

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Uniform Cover and Calendar Sheet

1. REPORT DATE: November 12, 1997	2. BUREAU AGENDA NO.:
3. BUREAU: Office of Special Assistants	NOV-97-OSA-384*
4. SECTION(S):	5. PUBLIC MEETING DATE:
6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: R.H. Albert 7-8108	November 21, 1997
7. PERSONS IN CHARGE: L. F. Smith 7-8866	KJR
8. DOCKET NO.: R-00973954	DOCKETED NOV 20 1997

9. (a) CAPTION: PUC v. PP&L: Application for Approval of its Restructuring Plan

(b) Short summary: PP&L filed an Application for approval of its Restructuring Plan under Section 2806 of the Public Utility Code. The parties agreed that a decision in PP&L's Restructuring case may be adopted prior to February 5, 1998. Quaker Oats Co. (Quaker) and Mt. Joy Wire Corp. (Mt. Joy) sought to intervene/join the intervention of Caradon Mideast Aluminum (Caradon) and Metal Industries, Inc. (MI). All four (Quaker, Mt. Joy, Caradon, and MI) were concerned about PP&L's historical application/denial of its interruptible rate tariff provisions and PP&L's proposed changes thereto. When Caradon and MI were permitted to withdraw their interventions with prejudice, ALJ Kashi denied Quaker's and Mt. Joy's pending Petitions to Join the Caradon and MI interventions. Quaker and Mt. Joy filed Exceptions and Supplemental Exceptions to ALJ Kashi's Initial Decision. PP&L filed Replies to the Exceptions and Reply Exceptions.

(c) Recommendation: The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order which denies the Exceptions and Supplemental Exceptions and affirms the Initial Decision, consistent with the Opinion and Order.

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FOLDED

10. MOTION BY: Commissioner Chm. Quain
 Commissioner Hanger - No
 Commissioner Rolka - Yes
 SECONDED: Commissioner Bloom
 Commissioner

CONTENT OF MOTION: Staff recommendation adopted.



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

IN REPLY PLEASE
REFER TO OUR FILE

November 24, 1997

R-00973954

PAUL E RUSSELL ESQUIRE
PENNSYLVANIA POWER AND LIGHT COMPANY
TWO NORTH NINTH STREET
ALLENTOWN PA 18101-1179

DOCKETED

DEC 3 1997

KJR

Pennsylvania Public Utility Commission
vs.
Pennsylvania Power and Light Co., n/k/a PP&L, Inc.

Pennsylvania Power & Light Co. Application
for Approval of its Restructuring Plan Under
Section 2806 of the Public Utility Code

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on November 21, 1997 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty,
Acting Secretary

DOCUMENT
FOLDER

encls
cert. mail
law

See attached list
for additional
parties of record.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held November 21, 1997

Commissioners Present:

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

DOCKETED
DEC 3 1997

Pennsylvania Public Utility Commission

R-00973954

v.

Pennsylvania Power & Light Co., n/k/a PP&L, Inc.¹

Pennsylvania Power & Light Co. Application
for Approval of its Restructuring Plan Under
Section 2806 of the Public Utility Code

OPINION AND ORDER

**DOCUMENT
FOLDER**

BY THE COMMISSION:

Before us for consideration are the Exceptions and Supplemental Exceptions jointly filed by Quaker Oats Co. (Quaker) and Mount Joy Wire Corp. (Mt. Joy) to an Initial Decision of Administrative Law Judge (ALJ) George M. Kashi. The Initial Decision, issued on September 16, 1997, denied a Motion to Reconsider the ALJ's prior denial of Petitions to join and/or intervene filed by Quaker and Mt. Joy, relative to the above-captioned proceeding. PP&L filed Replies to the Exceptions and to the Supplemental Exceptions.

¹ Pennsylvania Power & Light Co. amended its Articles of Incorporation on September 12, 1997, to change its name to PP&L, Inc. (PP&L).

History of the Proceedings

Pursuant to the Electricity Generation Customer Choice and Competition Act (Act), Chapter 28 of the Public Utility Code (Code), 66 Pa. C.S. §§2801, *et seq.*, PP&L filed its Application For Approval of Its Restructuring Plan on April 1, 1997, at Docket No. R-00973954. On April 29, 1997, ALJ Kashi issued an Interim Order establishing a procedural schedule for the litigation of this case.

The following deadlines were established: May 2, 1997, Technical Conference; May 16, 1997, Second Prehearing Conference; May 27 - June 6, 1997, Public Input Hearings; July 2, 1997, Opposing Party Testimony; July 15, 1997, Third Prehearing Conference and Answering Witness Technical Conference; August 5, 1997, PP&L Rebuttal Testimony, August 15, 1997, Surrebuttal Testimony; August 18-29, 1997, Evidentiary Hearings; September 25, 1997, Initial Briefs; October 14, 1997, Reply Briefs; November 25, 1997, Exceptions; December 5, 1997, and Replies to Exceptions. The evidentiary record in this proceeding closed on September 10, 1997. The parties have agreed that a decision in PP&L's Restructuring case may be adopted prior to February 5, 1998.

On April 29, 1997, Caradon Mideast Aluminum (Caradon) and Metal Industries, Inc. (MI), filed a Joint Petition to Intervene which ALJ Kashi granted on June 17, 1997. Thereafter, Quaker, on July 15, 1997, and Mt. Joy, on July 28, 1997, filed Petitions to Join (Joinder Petitions) as parties to the intervention of Caradon and MI. Quaker and Mt. Joy alleged, *inter alia*, that all four parties (Caradon, MI, Quaker, and Mt. Joy) shared the same counsel and similar concerns and that allowing Quaker and Mt. Joy to join would not delay the proceeding. PP&L did not respond to the Joinder Petitions.

Thereafter, on August 15, 1997, ALJ Kashi granted Caradon's and MI's Petitions to withdraw from the Restructuring case.² On August 18, 1997, ALJ Kashi denied Quaker's and Mt. Joy's Joinder Petitions on the basis that the Quaker and MI interventions were withdrawn with prejudice. On August 28, 1997, ALJ Kashi denied Quaker's and Mt. Joy's Motion for Reconsideration. The Initial Decision memorializing the ALJ's actions was issued on September 16, 1997.

Quaker and Mt. Joy filed jointly their consolidated Exceptions on September 8, 1997. PP&L filed Reply Exceptions on September 19, 1997. Quaker and Mt. Joy jointly filed Supplemental Exceptions on October 6, 1997. PP&L filed a Reply to the Supplemental Exceptions on October 16, 1997.

Discussion

At this stage in the proceeding, we have before us for consideration the Exceptions and Supplemental Exceptions filed by Quaker and MI to ALJ Kashi's Initial Decision in this proceeding. Section 332(h) of the Code, 66 Pa. C.S. §332(h), provides that a party may file exceptions to an ALJ's decision in the form and manner prescribed by this Commission. Before addressing the subject Exceptions, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. (*U. of Pa. v. Pa. PUC*, 86 Pa. 410, 485 A.2d 1217, 1222 (1984).) Any exception or argument which is not specifically addressed herein shall be deemed to have been duly considered and will be granted or denied without further discussion, consistent with this Opinion and Order.

² On May 30, 1996, Caradon had filed a complaint against PP&L at Docket No. C-00968031, alleging, *inter alia*, that Caradon was entitled to an interruptible rate from PP&L and that such rate should be retroactive. Similarly, on August 21, 1996, MI had filed a complaint against PP&L at Docket No. C-00968275, alleging, *inter alia*, that MI was also entitled to an interruptible rate from PP&L and that such rate should be retroactive. Caradon and MI were also pursuing these and related issues in the subject PP&L Restructuring proceeding. Caradon, MI, and PP&L settled the complaints, and Docket Nos. C-00968031 and C-00968275 were closed on September 3, 1997.

Specifically, Quaker and Mt. Joy are alleging, *inter alia*, that they should be allowed to participate in this proceeding because no other party adequately represents their interests relative to interruptible power. Additionally, they allege that ALJ Kashi acted arbitrarily and with bias in denying their joinder/intervention.

We note from the record that the PP&L Industrial Customer Alliance (PPLICA) is a Party to this proceeding. PPLICA includes several interruptible rate customers. From our review of the record, we conclude that counsel for PPLICA extensively cross-examined PP&L's witnesses during the August evidentiary hearings relative to PP&L's proposed changes to its interruptible rate tariff provisions. (Tr., pp. 1052-1082.) Thus, Quaker's and Mt. Joy's prospective concerns are adequately before this Commission.

We note, additionally, that Quaker and Mt. Joy did not seek to become parties to this proceeding until mid to late July 1997, two and a half to three months after the proceeding was commenced. While ALJ Kashi granted other petitions to intervene filed after the Joinder Petitions, he also denied another entity's petition to intervene. Thus, we are not persuaded that the ALJ acted arbitrarily or with bias relative to Quaker or Mt. Joy.

Finally, we note that Quaker (Docket No. C-0097537) and Mt. Joy (Docket No. C-00970606) have each commenced complaint proceedings against PP&L, alleging that they were eligible for PP&L's interruptible tariff rate and that such rate should be applied retroactively. Clearly, a failure to join Quaker and Mt. Joy in this PP&L Restructuring proceeding will not preclude an examination and resolution of the historic eligibility and application issues of PP&L's interruptible tariff rate provisions. Thus, a refusal to permit joinder or intervention does not deny Quaker or Mt. Joy access to a forum in which to address their historical concerns.

Conclusion

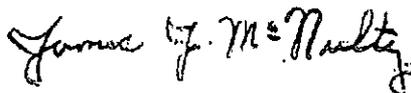
We find that, with respect to any prospective changes in PP&L's interruptible rate tariff provisions, Quaker's and Mt. Joy's interests are adequately represented in this proceeding. Any issues related to the historical eligibility and application of PP&L's interruptible rate tariff provisions *vis-à-vis* Quaker and Mt. Joy can be addressed adequately in the complaint proceedings at Docket Nos. C-00970537 and C-00970606. Further, we find no bias or arbitrariness on the part of the ALJ. Accordingly, Quaker's and Mt. Joy's Exceptions and Supplemental Exceptions are denied, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Exceptions and Supplemental Exceptions filed by Quaker Oats Co. and Mount Joy Wire Corp. to the Initial Decision of Administrative Law Judge George M. Kashi are denied consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge George M. Kashi, issued on September 16, 1997, in the above-captioned proceeding, is affirmed, consistent with this Opinion and Order.

BY THE COMMISSION,



James J. McNulty
Acting Secretary

(SEAL)

ORDER ADOPTED: November 21, 1997

ORDER ENTERED: NOV 24 1997

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ALEXANDRIA VA 22314

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 24th day of November, 1997,

KJR

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of November 21, 1997 at Docket No. R-00973954 on behalf of:

JOHNNIE E SIMMS ESQUIRE

PA PUC OFFICE OF TRIAL STAFF

3RD FLOOR PITNICK BLDG

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NOV 26 1997

Mari Jo Ruddy
Signature

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PROTHONOTARY'S OFFICE

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

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PA PUBLIC UTILITY COMMISSION
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Harrisburg, PA 17105-3265

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OFFICE OF TRIAL STAFF

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of _____, 19__ ,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of November 21, 1997 at Docket No. R-00973954 on behalf of:

BERNARD A RYAN JR ESQUIRE

OFFICE OF SMALL BUSINESS ADVOCATE

COMMERCE BLDG SUITE 1102

NOV 24 1997
KJR

C. Updegraff
Signature

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

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 25th day of November, 1997,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of November 21, 1997 at Docket No. R-00973954 on behalf of:

IRWIN A POPOWSKY ESQUIRE

OFFICE OF CONSUMER ADVOCATE

1425 STRAWBERRY SQUARE

KJR

James C. Neuber
Signature

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

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