-394-7726
1605 North Cedar Crest Boulevard, Suite 515, P.O. Box 20830, Lehigh Valley, PA 18002-0830 • 610-439-4195 Fax 610-439-8415
Two Penn Center Plaza, Suite 200, Philadelphia, PA 19102-1702 • 215-854-6370 Fax 215-569-0216
111 North Sixth Street, P.O. Box 679, Reading, PA 19603-0679 • 610-478-2000 Fax 610-376-5610
One Glenhardie Corporate Center, 1275 Drummers Lane, P.O. Box 236, Wayne, PA 19087-0236 • 610-964-1480 Fax 610-687-1384
289 North Main Street, Wilkes-Barre, PA 18702-4409 • 717-823-6116 Fax 717-823-1149

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code	:	Docket No. R-00974104

REPLY BRIEF OF THE PENNSYLVANIA RETAILERS ASSOCIATION

Kenneth Zielonis, Esquire
Suite 310
208 North Third Street
P.O. Box 12090
Harrisburg, PA 17108-2090

Dated: February 17, 1998

Attorneys for the Pennsylvania Retailers Association

TABLE OF CONTENTS

I. Introduction and Summary of Argument.

The presiding Administrative Law Judge, ("ALJ"), directed that Main Briefs be filed in this proceeding on or before February 10, 1998. Several of the active parties filed Main Briefs in accordance with that directive. The presiding ALJ has directed that Reply Briefs be submitted on or before February 17, 1998. The Pennsylvania Retailers Association, ("PRA"), files this Reply Brief in accordance with that directive.

II. Phase-In of Customer Choice.

A. Method of Customer Selection.

Duquesne claims that its market segment plan for industrial and commercial classes has two key benefits for purposes of phase-in to access to a competitive retail generation market . Duquesne M.B. at 6. First, it claims that the results of its first-come, first served pilot program enrollment process are best used to determine which market segments expressed, initially, the most interest in the pilot program. It wiil use this data to phase-in access Id. Second, Duquesne claims that its proposal eliminates competitive disadvantages by enrolling all market segments at one time. Duquesne's arguments are baseless and contrary to its own evidence.

For example, Duquesne relies upon the results of a lottery enrollment for the pilot program, not a first-come, first

served methodology. Duquesne admits that all customers did not have equal knowledge or expertise regarding the pilots. Duquesne St. No. 6 at 3. Further, PRA emphasized the inappropriateness of using the results of the pilot program as a determination of a phase-in to electric competition. See, PRA M.B. at 8-9. Secondly, the Duquesne approach does not eliminate competitive advantages. Indeed, it exacerbates the problem. Duquesne witness Hoffman admitted that market segments could compete with each other. PRA M.B. at 8. In that case, similarly situated customers are disadvantaged through denial to access to the competitive retail generation market.

The Act requires that the benefits of retail generation competition be made available to the entire Commonwealth.

> (7) This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs.

66 Pa. C.S. § 2802(7).

The Legislature intends for all customers to participate. The Commission must not shackle customers' abilities to access the market through the artificial creation of a one-third of class load limitation. The only fair, equitable and nondiscriminatory method of phase-in is that proposed by PRA. That is, all customers should be permitted to accsee a limited portion of their load, at least initially. Contrary to

Duquesne's assertions, the Act does not state that phase-in is limited to a specific percentage of customers. The Act merely speaks of a class load. If the Legislative intent is to create a workable, competitive retail generation market (and PRA strongly believes it is), then the most efficient method of implementation is to allow all customers to initiate access through partial load. The Act speaks of Customer Choice and not administrative convenience to the electric utility. Indeed, Duquesne itself apparently agreed to PRA's proposal upon cross-examination. Tr. 1049 - 1050.

Finally, Duquesne never quantified the alleged "excessive administrative burdens) that would result from implementation of PRA's proposal. Rather, Duquesne provided unsupported conclusions lacking any factual basis. As such, it cannot be relied upon as a means of rejecting the PRA proposal. Duquesne claims that PRA seeks a "special deal" for large commercial customers. A closer reading of PRA's testimony reveals otherwise. To further dispel this notion, PRA believes that its proposal, as articulated in its Main Brief, can and should be applied to all customers as the Commission sees fit. PRA's proposal is fully consistent with the Legislative intent of the Act, something that cannot be said for the Duquesne proposal for customer selection.

B. Timetable for Phase-In.

Duquesne rejects proposals to implement a phase-in consistent with the the Commission's decision in Application of PECO Energy Company for Approval of its Restructuring Plan, Docket No. R-00973953 (Order entered December 23, 1997), hereafter PECO decision. PRA provided argument in its Main Brief as to why the PECO timetable was appropriate. Indeed, as the General Assembly's Declaration of Policy (66 Pa. C.S. § 2802) enunciated in the Act indicates, Pennsylvania businesses compete in regional, national and international marketplaces. Thus, a uniform policy must be established across Pennsylvania; to do otherwise will create a competitive disadvantage for those unfortunate customers "to be left out in the wilderness" because of a distorted interpretation of the Act. The PECO timetable as modified by PRA in its Main Brief should be adopted for the Duquesne proceeding. That is, one-third of each customer's load by January 1, 1999, two-thirds of each customer's load by January 2, 1999 and full access for the entire load by January 1, 2000.

III. Transmission and Distribution Rates; Unbundling Issues.

A. Introduction.

Duquesne claims three types of disputes in this section. They include (1) Test Year Cost of Service; (2) appropriate functionalization of plant; and (3) creation of

new rate classes. Duquesne M.B. at 9. PRA briefed this issue at pages 16 - 25 of its Main Brief. PRA responds only to the new arguments raised in Duquesne's Main Brief.

B. 1996 Test Year Cost of Service.

The cost of service selected by the Commission must appropriately functionalize the costs among the generation, transmission and distribution functions. Duquesne's costs of service fails to accomplish that goal and should be rejected.

C. Required v. Realized Rates of Return.

Duquesne claims that it has computed transmission and distribution rates on a traditional cost of service basis. Duquesne M.B. at 11. It claims that regulated rates are set based upon required rates of return. Id. at 13. It cites no legal authority for this proposition. Duquesne also argues that because it has not filed a rate case since 1987, customers should suffer through a required return analysis rather than the realized returns that underlie current rates capped by the statute. Duquesne claims that its approach is appropriate because total unbundled rates will equal total bundled rates, a classic non sequitur. The key issue is that the Act requires unbundling of rates into the functional components. PRA's main brief highlights why the claimed or required rate of return should not be recognized. The Duquesne approach also is inappropriate because it assumes that the T&D portion of plant was receiving a higher rate of return than the generation

component. There is no factual support for this assumption. Indeed, as pointed out by the OCA, the evidence is to the exact contrary. In Duquesne's last base rate case, a common rate of return was applied to rate base, not differing rates of return. Thus, the Duquesne proposal to utilize claimed rates of return should be rejected.

D. Distribution Losses.

The Commission should require that distribution losses should be removed from Duquesne's distribution rates so that alternative suppliers and customers may bid competitively such losses and so that distribution rates do not contain inappropriate costs related to the generation function.

E. Ancillary Services.

Duquesne claims two major issues in regard to ancillary services. First, it claims that FERC and ECAR established the rules for competitive and noncompetitive provisions of ancillary services. Second, it believes that another major issue is whether such services are related to the generation function or the T&D function.

PRA agrees with the statements of the OCA and DII contained in their Main Briefs. As indicated by DII, Duquesne's approach is piecemeal in nature and thus, unsatisfactory. DII M.B. at 16. All of the generation related ancillary costs must be removed from the transmission rate and placed back into generation rates. This affirmative modification to Duquesne's

costs of service is necessary because it is unclear now if Duquesne modified its adjustment to transmission rates. OCA M.B. at 11.

F. Voltage-Differentiated Rates.

This is not a PRA issue.

G. Other Issues.

Not applicable.

H. Conclusion.

The Commission should adopt each recommendation contained herein

IV. Transition or Stranded Costs.

A. Overview of Stranded Costs Valuation and Recovery Approaches.

1. Introduction.

Duquesne is correct in claiming that the pivotal issue in this proceeding is whether to accept its offer to establish stranded costs through a generation auction. It incorrectly assumes, however, that this auction of generation plant itself will decide the issue. As noted by PRA in its Main Brief, the elements of an auction clearly impact its success or failure (i.e., a high or low market price is attained).

2. Duquesne's Approach.

(a) Market Based Valuation.

Duquesne's divestiture proposal has meaning only in the context of a disallowance of the merger application between it and APS. Thus, it is difficult to analyze this offer at this time.

Moreover, the auction method may not be the most appropriate methodology if Duquesne is able to control the timing and parameters of the auction. As indicated by PRA in its Main Brief, the parameters of the auction are a key to its success. A passive wholesale auction that does not include ancillary services or the right to transmission access will lead to depressed market prices that are not indicative of prospective retail generation market prices.

Finally, Duquesne's claim that the Commission must deal with Duquesne's obligation to serve at capped rates. Duquesne M.B. at 21. It appears that Duquesne argues that it will be economically disadvantaged if market rates exceed capped rates. That is, it will be required to go to the open market to purchase capacity and energy. Duquesne's analysis, however, is severely misguided. If market rates are higher than those produced by the auction, it simply means that the resulting CTC was incorrectly established, i.e., it was set too high by the Commission. This means that Duquesne would be overrecovering its stranded cost level because it underestimated the market price. Thus, the

amount by which market rates exceed capped rates is the same amount by which Duquesne would be overcollecting stranded costs through an inflated CTC.

3. Intervenor Approaches.

Duquesne incorrectly assumes that the Act prohibits a reduction in excess earnings under capped rates as long as those excess earnings are used to mitigate stranded costs. Duquesne M.B. at 22. The OCA is correct in asserting in its Main Brief that the provision relied upon by Duquesne (66 Pa. C.S. § 2804(4)(v)) relates not to a restructuring proceeding but rather a proceeding subsequent to the restructuring proceedings. This provision is part of the rate cap section of the Act and consumers are entitled to those protections through the statutorily prescribed time periods. Further, the cited provisions refer to " upon complaint of any party", clearly a time period other than the restructuring proceeding. Thus, Duquesne's arguments must be rejected.

4. Conclusion.

The Commission should adopt each recommendation contained herein.

B. Generation Related Stranded Costs. (Recovery Pursuant to Section 2808(3)).

1. Introduction.

No discussion by PRA.

2. Net Book Value.

(a) Total Net Book Value.

Duquesne's Net Book Value should properly characterize the Beaver Valley 2 lease costs as a generation asset and should remove an amount that was associated with restoring Brunot Island to service. Since this facility will not be placed back into service, the amount must be removed from Duquesne's claim for book value.

(b) Treatment of Beaver Valley 2 Lease Costs.

These lease costs should be classified as generation related and not a regulatory asset. Significantly, it would not necessarily be fully recoverable as a generation related stranded cost. Contrary to Duquesne's claim, this reclassification will change the total valuation of Duquesne's stranded cost claim.

(c) Recovery of Phillips and Brunot Island Costs.

PRA recommends that the Commission adopt the OCA's adjustment regarding this issue. It is Duquesne's argument regarding the Ft. Martin settlement that is novel. The Commission's Declaratory Order regarding Duquesne's Ft. Martin Petition is novel. It is clear that the proceeds of this transaction were to be used to restore Brunot Island to commercial operation. Since that has not occurred, ratepayers are entitled to a "return" of this money. None of the significant financial commitments agreed to by Duquesne in the

Ft. Martin sale were tied to subsequent ratepayer contribution. So it should be for the Brunot Island funds.

3. Market Value.

(a) Introduction.

Duquesne's proposals to delay a final valuation of stranded costs until a future date should be rejected by the Commission. Stranded costs must be set in this proceeding. A market valuation in a subsequent time period will have to rely upon forecasts of future market prices to establish whether stranded costs are fully recovered at that time; it will rely upon past market transactions as indicators of future market prices, a dubious proposition; and the rate cap/obligation to serve argument is a red herring since it simply means the CTC was established too high and Duquesne is overrecovering its stranded costs.

Contrary to Duquesne's assertion, the Act does not elevate accuracy over any stranded cost formula. Indeed, as noted earlier, Duquesne is protected if market prices rise because that simply means it is overrecovering the CTC or its stranded costs. If market prices fall, Duquesne is still recovering its full CTC, it can purchase power supplies at the lower market cost and its recovery of stranded costs throughout the transition period lowers its net operating costs (particularly depreciation) thus enabling it to meet the lower market price. Duquesne simply ignores the interdependence of the

entire Act. The Legislature gave Duquesne the tools to meet competition by allowing it to receive its stranded costs.

(b) Market Price Projection.

(i) Forecasting Methodology.

The Duquesne RFP cannot be used as a predictor of future market prices. That process understated the future cost of power in a retail generation market. The functional (e.g., no ancillary services) and service constraints (e.g., no transmission rights) severely restricted the value bidders placed upon the power. Further, Duquesne narrowly defines the market to include only its service territory. A future electrical energy market will be regional in scope which greatly expands the universe of potential buyers and sellers.

(ii) Input Assumptions.

Duquesne alleges three disputed input assumptions. The first concerns the assumption that ECAR utilities will construct new generating capacity immediately to meet an assumed 15% reserve margin requirement. Duquesne M.B. at 30. Duquesne fails to recognize that a reserve margin is necessary and appropriate in light of a new, untested retail generation market where the statute requires and demands maintenance of a high level of reliability. 66 Pa. C.S. §§2802(4), (11), (12), (20); 2804(1), (14). It should be emphasized that Duquesne did not use a dispatch model and thus its input assumptions have little value. OCA M.B. at 35. Finally, the Commission concurred with and

relied upon the assumptions utilized in the ENPRO model in the PECO proceeding. The OCA's analysis assumes that customers will seek the same level of reliability that is comparable to the historic minimum reserve target of 8%. See OCA M.B. at 36. This is appropriate in light of the untested retail generation market and in light of the statutory requirement to maintain existing levels of reliability. See supra. The second disputed assumption concerns Duquesne's use of its auction prices as the indicator of future market prices. As discussed earlier, this market was narrowly defined and thus cannot be relied upon as a market predictor.

Assumptions not discussed by Duquesne in its Main Brief include a fuel price assumption. Duquesne's reluctance to rely upon fuel forecasts because they have been wrong in the past does not discount their value in determining stranded costs.

(iii) Results.

No discussion by PRA.

(c) Other Evidence of Market Value.

Duquesne ignores the reliability of historic market prices when they do not foster its stated goal of inflating stranded costs. For example, Duquesne fails to recognize the "other evidence of market value" arising from the sale of its' ownership interest in the Ft. Martin plant. It claims that the Ft. Martin sale reveals how price forecasts can become outdated. The Ft. Martin sale supports the contrary proposition that it is

an "auction" of power which reflects how unreliable so-called market prices are when they are narrowly defined, limited to one utility and subject to the parameters set by the selling utility. The Ft. Martin sale undercuts Duquesne's major assumption in this case in that its limited power auction RFP is not indicative of future market prices.

(d) Conclusion.

The ALJ should reject Duquesne's market assumption.

4. Other Factors Affecting Market Value/Stranded Costs.

(a) Life Extensions.

Duquesne claims that it is inappropriate to assume life extensions of its coal-fired plant. It claims this is deficient because the life extensions are not based upon a study of Duquesne's units but rather based upon studies of other utilities. It would be inappropriate, however, to rely upon a Duquesne specific study as it would again narrowly define the market. A future retail generation market will be regional and multi-Reliability Council in nature (e.g., PJM-ECAR). The statute requires an affirmative mitigation standard for electric utilities. This includes life extensions. Duquesne recognizes the folly of its own argument when it agrees that life extensions should be studied at the time it wishes to establish stranded costs, i.e., a future date. Thus it tacitly concedes that it is

appropriate to analyze life extension at the time at which stranded costs are set.

(b) Plant Shutdowns.

Duquesne inserted into this proceeding, at the Rebuttal stage, the issue of "Costs Independent of Operation" or operating losses. It's failure to raise the issue as an element of its stranded costs at that late date is an appropriate basis, on its own, for rejection of this claim. There is, however, another reason for rejection. Certain Duquesne plants are currently uneconomic. This status does not arise from a "movement to a competitive retail generation market," the legal predicate for stranded costs recovery. The Act and its intent to move the Commonwealth in the direction of competition only brings that issue to the foreground rather than burying it in current rates where it now exists. The Act only highlights the issue, it does not create the operating loss.

(c) Productivity Gains.

Duquesne claims that productivity gains may not be used in this proceeding because of the historic mitigation efforts implemented by it. This only focuses upon historic patterns and not future changes. It is counter-intuitive to assume that productivity gains will never come to the electric industry as a result of retail generation competition. If this is true then Pennsylvania will not receive cost reductions and it means that the Pennsylvania General Assembly has been hoodwinked.

Obviously this is not the case. As the Commission recognized in PECO, competition will result in lower costs largely as a result of efficiency/productivity gains.

(d) Costs Independent of Operations.

See, Discussion, supra. Further, this discussion is meant to institutionalize Duquesne's current operating losses at certain plants because those plants are now uneconomic. The Legislature did not contemplate recovery of operating losses unrelated to competition. Indeed, it did not contemplate operating losses at all. Rather, it sought to allow recovery of the value of an asset because of competition.

(e) Projected Capital Additions.

No discussion by PRA.

(f) Environmental Regulations.

No discussion by PRA.

(g) Other.

No discussion by PRA.

(h) Conclusion.

5. Conclusion.

Duquesne's assessment of market prices should be rejected by the Commission. Such assumptions do not reflect a workably competitive retail generation market thus grossly inflating Duquesne's level of stranded costs.

C. Merger Savings.

Merger savings should be included in setting stranded costs. The OCA provides a reasonable quantification of such costs.

D. Decommissioning.

1. Nuclear Decommissioning.

Nuclear decommissioning costs must be valued at January 1, 1998 and not at the "final valuation" date requested by Duquesne. Further, those costs must be quantified on a net present value basis. These costs must reflect trust fund earnings as required by the Act.

2. Fossil Decommissioning.

In PECO, the Commission denied recovery of fossil decommissioning costs because they have not been recovered under traditional ratemaking practices without a specific plan to decommission.

E. Regulatory Assets and Liabilities.

1. Introduction.

No discussion by PRA.

2. Disputes Regarding Specific Claims.

(a) SFAS 109 Deferred Taxes.

These costs are not properly recoverable as a stranded cost. Under the Act, regulatory assets are not generation related. Since a portion of the SFAS 109 Deferred Tax

is generation related, it must be removed from the regulatory asset category and placed in a generation-related category.

(b) Unamortized Debt Costs.

Duquesne's proposal for recovery of these costs represents double recovery of these costs. If such costs are reflected as a regulatory asset for stranded cost analysis purposes, then the cost of debt should be reduced by the level of the unamortized debt costs.

(c) Unamortized Sale/Leaseback Premiums.

These premiums should be included as a generation related asset and not a regulatory asset. The sale/leaseback arrangement merely reflects a financing tool and not a change in the functional classification of the plan as generation related.

(d) Deferred Rate Synchronization Costs.

These costs must be stated on a net present value basis. Duquesne has failed to calculate such costs on that basis. Thus its proposal must be modified in accordance with that requirement.

(e) Deferred Employee Costs.

These costs are not recoverable as a regulatory asset. They are created as a result of the movement to a deregulated market. 66 Pa. C.S. §2803. They are recovered elsewhere in the Company's claim of stranded generation costs.

(f) Deferred Coal Costs.

Duquesne has not shown that these costs will be recoverable under traditional ratemaking practices. Indeed, the Commission has ruled previously that such costs are not recoverable by Duquesne because they are above market, i.e., they were disallowed because they were imprudently incurred costs.

(g) Deferred Caretaker Costs.

These costs are nonrecoverable by Duquesne. They cannot be recovered because the underlying assets (the Brunot Island and Phillips plants) have not been returned to serve because they are currently uneconomic to operate. They are not uneconomic as a result of the passage of the Act. Rather, the Act only seals their fate preordained prior to passage of the Act. Thus, they are nonrecoverable.

(h) Pre-Accrual of Nuclear Outages.

The OCA's projected operating costs of Duquesne's nuclear units already include outages. Therefore, additional recovery as a regulatory asset double counts these costs in the stranded cost equation. The Duquesne adjustment should be rejected.

(i) Transition Costs.

No discussion by PRA.

(j) SFAS 106 Deferred Costs.

Such costs do not meet the definition of a stranded cost, i.e., nonrecoverable in a competitive market environment. 66 Pa. C.S. §2803. SFAS 106 will be applicable to future suppliers of electricity as well as EDC's. Further, such costs are recovered elsewhere in Duquesne's stranded cost claim.

(k) Warwick Mine Costs.

No discussion by PRA.

(l) Pilot Program/Customer Education Expense.

No discussion by PRA.

(m) Compensated Absences.

No discussion by PRA.

(n) Injuries/Damages.

No discussion by PRA.

(o) Other.

No discussion by PRA.

3. Conclusion.

F. Recovery of Stranded Costs.

1. Introduction.

The Commission only may allow a "just and reasonable" level of stranded costs. The PECO case relied upon prior interpretations of this phrase. As reaffirmed by the Commission, it only permits recovery of such costs which in the Commission's discretion is appropriate.

2. Proposals to Adjust the Level of Stranded Costs Recovery.

(a) Mitigation.

The Act places an affirmative duty upon Duquesne to mitigate its stranded investment to the fullest extent possible. It has not done so in this case.

(b) Sharing of Stranded Costs.

Duquesne claims that nothing in the Act supports the necessity to require shareholders to share in the absorption of a portion of Duquesne's stranded costs. The Courts have not interpreted the phrase "just and reasonable" as requiring 100% recovery of all costs. First, the underlying rationale for stranded costs is akin to an "excess capacity" adjustment. Second, contrary to Duquesne's assessment, these sharing proposals do bear a relationship to Duquesne's "unique facts and circumstances." The sharing mechanism reflects the uneconomic nature of Duquesne's plant, a status which exists with or without regulation. Third, the sharing proposal is consistent with historic regulation in this Commonwealth. Duquesne's assertion that it is unaware of any prior Commission proceeding where a plant was disallowed on the basis of a comparison to embedded costs to market price forecasts is ridiculous. Of course, this never occurred in Pennsylvania because the Code was only amended to achieve this result in December 1996! There was no need to do this comparison in the past under traditional ratemaking

principles. Thus, there exists no violation of state or federal law.

Fifth, the proposal does not severely damage, or even damage, Duquesne's financial health. Duquesne's contention is only supported by its misguided future market analysis.

Finally, Duquesne fails to realize the enormous benefits it receives from the Act. It is permitted recovery of assets at an accelerated rate far in excess of traditional rate-making principles imposed by this Commission. It permits 100% recovery of the reasonable level of stranded costs with no market risk; it permits a nonbypassable charge to be imposed upon all customers; it permits an annual reconciliation with no regulatory lag; upon securitization, such securitized costs are nonrevocable. Clearly, the statute is not as one-sided in favor of customers as Duquesne alleges.

(c) Securitization.

PRA believes Duquesne should not be precluded from securitizing its claim pursuant to a QRO.

3. Methods of Cost Recovery.

(a) Accelerated Amortization Under Section 2804(4)(v).

Section 2804(4)(v) of the Code does not apply to a restructuring proceeding. Rather it refers to post-restructuring proceedings where electric utilities are achieving significant excess earnings as operating costs decline and as a result of the

recovery of stranded costs and the general impact of competition. Rates existing as of January 1, 1997 obviously would not reflect these lower costs and expenses. The Legislature provides a mechanism for returning this overrecovery through the filing of a rate complaint, assuming an electric utility's stranded costs are equivalent to capped rates. Here they are not. Thus it is clear that the statutory provision refers to a post-restructuring challenge. The rate cap is not a floor.

(b) Immediate Rate Reductions.

No discussion by PRA.

(c) Rate Cap/CTC Extension.

The mere possibility of an undercollection of stranded costs is not a sufficient basis to now order an extension of the CTC. The statute provides for an annual reconciliation designed to insulate Duquesne from sales variations. Thus, the Act solely contemplates a catastrophic loss of load such that the CTC must be increased enormously to permit Duquesne 100% recovery of its Commission determined level of stranded costs.

(d) Other Proposals.

No discussion by PRA.

4. Conclusion.

No discussion by PRA.

G. Conclusion.

The Commission should adopt the above PRA recommendations.

V. The Competitive Transition Charge.

A. Conceptual Disputes Regarding the Calculation of CTC/CGC.

1. Differences in Overall Approach.

Two approaches for determining stranded costs are presented in this proceeding. One is a "CTC residual" or a top-down approach. The second is a "CGC residual" or a bottom-up approach. Duquesne M.B. at 60. These two differences generate intense debate in this proceeding.

2. Other Conceptual Disputes.

(a) CGC Calculation: Annual Adjustments v. Fixed Schedules.

The statute requires establishment of a fixed CTC. As noted earlier, Duquesne is protected regardless of market price reaction. It admits that it is protected when market prices rise above the CGC (Duquesne M.B. at 63) because it is overcollecting the CTC charge. It is further protected if market prices fall below the established CGC because it can purchase power in the open market and its own costs of producing power declines with recovery of stranded costs making it more competitive in the retail generation market. The Act provides appropriate symmetry and adequately protects investors.

(b) Determination of Class Responsibility for Stranded Costs.

No discussion by PRA.

(c) Levelized CTC v. Other Methods.

A levelized CTC recovery period is consistent with the Act. The actual CTC unit rate will change, however, from year to year because of the reconciliation required by the Statute. Thus, contrary to DII's claims, it is impossible to create a relationship between the CTC and CGC even under the residual CTC methodology.

(d) Duquesne's Rate Design Proposal.

See, PRA discussion in its Main Brief.

(e) Other Conceptual Disputes.

No discussion by PRA.

3. Conclusion.

The Commission should adopt each PRA proposal regarding the recovery of the CTC.

B. Other Disputes Regarding Specific Proposals.

No discussion by PRA.

C. Other Issues Addressed in the PECO Order.

Duquesne's discussion regarding PECO's decision are misplaced. The Commission must reject the ROE spillover and amortization spillover proposal.

D. Conclusion.

Duquesne's CTC design proposal should be rejected by the Commission. The proposal is contrary to the Act.

VI. Rate of Return/Discount Rate.

No discussion by PRA.

VII. Special Customer Classes.

A. Rule 4 Contracts.

Duquesne's proposal to deny Rule 4 customers' access to a competitive retail generation market is illegal. It is in violation of the law and PECO's underlying decision. It must be rejected.

B. Riders 8 and 20.

Duquesne proposes to eliminate these economic development incentive rates currently available to customers. This is in violation of the Act in that it increases the customer's rate above the rate cap imposed on January 1, 1997. Moreover, Duquesne's action is inappropriate when considered in light of its discriminatory treatment of providing special treatment to new customers at new service locations by authorizing access to the competitive retail generation market far earlier than existing customers. The Act recognizes, as a Commonwealth public policy, that the retention of existing

business is vital to the competitive position of the Commonwealth.

C. Self-Generation.

No discussion by PRA.

D. Other Tariff-Related Issues.

No discussion by PRA.

VIII. Competitive Safeguards.

A. Code of Conduct.

An appropriate Code of Conduct is absolutely an imperative predicate for development of a competitive retail generation market. It places all market participants on notice as to inappropriate conduct thus providing a level of comfort to Duquesne's employees.

IX. Conclusion

For all of the foregoing reasons, the Commission should adopt all of PRA's proposals and recommendations contained herein.

Respectfully Submitted,

Kenneth Zielonis

Kenneth Zielonis, Esquire
STEVENS & LEE
Suite 310
208 North Third Street
P.O. Box 12090
Harrisburg, PA 17108-2090

Dated: February 17, 1998

Attorneys f r the Pennsylvania Retailers Association

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of February, 1998, I have served true and correct copies of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code Section 1.54:

Hon. John H. Corbett, Jr.
Administrative Law Judge
Office of Administrative Law Judge
Pa Public Utility Commission
1103 Pittsburgh State Off Bldg.
300 Liberty Avenue
Pittsburgh, PA 15222

Larry R. Crayne, Esq.
Richard S. Herskovitz, Esq.
Duquesne Light Company
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, PA 15230-1930

Jim Ferlo, Councilman
District 7
510 City-County Building
Pittsburgh, PA 15219

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870

Patricia Armstrong, Esq.
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500

Kandace Melillo, Esq.
Wayne Scott, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Stephen L. Feld, Esq.
Pa. Power Company
1 East Washington Street
P.O. Box 891
New Castle, PA 16103-0891

Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cinncinati, OH 45202

Douglas F. John, Esq.
John & Hengerer
1200 17th Street, N.W., Ste 600
Washington, DC 20036-3006

Sheila Hollis, Esq.
Mary Ann Ralls, Esq.
Stephanie Sugrue, Esq.
1667 K Street, N.W., Ste 700
Washington, DC 20006-1608

Daniel Clearfield, Esq.
Gerald Gornish, Esq.
Alan Kohler, Esq.
Robert Longwell, Esq.
Wolf, Block, Schorr & Solis-Cohen
Locust Court Building
Suite 300
212 Locust Street
Harrisburg, PA 17101

Kevin McKeon, Esq.
William Hawke, Esq.
Janet Miller, Esq.
Todd Stewart, Esq.
Malatesta, Hawke & McKeon
Harrisburg Energy Center
P.O. Box 1778
Harrisburg, PA 17101

Karen Oill Moury
Office of Small Business Advocate
Suite 1102, Commerce Bldg.
300 North Second Street
Harrisburg, PA 17101

Steven Baicker-McKee, Esq.
Wanda Schiller, Esq.
Babst, Calland, Clements & Zomnir, P.C.
Two Gateway Center, 8th Fl.
Pittsburgh, PA 15222

Kenneth Wiseman, Esq.
Peter Thompson, Esq.
Andrews & Kurth, L.L.P.
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006

Mark McGuire, Esq.
Ronald Carroll, Esq.
Jenner & Block
601 Thirteenth Street, N.W.
12th Floor
Washington, DC 20005

John E. Stember, Esq.
1705 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

Alan J. Barak, Esq.
1417 Blue Mountain Parkway
Harrisburg, PA 17112

John Moot, Esq.
Kurt Bilas, Esq.
Skadden, Arps
1440 New York Avenue, Northwest
Washington, DC 20005

Howard Louik, Esq.
Allegheny County Law Dept.
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

Marisa Silfontes, Esq.
Tanya McCloskey, Esq.
Assistant Consumer Advocates
Office of Consumer Advocate
14th Floor, Strawberry Square
Harrisburg, PA 17120

James Dougherty, Esq.
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Robert Stefanko, Esq.
341 South Bellefield Avenue
Pittsburgh, PA 15213

Joseph Dworetzky, Esq.
John Lavelle, Jr., Esq.
Luke Dembosky, Esq.
One Logan Square, 12th Fl.
Philadelphia, PA 19103

Thomas P. Gadsden, Esq.
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Paul Russell, Esq.
Pennsylvania Power & Light Company
2 North 9th Street
Allentown, PA 18101

David Hughes
4037 Ludwick Street
Pittsburgh, PA 15217

Kenneth Zielonis, Esq.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

ORIGINAL

IN REPLY PLEASE
REFER TO OUR FILE

DOCUMENT
FOLDER

February 17, 1998

JAMES MCNULTY SECRETARY
PA PUBLIC UTILITY COMMISSION
P O BOX 3265
HARRISBURG PA 17105-3265

Re: Pennsylvania Public Utility Commission
v.
Duquesne Light Company
Docket No. R-00974004

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of the Reply Brief of the Office of Trial Staff for filing in the above-captioned proceeding. Copies are being served upon all active parties of record.

Very truly yours,

Kandace F. Melillo

Kandace F. Melillo
Prosecutor
Office of Trial Staff

KFM:sjh

c: Honorable John H. Corbett, Jr.
Parties of Record

52

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	
DUQUESNE LIGHT COMPANY	:	Docket No. R-00974104
(Application to approve restructuring plan pursuant to 66 Pa. C.S. §2806)	:	

REPLY BRIEF OF THE OFFICE OF TRIAL STAFF

Before
Administrative Law Judge
John H. Corbett, Jr.

Kandace F. Melillo
Wayne T. Scott
Prosecutors
Office of Trial Staff

Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: February 17, 1998

TABLE OF CONTENTS

TABLE OF CITATIONS

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Office of Trial Staff (OTS) and several other parties, including Duquesne Light Company ("Duquesne" or "the Company"), filed Main Briefs (frequently abbreviated as M.B. herein) in the Duquesne restructuring proceeding filed with the Pennsylvania Public Utility Commission (Commission) at Docket No. R-00974104, pursuant to Section 2806(d) of the Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa. C.S. §2806(d). Reply Briefs of the parties (with the exception of the statutory parties and the City of Pittsburgh) are due in-hand to Administrative Law Judge (ALJ) Corbett on February 17, 1998. Due to the state holiday on February 16, 1998, the statutory parties' Reply Briefs (Reply Briefs of OTS, the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA)) and the City of Pittsburgh, are due on February 18, 1998.

The OTS position with respect to many of the issues raised in the Main Briefs of other parties has already been stated in our Main Brief and reference should be made to that document. It is not the purpose of this Reply Brief to again recite the OTS position on all the various issues in this proceeding. Instead, this Reply Brief will address those areas where further response or clarification is required.

In response to the Company's contentions concerning its proposal to recover Phillips and Brunot Island costs, the Company improperly inserts words in the Competition Act which do not exist. In addition, while the Company refers to "benefits" which were to have been received by ratepayers by reactivation of these cold reserved units claimed as stranded by Duquesne, these units were never reactivated and there is no proof that any benefits were ever received by ratepayers. For these reasons and the reasons previously stated in the OTS Main Brief, Duquesne's stranded cost claim with respect to the Phillips and Brunot Island cold reserved units should be rejected.

Duquesne's reliance upon Mr. LaGuardia's historical experience in predicting the costs of nuclear decommissioning, including contingencies, are insufficient to meet the Company's burden of proof under the Competition Act. Mr. LaGuardia has very limited relevant United States nuclear decommissioning experience, since only four completed nuclear plants have been decommissioned so far in the United States and only one of these was even remotely similar in size and power output to the Duquesne nuclear units. Hospital Shared Services/Administrative Resources, Inc. (HSS/ARI) Statement No. 1, p. 74.

Duquesne failed to address OTS witness Darren Gill's recovery proposals for estimated nuclear and fossil decommissioning costs and Mr. Gill's proposal to require that Duquesne place all funds received for fossil plant

decommissioning into a non-qualified trust fund. See, OTS St. No. 2, pp. 7-10, 12-20. Duquesne also failed to respond to Mr. Metro's proposal to extend the Competitive Transition Cost (CTC) collection period and rate cap if CTC "rate shock" would otherwise result from the Company's proposed deferred final valuation of generation assets. OTS St. No. 4, pp. 12-14. Since Duquesne was directed by two separate ALJ Interim Orders to adhere to 52 Pa. Code §5.501 in briefing, and 52 Pa. Code §5.501(a)(3) requires Duquesne to address, in its Main Brief, all issues raised by other parties, OTS must presume that the Company has no objections to its positions. The Company should not now be permitted to raise objections at this late date, when OTS has no further opportunity to respond in briefs.

OTS witness Eric Van Jeschke's barometer group selection is proper because of its inclusion of companies with nuclear generation and because of its inclusion of companies that are going through potential mergers. Dr. Makholm's proposed use of an ex-dividend adjustment and flotation cost adjustment should be rejected for the reasons set forth herein and in the OTS Main Brief.

The Company and OCA positions with respect to allocation of Universal Service costs are discriminatory to large users. Also, the Duquesne Industrial Intervenors (DII) position fails to reflect that the provision of electric service to the poor is a societal need which should be paid for by all customer

classes.

II. PHASE-IN OF CUSTOMER CHOICE

This topic was not addressed by OTS in this proceeding.

III. TRANSMISSION AND DISTRIBUTION RATES;UNBUNDLING ISSUES

This topic was not addressed by OTS in this proceeding.

IV. TRANSITION OR STRANDED COSTS

A. Overview

The only topics addressed from the Main Brief outline in this Reply Brief are IV.B.2.(c), IV.D., and IV.F.3.(c).

B. Generation-Related Stranded Costs (Recovery Pursuant to Section 2808(3))

2. Net Book Value

(c) Recovery of Phillips and Brunot Island Costs

Duquesne contends that the OTS is mistaken in opposing the Company's stranded cost claim for the Phillips and Brunot Island cold reserved units. The Company argues that the removal of these units from rate base in 1986 for economic reasons is irrelevant to the Company's current claim that these units were rendered stranded once and for all by the Competition Act. Duquesne M.B., p. 24.

It is the Company that is mistaken. First of all, as stated in the OTS Main Brief and in the PECO Restructuring Order[1], it is the utility's burden to prove, by substantial evidence, that its stranded cost claim is within the statutory definition of stranded costs. Duquesne has failed to do this. Transition or stranded costs are defined in the Competition Act, 66 Pa. C.S. §2803, as follows:

> An electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market and which the commission determines will remain following mitigation by the electric utility. . . . The term includes any costs attributable to physical plants no longer used and useful because of the transition to retail competition.

Duquesne apparently does not claim that the cold reserved units would be traditionally recoverable under a regulated environment and apparently concedes that the units are not used and useful. However, the Company apparently contends that the units are no longer used and useful

---

[1] See, Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement, Docket No. R-00973953, Opinion and Order entered December 23, 1997 (PECO Restructuring Order), pp. 67-68 (Petitions for Review filed in Commonwealth Court).

because of the transition to retail competition. In so doing, the Company inserts the words "once and for all" between "used and useful" and "because of the transition to retail competition." In other words, the Company reads the last sentence of the above-quoted excerpt from 66 Pa. C.S. §2803 as saying that stranded costs "include any costs attributable to physical plants no longer used and useful once and for all because of the transition to retail competition."

However, the underlined words are not in the statute. As decided by the Superior Court of Pennsylvania in Worley v. Augustine, 310 Pa. Super. 178, 456 A. 2d 558, 561 (1983), adjudicators have no power to insert words into a statutory provision where the Legislature has failed to supply it.

The plain meaning of the above-quoted excerpt is that there must be a clear and distinct nexus (not a ten-year delay) between the placement of these units in cold reserved status and the advent of retail competition. That nexus does not exist. Indeed, as admitted by Duquesne witness Donald Clayton, these units were placed in cold reserve and removed from rate base (i.e., no longer used and useful) at a time when there was no competitive electric generation market for Duquesne's end use customers. Tr. 195-196.

In fact, the Commission Orders approving the placement of these units into cold reserved status were entered over ten years prior to the

enactment of the Competition Act on December 3, 1996.[2] Also, the Company does not deny that excess capacity played a role in its 1986 decision to "cold reserve" these units. Tr. 23, 110. Clearly, Duquesne has not met its burden of proving that the cold reserved units were no longer used and useful due to the transition to retail competition, and its stranded costs claim with respect to these units should therefore be denied.

Duquesne also makes an argument "in equity" in addition to its above-mentioned flawed statutory construction argument with respect to its stranded costs claim for the cold reserved units. Duquesne contends that it reached an agreement with General Public Utilities (GPU) to reactivate the cold reserved units and that the benefits of this transaction were to flow to ratepayers. Therefore, according to Duquesne, the economic detriment now associated with the units should be borne by ratepayers. Duquesne M.B., p. 25.

However, as indicated by Duquesne, the GPU transaction fell through. There is no evidence herein that ratepayers received any benefit from the cancelled GPU agreement and therefore, there is no benefit to be netted against the $65.8 million detriment (net of taxes) for the cold reserved units that

---

[2] See, Petition of Duquesne Light Company (re: Brunot Island), Docket No. P-860103, Order entered May 2, 1986; Petition of Duquesne Light Company (re: Phillips), Docket No. P-860132, Order entered July 30, 1986.

Duquesne now seeks to impose, inappropriately, on ratepayers. The imposition of these costs on ratepayers is not permitted under the Competition Act and should not be permitted herein. Duquesne's claim for stranded costs associated with its Phillips and Brunot Island cold reserved units should be rejected.

D. Decommissioning

1. Nuclear Decommissioning

In its Main Brief, Duquesne relies solely upon its expert's purported historical accuracy in predicting decommissioning costs, including contingencies, as support for the Company's nuclear decommissioning stranded costs claim. Duquesne M.B., pp. 41-42. This is clearly insufficient to meet the Company's burden of proof under the Competition Act.

As testified to by HSS/ARI witness Dr. Weisenmiller, there have been only four completed nuclear power plants that have been decommissioned so far in the United States so experiences with actual decommissioning costs are extremely limited. Also, of the four that have been decommissioned, according to Dr. Weisenmiller, only one (Shoreham) was even remotely similar in size and power output to the Duquesne nuclear facilities (Beaver Valley 1 and 2 and Perry). HSS/ARI St. No. 1, p. 74. The Shoreham Nuclear Power Station ran only two effective full power days. Tr. 643.

Since Duquesne has not met its burden of proof, its nuclear decommissioning stranded costs claim should be rejected, in favor of OTS witness Darren Gill's proposal which removes contingency factors.

In addition, OTS notes that the Company failed to address Mr. Gill's recovery proposal for estimated nuclear decommissioning costs. Mr. Gill's recovery proposal was presented in pre-filed direct testimony (OTS St. No. 2, pp. 7-10, 18-19), which was entered into the record during hearings on December 17, 1997. Tr. 634. It also was addressed in the OTS Main Brief at pages 34-37.

In a Prehearing Order issued in this proceeding on September 10, 1997, at page 11, ALJ Corbett directed all parties to comply with 52 Pa. Code §5.501, et seq., regarding the preparation and filing of briefs. This directive to comply with 52 Pa. Code §5.501, et seq., was reiterated on page 3 of ALJ Corbett's Ninth Interim Order Closing The Record, which was issued on January 23, 1998. Pursuant to 52 Pa. Code §5.501(a)(3), Duquesne, as the party with the burden of proof, was required to completely address in its Main Brief, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.

Since the Company failed to respond to Mr. Gill's recovery proposal in its Main Brief (and also apparently did not address this proposal in its testimony), it must be assumed that Duquesne has no objections to the

recovery proposal. Duquesne should not be permitted to disregard the directives of two ALJ Orders and the directive in 52 Pa. Code §5.501(a)(3) by raising objections to the OTS nuclear decommissioning cost recovery proposal in its Reply Brief; thereby denying OTS the opportunity to respond.

2. Fossil Decommissioning

The OTS Main Brief at pages 38-44 should be referred to for a response to Duquesne's fossil decommissioning arguments on pages 42-43 of Duquesne's Main Brief.

However, OTS notes that the Company failed to address in its Main Brief (or in its testimony) Mr. Gill's recovery proposal for estimated fossil decommissioning costs and his proposal that Duquesne be required to place all funds received for fossil plant decommissioning into a non-qualified trust fund. Mr. Gill's recovery proposal and trust fund proposal was presented in pre-filed direct testimony, dated November 7, 1997 (OTS St. No. 2, pp. 12-20), which was entered into the record during hearings on December 17, 1997. Tr. 634. It also was addressed in the OTS Main Brief at pages 40-44.

As stated previously, two ALJ Orders in this proceeding and 52 Pa. Code §5.501(a)(3) required Duquesne to raise any objections that it had to the OTS proposals in the Duquesne Main Brief. Duquesne is not permitted to wait until its Reply Brief to raise its objections; thereby denying OTS the opportunity to respond. Since Duquesne did not address the OTS fossil

decommissioning recovery proposal or trust fund proposal in its Main Brief, it must be presumed to have no objections.

E. Regulatory Assets and Liabilities

Reference should be made to the OTS Main Brief at pages 44-47 for a response to Duquesne's contentions concerning its proposal to recover deferred caretaker costs as stranded costs. Duquesne M.B., p. 48.

F. Recovery of Stranded Costs

The only issue that needs to be clarified in this Reply Brief on the recovery of stranded costs is in the Rate Cap/CTC Extension section (3.c.).

3. Methods of Stranded Cost Recovery

(c) Rate Cap/CTC Extension

Here again, the Company failed to respond in its Main Brief (or in its testimony) to an issue raised by OTS in its direct testimony. This issue concerned OTS witness Paul Metro's proposal to extend the CTC collection period and rate cap if CTC "rate shock" would otherwise result from the Company's proposal to defer a final valuation of stranded generation plant until 2003. Mr. Metro's proposal was presented in pre-filed direct testimony, dated November 7, 1997 (OTS St. No. 4, pp. 12-14), which was entered into the record during hearings on December 17, 1997. Tr. 634. It was also addressed in the OTS Main Brief at pages 16-17, 48-50.

As stated previously, two ALJ Orders in this proceeding and 52 Pa. Code §5.501(a)(3) required Duquesne to raise any objections that it had to the OTS proposals in the Duquesne Main Brief. Duquesne is not permitted to wait until its Reply Brief to raise its objections; thereby denying OTS the opportunity to respond. Since Duquesne did not address Paul Metro's proposal to extend the CTC collection period and rate cap in its Main Brief, it must be presumed to have no objections.

V. THE COMPETITIVE TRANSITION CHARGE

This topic was not addressed by OTS in this proceeding.

VI. RATE OF RETURN/DISCOUNT RATE

In its Main Brief, the Company states that it disagrees with OTS's position in regard to rate of return on three major issues. The first of these issues is the composition of OTS's Barometer Group for its discounted cash flow (DCF) analysis.

The Company's witness, Dr. Makholm, did not include any utilities that have nuclear generation or that were involved in a merger. According to the Company, this caused Dr. Makholm's analysis to be more conservative and more reliable because he excluded utilities that met these criterion. See Duquesne Main Brief, page 74.

OTS submits that Dr. Makholm is clearly wrong in his conclusion. From his analysis, it is apparent that Dr. Makholm does not understand the importance of the similarities of companies in selecting a suitable barometer group. OTS's witness Jeschke focused on similarities such as electric companies located in the eastern United States with similar financial risks to Duquesne and nuclear generating capacity. DQE's investment which profile reflects a beta of 0.75 which compares favorably to the barometer groups average of 0.78 and a median of 0.70. Similarly, DQE's financial strength at "A" is higher than the barometer groups average rating of B++ and median of B++.

OTS submits that nuclear generation exposure is the most important variable that needs to be similar. The percentage of nuclear generation in a variable where the expected large stranded costs associated with nuclear plant is possible. DQE's data reflects nuclear generation of 29%. The median percentage of nuclear generation for OTS's barometer group is .32%. Clearly, based on Mr. Jeschke's analysis of the risk indicators for DQE and the barometer group, the barometer group is a very close representation of an electric utility with DQE's characteristics. In addition, it must be noted that, not only are companies that own nuclear generation more suited to be compared to each other, but, also, the stranded costs must be viewed in light of the nuclear generation.

The Company also states that those four (4) companies in Mr. Jeschke's barometer group which are involved in potential mergers should be excluded. According to the Company, this is because stock prices can be volatile during the time of a potential merger. See Duquesne Main Brief, page 74.

It is OTS's position that the volatility of stock prices is minimized by Mr. Jeschke. This is because, in determining Mr. Jeschke's dividend, he afforded significant weight to the 52 week average dividend yield of 7.02%. This reflects closely with the current dividend yield of 6.92%. Therefore, any stock price volatility due to potential mergers has been adjusted for Mr. Jeschke's calculations. With this adjustment, it is important to include these four (4) companies in Mr. Jeschke's barometer group because of their other similarities with DQE.

The second dispute which the Company has with OTS's DCF calculation is that Company witness Makholm made an adjustment for the Ex-dividend date. According to witness Makholm, if a correction for the ex-dividend is not made the resulting DCF calculation will result in a rate of return that is too low. See Duquesne Main Brief, page 74.

OTS contends that an ex-dividend adjustment does not belong in the DCF model. The DCF calculation as applied by OTS witness Jeschke is the accepted academic method. OTS contends that there is no academic

evidence which supports an ex-dividend to dividend yields as it relates to the DCF model.

Additionally, there are no financial publications that provide for ex-dividend adjusted dividend yields to investors for their investment-making decision. This adjustment is clearly not found in the mainstream of financial decision makers. In fact, it seems that the only purpose for the ex-dividend is to justify unreasonably high rates of return for utilities when calculating their cost of equity.

Finally, the Company with Makholm would have an adjustment made to account for flotation costs. According to Dr. Makholm, without this adjustment, the net proceeds from the issuance of common equity would be less than the sales price of that issuance.

It is OTS's position that any adjustment for flotation costs should be rejected by the Commission. As stated in OTS's Main Brief, the selling and issuance cost of additional cost of capital that is incurred at the time of issuance. The current price of common stock already reflects these items as investors have already capitalized the expenses in determining the market price at the time of purchase. See OTS Main Brief, page 79. Additionally, as Dr. Makholm admitted, the Commission has typically denied these costs in other proceedings. See Duquesne Main Brief, page 75.

In conclusion, it is OTS's position that Mr. Jeschke's recommended return on common equity in this case of 10.50%, is very reasonable in light of recent Commission decisions. Specifically, the rate of return on common equity that the Commission allowed PECO Energy Company was 10.0% while "A" rated public utility bond yields at the time of that Opinion and Order were 7.89%. Bond yields have gone down since the PECO Opinion and Order and this would indicate, if anything, that OTS witness Jeschke in the present case could justify a much lower recommendation. See Pa.P.U.C. v. PECO Energy Company, Docket No. R-00973877 (1997).

VII. SPECIAL CUSTOMER CLASSES

This topic was not addressed by OTS in this proceeding.

VIII. COMPETITIVE SAFEGUARDS

This topic was not addressed by OTS in this proceeding.

IX. DUTY TO SERVE

No further response in Reply Brief.

X. UNIVERSAL SERVICE AND ENERGY CONSERVATION

B. Overall Funding and Rate Issues

2. Cost Allocation and Rate Design

Some of the parties to this proceeding including the Company and the Office of Consumer Advocate (OCA) propose to allocate universal service costs on a per kilowatt hour basis. See OCA Main Brief, page 97 and Duquesne Main Brief, page 88.

It is OTS's position that this is not a fair allocation of this charge. OTS submits that the universal service charge should be on a per customer basis rather on a kilowatt basis. This is because if the universal service charge is based upon kilowatt usage, high volume users would bare an excessive burden. Additionally, OTS submits that to apply universal service charges on a per kilowatt hour basis is contrary to the Commission's Universal Service Order. See Universal Service Order Slip Opinion at page 20.

It is also OTS's position that the universal service costs should be spread over all customer classes. This is contrary to the position advanced by parties such as the Duquesne Industrial Intervenors. See Duquesne Industrial Intervenors Main Brief at page 98.

As stated in OTS's Main Brief, this is an issue of fairness. Those who are unable to pay their electric bills are a societal problem and if responsibility for helping the poor to pay their electric bills is thrust upon

Duquesne's customers, then the responsibility should rest with all of its customers. Those residential customers who pay their bills on time are no more responsible for Duquesne's low income customers than Duquesne's commercial and industrial customers. See OTS Main Brief, page 89.

It is OTS's responsibility to represent the public interest. This representation should be viewed broadly enough to include those interests of all parties to this proceeding. It is OTS's task to review this case and to be as fair to each party as possible. Therefore, OTS submits that it is fair to have all customer classes share the burden of universal service costs. However, it is not fair for commercial and industrial customers to take on more of the burden than others. Since universal service costs accrue predominantly to residential customers, it is not fair for a large industrial to be charged the universal service cost on a per kilowatt hour basis thus causing that customer to pay considerably more than those customer belonging to the class in which the costs are incurred. Nor is it fair for those individuals in the residential class to be expected to pay for all the universal costs simply because they are classified as residential.

For the foregoing reasons, OTS submits that a fair and reasonable way to address universal service costs is for all customer classes to share in those costs on a per customer basis. This spreads the burden of the universal customer service cost, which is a social burden, over all customer classes. On

the other hand, these costs should be done on a per customer basis as opposed to a per kilowatt hour basis. This prevents those classes of customers who are not directly responsible for those costs from paying more than the rest of society.

XI. CUSTOMER EDUCATION

This topic was not addressed by OTS in this proceeding.

XII. MISCELLANEOUS ISSUES

This topic was not addressed by OTS in this proceeding.

XIII. CONCLUSION

For all the reasons stated herein and in the OTS Main Brief, OTS respectfully requests that its positions be adopted.

Respectfully submitted,

Kandace F. Melillo
Kandace F. Melillo
Wayne T. Scott
Prosecutors

Office of Trial Staff
Pa. Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: February 17, 1998

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	**Docket No. R-00974104**
Duquesne Light Company	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing, the Reply Brief of the Office of Trial Staff dated February 17, 1998, either personally, by first class mail, express mail or by fax upon the persons addressed below:

John L. Munsch, Esquire
Theresa J. Colecchia, Esquire
Allegheny Power
800 Cabin Hill Drive
Greensburg, PA 15601

Larry R. Crayne, Esquire
Richard S. Herskovitz, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219

James P. Dougherty, Esquire
Robert A. Weishaar, Jr., Esquire
Pamela C. Polacek, Esquire
McNees, Wallace and Nurick
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108

Jacqueline R. Morrow, Esquire
Rodney R. Akers, Esquire
313 City County Building
414 Grant Street
Pittsburgh, PA 15219

John S. Moot, Esquire
Kurt Bilas, Esquire
1440 New York Avenue, N.W.
Washington, DC 20005

Stephen J. Baron
J. Kennedy and Associates, Inc.
Suite 475
35 Glenlake Parkway
Atlanta, GA 30328

Angela T. Jones, Esquire
Office of Small Business Advocate
1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101

Howard M. Louik, Esquire
Allegheny County Law Department
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

Irwin A. Popowsky, Esquire
Marisa A. Sifontes, Esquire
Steven K. Steinmetz, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Deneice Covert Zeve, Esquire
Terry Lupia, Esquire
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

Steven Baicker-McKee, Esquire
Wanda Schiller, Esquire
Babst, Calland, Clements & Zomnir, PC
8th Floor, Two Gateway Center
Pittsburgh, PA 15222

Kenneth L. Wiseman, Esquire
Mark F. Sundback, Esquire
Andrews & Kurth, LLP
1701 Pennsylvania Avenue, NW
Washington, DC 20006

Matthew Kahal
Exeter Associates, Inc.
Suite 350
12510 Prosperity Drive
Silver Spring, MD 20904

Michael L. Kurtz, Esquire
David F. Boehm, Esquire
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

Terrance J. Fitzpatrick, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street
Suite 101
Harrisburg, PA 17102-2025

Robert B. Weisenmiller
MRW & Associates, Inc.
1999 Harrison Street
Suite 1440
Oakland, CA 94612-3517

Michael Reid, Director
Materials Management Services
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513

Robert J. Stefanko, Esquire
341 South Bellefield Avenue
Pittsburgh, PA 15213

Margaret Peters, Esquire
The Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222-3197

John Stember, Esquire
Low Income Advocate Parties
1705 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

Stephen L. Feld, Esquire
Pennsylvania Power Company
1 East Washington Street
P. O. Box 891
New Castle, PA 16103-0891

Donald R. Ayersman, Jr., Esquire
1125 Denver Avenue
Morgantown, WV 26505

Mark J. McGuire, Esquire
Ronald N. Carroll, Esquire
Jenner & Block
601 13th Street, N.W.
Suite 1200
Washington, DC 20005

Tim Merrill, Esquire
4 Penn Center West
Suite 200
Pittsburgh, PA 15276

Kevin J. McKeon, Esquire
William T. Hawke, Esquire
Janet L. Miller, Esquire
Todd S. Stewart, Esquire
Malatesta, Hawke & McKeon, LLP
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17101

Thomas P. Gadsden, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Cindy Datig, Esquire
$1 Energy Fund
P. O. Box 42329
Pittsburgh, PA 15203

David Hughes
4037 Ludwick Street
Pittsburgh, PA 15217

Thomas J. Augspurger, Esquire
MidCon Corporation
Office of General Counsel
701 East 22nd Street
Lombard, IL 60148

Joseph A. Dworetzky, Esquire
John P. Lavelle, Jr., Esquire
Hangley, Aronchick, Segal & Pudlin
One Logan Square
12th Floor
Philadelphia, PA 19103

Attorney Of Record
Environmentalist Energy Project
3700 Vartan Way
Harrisburg, PA 17110

Scott J. Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870-9357

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
Suite 500
P. O. Box 9500
Harrisburg, PA 17106-9500

Paul E. Russell, Esquire
Pennsylvania Power & Light Company
Two North Ninth Street
Allentown, PA 18101

David M. Boonin
New Energy Ventures East, LLC
1845 Walnut Street
Suite 2525
Philadelphia, PA 19103

Roger Clark, Esquire
The Environmentalists
905 Denston Drive
Ambler, PA 19002-3901

John O'Brien, Esquire
Wheeled Electric Power Company
50 Charles Lindburgh Boulevard
Suite 207
Uniondale, NY 11553

Daniel Clearfield, Esquire
Gerald Gornish, Esquire
Alan Kohler, Esquire
Robert J. Longwell, Esquire
Wolf, Block, Schorr & Solis-Cohen, LLP
212 Locust Street
Suite 300
Harrisburg, PA 17101

James D. Steffes
Enron Power Marketing, Inc.
1400 Smith Street
P. O. Box 4428
Houston, TX 77002

Brian Kalcic
Excel Consulting
Suite 720-T
225 S. Meramec Avenue
St. Louis, MO 63105

Albert M. Benincasa, Esquire
Director, Regulatory Affairs
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579

Jim Ferlo, President
Councilman, District 7
City of Pittsburgh
510 City-County Building
Pittsburgh, PA 15219

Robert F. Young, Esquire
Allegheny Electric Cooperative, Inc.
212 Locust Street
P. O. Box 1266
Harrisburg, PA 17108-1266

Mary McFall Hopper, Esquire
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103

Keith M. Sappenfield, II
Director of Marketing Support
Noram Energy Management, Inc.
1600 Smith St., Suite 1134
Houston, TX 77002-7345

John R. Orr, Esquire
Duke Energy Trading & Marketing, LLC
One Westchase Center
10777 Westheimer
Suite 650
Houston, TX 77042

David Cruthirds
Electric Clearinghouse, Inc.
1000 Louisiana
Suite 5800
Houston, TX 77002-5050

Brian A. Rider, President
Pennsylvania Retailer's Association
224 Pine Street
Harrisburg, PA 17101-1325

Vickiren S. Aeschleman
Director-Regulatory Policy
QST Energy Inc.
300 Hamilton Boulevard
Suite 300
Peoria, IL 61602

Sheila S. Hollis, Esquire
MaryAnn Ralls, Esquire
Stephanie A. Sugrue, Esquire
Duane, Morris & Heckscher, LLP
1667 K Street, NW
Suite 700
Washington, DC 20006-1608

Gary A. Jeffries
Senior Attorney
CNG Energy Services Corporation
One Park Ridge Center
P. O. Box 15746
Pittsburgh, PA 15244-0746

John Horton
Senior Regulatory Analyst
MidCon Corporation
701 E. 22nd Street
Lombard, IL 60148

Craig Nifong
MidCon Corporation
3200 Southwest Freeway
Houston, TX 77027

Lawrence E. Moncrief
Attorney for the Pittsburgh Branch
of the NAACP
1364 Silverton Avenue
Pittsburgh, PA 15206

Donald A. Kaplan, Esquire
Lisa M. Helpert, Esquire
Preston Gates Ellis & Rouvelas Meeds, LLP
1735 New York Avenue, NW
Suite 500
Washington, DC 20006-4759

Gordan J. Smith, Esquire
John and Hengerer
1200 17th Street, N.W.
Suite 600
Washington, DC 20036

Kenneth Zielonis, Esquire
Stevens and Lee
208 North Third Street
Suite 310
P. O. Box 12090
Harrisburg, PA 17108-2090

John Wilson, Executive Director
Community Action Association of Pennsylvania
222 Pine Street
Harrisburg, PA 17101

Samuel W. Braver, Esquire
Bruce A. Americus, Esquire
Buchanan Ingersoll, P.C.
20th Floor
One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219-1410

Honorable John H. Corbett, Jr.
Administrative Law Judge
PA Public Utility Commission
1103 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Kandace F. Melillo

Kandace F. Melillo
Prosecutor
Office of Trial Staff

Dated: February 17, 1998
R-00974104

SCOTT J. RUBIN
Public Utility Consulting

3 Lost Creek Drive
Selinsgrove, PA 17870-9357

(717) 743-2233 (Voice)
(717) 743-8145 (Fax)
e-mail: sjrubin@ptd.net

133191

98 FEB 17 PM 1:31

RECEIVED
PROTHONOTARY'S OFFICE

February 17, 1998

James McNulty, Prothonotary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

Re: Duquesne Light Company's Restructuring Plan
Docket No. R-00974104

Dear Mr. McNulty:

Enclosed for filing please find an original and nine (9) copies of the Reply Brief of System Council U-10, International Brotherhood of Electrical Workers, in the above-referenced proceeding. A copy of this document has been served on Administrative Law Judge Corbett and all parties of record, as shown on the attached certificate of service.

I am also enclosing an extra copy of the document that I would appreciate having time-stamped and returned to me in the enclosed envelope. Thank you.

Sincerely,

DOCUMENT
FOLDER

Scott J. Rubin, Esq.

Enclosures

cc: Hon. John Corbett, Jr., ALJ (with diskette)
All parties of record

64

ORIGINAL

BEFORE THE
COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

133192

98 FEB 17 PM 1:32

RECEIVED
PROTHONOTARY'S OFFICE

Application of Duquesne Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code	:	Docket No. R-00974104

Reply Brief
of System Council U-10,
International Brotherhood of Electrical Workers

Scott J. Rubin
3 Lost Creek Drive
Selinsgrove, PA 17870
(717) 743-2233

Counsel for:
System Council U-10, IBEW

Dated: February 17, 1998

INTRODUCTION

System Council U-10, International Brotherhood of Electrical Workers ("IBEW") submits this Reply Brief to respond to a few erroneous assertions made by other parties to this case. IBEW's Main Brief fully discusses the two issues on which IBEW has focused its attention: various parties' proposals for Duquesne Light Company ("Duquesne") to sell or shut down some or all of its power plants, and the Marketers' proposals to require Duquesne to let non-utilities provide billing and metering services.

IBEW will not repeat its arguments on these issues here. Indeed, there is nothing in the briefs filed by the other parties that would lead IBEW to change any of its positions.

None of the other parties addressed the legal authority for the Public Utility Commission ("Commission") to order a utility to sell or close a power plant. The reason for that is simple: the Commission has absolutely no authority to order a utility to sell or close any facility. See IBEW Main Brief at 4-7.

None of the other parties addressed the legal authority for the Commission to allow a non-utility to provide billing and metering services. Again, the reason is clear: the Commission has absolutely no authority to permit non-utilities to own or control utility meters or to bill for services that are provided by a public utility. See IBEW Main Brief at 9-16.

Consequently, regardless of the merits of the various factual and policy arguments that are made by the other parties (and they do not have merit, as IBEW explained in its Main Brief), the Commission is prohibited from ordering the relief that the other parties request. The Commission cannot order a utility to sell or close a facility. The Commission cannot permit a non-utility to provide metering or billing services.

The other parties did not provide any legal analysis of the Commission's authority on these issues and, as a result, there is little to which IBEW needs to respond. However, the briefs

for the other parties, specifically the City of Pittsburgh ("City") and Enron Power Marketing, Inc. ("Enron"), contain a few arguments that might lead to an inaccurate impression if they were not corrected. Therefore, IBEW will briefly address a few points made by these parties. IBEW's silence on an issue, or its failure to address an argument made by another party, should not be construed as acceptance. Rather, it should be construed for what it is: the irrelevance of those arguments given the limits of the Commission's legal authority.

ARGUMENT

IV. TRANSITION OR STRANDED COSTS

A. OVERVIEW OF STRANDED COST VALUATION AND RECOVERY APPROACHES

On pages 13-14 of its Main Brief, the City asserts that the sale of Duquesne's power plants would not lead to a loss of jobs. Specifically, the City states that "there are a number of plants that have changed hands recently without significant changes in staffing ..." City Main Brief at 14. The evidence on which the City relies, however, does not support this statement and, in fact, shows that precisely the opposite is true.

In making this assertion, the City relies on the surrebuttal testimony of Hospital Shared Services ("HSS") witness Weisenmiller. Dr. Weisenmiller's surrebuttal testimony relies on two events: the sale of one gas-fired plant by an independent power producer in California, with 18 employees; and the proposed sale of power plants by New England Electric System ("NEES"). Weisenmiller Surrebuttal at 60 and Exh. RBW-61.

There is nothing in the record that shows that the sale of one gas-fired power plant in California, with a total of 18 employees, has any relevance whatsoever to Duquesne. Weisenmiller Surrebuttal Exh. RBW-61 (Calpine press release, page 1).

Further, the second sale relied upon by the City, the sale by NEES, does not support the City's assertion that such a sale will have no impact on the utility's employees. In fact, the

information supplied by Dr. Weisenmiller in Exhibit RBW-61 shows that the purchaser agreed to pay $85 million "to fund previously announced retraining, early retirement, and special severance programs for its [NEES's] employees who will be affected by electric industry restructuring." Weisenmiller Surrebuttal Exh. RBW-61 (PG&E press release, page 2).

Needless to say, if it costs $85 million to compensate the utility's employees, then the sale of NEES's power plants must have had a severe impact on that utility's employees.

In addition, on pages 59-60 of his surrebuttal testimony, Dr. Weisenmiller states his belief that Duquesne should reduce the staffing levels at its power plants by between 33% and 35%. Without debating the merits of these extreme reductions in staff levels, it is clear that Dr. Weisenmiller believes that there are substantial savings to be realized by cutting employment levels at Duquesne's power plants. It is not credible, therefore, for the City to use Dr. Weisenmiller's testimony to support the notion that selling Duquesne's power plants would not have a serious impact on Duquesne's employees. Dr. Weisenmiller's testimony supports precisely the opposite conclusion.

IX. Duty to Serve

C. Electric Transmission and Distribution Service

1. Unbundling Other Customer Services

Enron leaves the impression in its Main Brief that California already has competitive billing and metering for utility services, and that such competition is necessary in order to have a competitive market for electric generation. Enron Main Brief at 55-56. In fact, though, California has only issued an order that permits such competition for residential and small commercial customers to begin in 1999. There is no experience in that state with the provision of billing and metering services to small customers by non-utilities.

Moreover, while California's order may be of some academic interest to the Commission, the Commission already has ruled on this issue and found that competitive billing and metering is not required in order for competition in electricity supply to occur. As IBEW stated in its Main Brief, the Commission held in its PECO decision that it is not necessary to unbundle metering and billing in order to have a competitive generation market. See IBEW Main Brief at 19, citing *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement*, Docket No. R-00973953 (Pa. PUC Dec. 23, 1997), slip op. at 139.

Interestingly, the New York Public Service Commission has reached precisely the same conclusion. In *Opinion and Order Establishing Regulatory Policies for Competitive Metering, In the Matter of Competitive Opportunities Regarding Electric Service,* Case 94-E-0952, Opinion No. 97-13 (NY PSC Aug. 1, 1997), that commission concluded that "competitive metering is not a necessary precondition for the introduction of retail electric competition." *Id.*, slip op. at 3. The New York commission, therefore, refused to allow anyone other than an electric utility to provide metering services to residential and small business customers.

Finally, on pages 59- 60 of its Main Brief, Enron cites to this Commission's Customer Services Order. *Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. §2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2809(E) and (F)*, Docket No. M-00960890 F. 0011 (Pa. PUC July 11, 1997). In so doing, however, Enron cited to the Commission order of July 11, 1997, rather than to the Commission's order in that same docket on August 21, 1997, *Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. §2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to*

66 Pa. C.S. §2809(E) and (F)-Petition for Reconsideration, Clarification, Rescission, and Amendment of the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus, Docket No. M-00960890 F. 0011 (Pa. PUC Aug. 21, 1997) (a copy of which is attached hereto as Appendix A). In its August 21st Order, the Commission acknowledged that IBEW's Petition for Reconsideration, Clarification, Rescission, and Amendment raised several legal issues that the Commission had not considered. As the Commission stated: "[W]e do recognize that all of the arguments presented by IBEW have not been considered by the Commission in setting up these guidelines or in any other electric competition proceeding. Rather than being addressed here, we anticipated that metering and billing issues would be addressed in each restructuring case." *Id.*, at 3-4.

The Commission then concluded its Reconsideration Order by stating that it intended only to direct the parties to "consider this guideline" in the restructuring cases, concluding that the July 11th Order "is not a final disposition on these issues." *Id.*, at 5.

Consequently, the Commission's July 11th Order, on which Enron relies, is without legal significance. The Commission subsequently acknowledged that it had not considered all of the relevant legal issues and that it was merely asking the parties to do so in each restructuring case. That is precisely what IBEW has done in this case, where it has demonstrated that Enron's proposals would violate numerous provisions of the Public Utility Code.

CONCLUSION

For the reasons set forth in this Reply Brief and in its Main Brief, System Council U-10, International Brotherhood of Electrical Workers respectfully requests the Pennsylvania Public Utility Commission to issue an order that (1) does not require Duquesne Light Company to sell or close any of its power plants, and (2) prohibits any entity other than Duquesne Light Company from providing and maintaining electric meters and from rendering bills for electric distribution service within the service territory of Duquesne Light Company.

Respectfully submitted,

Scott J. Rubin
3 Lost Creek Drive
Selinsgrove, PA 17870
(717) 743-2233

Counsel for:
System Council U-10, IBEW

Dated: February 17, 1998

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 21, 1997

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice-Chairman
John Hanger,
David W. Rolka,
Nora Mead Brownell,

Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C. S. § 2807 (D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C. S. § 2809 (E) and (F)- Petition for Reconsideration, Clarification, Rescission, and Amendment of the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus

Docket No. M-00960890 F 0011

ORDER

BY THE COMMISSION:

On July 11, 1997, the Commission issued an order setting guidelines for maintaining customer services at the same level of quality under retail competition, as required by the *Electricity Generation Customer Choice and Competition Act* (Act)[1], and for assuring conformance with the standards and billing practices for residential service at

[1] The Act revised the Public Utility Code, 66 Pa. C. S. §§ 101, *et seq.*, by, *inter alia*, adding Chapter 28, relating to restructuring of the electric utility industry.

52 Pa. Code, Chapter 56 (hereinafter referred to as *Guidelines Order*).[2] On July 25, 1997, the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus (IBEW) filed the subject petition requesting that the Commission reconsider, clarify, rescind, and amend the July 11, 1997 order to make clear that the following services must be provided by electric distribution companies (EDC) and cannot be provided by electric generation suppliers: disconnecting and meter reading services; billing for distribution-related charges; distribution-related complaint resolution and related customer service functions; and other similar functions. On August 11, 1997, Enron Power Marketing, Inc., filed an answer opposing IBEW's petition.

In support of its petition, IBEW first notes that it did not file comments in this proceeding because it believed that metering issues would be addressed in the Commission's metering docket and billing issues would be addressed in each restructuring case. Then, IBEW cites certain provisions in the *Guidelines Order* (pages 10-11) allowing the implementation of the supplier single bill option and supplier complaint handling in all restructuring cases. Also, IBEW notes that the *Guidelines Order* (page 23) provides for other entities (other than EDCs) performing nonphysical meter reading.

In reaching these conclusions, IBEW argues that the Commission failed to consider the legal requirements imposed by the Act and other provisions of the Public

[2] On April 25, 1997, we issued a *Tentative Order* at this docket proposing guidelines and soliciting comments on the proposed guidelines.

Utility Code (Code), and the Commission's regulations. Thereafter, the petitioner lays out its basic position that generation suppliers are not public utilities and certain legal requirements imposed in the Code and Commission regulations, involved in providing electric service, cannot be met by a generation supplier or other non-utility entity.

In particular, IBEW maintains that there are certain legal obligations for metering and billing customers and providing customer service that are placed on a public utility. IBEW submits that it is not possible for an EDC to satisfy these obligations if it does not own, maintain, and read the meter and issue the resulting bill for service. Further, IBEW asserts that both the Act and the Commission's regulations state that meter reading must be performed by the EDC. Finally, the petitioner contends that Section 2807 (d) of the Act requires the EDC to continue to provide complaint resolution and collection services. IBEW requests that the Commission grant its petition.

In considering the subject petition seeking reconsideration pursuant to 66 Pa. C. S. § 703 (g), the Commission will follow the well-established standard enunciated in Duick v. Pennsylvania Gas and Water Company, 56 Pa. PUC 553, 559 (1982), where we will find merit with petitions raising " new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." Here, we do recognize that all of the arguments presented by IBEW have not been considered by the Commission in setting up these guidelines or in any other electric competition proceeding. Rather than being addressed here, we anticipated that

metering and billing issues would be addressed in each restructuring case. Therefore, we have not overlooked the issues raised by IBEW.

Although we declined to open up generic proceedings on these and other issues because of the limited time period allowed for hearing and resolution of the restructuring proceedings, we did recognize that the proceeding on the electric utility restructuring plans would examine transition issues, such as metering and billing, that involve employees of EDCs.[3] In fact, the content of the restructuring plans required under Section 2806 (d)[4] must discuss the impacts of the proposed plan on the utility's employees. See 66 Pa. C. S. § 2806 (e). We specifically noted that this issue along with other important issues would be explored in the restructuring proceedings (*Filings Order*, pages 6-7).

Furthermore, one of the issues to be explored -- permitting generation suppliers to bill all charges -- is contemplated in Appendix A (page 34), which sets forth the information to be supplied with the plan and is attached to the *Filings Order*. Therefore, Guideline II. B. in the *Guidelines Order* which requires utility restructuring plans to provide for suppliers to render a consolidated bill and engage in complaint handling , and is opposed by IBEW, is entirely consistent with the Commission's *Filings Order* issued

[3] *Order Re: Electric Utility Restructuring Filings Made Pursuant to 66 Pa. C. S. § 2806 (e),* (hereinafter referred to as *Filings Order)*, Docket No. M-00960890 F. 0003 (Pa. PUC Feb. 13, 1997) at page 3 and Appendix A, page 31.

[4] A provision of the Act at 66 Pa. C.S. §2806(d) requires that each electric utility in the Commonwealth submit to the Commission a restructuring plan between April 1, 1997 and September 30, 1997. The plan will, in effect, restructure the rates, rules, regulations and practices of each jurisdictional electric utility in accordance with the intention of the Act and meet the new market structure.

almost five full months before on February 13, 1997. As stated in our *Tentative Order* (page 2), "[t]he Guidelines are intended to assist the parties in the preparation, litigation and resolution of the Restructuring Filings of each utility by setting forth the Commission's current views regarding how those issues should be addressed in the restructuring proceedings." Therefore, our resolve to have the parties consider this guideline and Guideline III. G. on Metering/Meter Reading is not a final disposition on these issues and, on this basis, we hold that the subject petition is premature.

Finally, we have analyzed the effect that participation may have in these restructuring proceedings:

> Those parties with limited resources are not shut out of the process. They may still participate in the earliest filed restructuring plan proceedings and advance their views. If adopted, and of meaningful precedential value and applicability, such resolution will be applied to other cases in the same manner as any other adjudication.

Filings Order, page 10. Clearly, IBEW has had the opportunity to address the issues in the restructuring proceeding that it is attempting to raise here. Although the restructuring proceedings involving a few companies may be near completion,[5] IBEW can still attempt to intervene in recently filed restructuring plan proceedings,[6] or plan to intervene in future restructuring proceedings[7] and raise the issues it presently is attempting to raise through

---

[5] PECO Energy and Pennsylvania Power and Light Company (PP&L) filed their plans on April 1, 1997. IBEW intervened in the PP&L proceeding.

[6] On June 1, 1997, GPU Energy filed its plan. Allegheny Power and Duquesne Light Company have only recently filed their respective plans on August 1, 1997. UGI Utilities, Inc., filed its plan on August 7, 1997.

[7] On September 30, 1997, Citizens Electric Company, Penn Power, Pike County Light & Power Company and Wellsboro Electric Company will file their plans.

this petition. In the restructuring proceedings, we will have the benefit of a full briefing schedule and an administrative law judge's initial decision before having to decide these issues; THEREFORE,

IT IS ORDERED:

That the petition for reconsideration, clarification, rescission and amendment filed by the International Brotherhood of Electric Workers' Pennsylvania Utility Caucus is hereby denied on the merits.

BY THE COMMISSION,

James J. McNulty
Acting Secretary

(SEAL)

ORDER ADOPTED: August 21, 1997

ORDER ENTERED: AUG 21 1997

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

98 FEB 17 PM 1:32

133193

RECEIVED
PROTHONOTARY'S OFFICE

In the Matter of Duquesne Light Company's Restructuring Plan	: Docket No. R-00974104	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Reply Brief of System Council U-10, International Brotherhood of Electrical Workers, via first class mail upon the participants, listed on the following pages, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Scott J. Rubin, Esq.

Counsel for:
International Brotherhood of Electrical Workers,
System Council U-10

Dated: February 17, 1998

Carol Pennington
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

Marisa Sifontes
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Kandace Melillo
Pa. Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265

Patricia Armstrong
Thomas Thomas Armstrong & Niesen
P.O. Box 9500
Harrisburg, PA 17108-9500

Deneice Covert Zeve
Terry Lupia
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

Terrance Fitzpatrick
Ryan Russell Ogden & Seltzer
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025

Hon. John H. Corbett, Jr., ALJ
Pa. Public Utility Commission
1103 Pittsburgh State Office Bldg.
300 Liberty Ave.
Pittsburgh, PA 15222

Timothy Moran
System Council U-10, IBEW
986 Greentree Road
Pittsburgh, PA 15220

Kevin McKeon
William Hawke
Malatesta Hawke & McKeon
100 North 10th St.
Harrisburg, PA 17101

Daniel Clearfield
Wolf Block Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101-1236

James Dougherty
McNees Wallace & Nurick
P.O. Box 1166
Harrisburg, PA 17108-1166

Kenneth Zielonis
Stevens & Lee
P.O. Box 12090
Harrisburg, PA 17108-2090

Brian Rider
Pennsylvania Retailers' Assoc.
224 Pine St.
Harrisburg, PA 17101-1325

John Wilson
Community Action Association of Pa.
222 Pine St.
Harrisburg, PA 17101

John Moot
Skadden Arps Slate Meagher & Flom
1440 New York Avenue, NW
Washington, DC 20005

Richard Herskovitz
Duquesne Light Company
P.O. Box 1930
Pittsburgh, PA 15230-1930

David Hughes
4037 Ludwick St.
Pittsburgh, PA 15217

Jim Ferlo, Councilman
510 City-County Building
Pittsburgh, PA 15219

Mary McFall Hopper
PECO Energy Company
P.O. Box 8699
Philadelphia, PA 19101-8699

Jacqueline Morrow
313 City County Building
414 Grant Street
Pittsburgh, PA 15219

Stephen Baron
J. Kennedy & Assoc.
35 Glenlake Parkway, Suite 475
Atlanta, GA 30328

Howard Louik
Allegheny County Law Dept.
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

Steven Baicker-McKee
Babst Calland Clements & Zomnir
8th Floor, Two Gateway Center
Pittsburgh, PA 15222

Kenneth Wiseman
Andrews & Kurth
1701 Pennsylvania Avenue, NW
Washington, DC 20006

Kenneth Maiman
Andrews & Kurth
425 Lexington Avenue
New York, NY 10017-3903

Exeter Associates, Inc.
12510 Prosperity Drive, Suite 350
Silver Spring, MD 20904

Michael Kurtz
Boehm Kurtz & Lowry
2110 CBLD Center
36 East Seventh St.
Cincinnati, OH 45202

Robert Weisenmiller
MRW & Associates, Inc.
1999 Harrison St., Suite 1440
Oakland, CA 94612-3517

Michael Reid, Director
Materials Management Services
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513

Robert Stefanko
Pittsburgh School District
341 South Bellefield Ave.
Pittsburgh, PA 15213

Margaret Peters
The Peoples Natural Gas Company
625 Liberty Ave.
Pittsburgh, PA 15222-3197

John Stember
1705 Allegheny Building
429 Forbes Ave.
Pittsburgh, PA 15219

Stephen Feld
Pennsylvania Power Company
P.O. Box 891
New Castle, PA 16103-0891

Donald Ayersman
IBEW Local 2357
1125 Denver Ave.
Morgantown, WV 26505

Tim Merrill
The Eastern Group
4 Penn Center West, Suite 200
Pittsburgh, PA 15276

Thomas Gadsden
Morgan Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Attorney of Record
Environmental Energy Project
3700 Vartan Way
Harrisburg, PA 17110

Paul Russell
Pa. Power and Light Co.
Two North Ninth St.
Allentown, PA 18101

Donald Kaplan
Preston Gates Ellis & Rouvelas Meeds
1735 New York Ave., NW, Suite 500
Washington, DC 20006-4759

David Boonin
New Energy Ventures
1845 Walnut St., Suite 2525
Philadelphia, PA 19103

Roger Clark
905 Denston Dr.
Ambler, PA 19002-3901

John O'Brien
Wheeled Electric Power Co.
50 Charles Lindburgh Blvd., Suite 207
Uniondale, NY 11553

James Steffes
Enron Power Marketing, Inc.
P.O. Box 4428
Houston, TX 77002

Brian Kalcic
Excel Consulting
225 S. Meramec Ave., Suite 720-T
St. Louis, MO 63105

Albert Benincasa
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579

Joseph Dworetzky
Hangley Aronchick Segal & Pudlin
One Logan Square, 12th Floor
Philadelphia, PA 19103

John Horton
MidCon Corporation
701 East 22nd St.
Lombard, IL 60148

Craig Nifong
MidCon Corporation
3200 Southwest Freeway
Houston, TX 77027

Thomas Augspurger
MidCon Corporation
Office of General Counsel
701 East 22nd St.
Lombard, IL 60148

Mark McGuire
Jenner & Block
601 13th St., NW, Suite 1200
Washington, DC 20005

Gordon Smith
John & Henreger
1200 17th St., NW, Suite 600
Washington, DC 20036

Sheila Hollis
Duane Morris & Heckscher
1667 K St., NW, Suite 700
Washington, DC 20006-1608

Vickiren Aeshleman
QST Energy Inc.
300 Hamilton Blvd., Suite 300
Peoria, IL 61602

Gary Jeffries
CNG Energy Services Corp.
P.O. Box 15746
Pittsburgh, PA 15244-0746

David Cruthirds
Electric Clearinghouse, Inc.
100 Louisiana, Suite 5800
Houston, TX 77002-5050

Keith Sappenfield
NorAm Energy Management, Inc.
1600 Smith, Suite 1140
Houston, TX 77002-7345

John Orr
Duke Energy Trading & Marketing
One Westchester Center
10777 Westheimer, Suite 650
Houston, TX 77042

Lawrence Moncrief
Pittsburgh Chapter NAACP
1364 Silverton Ave.
Pittsburgh, PA 15206

Cindy Datig
Dollar Energy Fund
P.O. Box 42329
Pittsburgh, PA 15203

Samuel Braver
Buchanan Ingersoll, PC
301 Grant St., 20th Floor
Pittsburgh, PA 15219-1410

COMMONWEALTH OF PENNSYLVANIA

ORIGINAL

OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

Bernard A. Ryan, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831 (FAX)

February 18, 1998

DOCUMENT FOLDER

KJR

RECEIVED
98 FEB 18 PM 2:19
PA.P.U.C.
PROTHONOTARY'S OFFICE

HAND_DELIVERED

Office of the Prothonotary
Pa. Public Utility Commission
North Office Building
P. O. Box 3265
Harrisburg, PA 17105

Re: Application of Duquesne Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code Docket No. R-00974104

Dear Prothonotary:

Enclosed for filing are the original and nine (9) copies of the Reply Brief 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,

Angela T. Jones

Angela T. Jones
Assistant Small Business Advocate

Enclosures
cc: Hon. John H. Corbett, Jr.
Administrative Law Judge

Parties of Record

Mr. Brian Kalcic

24

BEFORE THE

ORIGINAL

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light Company For Approval Of Its Restructuring Plan Under Section 2806 Of The Public Utility Code	:	Docket No. R-00974104

REPLY BRIEF
OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

Bernard A. Ryan, Jr.
Small Business Advocate

Angela T. Jones
Assistant Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525

Dated: February 18, 1998

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY OF ARGUMENT

A. INTRODUCTION

On August 1, 1997, Duquesne Light Company ("Duquesne" or "Company") filed its Restructuring Plan pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§2801-2813 ("Competition Act"). The Office of Small Business Advocate ("OSBA") incorporates by reference to its Main Brief the mechanics of the Company's restructuring plan as well as the procedural history of this proceeding. The Company and the Intervenors to this proceeding filed briefs on February 10, 1998 pursuant to the Ninth Interim Order of Administrative Law Judge, John H. Corbett, Jr. It is the intent of OSBA through this Reply Brief to provide clarification on items in dispute in this proceeding that affect the equitable treatment of small business customers of Duquesne during the transition to a competitive generation environment.

B. SUMMARY OF ARGUMENT

Upon review of the arguments set forth in the Main Briefs of Duquesne, Duquesne Industrial Intervenors("DII"), and the Office of Consumer Advocate ("OCA") the OSBA finds there remain four (4) issues that require further explanation to clarify disputes with the parties to this proceeding. These four issues are: (1) the method of customer selection for the phase-in period, (2) the methodology appropriate for the unbundling of the transmission and distribution rates, (3) proposals for determining class responsibility for stranded costs, and (4) the cost allocation and rate design associated with the universal service charge.

The OSBA endorses the customer selection methodology proposed by the Company. However, in the alternative, if a first-come first-serve methodology is adopted, it should be modified to treat similarly situated small business customers equitably.

The Company insists on using required rates of return to derive unbundled transmission and distribution rates. This method is exclusive to a base rate case, which this proceeding is not. The statutory mandate is to use realized rates of return so that the rates for transmission and distribution services remain the same as those approved in the Company's last base rate proceeding.

The OSBA refutes the assertions of DII with regard to how the CTC should be determined for each class. Contrary to DII's contentions in determining class responsibility for stranded costs, the allocation of stranded costs to rate classes will prevent interclass cost shifting. OSBA also proposes a longer than minimum recovery period to afford all ratepayers a significant rate reduction immediately as a benefit to the restructured industry.

OSBA asserts that the arguments of differential treatment that OCA advocates for this proceeding as compared to the PECO proceeding for universal service charges are without merit. OSBA demonstrates that the allocation of costs consistent with the Company's last rate base treatment does not cause 100% of the universal service costs to be borne by the residential class. OSBA asserts that this allocation should be maintained following the statutory mandates of the Competition Act.

II. PHASE-IN OF CUSTOMER CHOICE

A. METHOD OF CUSTOMER SELECTION

The majority of intervenors advocate the first-come first-serve ["FCFS"] method of selection of customers or some derivative thereof. While the preferred method of selection of customers for OSBA continues to be the proposal of the Company, in the alternative, the OSBA would modify the proposals of FCFS selection.

The modification to the FCFS selection method, as discussed in the OSBA Main Brief and incorporated here by reference, serves to cure the inequities of applying the FCFS approach to an

inherently diverse Rate GS/GM class, of which the small business class of customers is but one part. By incorporating this modification to the FCFS selection process, the Rate GS/GM class would be homogenized. OSBA Main Brief at 11. Moreover, the frequency of complaints of similarly situated small business customers experiencing competitive disadvantages would be lessened.

III. TRANSMISSION AND DISTRIBUTION RATES; UNBUNDLING ISSUES

C. REQUIRED V. REALIZED RATES OF RETURN

The Company asserts that its transmission and distribution ("T&D") rates were set on a traditional cost-of-service basis in three stages: (1)the Company first computed functionalized revenue requirements for T&D using its required rate of return, (2) functionalized revenue requirements then were allocated to customer classes,[1] and (3) using these allocated revenue requirements, T&D rates were then designed for each class. Duquesne Main Brief at 11-12. The Company alleges that the use of a realized rate of return would shift costs away from T&D and thus lower the rates for these services. Id at 12. The lowering of rates would occur because the Company's total revenue requirement cannot fit within the rate cap established by the Competition Act; hence realized rates of return are less than the required rates of return. Id at 12-13. The Company alleges that proposals advocating the use of realized rates of return[2] must fail because that method is not how regulated rates are set. Regulated rates are set using required rates of return. Id at 13.

---

[1] Distribution demand costs allocated on basis of noncoincident peak demands and number of customers, transmission allocated on basis of coincident peak demand consistent with FERC.

[2] OSBA advocated the use of realized rates of return along with the Office of Consumer Advocate ("OCA"), DII and Enron.

The latter assertions by the Company that rates are set by using required rates of return are the critical point of OSBA's argument. This application by Duquesne to restructure its rates for electric competition is not a rate case. The Company must unbundle existing rates to reflect existing T&D components.

In contrast, "Duquesne's proposal is equivalent [to] a petition to increase current distribution rates." OSBA Stmt. No. 1 at 7 (Emphasis added). As a result, a customer who chooses to purchase generation from an alternative supplier, would experience non-generation services supplied by Duquesne at the claimed overall cost of capital of 9.61% rather than the lower realized return on rate base provided by current rates. Id. Moreover, a customer who chooses to purchase generation service from Duquesne would also experience total distribution charges exceeding those approved by the Commission in its last rate case proceeding. These increases in current distribution rates are prohibited by Section 2804(4) of the Competition Act. 66 Pa.C.S. §2804(4)(I). Consequently, the scheme proposed by Duquesne would be in violation of the rate cap provision of the Competition Act and therefore, should be rejected.

D. FUNCTIONALIZATION OF DISTRIBUTION LOSSES

The OSBA has recognized that the Company has modified its initial proposal with respect to the functionalization of distribution losses. The Company has recognized that distribution losses may be subject to competition as a generation-related function. Consequently, the Company has now included distribution losses in the generation function.

The DII and the Pennsylvania Retail Association ("PRA") object to the Company's treatment of distribution line losses. DII Main Brief at 14, and PRA Main Brief at 23. These intervenors assert that it is inappropriate to include distribution line loss services in regulated distribution rates because these services are open to competition as a generation-related function.

It appears that these arguments are misdirected. The Company has functionalized distribution line losses as a generation-related service in its revised proposal for the very reasons that these intervenors are now advocating. Consequently, these arguments of the DII and PRA should be considered moot.

V. THE COMPETITIVE TRANSITION CHARGE

(b) Determination of Class Responsibility for Stranded Costs

DII claims that the OSBA's proposal to allocate stranded costs to ratepayers is inappropriate in this proceeding because it would result in cost-shifting and possible rate cap violations. DII Main Brief at 80. To the contrary, OSBA asserts that it is DII's proposal with respect to the accelerated recovery of stranded costs that would result in cost-shifting. OSBA Main Brief at 18. Further, OSBA asserts that DII's claim regarding possible rate cap violations is disingenuous.

Class allocation-based CTCs cannot be known until such time as Duquesne's total stranded costs and length of recovery period are determined. MAPSA Main Brief at 33. Should potential rate cap concerns arise, the Commission can take appropriate steps to adjust the CTC so as to allow for meaningful competition, as it did in its PECO decision.

The OSBA is proposing an allocation of stranded cost responsibility which preserves the meaningful customer choice inherent in the residual-CTC methodology. The difference between the DII proposal and that of OSBA lies in the attempt of DII to collect the maximum available CTC revenues from all rate classes as quickly as possible. OSBA Stmt. No. 1R at 3. DII asserts that the residual-CTC methodology results in an appropriate assignment of costs without the need for allocations. DII Main Brief at 80. OSBA strongly disagrees.

OSBA does not agree with DII that use of the residual-CTC methodology appropriately assigns the stranded cost revenue requirement to rate classes. DII Stmt. No. 1 at 11. Instead, as explained in OSBA's Main Brief, the allocation of rate classes affords a more equitable assignment of stranded cost responsibility to rate classes and could provide all ratepayers with an immediate rate reduction. OSBA Main Brief at 17-19. Moreover, this potential rate reduction would not otherwise be available under the DII proposal.

Summarily, the OSBA asserts that the DII residual-CTC methodology would violate the statutory mandate against interclass and intraclass cost shifting in Section 2808(a) of the Competition Act. 66 Pa.C.S. §2808(a). However, should the Commission decide to adopt DII's approach, OSBA asserts that it would remain feasible and appropriate to allocate stranded cost responsibility to rate classes. In DII's residual-CTC approach, each class should be allocated it share of the beginning stranded cost balance with CTC revenues tracked by class. OSBA Stmt. No. 1R at 8. Each class would then pay (maximum) residual CTCs up to its respective generation rate cap, but with CTC revenues credited against its class-specific stranded cost allocation. In this modified DII approach, CTCs for a given class would end when its allocated stranded cost share was amortized. Id. OSBA's recommended modification would prevent DII's residual-CTC methodology from shifting cost responsibility from low premium to high premium classes. Id.

X. UNIVERSAL SERVICE AND ENERGY CONSERVATION

2. Cost Allocation and Rate Design

The OCA asserts that universal service costs should be recovered on a per kWh basis from all distribution customers and that this allocation would ensure that all customer classes contribute in an equitable fashion. OCA Main Brief at 84. Assuming in arguendo, that the Commission would reject the per kWh basis, the OCA would recommend the use of a non-production revenue allocator.

Id. The OSBA has already addressed (and incorporates here by reference) the arguments against both of these methods of allocation. OSBA Main Brief at 23 and 26-27, respectively. Neither of these methods comply with the statutory mandates of the Competition Act. 66 Pa. C.S. §2804(7).

OCA advocates that this proceeding differs from the PECO[3] decision in that Duquesne has proposed expansion of its programs. In PECO, the Commission addressed existing costs for maintaining existing programs. OCA Main Brief at 85. This difference, in the OCA's view, justifies its proposal that these costs be allocated to all customers and not just confined to the previous allocation of residential customers. Id.

OSBA asserts that the allocation of universal service costs should be consistent with the Company's last rate case, in compliance with the Competition Act. 66 Pa.C.S. §2804(7). The OSBA also asserts that its proposal, contrary to the OCA's claim, would not burden the residential class with a 100% allocation of universal service costs. See OSBA Main Brief Table 1 at 25 (Table supplied again as an attachment to this Reply Brief for convenience). In fact, the residential class would be properly allocated $10,217,601 or 83%[4] of Duquesne's total universal service budget of $12,275,000.

In summary, the universal service allocation methodology recommended by OSBA is in compliance with the Competition Act and its prohibition against intra- and inter-class cost shifting. 66 Pa.C.S. §2804(7). Consequently, the assertions of OCA against Mr. Kalcic specifically referring to the cost allocation of the universal service charge are without merit.

---

[3] Referencing the Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al., Docket Nos. R-00973953 and P-00971265 (Order entered December 23, 1997).

[4] 10,217,601/12,275,000 equals 0.83 or 83%.

XI. CONCLUSION

For the reasons set forth in this Reply Brief, the OSBA respectfully requests the presiding Administrative Law Judge and the Commission:

(1) to adopt the modification to the first-come first-served customer selection process proposed by OSBA as a remedy to homogenize the small business class rate schedule if the Company's proposal is rejected;

(2) to reject the use of required rates of return for distribution rates as asserted by the Company and to adopt the use of a realized rate of return, concluding that a realized return is in compliance with the Competition Act;

(3) to approve the Company's modified treatment of distribution losses as a functionalized generation-related services;

(4) to adopt an allocation methodology for determining class stranded cost responsibility where, if necessary, stranded cost CTC collections are tracked by class; and

(5) to direct the Company to provide a universal service and conservation cost allocation that is consistent with the allocations contained in the Company's last base rate case.

Respectfully submitted,

Angela T. Jones
Assistant Small Business Advocate

Dated: February 18, 1998

ATTACHMENT

TABLE 1

Duquesne Light Company
Company Versus Cost-of-Service Based
Residential Universal Service Cost Allocation

Acct.	Cost Study Allocation Factor	Universal Service Costs	Rate RA Allocation %	Rate RA Amount	Rate RS Allocation %	Rate RS Amount	Rate RH Allocation %	Rate RH Amount	Total Residential
		(1)	(2)	(1)*(2) (3)	(4)	(1)*(4) (5)	(6)	(1)*(6) (7)	(3)+(5)+(7) (8)
901	39 - Cust Serv Costs	$529,095	0.3953%	$2,091	70.2351%	$371,611	3.2167%	$17,019	$390,721
903	39 - Cust Serv Costs	$4,074,030	0.3953%	$16,104	70.2351%	$2,861,400	3.2167%	$131,049	$3,008,552
904	13 - Avg. No. Cust	$6,137,500	0.4818%	$29,569	85.6040%	$5,253,948	3.9206%	$240,624	$5,524,141
908	13 - Avg. No. Cust	$1,375,647	0.4818%	$6,627	85.6040%	$1,177,609	3.9206%	$53,933	$1,238,170
926p	104 - Production	$63,656	0.3151%	$201	26.3979%	$16,804	3.0020%	$1,911	$18,915
926t	106 - Transmission	$2,511	0.2780%	$7	23.9606%	$602	2.0846%	$52	$661
926d	107 - Distribution	$39,652	0.3794%	$150	40.1546%	$15,922	3.6780%	$1,458	$17,531
931p	126 - Production	$31,828	0.3543%	$113	28.2913%	$9,005	3.5073%	$1,116	$10,234
931t	127 - Transmission	$1,255	0.2723%	$3	23.4697%	$295	2.0419%	$26	$324
931d	128 - Distribution	$19,826	0.3600%	$71	38.3237%	$7,598	3.4449%	$683	$8,352
	Total	$12,275,000		$54,937		$9,714,793		$447,872	$10,217,601
	Company Proposed USC Assignment (Per OSBA Cross-Exam. Exhibit No. 1)			$46,192		$5,266,035		$427,994	$5,740,221
								Shortfall	$4,477,380 43.8%

Source:

Exh. JAL-1B, pages 15 & 17	OSBA Cross-Exam. Exhibit. No. 1	Exh. JAL-1D, pages 2-5	Exh. JAL-1D, pages 2-5	Exh. JAL-1D, pages 2-5

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light Company For Approval Of Its Restructuring Plan Under Section 2806 Of The Public Utility Code	:	Docket No. R-00974104

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief on behalf of the Office of Small Business Advocate upon the persons addressed below by first class mail unless otherwise indicated:

Hon. John H. Corbett, Jr.
Administrative Law Judge
Pa. Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
(412) 565-3550
(overnight mail 2/17)

Larry R. Crayne, Esquire
Legal Unit
Duquesne Light Company
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, PA 15230-1930
(412) 393-6049
(412) 393-6645 (fax)

John S. Moot, Esquire
Kurt Bilas, Esquire
1440 New York Avenue, N.W.
Washington, DC 20005
(Duquesne Light Company)
(202) 371-7310
(202) 371-7939 (fax)

Kandace F. Melillo, Esquire
Wayne T. Scott, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17101
(Office of Trial Staff)
(717) 787-1976
(717) 772-2677 (fax)

James Ferlo, Councilman
510 City-County Building
Pittsburgh, PA 15219

Tanya J. McCloskey, Esquire
Steven K. Steinmetz, Esquire
Marisa A. Sifontes, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(Office of Consumer Advocate)
(717) 783-5048
(717) 783-7152 (fax)

David Kleppinger, Esquire
Derrick P. Williamson, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(Duquesne Indusrial Intervenors)
(717) 232-8000
(717) 237-5300 (fax)

Stephen J. Baron
J. Kennedy and Associates, Inc.
Suite 475
35 Glenlake Parkway
Atlanta, GA 30328
(Duquesne Industrial Intervenors)
(770) 395-1288
(770) 396-0151 (fax)

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
P. O. Box 9500
Harrisburg, PA 17108-9500
(Allegheny Elec. Cooperative)
(717) 255-7600
(717) 236-8278 (fax)

Steven F. Baicker-McKee, Esq.
Babst Calland Clements & Zomnir
Two Gateway Center, 8th Floor
Pittsburgh, PA 15222
(Allegheny Teledyne, Inc.)
(412) 394-5400
(412) 394-6576 (fax)

Scott J. Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870
(Elec. Workers, Local 1600)
(717) 743-2233
(717) 743-8145 (fax)

Mary McFall Hopper, Esquire
Assistant General Counsel
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(PECO Energy)
(215) 841-4917
(215) 568-3389 (fax)

Kenneth Zielonis, Esquire
Stevens & Lee
208 North Third Street
Suite 310
P.O Box 12090
Harrisburg, PA 17108-2090
(717) 234-1250
(717) 234-1939 (fax)

Brian A. Rider, President
Pennsylvania Retailers' Assoc.
224 Pine Street
Harrisburg, PA 17101-1325
(717) 233-7976

Cynthia S. Bogorad, Esquire
Spiegel & McDiarmid
Suite 1100
1350 New York Avenue, N.W.
Washington, DC 20005-4798
(Utility Workers Union)
(202) 879-4000
(202) 393-2866 (fax)

Robert F. Young, Esquire
Deputy General Counsel
212 Locust Street
P.O. Box 1266
Harrisburg, PA 17108-1266
(Allegheny Elec. Cooperative)
(717) 233-5704
(717) 236-0248 (fax)

Stephen L. Feld, Esquire
Penn Power Company
Legal Department
1 East Washington Street
P.O. Box 891
New Castle, PA 16103-0891
(412) 652-5531

Thomas P. Gadsden, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103
(Penn Power Company)
(215) 963-5234
(215) 963-5299 (fax)

Sheila S. Hollis, Esquire
Mary Ann Ralls, Esquire
Duane, Morris & Heckscher LLP
1667 K Street, N.W. Suite 700
Washington, DC 20006-1608
(QST Energy Inc.)
(202) 776-7800
(202) 776-7801 (fax)

Vickiren S. Aeschleman, Director
Regulatory Policy
QST Energy Inc.
300 Hamilton Blvd., Suite 300
Peoria, IL 61602
(309) 655-1356

Environmental Energy Project
Attorney of Record
3700 Vartan Way
Harrisburg, PA 17110
(Environmentalists)
(717) 540-5106
(717) 541-1970 (fax)

Robert J. Longwell, Esquire
Daniel Clearfield, Esquire
Wolf, Block, Schorr & Solis-Cohen
Locust Court Building
212 Locust St., Suite 300
Harrisburg, PA 17101
(Enron Corp.)
(717) 237-7160
(717) 237-7161 (fax)

Kevin McKeon, Esquire
Malatesta, Hawke & McKeon
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17105
(Peoples Natural Gas Company)
(717) 236-1300
(717) 236-4841 (fax)

Howard M. Louik, Esquire
Allegheny County Law Department
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219
(Allegheny County)
(412) 350-1182

Deneice Covert Zeve, Esquire
Terry Lupia, Esquire
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120
(Commonwealth of Pennsylvania)
(717) 787-4530
(717) 787-1190 (fax)

Exeter Associates
Suite 350
12510 Prsperity Drive
Silver Spring, MD 20904
(OCA Expert Witness)
(301) 622-4500
(301) 622-2686 (fax)

Kenneth L. Wiseman, Esquire
Andrews & Kurth LLP
1701 Pennsylvania Avenue NW
Washington DC 20006
(Hospital Shared Services)
(202) 662-2700
(202) 662-2739 (fax)

John E. Stember, Esquire
1705 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219
(Low Income Advocates)
(412) 338-1445
(412) 232-3730 (fax)

Rodney R. Akers, Esquire
City of Pittsburgh
Department of Law
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219
(412) 255-2015
(412) 255-2285 (fax)

Samuel W. Braver, Esquire
Bruce A. Americus, Esquire
Buchanan Ingersoll Professional Corp.
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, PA 15219-1410
(City of Pittsburgh)
(412) 562-8800
(412) 562-1041 (fax)

Glenn J. Berger, Esquire
Skadden, Arps, Slate, Meagher
& Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111
(Washington Power Company and
Champion Processing, Inc.)
(202) 371-7000
(202) 393-5760 (fax)

Margaret H. Peters, Esquire
Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222-3197
(412) 497-6892
(412) 497-6838 (fax)

Terrance J. Fitzpatrick, Esquire
David M. DeSalle, Esquire
Ryan, Russell, Ogden & Seltzer LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025
(GPU Energy)
(717) 236-7714
(717) 236-7816 (fax)

Mark F. Sundback, Esquire
Andrews & Kurth LLP
1701 Pennsylvania Avenue NW
Washington DC 20006
(Administrative Resources, Inc.)
(202) 662-2755
(202) 662-2747 (fax)

Michael Reid, Director
Materials Management Services
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513
(412) 772-7223
(412) 776-6969 (fax)

Mark J. McGuire, Esquire
Ronald N. Carroll, Esquire
Jenner & Block
Suite 1200, 601 13th Street NW
Washington DC 20005
(MidCon Gas Services Corp.)
(202) 639-6000
(202) 639-6066 (fax)

Tim Merrill, Esquire
Suite 200, 4 Penn Center West
Pittsburgh, PA 15276
(The Eastern Group)
(412) 490-0925

Joseph A. Dworetzky, Esquire
Hangley Aronchick Segal & Pudlin
One Logan Square, Twelfth Floor
Philadelphia, PA 19103-6933
(New Energy Ventures)
(215) 496-7014
(215) 568-0300 (fax)

Mr. David M. Boonin
New Energy Ventures, Inc.
1845 Walnut Street, Suite 2525
Philadelphia, PA 19103
(New Energy Ventures)
(215) 563-9290
(215) 563-9292 (fax)

James D. Steffes
Enron Power Marketing, Inc.
Box 4428
Houston, TX 77002
(713) 853-7500
(713) 646-8160 (fax)

Michael L. Kurtz, Esquire
Boehm, Kurtz & Lowry
2110 Society Bank Center
36 East Seventh Street
Cincinnati, OH 45202
(Counsel for ARMCO)
(513) 421-2255
(513) 421-2764 (fax)

Robert B. Weisenmiller
MRW & Associates, Inc.
Suite 1440
1999 Harrison Street
Oakland, CA 94612-3517
(Hospital Shared Services)
(510) 834-1999
(510) 834-0918 (fax)

Robert J. Stefanko, Esquire
341 South Bellefield Avenue
Pittsburgh, PA 15213
(Pittsburgh School District)
(412) 622-3780

Donald R. Ayersman, Jr., Esquire
1125 Denver Avenue
Morgantown, WV 26505
(IBEW Local 2357)
(304) 296-3958

Thomas J. Augspurger, Esquire
MidCon Corporation
Office of General Counsel
701 East 22nd Street
Lombard, IL 60148
(MidCon Gas Services Corp.)

William T. Hawke, Esquire
Malatesta, Hawke & McKeon LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17101
(Mid Atlantic Power Supply Assoc.)
(717) 236-1300
(717) 236-4841 (fax)

Paul E. Russell, Esquire
Pennsylvania Power & Light Co.
Two North Ninth Street
Allentown, PA 18101-1179
(PP&L)
(610) 774-4254
(610) 774-6726 (fax)

Albert M. Benincasa, Esquire
Director, Regulatory Affairs
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579
(516) 674-4186

Douglas F. John, Esquire
John & Hengerer
1200 17th Street, N.W.
Washington DC 20036
(Duke Energy Trading/Markketing, LLC)
(NorAm Energy Management, Inc.)
(Electric Clearinghouse, Inc.)
(202) 429-8800
(202) 429-8805 (fax)

Donald A. Kaplan, Esquire
Lisa M. Helpert, Esq.
Preston Gates Ellis & Rouvelas Meeds
Suite 500
1735 New York Avenue, N.W.
Washington DC 20006-4759
(PP&L)
(202) 628-1700
(202) 331-1024 (fax)

Roger Clark, Esquire
The Environmentalists
905 Denston Drive
Ambler, PA 19002-3901
(215) 643-2364
(215) 628-2630 (fax)

John O'Brien, Esquire
Wheeled Electric Power Company
Suite 207
50 Charles Lindburgh Boulevard
Uniondale, NY 11553
(516) 390-7600

Angela T. Jones
Assistant Small Business Advocate

Date: February 18, 1998

LAW OFFICES
WOLF, BLOCK, SCHORR AND SOLIS-COHEN LLP

212 LOCUST STREET
SUITE 300
HARRISBURG, PA 17101-0213

(717) 237-7160
FACSIMILE: (717) 237-7161

DOCUMENT FOLDER

ORIGINAL

DANIEL CLEARFIELD
DIRECT DIAL: (717) 237-7173
E-MAIL: DCLEARFIELD@WOLFBLOCK.COM

February 18, 1998

James McNulty, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Duquesne Light Company Application to Approve Restructuring Plan Pursuant to 66 Pa. C.S. §2806(d)
Docket No. R-00974104

KJR

Dear Mr. McNulty:

It has come to my attention that the Reply Brief filed by Enron Power Marketing, Inc. ("Enron") on February 17, 1998 contains a typographical error which should be brought to your attention. On page 15 of the Reply Brief Enron references a statement from page 42 of the PECO Restructuring Order addressing the methodology for calculation of the competitive generation credit. However, the block quote which follows not only includes the quoted passage from the Commission's Order but also includes argument pertaining to the Commission's statement. Of course, the argument should have been omitted from the block quote and included as text. A revised page 15 is attached which should replace the original page 15 filed with the Reply Brief on February 17, 1998.

If you have any questions or concerns regarding this matter, feel free to contact the undersigned at your convenience.

Respectfully submitted,

Daniel Clearfield/JAK

Daniel Clearfield
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosure

cc: Hon. John H. Corbett, w/enc.
Parties of Record w/enc.

PECO and that a different result (from that in PECO) should obtain.[34] Duquesne's insistence on a "calculated" generation credit is to further its claim that the CTC should be established as the residual of its entire generation related rate. Not only does Duquesne's proposal turn the PECO Order on its head, such an approach would simultaneously allow Duquesne to recover stranded costs at a maximum level and, at the same time, assure that competitors have no hope of winning customers in its service territory.

Duquesne's position is, of course, incorrect. As was set forth carefully in Enron's Main Brief, the PECO paradigm does not "calculate" a "CGC" using any projections, guesses or assumptions about market prices. As the Commission determined in PECO, the CGC is a residual number which is not calculated but produced after determinations of the portions of Duquesne's rates which were associated with transmission and distribution and CTC. When those elements are determined and removed from Duquesne's current rates, the remainder — whatever that may be — is the customer generation credit. The Commission stated that, "The shopping credit is not a selected number. It is the number that results from the difference between a particular customer's total rate as of January 1, 997 and the sum of T&D and CTC rates established pursuant to this order."[35]

The residual establishment of a shopping credit does not purport to track a market price for generation but is the Commission's determination of what is necessary to create incentives for customers to want to shop and for sellers to be able to offer savings, therefore building the foundation for a competitive market. Nothing in the Act explicitly or implicitly links the unbundling of rates and the design of the shopping credit to market price.

34 Id.

35 PECO Restructuring Order at 42.

DOCUMENT FOLDER

City of Pittsburgh

Department of Law

Tom Murphy
Mayor

Jacqueline R. Morrow
City Solicitor

February 18, 1998

RECEIVED

FEB 18 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

VIA EXPRESS U.S. MAIL DELIVERY

James J. McNulty
Prothonotary
Pennsylvania Public Utility Commission
P. O. Box 3265
North Office Building
Harrisburg, Pennsylvania 17105-3265

RE: Application of Duquesne Light Company for Approval of a Restructuring Plan (Under Section 2806 of the Pennsylvania Public Utility Code);
Docket No. R-00974104

Dear Mr. McNulty:

The City of Pittsburgh, Pennsylvania will not be filing a Reply Brief in the above-captioned matter. A copy of this letter has been served on parties of record, as indicated in the enclosed Certificate of Service. Any questions regarding this submission should be directed to the undersigned at (412) 255-2015. Thank you.

KJR

DOCKETED
FEB 20 1998

Sincerely,

Rodney R. Akers
Assistant City Solicitor

Enclosures
CC: The Honorable John H. Corbett, Jr. (by hand)
Parties of Record (via first-class U.S. Mail)

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	)	
	)	
v.	)	**Docket No. R-00974104**
	)	
Duquesne Light Company	)	
Application for Approval of a	)	
Restructuring Plan Pursuant	)	
to 66 Pa. C.S. § 2806(d).	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants via first-class U.S. Mail, postage prepaid, except as indicated on the attached service listing, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), and in accordance with the First Prehearing Order of Administrative Law Judge John H. Corbett, Jr., dated September 10, 1997.

Dated this 18th day of February, 1998.

Rodney R. Akers
Counsel for City of Pittsburgh

City of Pittsburgh
Department of Law
313 City County Building
414 Grant Street
Pittsburgh, Pennsylvania 15219

Telephone (412) 255-2015
Facsimile (412) 255-2285

PA Public Utility Commission v. Duquesne Light Company

The Honorable John H. Corbett, Jr.
Administrative Law Judge
PA Public Utility Commission
Pittsburgh State Office Building
300 Liberty Avenue – Room 1103
Pittsburgh, PA 15222

Daniel Clearfield, Esquire
Wolf, Block, Schorr & Solis-Cohen, LLP
Locust Court Building, Suite 300
212 Locust Street
Harrisburg, PA 17101

Kandace F. Melillo, Esquire
Office of Trial Staff
PA Public Utility Commission
P. O. Box 3265, North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA 17101-3265

John O'Brien, Esquire
Wheeled Electric Power Company
50 Charles Lindburgh Blvd., Suite 207
Uniondale, NY 11553

Angela Jones, Esquire
Office of Small Business Advocate
1102 Commerce Building
300 North Street
Harrisburg, PA 17101

Marisa Sifontes, Esquire
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

James P. Dougherty, Esquire
David M. Kleppinger, Esquire
NcNees, Wallace & Nurick
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166

Robert F. Young, Esquire
Allegheny Electric Cooperative, Inc.
212 Locust Street
P.O. Box 1266
Harrisburg, PA 17108-1266

Patricia Armstrong, Esquire
Regina L. Matz, Esquire
John A. Alzamara, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P. O. Box 9500
Harrisburg, PA 17108-9500

Scott Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870-9357

Howard M. Louik, Esquire
Allegheny County Law Department
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

Roger Clark, Esquire
The Environmentalists
905 Denston Drive
Andler, PA 19002-3901

Michael L. Kurts, Esquire
Boehm Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

Larry R. Crayne, Esquire
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue, 16-006
Pittsburgh, PA 15219

John S Moot, Esquire
1440 New York Avenue NW
Washington, DC 20005

Donald R. Ayersman, Jr., Esquire
IBEW Local 2357
1125 Denver Avenue
Morgantown, WV 26505

Steven Baicker-McKee, Esquire
Babst, Calland, Clements & Zomnir, P.C.
8th Floor, Two Gateway Center
Pittsburgh, PA 15222

Kenneth L. Wisseman, Esquire
Andrews & Kurth, LLP
1701 Pennsylvania Avenue NW
Washington, DC 20006

Terrance J. Fitzpatric, Esquire
Ryan, Russsell, Ogden & Seltzer, LLP
Suite 101, 800 North Third Street
Harrisburg, PA 17102-2025

Robert J. Stefanko, Esquire
341 South Bellefield Avenue
Pittsburgh, PA 15213

Margaret Peters, Esquire
The Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222-3197

John Stember, Esquire
Low Income Advocate Parties
1705 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

Stephen L. Feld, Esquire
Pennsylvania Power Company
1 East Washington Street
P.O. Box 891
New Castle, PA 16103-0891

Kenneth Zielonis, Esquire
Stevens & Lee
208 North Third Street, Suite 310
P. O. Box 12090
Harrisburg, PA 17108-2090

Mark J. McGuire, Esquire
Jenner & Block
Suite 1200, 601 13th Street NW
Washington, DC 20005

Timothy W. Merrill, Jr., Esquire
Suite 200, 4 Penn Center West
Pittsburgh, PA 15276

Kevin J. McKeon, Esquire
Malatesta, Hawke & McKeon LLP
P. O. Box 1778
Harrisburg, PA 17101

Thomas P. Gadsden, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

David Hughes
4037 Ludwick Street
Pittsburgh, PA 15217

Thomas J. Augspurger, Esquire
MidCon Corporation
Office of General Counsel
701 East 22nd Street
Lombard, IL 60148

William T. Hawke, Esquire
Mid Atlantic Power Supply Association
100 North 10th Street
Harrisburg, PA 17105

Joseph A. Dworetzky, Esquire
Hangley, Aronchick, Segal & Pudlin
12th Floor, One Logan Square
Philadelphia, PA 19103

"Attorney of Record,
Environmental Energy Project"
3700 Vartan Way
Harrisburg, PA 17110

Paul E. Russell, Esquire
Pennsylvania Power and Light Company
2 North 9th Street
Allentown, PA 18101

Stephen J. Baron
J. Kennedy and Associates, Inc.
35 Glenlake Parkway, Suite 475
Atlanta, GA 30328

Exeter Associates, Inc.
12510 Prosperity Drive, Suite 350
Silver Spring, MD 20904

Mary McFall Hopper, Esquire
PECO Energy Company, S23-1
2301 Market Street
Philadelphia, PA 19103

Albert M. Benincasa, Esquire
Director, Regulatory Affairs
Skipping Stone
46 Ninth Avenue
Sea Cliff, NY 11579

Donald A. Kaplan, Esquire
Preston Gates Ellis & Rouvelas Meeds LLP
Suite 2525
1735 New York Avenue, NW
Washington, DC 20006-4759

David M. Boonin
New Energy Ventures East, LLC
Suite 2525
1845 Walnut Street
Philadelphia, PA 19103

Vickiren S. Aeshleman
Director, Regulatory Affairs
QST Energy, Inc.
300 Hamilton Blvd., Suite 300
Peoria, IL 61602

Gary A. Jeffries, Esquire
CGN Energy Services Corporation
One Park Ridge Center
P.O. Box 15746
Pittsburgh, PA 15244-0746

David Cruthirds, Esquire
Electric Clearinghouse, Inc.
100 Louisiana, Suite 5800
Houston, TX 77002-5050

Douglas F. John, Esquire
John & Hengerer
1200 17th Street NW, Suite 600
Washington, DC 20036-3006

Mary Ann Ralls, Esquire
Duane, Morris & Hechscher LLP
1667 K Street NW, Suite 700
Washington, DC 20006-1608

Keith M. Sappenfield, II
Director of Marketing Support
NorAm Energy Management, Inc.
P. O. Box 2628
Houston, TX 77252-2628

John R. Orr, Esquire
Duke Energy Trading & Marketing, LLC
One Westchester Center, Suite 650
10777 Westheimer
Houston, TX 77042

James D. Steffes
Enron Power Marketing, Inc.
1400 Smith Street
P. O. Box 4428
Houston, TX 77002

Mark F. Sundback, Esquire
Andrews & Kurth LLP
1701 Pennsylvania Avenue NW
Washington, DC 20006

Lawrence E. Moncrief, Esquire
1364 Silverton Avenue
Pittsburgh, PA 15276

Robert B. Weisenmiller, PhD
MRW & Associates, Inc.
Suite 1440, 1999 Harrison Street
Oakland, CA 94612-3517

Michael Reid, Director
Materials Management Servies
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513

Brian Kalcic
Excel Consulting
Suite 720-T
225 S. Meramec Avenue
St. Louis, MO 63105

Wayne T. Scott, Esquire
Kandace F. Melillo, Esquire
PA Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg PA 17108-3265

Samuel W. Braver, Esquire
Bruce Americus, Esquire
Buchanan Ingersoll, P.C.
20th Floor, One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219-1410

Brian A. Rider, President
Pennsylvania Retailers' Association
224 Pine Street
Harrisburg, PA 17101-1325

Cindy Datig
Dollar Energy Fund
P.O. Box 42329
Pittsburgh, PA 15203

John Wilson, Executive Director
Community Action Association of PA
222 Pine Street
Harrisburg, PA 17101

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760

FIRM/AFFILIATE OFFICES
BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
NEW YORK
SAN FRANCISCO
WILMINGTON
BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO

DIRECT DIAL
371-7310
DIRECT FAX
371-7939

February 20, 1998

John H. Corbett, Jr.
Presiding Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Re: Duquesne Light Company, Docket No. R-00974104

KJR

Dear Judge Corbett:

Duquesne Light Company ("Duquesne") submits this letter to address a new factual allegation contained in the Reply Brief of the Office of Consumer Advocate ("OCA"). On page 19 of that brief, the OCA argues that its "sharing" proposal will not have a profound long-term adverse impact on Duquesne because, while Duquesne may have "lower returns" in the near term, Duquesne's rate of return "will exceed revenue requirements on a traditional ratemaking basis" in later years. The OCA asserts that if Duquesne "cannot wait" for such higher returns, "then it could divest today and recognize that present value currently." Id.

This claim is outrageous and false. It is outrageous because it is premised on new factual allegations having no basis in the record, and the OCA cites none. The OCA, apparently stung by criticism that it never "bothered to evaluate the financial impact of its proposed [sharing] disallowance on Duquesne" (DLC Main Br. at 54), has now attempted to do so, but, of course, its extra-record statements cannot be given any weight.

The claim also is patently false. The notion that Duquesne can simply divest its assets, and avoid the adverse impact of the OCA's sharing disallowance (over $460 million, DLC St. 3-R at 33-34), is disingenuous. The stranded costs remaining after the divestiture would, under the OCA proposal, continue to earn no return at all.[1]

Duquesne recognizes that this letter is unusual, but we cannot ignore the OCA's new factual allegations, given the obvious significance of the issue they address.

Sincerely,

John S. Moot

cc: Official Service List
Prothonotary McNulty

[1] Perhaps the OCA's bizarre claim was mistakenly parroted from its arguments on a different issue in a different case (the West Penn restructuring case). In West Penn, the OCA argued that West Penn has no stranded generation costs. Consequently, it argued that any earnings deficiencies in the near term would be recouped by West Penn in the long term – the result being no overall revenue deficiency on a net present value basis. While we do not suggest this argument has any merit, that circumstance, of course, does not exist in this case. Here, the OCA concedes Duquesne has more than $1 billion in stranded generation costs, but argues that no return should be earned on those costs. The financial impact of this disallowance exists regardless of whether the stranded costs are determined by the OCA's market value "predictions" or by the market itself through an auction.

KJR

BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
2110 CBLD CENTER
36 EAST SEVENTH STREET
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

98 FEB 20 AM 9:12

ORIGINAL

Via Overnight Mail

DOCKETED

FEB 23 1998

February 20, 1998

Mr. James McNulty, Acting Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
North Office Building
Harrisburg, PA 17105-3265

Re: **Duquesne Light Company Application for Approval of Restructuring Plan, Docket No. R-00974104**

Dear Mr. McNulty:

Please be advised that Armco Inc. will not be filing a separate brief in the above-referenced matter. Armco's concerns are being addressed, along with other industrial customers, in the brief of West Penn Power Industrial Intervenors.

Respectfully submitted,

David F. Boehm

David F. Boehm, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Enclosure
cc: Attached Certificate of Service

DOCUMENT
FOLDER

Certificate of Service

I hereby certify that on this 20th day of February, 1998 a true and correct copy of the foregoing was served via first-class, postage prepaid on the following: 133713

98 FEB 20 AM 9:43

RECEIVED
PROTHONOTARY'S OFFICE

Larry R. Crayne, Esq.
Richard S. Herskovitz, Esq.
Duquesne Light Co.
411 Seventh Avenue
Pittsburgh, PA 15219

John S. Moot, Esq.
Kurt Bilas, Esq.
1440 New York Avenue NW
Washington, D.C. 20005

James P. Dougherty, Esq.
Robert A. Weisshaar, Jr., Esq.
Pamela C. Polacek, Esq.
McNees, Wallace & Nurick
100 Pine Street
Harrisburg, PA 17108

Stephen J. Baron
J. Kennedy & Associates, Inc.
Suite 475
35 Glenlake Parkway
Atlanta, GA 30328

Kandace F. Melillo, Esq.
Wayne T. Scott, Esq.
PA Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105

Karen Oill Moury, Esq.
Office of Small Business
Advocate,
Suite 1103, 300 North 2nd Street
Harrisburg, PA 17101

Jacqueline R. Morrow, Esq.
Rodney R. Akers, Esq.
Assistant City Solicitor
313 City County Building
414 Grant Street
Pittsburgh, PA 15219

Howard M. Louik, Esq.
Allegheny County Law Dept.
300 Fort Pitt Commons
445 Fort Pitt Blvd.
Pittsburgh, PA 15219
(Allegheny County)

Irwin A. Popowsky, Esq.
Marisa A. Sifontes, Esq.
Steven K. Steinmetz, Esq.
Office of Consumer Advocate
1525 Strawberry Square
Harrisburg, PA 17120

Exeter Associates, Inc.
Suite 350
12510 Prosperity Drive
Silver Spring, MD 20904

Deneice Covert Zeve, Esq.
Terry Lupia, Esq.
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

Steven Baicker-McKee, Esq.
Wanda Schiller, Esq.
Babst, Calland, Clements &
Zomnir P.C.
8th Floor, Two Gateway Center
Pittsburgh, PA 15222

Terrance J. Fitzpatrick, Esq.
Ryan, Russell, Ogden & Seltzer,
LLP
800 North Third Street
Suite 101
Harrisburg, PA 17102

Kenneth L. Wiseman, Esq.
Andrews & Kurth, LLP
1701 Pennsylvania Avenue NW
Washington, D.C. 20006
(Hospital Shared Services)

Robert B. Weisenmiller
MRW & Associates, Inc.
Suite 1440
1999 Harrison Street
Oakland, CA 94612-3517
(Hospital Shared Services)

Mark F. Sundback, Esq.
Andrews & Kurth, LLP
1701 Pennsylvania Avenue NW
Washington, DC 20006
(Administrative Resources)

Michael Reid, Director
Materials Management Services
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513

Robert J. Stefanko, Esq.
341 South Bellefield Avenue
Pittsburgh, PA 15213
(Pittsburgh School District)

Tim Merrill, Esq.
Suite 200, 4 Penn Center West
Pittsburgh, PA 15276
(The Eastern Group)

Margaret Peters, Esq.
The Peoples Natural Gas Co.
625 Liberty Avenue
Pittsburgh, PA 15222-3197

Kevin J. McKeon, Esq.
Malatesta, Hawke & McKeon LLP
P.O. Box 1778
Harrisburg, PA 17101
(The Peoples Natural Gas Co.)

John Stember, Esq.
Low Income Advocate Parties
1705 Allegheny Bldg.
429 Forbes Avenue
Pittsburgh, PA 15219

Thomas P. Gadsden, Esq.
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103
(Pennsylvania Power Co.)

Stephen L. Feld, Esq.
Pennsylvania Power Co.
1 East Washington Street
P.O. Box 891
New Castle, PA 16103-0891

Cindy Datig, Esq.
$1 Energy Fund
P.O. Box 42329
Pittsburgh, PA 15203

Donald R. Ayersman, Jr., Esq.
1125 Denver Avenue
Morgantown, WV 26505
(IBEW Local 2357)

David Hughes
4037 Ludwick Street
Pittsburgh, PA 15217

Mark J. McGuire, Esq.
Ronald N. Carroll, Esq.
Jenner & Block
Suite 1200, 601 13th Street NW
Washington, DC 20005

Thomas J. Augspurger, Esq.
MidCon Corporation
Office of General Counsel
701 East 22nd Street
Lombard, IL 60148

William T. Hawke, Esq.
Mid Atlantic Power Supply Association
100 North 10th Street
Harrisburg, PA 17105

Paul E. Russell, Esq.
Pennsylvania Power & Light Company
2 North 9th Street
Allentown, PA 18101

Joseph A. Dworetzky, Esq.
John P. Lavelle, Jr. Esq.
Hangley, Aronchick, Segal & Pudlin
12th Floor One Logan Square e
Philadelphia, PA 19103

David M. Boonin
New Energy Ventures East, LLC
Suite 800
200 South Broad Street
Philadelphia, PA 19102

Alan J. Barak, Esq.
Environmentalists
1417 Blue Mountain Parkway
Harrisburg, PA 17112

Roger Clark, Esq.
The Environmentalists
905 Denston Drive
Andler, PA 19002-3901

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870

John O'Brien, Esq.
Wheeled Electric Power Company
Suite 207
50 Charles Lindburgh Blvd.
Unionddale, NY 11553

Patricia Armstrong, Esq.
Thomas, Thomas, Armstrong & Niesen
Suite 500 212 Locust Street
P.O. Box 9500
Harrisburg, PA 17106-9500

Daniel Clearfield, Esq.
Gerald Gornish, Esq.
Alan Kohler, Esq.
Wolf, Block, Schorr
305 North Front St., Ste. 401
Harrisburg, PA 17101-1236

James D. Steffes
Enron Power Marketing, Inc.
1400 Smith Street
P.O. Box 4428
Houston, TX 77002

Albert M. Benincasa, Esq.
Director, Regulatory Affairs
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579

Brian Kalcic
Excel Consulting
Suite 720-T
225 S. Meramec Avenue
St. Louis, MO 63105

Vickiren S. Aeschleman, Esq.
Director-Regulatory Policy
QST Energy Inc.
300 Hamilton Blvd., Suite 300
Pioria, IL 61602

David F. Boehm

David F. Boehm, Esq.