

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: December 15, 1997	2. BUREAU AGENDA NO. DEC-97-OSA-413*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: December 18, 1997
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: A. Arnold 7-8032	
7. PERSONS IN CHARGE: A. Arnold 7-8032	
8. DOCKET NO.: XXXXXXXXXX R-00973954	<p align="center">DOCKETED</p> <p align="center">JAN - 5 1998</p>

9. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) Pennsylvania Public Utility Commission, et al. v. Pennsylvania Power & Light Company; Remand Proceeding and Restructuring Proceeding Under Chapter 28

(b) On May 13, 1997, the Commonwealth Court decided the Petition for Review of the Office of Consumer Advocate in the appeal of the base rate proceeding of Pennsylvania Power & Light Company, (PP&L) at Docket No. R-00943271. 695 A.2d 448 (PP&L II). The Commonwealth Court affirmed the Commission except with respect to an issue pertaining to the "actual taxes paid" doctrine and directed the refund of \$745,000. A Secretarial Letter was issued to PP&L directing the utility to file a proposal for the refund of said amount. Because of the administrative burden presented by the relatively small size of the amount, PP&L responded with a counter-proposal to include the amount in its Restructuring Proceeding (Docket No. R-973954) filed pursuant to the Electricity Generation Customer Choice and Competition Act (Act).

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order, Tentative Form, which directs the reopening of the record in PP&L's Restructuring Proceeding for the limited purpose of including the refund proposal to reflect the refund of the remanded issue arising from PP&L II.

10. MOTION BY: Commissioner Chm. Quair
Commissioner Hanger - Yes
Commissioner Rolka - Yes

SECONDED: Commissioner Bloom
Commissioner Brownell - Yes

CONTENTS OF MOTION: Staff recommendation adopted.

**DOCUMENT
FOLDER**



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

IN REPLY PLEASE
REFER TO OUR FILE

December 24, 1997

DOCKETED
MAR 2 1998

All Parties

R-00943271 & R-00943954

Pennsylvania Public Utility Commission, et al
v
Pennsylvania Power & Light Company

KJK

**DOCUMENT
FOLDER**

To Whom It May Concern:

This is to advise you that a Tentative Form Opinion and Order was adopted by the Commission at public meeting held December 18, 1997 on the above entitled proceeding.

A copy of the Tentative Form Opinion and Order is enclosed for your records.

Very truly yours,

James J. McNulty, Secretary

EMD

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

Public Meeting held December 18, 1997

Commissioners Present:

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

DOCKETED
MAR 2 1998

Pennsylvania Public Utility
Commission, et al.

v

Pennsylvania Power & Light Company

R-00943271
R-00943954

DOCUMENT
FOLDER

TENTATIVE FORM OPINION AND ORDER

BY THE COMMISSION:

On May 13, 1997, the Commonwealth Court of Pennsylvania decided the Petition for Review of the Office of Consumer Advocate (OCA), relative to the above-captioned proceeding. The Petition for Review sought review of the Order of the Pennsylvania Public Utility Commission entered September 27, 1995, in the general rate increase proceeding of Pennsylvania Power & Light Company (PP&L or Company). See Popowsky v. Pennsylvania Public Utility Commission, 695 A.2d 448 (Pa. Cmwlth. 1997)

(PP&L II hereafter).¹ By order entered September 30, 1997, the Pennsylvania Supreme Court denied the OCA's petition for allowance of appeal filed at No. 449 M.D. Allocatur Docket 1997.

The issues presented before the Commonwealth Court were: (1) whether the Commission erred in permitting PP&L to charge current ratepayers for deferred prior period costs associated with a change in post-retirement benefits expense, (SFAS 106 expenses) where the Court had previously held that recovery of these same costs would be prohibited by the rule against retroactive ratemaking; (2) whether the Commission's decision to permit PP&L to charge current ratepayers for costs incurred ten years earlier for carrying charges and operation and maintenance expenses (early window expenses) associated with the Susquehanna Unit 2 nuclear plant violated the same rule; and (3) whether the Commission's decision to allow PP&L to charge ratepayers for gross receipts taxes that PP&L will not incur violated the actual taxes paid doctrine. See 695 A.2d at 449 (footnote omitted).

On consideration of the positions of the OCA, PP&L and this Commission, the Commonwealth Court held that the Commission's allowance of SFAS 106 expenses and Susquehanna Unit 2 early window expenses did not violate the rule against retroactive ratemaking. However, the Court held that the Commission violated the actual taxes paid doctrine by allowing recovery of gross receipts taxes that PP&L would not incur. 695 A.2d at 455.

¹ In Popowsky v. Pa. P.U.C., 642 A.2d 648 (Pa. Cmwlth. 1994), appeal denied, 543 Pa. 733, 673 A.2d 338 (1996) (PP&L I), the Commonwealth Court reversed a declaratory order of the Commission which granted the request of PP&L to record the costs of post-employment benefits other than pensions (OPEBS) as a regulatory asset subject to recovery in a future base rate case, to the extent such costs were prudently incurred.

DISCUSSION

Consistent with the directives of the Commonwealth Court concerning the actual taxes paid adjustment, we issued a Secretarial Letter to PP&L requesting the Company to file a plan for refund for this Commission's review. Subsequent to the issuance of this Secretarial Letter, the Commission was advised by responsive letter that PP&L desired an extension of time in order to present an alternative proposal for the treatment of the remanded issue.

PP&L, on December 11, 1997, made a presentation to the Staff of the Commission concerning an alternative proposal for treatment of the remanded issue.

On January 1, 1997, Governor Thomas Ridge signed into law the Electricity Generation Customer Choice and Competition Act, P.L. 802, No. 188, §4, effective January 1, 1997, 66 Pa. C.S. §§ 2801-2812 (Act). Pursuant to Section 2806(c) of the Act, PP&L was required to file a restructuring plan to implement direct access to a competitive market for the generation of electricity. On or about April 1, 1997, PP&L submitted its restructuring plan pursuant to Section 2806(d) of the Act. See Docket No. R-973954 (Restructuring Proceeding). The matter has been assigned to the Office of Administrative Law Judge (OALJ), per Administrative Law Judge (ALJ) George Kashi. The record in the Restructuring Proceeding has been closed and the proceedings are now at the briefing stage.

With regard to the filing of a refund plan so as to implement the directives of the Commonwealth Court in PP&L II, Staff was advised by the Company that the dollar amount representing the level of refund is so small so as to impose an administrative burden on PP&L to reflect the amount in pro forma financial tables. The \$745,000 involved constitutes a figure in excess of one-hundred thousandth of a percentage of the

annual revenues of PP&L. Based on the foregoing, PP&L proposes the following treatment of the amount made necessary by the remand in PP&L II:

- (a) PP&L expects to receive a Commission Order in its Restructuring Plan proceeding no later than April 30, 1998. The rate changes approved by the Commission in the Restructuring Proceeding will be effective on January 1, 1999.
- (b) PP&L proposes to establish a regulatory liability for amounts which are associated with the remanded issue, recovered through existing retail customer rate charges from September 28, 1995 through December 31, 1998.
- (c) PP&L will refund the full amount of this regulatory liability through a one-time adjustment to retail customer rates beginning January 1, 1999.
- (d) The total rate charges approved by the Commission in PP&L's Restructuring Proceeding will be reduced from their existing levels, which were approved by the Commission in the above-captioned docket by \$745,000 so that going-forward retail customer rates reflect the full effect of the remanded rate case adjustment.

On consideration of the representations of PP&L, we find that good cause has been presented for including the refund of the \$745,000 from the PP&L II remand for consideration in the PP&L Restructuring proceeding. Based on the foregoing, we shall direct that the issue be included in the PP&L Restructuring proceedings. Notwithstanding that the record has been closed, we note that the \$745,000 is an amount which is not in controversy, and the only issue remaining is the adequate manner in which to refund this money to ratepayers. Consequently, we discern no prejudice to the parties in the Restructuring Proceeding based upon the inclusion of this matter in the record developed there. We shall, however, issue this Opinion and Order in Tentative Form, directing that

all parties to the underlying PP&L II Proceeding, and the Restructuring Proceeding be given the opportunity to comment upon the Company's proposal; **THEREFORE;**

IT IS ORDERED:

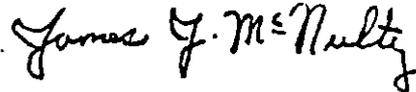
1. That the record in Docket No. R-973954 shall be reopened for the limited purpose of receiving evidence limited to the proposal of PP&L to refund \$745,000 resulting from the remand of the Commonwealth Court in the matter of Popowsky v. Pennsylvania Public Utility Commission, 695 A.2d 448 (Pa. Cmwlth. 1997), appeal denied, No. 449 M.D. Allocatur Docket 1997 (September 30, 1997).

2. That this Opinion and Order shall issue in Tentative Form..

3. That the parties to Docket No. R-973954 and the instant docket, No. R-00943271, shall be given ten (10) days from the date of entry of this Opinion and Order to comment to or either object to the proposal of PP&L.

4. That a copy of this Opinion and Order shall be served upon the Office of Administrative Law Judge, and the parties to the proceedings at Docket Nos. R-973954 and R-00943271.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 18, 1997

ORDER ENTERED: **DEC 24 1997**

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ALLENTOWN PA 18102-3102

ANNA E FOSTER
59 SHENKS FERRY ROAD
CONESTOGA PA 17561

SANDRA HOLOMAN & WM HELM
RD #3 BOX 26AS
BENTON PA 17814

ARTHUR W LOCKNER
120 LINFIELD CIRCLE
MACUNGIE PA 18062

W J SELLERS
6444 LARCH LANE
MCUNGIE PA 18062

BEVERLY WINDER
460 EAST CENTRAL AVENUE
SOUTH WILLIAMSPORT PA
17701

STEPHANIE A CRAYTON
460 EAST CENTRAL AVENUE
SOUTH WILLIAMSPORT PA
17701

WILFRED & FINITA FONTAINE
90-11 NORTHERN BLVD
APT 508
JACKSON HEIGHTS NY 11372

THOMAS A BODACK
834 SOUTH HAYES STREET
ALLENTOWN PA 18103

SANDRA CHRISTMAN
RD #2 BOX 60-1
PALMERTON PA 18071

ERIKA LATSCH
WALNUTPORT MOBILE PARK
#84
WALNUTPORT PA 18088

HARVEY & MARJORIE KICHLINE
2663 OAKHURST DRIVE
CENTER VALLEY PA 18034

RAYNARD E ADAMS
259 WEST 28TH DIV HIGHWAY,
LITITZ PA 17543

ANNE M COYLE
4531 PARK VIEW DRIVE
APT Q-12
SCHNECKSVILLE PA 18078

KAREN PHILLIPS
443 5TH STREET
WHITHALL PA 18052

CHRIS CHARRON
BOX 283-B DAVIS ROAD
HONEYBROOK PA 19344

MELVIN & PAT MILLER
1637 WEST LINDEN STREET
ALLENTOWN PA 18102

JANET MILLER
1713 SOUTH HALL STREET APT
B2
ALLENTOWN PA 18103

BROWEN K ZITRIDES
1116 MEADOWNBROOK CT
ALLENTOWN PA 18103

MICHELLE SCOTT
36 NORTH 20TH STREET
HARRISBURG PA 17103

DENISE TUCKER
1071 LAKEWOOD DRIVE
QUAKERTOWN PA 18951

CHRISTOPHER S UNDERHILL ES
HARTMAN UNDERHILL &
BRUBAKER
221 EAST CHESTNUT STREET
LANCASTER PA 17602-2782

JOHN DITCHUS SR
1302 BLUCHER AVENUE
SCRANTON PA 18505

PETER DODGE
255 WASHINGTON STREET
APT A-1
EAST STROUDSBURG PA 18301

JOAN GRAHAM
4853 SOUTH HEDGEROW DRIVE
ALLENTOWN PA 18103

FRED MONTGOMERY
2101 SOUTH LUMBER STREET
ALLENTOWN PA 18103

JOHN R MORGAN
223 MAIN STREET
NORTHAMPTON PA 18067-1952

ELEANORE RITTER
ROUTE 2 BOX 354
KUNKLETOWN PA 18058

MICHAEL & KRIS FERRARA
HC 62 BOX 3375
LONG POND PA 18334

ROANDL GERHARD
6672 WILD CHERRRY DRIVE
COOPERSBURG PA 18036

PHILIP R KELLY
1552 FARMERSVILLE ROAD
BETHELHEM PA 18017

SUSAN W FREY
1819 M COLDSTREAM CIRCLE
APT M
EMMAUS PA 18049

PATRICIA ADAIR
550 WOLLUPS HILL ROAD
STEVENS PA 17578

JANE C. LAGOSKIY
509 RAILROAD STREET
ALLENTOWN PA 18102

EBRA LWINCH
1223 WASHINGTON STREET
WHITEHALL PA 18052

JURA HAPP
1462 MAIN STREET
FLOOR 3
BETHELEHM PA 18018

WILHELMINA L LEWIS
416 KANSAS AVENUE
WHITEHALL PA 18052

SANDY GAUGLER
2162 MICHAEL ROAD
NAZARETH PA 18064

SHELLY GLOSEK
1613 TILGHAM STREET
ALLENTOWN PA 18102

JUDITH A ECHHOFF
JOHN M ECKHOFF
19 EAST SPRUCE STREET
EMMAUS PA 18049

LORETTA A EVANS
1511 QUARRY DRIVE
BETHLEHEM PA 18017

R T CHMIELEWSKI
4101 RAVENSWOOD ROAD
ALLENTOWN PA 18102

JOELENE CAREY
2087 BAKER DRIVE
ALLENTOWN PA 18103

W J NASSOFF
PO BOX 268
ALLENTOWN PA 18105-0288

BETTY HENDEL
9340 TREXLER
BREINIGSVILLE PA 18031

BARRY BEAN
PO BOX 53
BETHLEHEM PA 18016

MRS BETTY J HUGHES
697 YELLOW HILL ROAD
NARVON PA 17555

EUGENE M BRADY
211 SOUTH MANI STREET
WILKES BARE PA 18701

CHARLES PETRILLO ESQUIRE
LEGAL SERVICES
410 BICENTENNIAL BLDG
WILKES BARRE PA 18701

WM NEMETH
2750 DAHL ROAD
QUAKERTOWN PA 18951

ROBERT C KLEINTOP RD #1
BOX 1220
PLAMERTON PA 18071

STEVEN J LONGOBARDI
824 DOGWOOD LANE
CANADENSIS PA 18325

BARBARA MCCREA
1724 SOUTH HALL STREET
APT C2
ALLENTOWN PA 18103

JOHN DECKER
1724 SOUTH HALL STREET APT
C2
ALLENTOWN PA 18103

DIANNE R FRANCIS
RD #3 BOX 3183
STROUDSBURG PA 18360

STEPHEN J SELDEN
BETHELEHM STEEL CORP
BETHLEHEM PA 18016

JOHN B PLYE
3283 PLEASANT VIEW DRIVE
MANHEIM PA 17545

CROWN AMERICAN REALTY
TRUST
PASQUERILLA PLAZA
JOHNSTOWN PA 15907

JOSEPH MCANDREW
MAUREEN MCANDREW
85 W CHESTNUT STREET
MACUNGIE PA 18062

JAMES DOUGHERTY
2232 MANCHESTER BLVD
HARRISBURG PA 17112

MAYOR GEORGE LEGEZDH
600 CHESTNUT STREET
DUPONT PA 18641

JOHN W COPE
312 N 4TH STREET
SUNBURY PA 17801

TERRY MORROW
50 WOODVIEW DRIVE
ELIZABETHTOWN PA 17022

ROBIN L MCCOMSEY
5894 PINE STREET
EAST PETERSBURG PA 17520

MICHAEL OCHS
1633 SCOTT STREET
WILLIAMSPORT PA 17701

BETTY J SCHEMERY
1111 CHESTNUT STREET
MONTOURSVILLE PA 17754

GEORGE E GROSSMANN
5 FAWN CT
MOUNTAINTOP PA 18707

AXEL JOHNSON METALS INC
900 HEMLOCK ROAD
MORG BUS PARK
MORGANTOWN PA 19543

WILLIAM H SCHIPPERS
1750 KRMRY ROAD
QUAKERTOWN PA 18951