



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
ISSUED: JULY 16, 2002

IN REPLY PLEASE  
REFER TO OUR FILE  
R-00016850C0001

JOHN H ISOM ESQUIRE  
MORGAN LEWIS & BOCKIUS  
417 WALNUT STREET  
HARRISBURG PA 17101

DOCUMENT  
FOLDER

Office of Consumer Advocate  
V.  
PPL Electric Utilities Corporation

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Wayne L. Weismandel.

An original and nine (9) copies of signed exceptions to the decision, if any, **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265; a copy in the hands of the Office of Special Assistants, Third Floor; and a copy in the hands of each party of record no later than July 24, 2002 by 4:30 P.M.** 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions or reply exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, no later than July 30, 2002 by 4:30 P.M. as well as served upon the parties. A certificate of service shall be attached to the filed exceptions.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in Microsoft Word 6.0 format. If Word 6.0 is not available, either Wordperfect 5.1 or ASCII format is acceptable.

FG  
Encls.  
Certified Mail  
Receipt Requested

Very truly yours,  
  
James J. McNulty  
Secretary

See Attached Listing for Additional Parties of Record.

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AD

X- 7/24

R- 7/30

"In Hand by 4:30"

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office of Consumer Advocate	:	
	:	Docket Number
v.	:	
	:	R-00016850C0001
PPL Electric Utilities Corporation	:	

RECOMMENDED DECISION

Before  
Wayne L. Weismandel  
Administrative Law Judge

DOCUMENT  
FOLDER

RECEIVED  
DEC 21 2001  
PPL

HISTORY OF THE PROCEEDING

On November 19, 2001, the Office of Consumer Advocate (OCA) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (respondent). Docket Number R-00016850C0001. The Complaint deals with the revenue-neutral reconciliation (RNR) [pursuant to the provisions of 66 Pa.C.S. §2810] increase proposed to be collected by respondent through the State Tax Adjustment Surcharge (STAS) mechanism as filed by respondent on October 29, 2001, at Docket Number R-00016850.

By Order adopted December 19, 2001, entered December 21, 2001, at Docket Number R-00016850 (Commission Order), the Commission approved, as modified, respondent's filing, subject to later adjudication of the OCA's Complaint. The Commission Order also granted intervention to the Office of Small Business Advocate (OSBA), the Mid-Atlantic Power Suppliers Association (MAPSA), PECO Energy

Company (PECO), and the PP&L Industrial Customer Alliance (PPLICA). The Commission Order also ordered that the OCA's Complaint be adjudicated within sixty days of entry of the order.

By Notice dated December 27, 2001, an Initial Prehearing Conference was scheduled for January 8, 2002, and the case was assigned to me as the presiding officer.

By Secretarial Letter dated January 3, 2002, the Commission advised that it had determined that it was in the public interest to extend the timeframe for consideration of OCA's Complaint until February 21, 2002.

On January 8, 2002, an Initial Prehearing Conference was held in the above-captioned case.<sup>1</sup>

Subsequent to the Initial Prehearing Conference, OCA filed a Petition For Review of the Commission Order (Docket Number R-00016850) adopted December 19, 2001, entered December 21, 2001, with the Commonwealth Court of Pennsylvania with respect to issues raised by its instant Complaint and not finally adjudicated prior to the issuance of the Commission Order. By Order dated March 21, 2002, the Commonwealth Court quashed, as interlocutory, the Petition For Review, returning jurisdiction over the Complaint to the Commission for adjudication in accordance with the Commission Order.

By Order Regarding Burden Of Proof dated March 27, 2002, the burden of

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<sup>1</sup> A total of nine prehearing conferences were held simultaneously, in this and eight other cases involving the same complainant (OCA) and individual electric utility companies and involving the same issues. One transcript of the proceeding, containing 34 pages was produced.

proof in the above-captioned case was established as being upon respondent.

On April 2, 2002, OCA filed its Motion To Dismiss Objections And To Compel Answers (Motion to Compel) regarding objections to OCA's Interrogatories Set I, Interrogatories 1 through 7.<sup>2,3</sup>

A Further Prehearing Conference was held on April 5, 2002.<sup>4</sup> As a result of oral arguments at the Further Prehearing Conference, rulings were made on the scope of this proceeding. These rulings were memorialized by Order Regarding Scope Of Proceeding dated April 12, 2002, which contained the following Order Paragraphs:

1. That the rate caps on the charges of PPL Electric Utilities Corporation to customers established by 66 Pa.C.S. §2804(4)(i) and (ii) are the subject of this proceeding.
2. That only that portion of the change in PPL Electric Utilities Corporation's tax liability under 66 Pa.C.S. §2810 causing PPL Electric Utilities Corporation's charges to customers to be in excess of the rate caps described in Order Paragraph 1, above, is at issue in this proceeding.
3. That the Pennsylvania Public Utility Commission's Regulations governing the information required to be filed by

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<sup>2</sup> OCA served the same Interrogatories, Set I, Interrogatories 1 through 7, on all nine individual electric companies referred to in Footnote 1, above. OCA's Motion to Compel was prepared with specific reference to the objections of PECO Energy Company, but was filed in all nine cases, including this one. In the future, OCA should file separate motions referring to the proper respondent company in cases that have not been consolidated.

<sup>3</sup> All nine individual electric companies ultimately withdrew their objections to OCA Interrogatories, Set I, Interrogatory 7.

<sup>4</sup> A total of nine further prehearing conferences were held simultaneously, in this and eight other cases involving the same complainant (OCA) and individual electric utility companies and involving the same issues. One transcript of the proceeding, containing 117 pages (numbered 35 - 151) was produced.

PPL Electric Utilities Corporation in this proceeding are exclusively set forth in 52 Pa.Code §§54.91 through 54.98.

4. That to the extent that PPL Electric Utilities Corporation is using the State tax adjustment surcharge (STAS) mechanism set forth in 52 Pa.Code §§69.51 and 69.52 to accomplish the revenue-neutral reconciliation (RNR) required by the provisions of 66 Pa.C.S. §2810, adjustments to other taxes included in the STAS calculation are legitimate subjects of inquiry in this proceeding.

Also as a result of the Further Prehearing Conference held on April 5, 2002, a Scheduling And Briefing Order setting forth the schedule for this case was issued on April 15, 2002. This Scheduling And Briefing Order scheduled a Hearing for May 1, 2002, with Main Briefs due May 10, 2002, and Reply Briefs due May 17, 2002.

Also on April 15, 2002, OCA filed a Petition For Review Of And Answer To A Material Question (Petition)<sup>5</sup> questioning the Order Regarding Scope Of Proceeding dated April 12, 2002.

On April 16, 2002, the parties were advised by Secretarial Letter that the Briefs supporting or opposing OCA's Petition were due to be filed "by noon on April 22, 2002."

By Order Granting In Part And Denying In Part Motion To Compel dated April 17, 2002, OCA's Motion to Compel was granted in part and denied in part in conformity with the Order Regarding Scope Of Proceeding dated April 12, 2002.

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<sup>5</sup> OCA's Petition was filed in this and all eight other cases in which OCA was the complainant and an electric utility company was the respondent.

The Hearing in this case was held as scheduled on May 1, 2002. OCA, respondent, OSBA, and PPLICA were represented at the Hearing. Respondent presented its evidence in the form of the testimony of one witness and the introduction into evidence of PPL Statement Number 1 and Exhibits 1, 2, 3, and 4. OCA presented its evidence in the form of testimony of one witness and the introduction into evidence of OCA Statement Number 1 and Schedules TSC-1, TSC-2, and TSC-3. OSBA and PPLICA presented no evidence. A transcript of the proceeding containing 64 pages (numbered 1 through 64) was produced.

As a result of an Initial Hearing held on May 3, 2002, in the case of Office of Consumer Advocate v. Pennsylvania Power Company, Docket Number R-00016851C0001 (Penn Power case), on May 3, 2002, I issued an Order Regarding Official Notice admitting into evidence in this case what had been received into evidence in the Penn Power case as Penn Power Exhibits RAD-26, RAD-27, and RAD-28, and advising the parties that the findings of fact will include a finding that the Commission requires an annual reconciliation of STAS revenues collected.

By Material Question Order adopted and entered May 9, 2002, the Commission ruled on OCA's Petition. The Commission's Material Question Order provided:

1. That the OCA petition for interlocutory review of a material question, filed April 15, 2002, is granted; the material question is answered in the affirmative as to earnings data.
2. That the OCA may raise and address, in these proceedings, the utilities' quarterly financial earnings data.
3. That the OCA may pursue reasonable discovery as to the utilities' quarterly financial earnings data.

4. That the utilities may file testimony in rebuttal to OCA's testimony regarding earnings data.
5. That the presiding ALJ's rulings regarding the scope of these proceedings is affirmed in all other respects.
6. That the presiding ALJ may add an additional 30 days to the schedule of these proceedings to accommodate the discovery and testimony regarding earnings data.
7. That the presiding ALJ may provide for additional time, if in his judgement, some additional time is needed to address the earnings data.

Due to the Material Question Order's provisions, the previously established schedule for Main and Reply Briefs was cancelled and a Further Prehearing Conference was scheduled for May 21, 2002.

The Further Prehearing Conference occurred as scheduled on May 21, 2002.<sup>6</sup>

As a result of the May 21, 2002 Further Prehearing Conference, I issued a Revised Scheduling And Briefing Order dated May 21, 2002, adopting the schedule agreed to by all parties at the Further Prehearing Conference. This schedule provided for the staggered submission of written testimony, further Hearings during the period July 30 through August 1, 2002, Main Briefs on August 16, 2002, and Reply Briefs on August 26, 2002.

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<sup>6</sup> A total of nine further prehearing conferences were held simultaneously, in this and eight other cases involving the same complainant (OCA) and individual electric utility companies and involving the same issues. One transcript of the proceeding, containing 48 pages (numbered 152 - 199) was produced.

By Secretarial Letter dated June 4, 2002, the Commission directed that the schedule set forth in the Revised Scheduling And Briefing Order dated May 21, 2002, be modified to "establish a modified procedural schedule which provides for the adoption of a Commission Order at the Public Meeting of August 9, 2002." The Secretarial Letter also required that "Reply Exceptions must be submitted to the Commission no later than July 30, 2002."

By Hearing Cancellation/Reschedule Notice dated June 7, 2002, a Further Hearing was scheduled for June 25 and 26, 2002.<sup>7</sup>

The Further Hearing occurred as scheduled on June 25, 2002. . OCA, respondent, OSBA, PECO, and PPLICA were represented at the Further Hearing. The participants stipulated into evidence without cross-examination OCA Statements 1S and 2, Schedule TSC-4 updated 6/25/02, and Exhibit 1, and PPL Statements 1-R and 2-R and Exhibits JMK-5 and PRM-1. Additionally, the participants stipulated that there is no need to make a cost of equity finding with respect to respondent in this proceeding because its actual return on equity is below the range established by an OCA witness as encompassing a just and reasonable rate. (Tr. 70). OCA noted its exception to the schedule change imposed by the Secretarial Letter dated June 4, 2002.<sup>8</sup> A transcript of the proceeding containing 10 pages (numbered 65 through 74) was produced. The

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<sup>7</sup> By agreement of all parties, it was decided that OCA's witnesses would appear and be available for cross-examination in all cases on Tuesday, June 25, 2002. The next two days, June 26 and 27, 2002, would be divided up among the cases for cross-examination of company witnesses. Consequently, each case was scheduled for two days of Further Hearing, either June 25 and 26, 2002, or June 25 and 27, 2002.

<sup>8</sup> See, Transcript dated June 25, 2002, of Further Hearing in Office of Consumer Advocate v. Metropolitan Edison Company, Docket Number R-00016852C0001, pages 31 - 32.

Further Hearing session scheduled for June 26, 2002, was cancelled. The record was closed at the conclusion of the Further Hearing on June 25, 2002.

By letter dated July 9, 2002, OSBA advised that it would not be filing a Brief in this case.

Timely Briefs were filed on July 9, 2002, by respondent, OCA, and PPLICA. MAPSA and PECO did not file a Brief, nor did they submit any document of any kind.

#### FINDINGS OF FACT

1. Respondent made its STAS filing on October 29, 2001.
2. The principal tax change in respondent's STAS filing was an increase of 16 mills in the applicable Gross Receipts Tax rate.
3. In its original filing, respondent explained that the reason for its proposed rate increase was to recover its increased state tax liability incurred pursuant to the RNR provisions of Section 2810 of the Act, 66 Pa. C.S. § 2810.
4. In its original filing, respondent provided a proof of revenue calculation for its STAS, including its RNR tax liability.
5. In its original filing, respondent included a description of the surcharge mechanism for recovering its increased tax liability.

6. In its original filing, respondent provided a notice that its surcharge was to become effective 60 days from filing.

7. Respondent filed a compliance filing on December 21, 2001, to reflect a reduction in the RNR tax rate from 16 mills to 15 mills.

8. Respondent notified customers of the STAS increase through a bill insert which was included with each customer's bill during the January, 2002, billing cycle.

9. Respondent's 2002 STAS rate was calculated to be 1.08%.

10. Recovery of respondent's 2002 RNR tax liability will cause respondent to exceed its cap on total rates by approximately \$4,162,098.

11. The rates designed to recover respondent's 2002 RNR tax liability will collect the RNR tax increase on a dollar-for-dollar basis and all collections will be passed through to the Commonwealth of Pennsylvania.

12. The Commission requires an annual reconciliation of STAS revenues collected.

13. No evidence was presented in this case comparing respondent's most recent earnings with respondent's earnings at any previous point in time.

14. The participants stipulated that there is no need to make a cost of equity finding with respect to respondent in this proceeding because its actual return on

equity is below the range established by an OCA witness as encompassing a just and reasonable rate.

15. In the Commission Order the Commission held that it was satisfied that the respondent's proposed rates, as modified therein, accurately reflect known and measurable changes in respondent's state tax liability and, thus, are just and reasonable within the meaning of Section 2804(16)(ii).

### DISCUSSION

This case is a "proceeding [ . . . ] upon complaint involving [a] proposed increase in rates" and as such, "the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility." 66 Pa.C.S. §315(a), Order Regarding Burden Of Proof dated March 27, 2002.

To establish a sufficient case and satisfy the burden of proof, respondent must show that the rates resulting from the RNR increase (pursuant to the provisions of 66 Pa.C.S. §2810) proposed to be collected through the STAS mechanism as filed by respondent on October 29, 2001, are just and reasonable. Such a showing must be by a fair weight of the evidence, sufficient to satisfy a reasonable mind, i.e., a preponderance of the evidence. Equitable Gas Co. v. PA Public Utility Comm'n, 160 Pa.Super. 458, 51 A.2d 497(1947). Peoples Natural Gas Co. v. PA Public Utility Comm'n, 141 Pa.Super. 5, 14 A.2d 133(1940). The burden of proof is borne by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Se-Ling Hosiery v. Marquies, 364 Pa. 45, 70 A.2d 854(1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. Mill v. Comm'w., PA

Public Utility Comm'n. 67 Pa.Commw. 597, 447 A.2d 1100(1982), Edan Transportation Corp. v. PA Public Utility Comm'n. 154 Pa.Commw. 21, 623 A.2d 6(1993), 2 Pa.C.S. §704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. v. PA Public Utility Comm'n. 489 Pa. 109, 413 A.2d 1037(1980); Eric Resistor Corp. v. Unemployment Compensation Bd. of Review. 194 Pa.Super. 278, 166 A.2d 96(1960); Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center. 85 Pa.Commw. 23, 480 A.2d 382(1984).

The Commission's judgment as to the justness and reasonableness of rates must prevail unless its decision does not bear a reasonable relationship to the regulatory object. *Cf.*, Popowsky v. PA Public Utility Comm'n. 669 A.2d 1029(Pa.Commw., 1995).

In making its judgment, the Commission enjoys a degree of flexibility commensurate with its expertise. As the Pennsylvania Supreme Court has said:

In determining just and reasonable rates, the PUC has discretion to determine the proper balance between interests of rate-payers and utilities. Pennsylvania Public Utility Commission v. Philadelphia Electric Co., 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989). As this Court stated in Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co., 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980), cert. denied, 454 U.S. 824, 102 S.Ct. 112, 70 L.Ed.2d 97 (1981),

There is ample authority for the proposition that the power to fix "just and reasonable" rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term "just and reasonable" was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to

utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.

Popowsky v. PA Public Utility Comm'n, 542 Pa. 99: \_\_\_, 665 A.2d 808: 812(1995).

In evaluating respondent's October 29, 2001 filing in this single issue, non-general rate case, the Commission need not (indeed should not) attempt to conduct a full-blown general rate case.

The proceeding contemplated by the applicable statutory provisions is of limited and narrowly focused scope. Any non-general rate case is less sweeping in the issues to be considered than a general rate case. *Cf.*, Popowsky v. PA Public Utility Comm'n, 683 A.2d 958(Pa.Comm.w., 1996), cert. den. 543 Pa. 733, 673 A.2d 338(1996). A single issue rate proceeding is the most strictly limited type of a non-general rate case. If a general rate case calls for the use of a Commission searchlight and a multi-issue non-general rate case calls for the use of a Commission flashlight, a single issue rate case such as this one calls for the use of a Commission laser.

The uniqueness of this proceeding is attributable to its statutory origin. Single issue ratemaking is prohibited if it impacts on a matter that is normally considered in a base rate case. PA Industrial Energy Coalition v. PA Public Utility Comm'n, 653 A.2d 1336(Pa.Comm.w., 1995), aff'd. on opinion below 670 A.2d 1152(Pa., 1996). However, the legislature has provided in 66 Pa.C.S. §2804(16)(ii) for a "single issue rate proceeding" in a situation such as this, i.e., "regard[ing] . . . any portion of the change in an electric distribution company's tax liability under section 2810 which would cause it to exceed the rate cap".

The Electricity Generation Customer Choice and Competition Act (Act), 66 Pa.C.S. §§2801 - 2812, established rate caps of differing durations in §2804(4)(i) and (ii). The Act also clearly established limited circumstances in which the rate caps could be exceeded before they expired. One of those clearly established circumstances is set forth in §2804(4)(iii)(G), which reads in full, "(G) As permitted by paragraph (16)."

In turn, 66 Pa.C.S. §2804(16) provides, in relevant part:

(ii) With regard to any portion of the change in an electric distribution company's tax liability under section 2810<sup>9</sup> which would cause it to exceed the rate cap, the electric distribution company may file a single issue rate proceeding under section 1308(a) to recover that amount. The commission shall adjudicate, within 60 days, whether the resulting rates are just and reasonable.

66 Pa.C.S. §2804(16)(ii)

By including this provision, the legislature did two things. First, it made clear that while the established rate caps were not to be lightly disregarded, neither were they inviolable. An RNR tax liability increase was recognized as a legitimate reason for the possibility of just and reasonable rates in excess of a rate cap. Second, as previously discussed, it specifically permitted a unique type of proceeding (a single issue rate case) not otherwise allowed.

The Commission Order in this case, by approving respondent's October 29, 2001 filing at Docket Number R-00016850, as modified, acted upon the first of these legislative actions. Additionally, by ordering that OCA's Complaint be adjudicated, the Commission Order also acted in accordance with the second legislative action by

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<sup>9</sup> 66 Pa.C.S. §2810 is the RNR provision of the Act.

conducting a single issue rate case.

Determining the parameters of that single issue rate case has been the crux of this proceeding. This is somewhat surprising, given my Order Regarding Scope Of Proceeding dated April 12, 2002, and the Commission's Material Question Order adopted and entered May 9, 2002.

Read in conjunction, it is clear that OCA's two points of contention, whether it is appropriate to conduct an examination of respondent's earnings<sup>10</sup> to determine if they remain "just and reasonable" without RNR recovery, and what, if any, tax offsets should be analyzed in the single issue rate case, have been addressed.

The Order Regarding Scope Of Proceeding dated April 12, 2002, was affirmed in all respects except one by the Commission's Material Question Order adopted and entered May 9, 2002. The one exception was the Commission's allowance of the OCA's "reasonable discovery and the opportunity to present its analysis of the [respondent's] presently existing quarterly earnings data as part of its case (footnote omitted)." The Commission hastened to add, however, that "in providing this latitude, the Commission is not making any ruling here on the ultimate relevance of earnings data

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<sup>10</sup> At least some of the difficulties, and disagreements between the parties, may be caused by a less than precise use of terminology, i.e., failing to differentiate between "earnings", "rates", and "rate of return". The first is a discrete number representing respondent's net cash inflow during a defined period. The second, also discrete numbers, are the prices per unit charged by the respondent to its varying classes of customers. The third is the amount of money earned by respondent, over and above operating costs (earnings), expressed as a percentage of its rate base. It is the new rates resulting from the addition of respondent's new RNR tax liability to respondent's previously existing rates that 66 Pa.C.S. §2804(16)(ii) requires to be found "just and reasonable".

under Section 2804(16)(ii).” Material Question Order adopted and entered May 9, 2002, p. 9.

The Material Question Order also addressed tax offsets, saying:

The ALJ ruled correctly that any exploration of potential tax savings should be limited to contemporaneous tax savings.  
Material Question Order adopted and entered May 9, 2002, p. 9.

As to the relevancy of respondent’s most recent (whether quarterly or annual) earnings in the single issue rate case called for by 66 Pa.C.S. §2804(16)(ii), they are either irrelevant or not helpful without changing the entire nature of the proceeding.

Respondent’s most recent earnings, looked at in isolation, tell nothing about the justness and reasonableness of respondent’s rates. Therefore, an examination of nothing more than respondent’s most recent earnings is irrelevant in a single issue rate case whose single issue is the justness and reasonableness of newly adopted rates. An examination of respondent’s most recent earnings divided by respondent’s rate base to determine respondent’s rate of return would be relevant if the statutory provision spoke in terms of a “fair rate of return”. Unlike other parts of 66 Pa.C.S. §2804(4)(iii) dealing with circumstances permitting rate caps to be exceeded, 66 Pa.C.S. §2804(4)(iii)(G) [which, in essence, incorporates §2804(16)] does not speak in terms of a “fair rate of return”, but rather in terms of “resulting rates [that] are just and reasonable.” (emphasis added) Compare, 66 Pa.C.S. §§2804(4)(iii)(A), (C), (D), and (F) with 66 Pa.C.S. §2804(4)(iii)(G) [66 Pa.C.S. §2804(16)(ii)]. Cf., ARIPPA v. PA Public Utility Comm’n, 792 A.2d 636(Pa.Commw., 2002)[determining if rate caps can be exceeded pursuant to 66 Pa.C.S. §2804(4)(iii)(D) requires examining if the utility could still earn a fair rate of return]. Examining respondent’s rate of return to determine if rate caps should be allowed to be exceeded is certainly legitimate, but the proceeding would not be a single

issue rate case! The legislature drew this distinction and it cannot be ignored. Only 66 Pa.C.S. §2804(4)(iii)(G), speaking through 66 Pa.C.S. §2804(16)(ii), directs that the proceeding be "a single issue rate proceeding". The other statutory provisions, 66 Pa.C.S. §§2804(4)(iii)(A), (C), (D), and (F), do not contain the phrase "single issue rate proceeding" for the simple reason that examining whether a rate of return is or is not "fair" encompasses many issues. As the Commission is without authority to change the statutory provisions, in order to maintain the proceeding called for by 66 Pa.C.S. §2804(16)(ii) as "a single issue rate proceeding" an examination of respondent's earnings must be ruled irrelevant.

There is also a practical, but no less important for that, reason for declining OCA's invitation to expand the scope of the required proceeding. The relevant statutory provision, 66 Pa.C.S. §2804(16)(ii), requires that the Commission complete its adjudication of the justness and reasonableness of the new rates "within 60 days". This period stands in stark contrast to the six months suspension period, plus three additional months pending a decision, provided in 66 Pa.C.S. §1308(b) for other non-general rate cases. Recognizing also that respondent and eight other jurisdictional electric utility companies using the STAS mechanism to recover the increased RNR tax liability must make simultaneous filings and each have their cases adjudicated in the same 60 day period emphasizes the extremely narrow and limited scope that is contemplated for these proceedings.

Finally, the very nature of a tax increase recovery further demonstrates why a narrowly focused single issue rate case is appropriate in this situation. Taxes are, by definition, payable to the government, not private companies, including private utility companies. The dollars collected by respondent from its customers to pay the increased RNR tax liability are passed through to the Commonwealth of Pennsylvania, not retained by respondent. In OCA's terms, respondent's "earnings" are effected not one iota. The

transaction is, from respondent's perspective, a wash. This being so, it is logically proper to conclude that respondent's new rates (increased to merely collect the increased amount of RNR tax liability), while exceeding the rate cap are, *prima facie*, as just and reasonable as its rates were immediately before the increase. Rates that were just and reasonable and that increase only by the amount of a pass-through of taxes to the government should remain just and reasonable as to the entity passing through the increase. Respondent, immediately before receiving Commission permission to implement the new rates by virtue of the Commission Order, was charging Commission approved rates to its customers. The Commission, at a point in time in the past, has discharged its legal responsibility to see that respondent's rates are at all times just and reasonable. 66 Pa.C.S. §1301. It follows, therefore, that a narrowly focused proceeding, similar to those used pursuant to 66 Pa.C.S. §1307(e), is sufficient in the first instance to determine if the new rates (having, ostensibly, nothing but a pass-through amount added to them) are still just and reasonable.

In the event that the Commission rejects my determination that an examination of respondent's earnings is irrelevant in this proceeding, it should be noted that the OCA witnesses did not present evidence comparing respondent's most recent earnings with respondent's earnings at any previous point in time. Rather, perpetuating the improper treatment of words or terms as synonyms that are not synonymous (*see*, footnote 10, above), OCA's witnesses presented evidence regarding respondent's return on equity (again, a percentage as opposed to a discrete number) as a proxy for respondent's overall rate of return. This is not what the Commission's Material Question Order adopted and entered May 9, 2002, authorized when it determined that an "analysis of the [respondent's] presently existing quarterly earnings data" (emphasis added) might be relevant in this proceeding.

Ultimately, the participants stipulated that there is no need to make a cost of equity finding with respect to respondent in this proceeding because its actual return on equity is below the range established by an OCA witness as encompassing a just and reasonable rate. OCA's witness established a benchmark range for cost of common equity for respondent and eight other jurisdictional electric utility companies of 8.5 percent to 10.4 percent. OCA Statement Number 2, p. 5. OCA's other witness determined respondent's return on equity as being 6.41 percent per Books and 5.31 percent adjusted. OCA Schedule TSC-4 updated 6/25/02. Respondent's per Books and adjusted return on equity each fall below the minimum percentage established as a range encompassing a just and reasonable rate by OCA's own witness.

Given the lack of direct evidence regarding comparisons of respondent's most recent earnings and any previous earnings, the best that can be said is that the Commission has long recognized that:

There is a range of reasonableness within which earnings may properly fluctuate and still be deemed just and reasonable and not excessive or extortionate. It is bounded at one level by investor interest against confiscation and the need for averting any threat to the security for the capital embarked upon the enterprise. At the other level it is bounded by consumer interest against excessive and unreasonable charges for service.

PA Public Utility Comm'n v. Bell Telephone Company Of Pennsylvania,

39 Pa. PUC 649; 656 - 657, 43 PUR3d. 241(1962).

There is no evidence in this case that respondent's earnings that may be anticipated to be produced under the rates authorized by the Commission Order will fall outside this range.

OCA's tax offset issue was addressed by both my Order Regarding Scope Of Proceeding dated April 12, 2002, and the Commission's Material Question Order adopted and entered May 9, 2002. Contrary to OCA's position that respondent's current Gross Receipts Tax, Capital Stock Tax, Corporate Net Income Tax, PURTA tax, and Sales and Use Tax liabilities should be compared to respondent's liabilities for those taxes at the 1995 -1996 tax year rates (*see*, OCA Statement Number 1 and Schedules TSC-1, TSC-2, and TSC-3), only contemporaneous savings in any of these taxes are relevant in this case.<sup>11</sup> Order Regarding Scope Of Proceeding dated April 12, 2002, Order Paragraph 4. Material Question Order adopted and entered May 9, 2002, p. 9.

In using the STAS mechanism to adjust its rates to reflect changes in its State tax liabilities, respondent is in compliance with the Commission's Regulations found at 52 Pa.Code §§54.91 - 54.98 and 69.51 - 69.56.

The STAS mechanism was originally established by the Commission in 1970. State Tax Adjustment Procedure, 44 Pa. PUC 545(1970). At the time of its adoption, the Commission explained the purpose as follows:

Public utilities under our jurisdiction are subject to regulation, which permits them to recover, in the form of rates, their legitimate costs, plus a fair return which compensates investors for the use of the funds they have provided for the construction of utility facilities.

The new and increased taxes constitute a legitimate cost, and, unless compensated for will reduce the return of public utilities at a time when many of them, particularly the electric and telephone groups, are engaged in unprecedented construction programs in order to assure adequate facilities for service to customers. These large construction programs

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<sup>11</sup> In fairness to OCA, it must be pointed out that the Commission's Material Question Order finalizing this ruling was adopted and entered on May 9, 2002, after OCA Statement Number 1 and Schedules TSC-1, TSC-2, and TSC-3 had been admitted into evidence at the initial Hearing in this case on May 1, 2002.

must be financed by attracting funds from investors; and such attraction will be difficult in many instances, and impossible in others, if the returns of the public utilities are permitted to decline appreciably as a result of these increases in taxes. Unless relief is granted, there could be serious deterioration of service to the public.  
State Tax Adjustment Procedure, 44 Pa. PUC 545, 546(1970).

Ever since the establishment of the STAS mechanism it has been recognized that the procedure, and the Commission's Regulations implementing it, are designed to permit jurisdictional utilities to recover from ratepayers, in a timely manner, dollar for dollar, increased tax expense incurred as the result of tax-law changes occurring between base rate cases.

Beginning in the early 1990's, respondent has had to file an annual reconciliation of STAS revenues collected. (Tr. 28 - 29, 45 - 51, 53, Penn Power Exhibits RAD-26, RAD-27, and RAD-28). It is in the annual reconciliation that changes, if any, in the rates for each of the taxes included in the STAS mechanism<sup>12</sup> are "trued-up", resulting in an adjustment for the previous year's over- or under-collection. Consequently, the "tax offset" is cared for on an annual basis by virtue of the mechanism by which respondent is collecting the tax revenues for pass-through to the Commonwealth. It is for this very reason that only "contemporaneous tax savings" are relevant in this case. Prior years have been adjusted by prior annual reconciliations. Respondent has made the necessary adjustments in its STAS calculations included in its filing on October 29, 2001, at Docket Number R-00016850. OCA Statement Number 1, p. 4, Tr. 59 - 60.

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<sup>12</sup> Gross Receipts Tax, Capital Stock Tax, Corporate Net Income Tax, PURTA tax, Sales and Use Tax, and, now, RNR.

In the Commission Order the Commission held:

[W]e are satisfied that the proposed rates, as modified herein, accurately reflect known and measurable changes in PPL's state tax liability and, thus, are just and reasonable within the meaning of Section 2804(16)(ii).

Commission Order, p. 3 - 4.

Having completed the single issue rate proceeding designed to permit OCA to litigate the two issues identified in the Commission's Material Question Order adopted and entered May 9, 2002, there is no basis for altering that holding. Indeed, the scope of this proceeding has been more far reaching than necessary, an earnings examination having been found to be irrelevant and the tax offset occurring as a natural consequence of the use of the STAS mechanism.

In Emporium Water Company Filed Supplement No. 7 to Tariff Water - Pa. P.U.C. No. 5, Which Includes the Computation of a Proposed State Tax Adjustment, Docket Number R-00005945, Opinion and Order adopted January 24, 2002, entered February 21, 2002, the Commission said:

Given that we have previously ruled that recovery through STAS is appropriate, and given the Company's verification on the record that the November 1999 PURTA tax bill is as represented, approval of the recovery of \$43,903 through STAS is appropriate and the proposed rates are just and reasonable.  
Slip opinion at 10.

I understand the Commission's holding in the Commission Order in this case to be in accord with this statement from Emporium Water. Respondent here has complied with the requirements of the Commission's Regulations. As the Commission also said in Emporium Water:

...STAS by its very nature isolates a particular class of expense (taxes) and permits recovery *via* a Section 1307(a) sliding scale

mechanism, rather than base rates. Thus base rate concepts do not apply.  
Slip opinion at 10.

Future RNR increases proposed to be collected by respondent through the STAS mechanism, because of their extremely limited and narrow scope, should be heard in a proceeding such as that set forth in 66 Pa.C.S. §1307(e), subject to the time constraint established by 66 Pa.C.S. §2804(16)(ii).

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding.
2. Pursuant to 66 Pa.C.S. §315(a), the burden of proof in this proceeding is upon respondent.
3. To establish a sufficient case and satisfy the burden of proof, respondent must show that the rates resulting from the RNR increase (pursuant to the provisions of 66 Pa.C.S. §2810) proposed to be collected through the STAS mechanism as filed by respondent on October 29, 2001, are just and reasonable.
4. Such a showing must be by a fair weight of the evidence, sufficient to satisfy a reasonable mind, i.e., a preponderance of the evidence.

5. Respondent's burden of proof is borne by presenting evidence more convincing, by even the smallest amount, than that presented by the other party.

6. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.

7. The Commission's judgment as to the justness and reasonableness of rates must prevail unless its decision does not bear a reasonable relationship to the regulatory object.

8. In making its judgment, the Commission enjoys a degree of flexibility commensurate with its expertise.

9. Any non-general rate case is less sweeping in the issues to be considered than a general rate case.

10. A single issue rate proceeding is the most strictly limited type of a non-general rate case.

11. Single issue ratemaking is prohibited if it impacts on a matter that is normally considered in a base rate case.

12. The legislature has provided in 66 Pa.C.S. §2804(16)(ii) for a "single issue rate proceeding".

13. The Act established rate caps of differing durations in §2804(4)(i) and (ii). The Act also clearly established limited circumstances in which the rate caps could be exceeded before they expired.

14. One of those clearly established circumstances is set forth in §2804(4)(iii)(G), which reads in full, "(G) As permitted by paragraph (16)."

15. 66 Pa.C.S. §2804(16)(ii) provides for a single issue rate proceeding for an electric distribution company to recover any portion of the change in its tax liability under 66 Pa.C.S. §2810 which would cause the electric distribution company to exceed the rate cap.

16. In the single issue rate proceeding provided for in 66 Pa.C.S. §2804(16)(ii), the Commission must adjudicate whether the resulting rates are just and reasonable.

17. The Commission adjudication required by 66 Pa.C.S. §2804(16)(ii) must be done within 60 days.

18. The STAS mechanism, and the Commission's Regulations implementing it, are designed to permit jurisdictional utilities to recover from ratepayers, in a timely manner, dollar for dollar, increased tax expense incurred as the result of tax-law changes occurring between base rate cases.

19. The annual reconciliation of STAS revenues collected "tries-up" the electric distribution company's previous year over- or under-collection.

20. There is no basis for altering the Commission's holding in the Order adopted December 19, 2001, entered December 21, 2001, at Docket Number R-00016850, that the proposed rates, as modified therein, accurately reflect known and

measurable changes in respondent's state tax liability and, thus, are just and reasonable within the meaning of Section 2804(16)(ii).

21. Respondent's rate increase to recover its increased 2002 RNR tax liability is just and reasonable under Section 2804(16)(ii) of the Public Utility Code, 66 Pa.C.S. §2804(16)(ii).

22. It is improper to consider earnings in adjudicating a single issue rate case for RNR tax recovery under Section 2804(16)(ii) of the Public Utility Code because they are irrelevant.

23. The appropriate tax offset in adjudicating a single issue rate case for RNR tax recovery under Section 2804(16)(ii) of the Public Utility Code occurs as a natural consequence when the STAS mechanism is used.

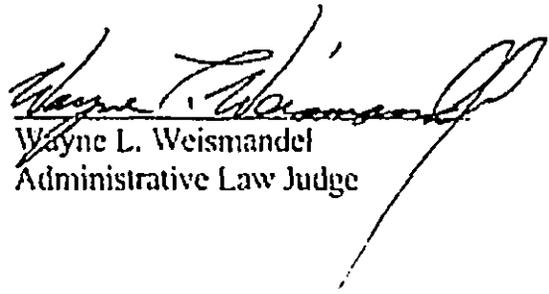
ORDER

THEREFORE,

IT IS ORDERED (subject to Commission approval):

1. That the Complaint of the Office of Consumer Advocate against PPL Electric Utilities Corporation at Docket Number R-00016850C0001 is dismissed.
2. That the record at Docket Number R-00016850C0001 be marked closed.
3. That the Order adopted December 19, 2001, entered December 21, 2001, at Docket Number R-00016850 is final and the case at Docket Number R-00016850 is closed.

Date: July 15, 2002

  
Wayne L. Weismandel  
Administrative Law Judge



ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 16<sup>th</sup> day of July, 2002,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of Recommended Decision an official Commission document entered, issued, or otherwise promulgated under date of July 16, 2002 at Docket No.R-00016850C0001 on behalf of:

TANYA J MCCLOSKEY ESQUIRE  
OFFICE OF CONSUMER ADVOCATE  
FORUM PLACE  
555 WALNUT STREET 5TH FLOOR  
HARRISBURG PA 17101-1921

*Tanya McCloskey*  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION  
PA PUBLIC UTILITY COMMISSION  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

DOCUMENT  
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