

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: October 12, 1998	2. BUREAU AGENDA NO. OCT-98-L-99
3. BUREAU: Law	
4. SECTION(S):	5. PUBLIC MEETING DATE: October 16, 1998
6. APPROVED BY: Director: Bohdan R. Pankiw 7-5060 Supervisor: Karen Oill Moury 2-8883	
7. PERSONS IN CHARGE: Ramona C. Cataldi 7-3639 <i>ecc</i>	DOCKETED OCT 26 1998
8. DOCKET NO.: R-00973954	

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

KJR

(a) Application of PP&L, Inc. for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code; Order Implementing Competitive Billing and Metering Specifications for use in PP&L, Inc.'s service territory.

(b) On August 12, 1998, the parties to the PECO restructuring proceeding submitted a Joint Petition for Full Settlement of PP&L's Restructuring Plan and Related Court Proceedings at Docket No. R00973954, which was adopted by the Commission at public meeting on August 27, 1998. Pursuant to the Agreement, PP&L, Inc. has filed Competitive Billing and Metering Specifications for application in its service territory, reflecting agreement of the Joint Petitioners.

(c) The Law Bureau recommends that the Commission issue an order adopting the proposed competitive billing and metering specifications for application in PP&L, Inc.'s service territory.

10. **MOTION BY:** Commissioner Chm. Quain
SECONDED: Commissioner Bloom
 Commissioner Rolka - Yes
 Commissioner Brownell - Yes
 Commissioner Wilson - Yes

CONTENT OF MOTION: Staff recommendation adopted.

**DOCUMENT
FOLDER**

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Pennsylvania Power & Light Company

Re: Chapter 28 Electricity Generation
Customer Choice and Competition Act;
Capacity Issues Within the PJM Interconnection

Public Meeting

October 16, 1998

OCT-98-L-100*

Docket Nos. R-00973954

I-00980078

STATEMENT OF COMMISSIONER NORA MEAD BROWNELL

The settlement presented here has several good provisions regarding installed capacity market issues in the PJM Interconnection. The provisions of this settlement, coupled with the action taken earlier this week by PJM regarding a mandatory installed capacity auction market, should go a long way to easing the installed capacity constraints we have experienced in the past few months. I hope that with FERC approval of these steps, a vibrant, competitive market will continue to grow in Pennsylvania.

On the other side of the ledger, the settlement also requires the Commission to agree to forebear from any formal investigation of PP&L with regard to installed capacity market power issues during 1999. I have significant reservations regarding this provision as we move forward with a new, growing marketplace. This requires a tremendous amount of trust on the part of the Commission. It is my hope that that trust, and our statutory obligations to provide the public with a truly competitive marketplace, will be well served by this provision.

Chairman Quain has often said that to reach a true settlement, parties must negotiate in good faith, seeking that which they need, not necessarily that which they want. As I stated, the Agreement contains a number of good provisions relating to installed capacity. I congratulate all involved for their commitment. I am relying heavily on PP&L's history of integrity and service when I agree to forebear from a formal investigation in 1999 regarding market power issues in installed capacity as they relate to PP&L.

10/16/98

DATE

Nora Mead Brownell

NORA MEAD BROWNELL
COMMISSIONER



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
October 16, 1998

IN REPLY PLEASE
REFER TO OUR FILE

R-00973954
I-00980078

TO ALL EGS AND EDC'S

Pennsylvania Power & Light Company

KJR

To Whom It May Concern:

This is to advise you that a Modification Order has been adopted by the Commission in Public Meeting on October 16, 1998 in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

DOCKETED
OCT 20 1998

Enclosure
JEP

DOCUMENT
FOLDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 16, 1998

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
David W. Rolka
Nora Mead Brownell , Statement attached
Aaron Wilson, Jr.

Pennsylvania Power & Light Company : Docket No. R-00973954
:
Re: Chapter 28 Electricity : Docket No. I-00980078
Generation Customer Choice :
and Competition Act; Capacity :
Issues Within the PJM Interconnection :

DOCKETED
OCT 20 1998

MODIFICATION ORDER

BY THE COMMISSION:

**DOCUMENT
FOLDER**

On September 21, 1998, the Commission entered an Interim Order with respect to a number of jurisdictional utilities, including PP&L, Inc.¹ ("PP&L"), at the above docket numbers to address, inter alia, apparent problems raised by the imperfect market for installed capacity needed to serve end-use retail electric customers within the Pennsylvania-New Jersey-Maryland Interconnection L.L.C. ("PJM") market area. We did so in order to ensure that the Commonwealth's transition to retail electric choice

¹ When PP&L, Inc. filed its electric restructuring plan with the Commission pursuant to Chapter 28 of the Public Utility Code, 28 Pa. C.S. §§ 2801-2812, it was then known as Pennsylvania Power & Light Company.

meets the statutory schedule set forth in the Electricity Generation Customer Choice and Competition Act ("Electricity Competition Act").

As we noted in that Interim Order, it is our strong preference that the parties resolve these matters in a spirit of timely cooperation. However, because of the imminence of the January 1, 1999 statutory phase-in of retail electric choice, and given the non-resolution of the capacity issue after several meetings in September 1998 between PJM and the market participants, and the continuing appearance of similar difficulties in the East Central Area Reliability Coordination Agreement ("ECAR") market area, we believed that we had no choice but to act affirmatively to meet our statutorily-mandated duties to implement retail access under section 2806(b) of the Electricity Competition Act. We noted at the time that we took this action as an Interim Order so as to leave "open the possibility of consideration of any reasonable and acceptable alternative arrived at by the PJM membership meeting in Valley Forge on September 17, 1998." Interim Order at 2.

On September 24, 1998, PP&L filed a civil complaint against the Commission in the United States District Court for the Eastern District of Pennsylvania, naming the individual Commissioners as defendants. The complaint asked the district court to issue a temporary restraining order and to grant both preliminary and permanent injunctive relief against our Interim Order, primarily on the grounds that the subject matter of the order (with respect to installed capacity transfers and pricing) is preempted by the Federal

Energy Regulatory Commission ("FERC") pursuant to section 201(b)(1) of the Federal Power Act, 16 U.S.C. § 824(b)(1). The district court has yet to act on PP&L's request for injunctive relief.

Since the filing of PP&L's lawsuit, the Commission has been informed that PJM and its members have finalized proposed tariff changes and procedures which will authorize PJM to facilitate a visible, competitive capacity market for the purchase and sale of Capacity Credits, as that term is defined in the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area ("RAA"), on a day ahead and month-to-month basis. The creation of a visible capacity market is intended to address concerns of installed capacity market liquidity and transparency and is considered essential by both PJM and this Commission to facilitate retail choice in PJM's market area for 1999.

The capacity credit market, which will be administered and operated by the Office of the Interconnection ("OI"), will allow marketers to purchase Capacity Credits at market clearing prices. Capacity Credits are entitlements to generation capacity that may be used on a MW for MW basis to meet a marketer's installed capacity requirements under the RAA. The capacity credit market establishes market clearing prices through an auction process, and also permits Capacity Credits to be bought and sold bilaterally. The PJM capacity credit market proposal was unanimously approved by its membership on

October 14, 1998, and was to be filed with FERC on or about the same time, with a request for an October 15, 1998, effective date.²

On or about October 7, 1998, PP&L and this Commission entered into settlement discussions to resolve amicably the above civil complaint. On October 15, 1998, a settlement agreement was executed by Commission Staff and PP&L, which agreement has been attached to this Modification Order. The salient terms of the settlement agreement are as follows:

1. PP&L will offer Capacity Credits to Electric Generation Suppliers ("EGSs") that serve PP&L residential customers at a price of \$19.72 per KW/year prior to June 1, 1999, and at a price of \$22.01 per KW/year from June 1, 1999, through December 31, 1999.³ The amount of Capacity Credits offered to any one EGS will be limited to the amount of such EGS's daily Accounted-For Obligation under the RAA for its PP&L residential customers.

2. PP&L will permit up to 100% of its residential customers to enroll for direct access under the Electricity Competition Act as of January 2, 1999.

² Another proposal approved on October 14, 1998 by the RAA/Reliability Committee will, when implemented, provide for mandatory Load Serving Entity participation in the day-ahead capacity credit market to the extent of remaining uncommitted generation resources or unfilled deficiencies, so as provide a more liquid market and prevent capacity credit hoarding.

³ This settlement does not limit the ability of PP&L or any EGS to enter into agreements with any person for the purchase or sale of Capacity Credits under any other prices, terms or conditions.

3. PP&L will provide this Commission for each calendar quarter through the last quarter of 1999, a copy of that portion of its quarterly transactions report filed with FERC that shows PP&L's Capacity Credit transactions.

4. The parties agree that they will work cooperatively toward a successful implementation of retail choice and the development of a visible, liquid Capacity Credit market within PJM.

Accordingly, as this agreement resolves the Commission's concerns as to PP&L with respect to the installed capacity issue in the PJM market for the calendar year 1999, the Commission withdraws its Interim Order as to PP&L. The Interim Order remains in effect as to all other Pennsylvania jurisdictional entities with installed capacity within the PJM area; THEREFORE,

IT IS ORDERED:

1. That the Commission herewith approves the attached settlement agreement relating to the above captioned dockets;

2. That with respect to the Commission's September 21, 1998 Interim Order regarding installed capacity pricing, particularly ¶ 1 of that order, such Interim Order is hereby withdrawn as to PP&L.

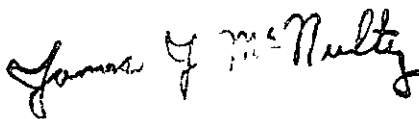
3. That the provisions contained in the attached settlement agreement and our withdrawal of the Interim Order in consideration of that settlement as it pertains to PP&L, along with the market amelioration measures taken by PJM and its members as described

in this Order, constitute a full and complete satisfaction and accord of our installed capacity concerns with respect to PP&L for the calendar year 1999.

4. That a copy of this Order, with the attached settlement agreement, shall be served upon all Commission jurisdictional electric distribution companies, electricity generation suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, the Federal Energy Regulatory Commission, the United States Department of Justice's Antitrust Division, and the Federal Trade Commission.

5. That the Commission invites the other Pennsylvania jurisdictional utilities that are members of PJM to submit proposals to the Commission consistent with the PP&L settlement for its consideration to resolve the installed capacity pricing issues that necessitated issuance of the Interim Order.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: October 16, 1998

ORDER ENTERED: **OCT 16 1998**

**AGREEMENT IN SETTLEMENT OF
PP&L, INC. V. JOHN M. QUAIN ET AL,
CIVIL ACTION NO. 98-5083**

This Settlement Agreement is entered into on October 15, 1998 by and between Plaintiff, PP&L, Inc. ("PP&L") and Defendants JOHN M QUAIN, ROBERT BLOOM, DAVID W. ROLKA, NORA MEAD BROWNELL, and AARON WILSON, JR., acting in their capacity as Chairman and Commissioners of the Pennsylvania Public Utility Commission ("Pa. PUC"), parties in *PP&L, Inc. v. John M Quain et al.*, Docket No. 98-5083, pending before the United States District Court for the Eastern District of Pennsylvania ("Action").

WHEREAS Defendants acting in their capacity as Chairman and Commissioners of the Pa. PUC entered an Order (the "Capacity Order") on September 21, 1998, that in part directs holders of installed capacity resources within the meaning of the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") Reliability Assurance Agreement ("RAA"), including PP&L, to immediately release/offer capacity at a presumptive \$19.72 per kilowatt-year level, absent PJM directed capacity deficiency findings; and

WHEREAS on September 24, 1998, Plaintiff brought the Action asking the Court for: (1) a declaration that the Capacity Order on its face attempts to regulate matters within exclusive federal jurisdiction, and therefore is preempted in its entirety; and (2) a preliminary and permanent injunction against any action by Defendants to implement or enforce the Capacity Order; and

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WHEREAS Plaintiff and Defendants seek to settle the Action without such settlement constituting an admission or waiver of any party's legal position as provided in Paragraph 8;

PLAINTIFF AND DEFENDANTS AGREE AS FOLLOWS:

1. Pursuant to its market-based rate tariff on file with the Federal Energy Regulatory Commission ("FERC"), FERC Electric Volume No. 5 ("PP&L Market-based Rate Tariff"), Plaintiff will offer to sell Capacity Credits as defined in Section 2.3 of Schedule 11 to the Operating Agreement of the PJM Interconnection, L.L.C. ("Capacity Credits") to Load Serving Entities that are Electric Generation Suppliers ("EGSs") licensed under the Pennsylvania Electricity Generation Customer Choice and Competition Act, 66 Pa. C. S. 2801, *et seq.* ("the Act"), under the following terms and conditions:

a. Prior to June 1, 1999, the price of such Capacity Credits will be at \$54.03 per megawatt-day (\$19.72 per kilowatt-year) for increments of not less than 0.1 megawatt and not less than one day; and

b. On June 1, 1999 through December 31, 1999, to reflect the revised definition of Capacity Credits in Article 7 and Schedule 7 of the RAA, the price of such Capacity Credits will be at \$61.40 per megawatt-day (\$22.41 per kilowatt-year) for increments of not less than 0.1 megawatt and not less than one day; and

c. The EGS must utilize the Capacity Credits purchased to serve customers receiving electric distribution service under rate schedules RS, RTS, and RTD(R) of PP&L's General Tariff Electric Pa. P.U.C. No. 201, Supplement No. 2, on file with the Pa. PUC (collectively, "PP&L Residential Customers"); and

d. Prior to April 1, 1999, the amount of Capacity Credits offered to any one EGS will be limited to the amount of such EGS's daily Accounted-For Obligation under the RAA for its PP&L Residential Customers; and

e. From April 1, 1999 through December 31, 1999, the amount of Capacity Credits offered to any one EGS will be limited to the amount of such EGS's daily Accounted-For Obligation under the RAA for its PP&L Residential Customers, but shall not exceed such EGS's obligation on March 31, 1999; and

f. Any disputes under this offer will be resolved in accordance with the procedures under the PP&L Market-based Rate Tariff and the service agreement under that tariff with the individual EGS; and

g. This offer expires on March 31, 1999, provided the EGS complies with applicable agreements, tariffs and Pa. PUC regulations requiring Plaintiff to be notified of a PP&L Residential Customer's selection of the EGS 16 days prior thereto (March 15, 1999 at 5:00 p.m., Eastern Standard Time); and

h. Within 5 business days of the execution of this Agreement, Plaintiff will request that the FERC make this offer effective on one day's notice; and

i. PP&L reserves its right withdraw the offer under this Paragraph 1 if (1) the FERC rejects or suspends, pursuant to 16 U.S.C. § 824d(e) and applicable regulations (other than a one-day suspension), Plaintiff's filing incorporating the terms of the offer, or (2) the FERC or any court or agency of competent jurisdiction determines that this offer violates applicable law or regulations or requires that it be modified; and

j. Nothing in the offer under this Paragraph 1 is intended to limit the ability of Plaintiff or any EGS to enter into agreements with any person for the purchase or sale of Capacity Credits under prices, terms, and conditions other than those contained in this Paragraph 1.

2. Plaintiff will not reject the request of any Residential Customer to enroll for direct access under the Act even if, as of January 2, 1999, customers constituting more than two-thirds of the non-coincident peak load of such PP&L Residential Customer's rate schedule have already enrolled.

3. Plaintiff will provide to Defendants for each calendar quarter through the last quarter of 1999, a copy of that part of its quarterly report of transactions filed with the FERC pursuant to the FERC's *Order Conditionally Accepting for Filing Proposed Market-Based Rates*, 80 F.E.R.C. ¶ 61,053 (1997), showing Plaintiff's Capacity Credit transactions.

4. At the first meeting of the Pa. PUC following execution of this Agreement, but not later than October 16, 1998, Defendants will withdraw the Capacity Order in its entirety as to Plaintiff and will take no further action to apply the Capacity Order or any of its terms to Plaintiff.

5. This Agreement resolves all of the Defendants' concerns with respect to the subject matter of this Action with respect to Plaintiff for the calendar year 1999, including, but not limited to matters asserted in Defendants' Brief in Opposition to PP&L's Motion For Temporary Restraining Order and Appendices served in this Action on September 29, 1998, and Defendants will immediately terminate or cause to cease any related formal investigation of Plaintiff under the jurisdiction of the Pa. PUC. If Defendants or their representatives have formally or informally requested any other government agency, including but not limited to the FERC, the United States Department of Justice, the Federal Trade Commission, or the Office of the Attorney General of the Commonwealth of Pennsylvania, to initiate any proceeding or investigation with respect to such matters, within 5 business days of the execution of this Agreement, Defendants shall notify such government agency of this Agreement and shall provide a copy of this Agreement to such government agency.

6. Plaintiff and Defendants agree that they will resume their heretofore relationship of cooperation and mutual trust in working toward a successful implementation of retail choice in the Commonwealth of Pennsylvania, and will work cooperatively toward the development of a visible, liquid Capacity Credit market within PJM.

7. Plaintiff will offer for sale any unsold or uncommitted Capacity Credits in the PJM Daily Capacity Credit Market as defined in Paragraph 2.9 of Schedule 11 to the Operating Agreement of the PJM Interconnection, L.L.C. Nothing in this Agreement is intended to preclude Plaintiff from participating in any other PJM Capacity Credit market or engaging in sales of Capacity Credits outside of the PJM Capacity Credit markets.

8. The Parties acknowledge that their actions pursuant to this Agreement are undertaken on an entirely voluntary basis and that this Agreement is made without admission against or prejudice to any factual or legal position which any Party has asserted or may assert in this Action. No Party may cite, refer, or rely on this Agreement or the offer set forth in Paragraph 1 as precedent in any proceeding to which Plaintiff is a party, other than a proceeding to enforce an obligation under this Agreement.

9. If Defendants enter into any agreement in settlement or compromise with one or more Pennsylvania public utilities with respect to the terms and conditions of a Capacity Credit offer or sale, Plaintiff may substitute all of the Capacity Credit offer or sale terms and conditions of such settlement or compromise in lieu of the Capacity Credit offer or sale terms and conditions of this Agreement, provided that Plaintiff may exercise this option if Defendants cannot demonstrate that any difference in the Capacity Credit terms and conditions for such utility is necessary due to legal or operating constraints on such utility.

10. Plaintiff will be released from all remaining obligations under this Agreement, if the Capacity Order is:

a. Modified, vacated, or withdrawn, other than in accordance with this Agreement, or other than pursuant to settlement or compromise with one or more Pennsylvania public utilities; or

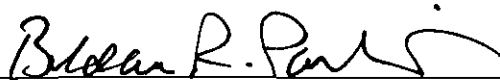
b. Not enforced by the Pa. PUC.

11. The Parties will cooperate to support this Agreement if it is challenged before the FERC or any court or agency of competent jurisdiction. If a complaint or protest with respect to the offer set forth in Paragraph 1 is filed with the FERC, the Pa. PUC will intervene in such proceeding to support approval of the terms set forth herein.

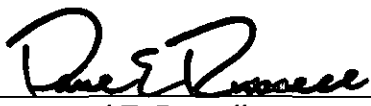
12. This Agreement is not intended to confer and does not confer any benefits or rights to any person not a named party hereto, nor may anyone not a party to this Agreement initiate an action or proceeding to seek the enforcement of any obligation of any Party under this Agreement.

13. This Agreement will be construed under the laws of Pennsylvania, except as to matters within the exclusive jurisdiction of the FERC.

14. This Agreement will become effective upon the completion of Defendants' obligations under Paragraphs 4 and 5 of this Agreement. Upon notification by Defendants that they have completed or caused to be completed said obligations, Plaintiffs will within 5 business days file a voluntary notice of dismissal of this Action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

By 
Bohdan R. Pankiw
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Attorneys For Defendants John M Quain, Robert Bloom, David W. Rolka, Nora Mead Brownell, and Aaron Wilson, Jr.

By 
Paul E. Russell
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Dated: October 16, 1998

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