

4/16/01

R-973954

ATTACHED CAME FROM LAW BUREAU. COMMONWEALTH COURT IS
REFERRING THIS CASE TO PUC. NEEDS TO BE DOCKETED.

THANKS.

Glavin

DOCUMENT
FOLDER



OFFICE OF THE PROTHONOTARY

Chester County, Pennsylvania
2 North High Street, Suite 130
West Chester, PA 19380-3050 (610) 344-6300

Allison Bell Royer, Esq.
Prothonotary

Carol Luning
First Deputy

Edward C. Sweeney, Esq.
Solicitor

R-973954

COURT OF COMMON PLEAS OF CHESTER COUNTY

OFFICE OF THE PROTHONOTARY

FROM: PROTHONOTARY OF CHESTER COUNTY

CASE : 99-09799

**CAPTION: COMMERCIAL UTILITY CONSULTANTS ET AL
VS
PENNSYLVANIA POWER & LIGHT COMPANY ET AL**

TRANSFERRED TO: PENNSYLVANIA PUBLIC UTILITY COMMISSION

ON: APRIL 13, 2001

ORIGINAL FILE SENT ? :NO, CERTIFIED COPY OF RECORD FORWARDED

**FEE PAID BY: POWELL, TRACHTMAN, LOGAN, CARRLE, BOWMAN, &
LOMBARDO**

SENT BY: FED EX #823997556257

ALLISON BELL ROYER, Prothonotary

**BY: Genevieve M. Greenhalgh
TRANSFER CLERK**

**DOCUMENT
FOLDER RECEIVED**

APR 09 2001

**PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE**

The enclosed docket entries and record are certified copies of the whole and entire record from The Court of Common Pleas of Chester County for Cases #99-09799 and #99-09800. (Case #99-09800 is consolidated into Case #99-09799.) These certified copies of the record are being forwarded to the Pennsylvania Public Utility Commission as per Court Order of January 24, 2001 by the Honorable Judge Katherine B.L. Platt. The documents comprising the record are numbered and attached.

**CERTIFIED
FROM THE RECORD**
ATTEST *Charles M. [Signature]*
DEPUTY PROTHONOTARY

4-13-01



FEB 02 2001

JB/m

Continued for the purpose of re-establishing the Deadlines

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:

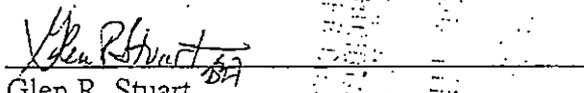


Ethan N. Halberstadt
Attorneys for Plaintiffs

Dated: 1/23/01

MORGAN, LEWIS & BOCKIUS LLP

By:



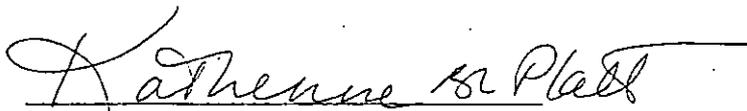
Glen R. Stuart
Bryant D. Lim
Attorneys for Defendant

Dated: 1/23/01

ORDER

AND NOW, this 24th day of January, 2001, upon consideration of the parties' Stipulation, it is hereby ORDERED that said Stipulation is approved as an Order of Court and that the foregoing issues are hereby referred to the Pennsylvania Public Utility Commission for determination. The Prothonotary's Office is hereby directed to take appropriate action to forward a certified copy of the record in this action to the Pennsylvania Public Utility Commission.

BY THE COURT:



Katherine B. L. Platt, J.

CASE SUMMARY REPORT

99-09799 COMMERCIAL UTILITY CONSULTANTS ET AL V. PENNS
YLVANIA POWER & LIGHT COMPANY
OTHER

CASE INITIATION DATE 11/23/99 03:24 P NOT ACTIVE SINCE 00/00/00
CASE STATUS ACTIVE REOPEN DATE 00/00/00
ARBITRATION DATE ARBITRATION TIME
TRIAL READY DATE 03/02/01
JUDGE KATHERINE B. L. PLATT 11/23/99
PLAINTIFF

R-973954

COMMERCIAL UTILITY CONSULTANTS

1556 MCDANIEL DR
WESTTOWN BUSINESS CENTER
WEST CHESTER PA 19380
ATTORNEY: 057544 TEL: 610-354-9700 11/23/99
ETHAN N. HALBERSTADT
POWELL TRACHTMAN LOGAN CARRLE
475 ALLENDALE ROAD, STE 200
KING OF PRUSSIA, PA 19406

PUBLIC UTILITY SERVICE CORPORATION COMPANY

WHITELAND BUSINESS PARK
750 SPRINGDALE DR
EXTON PA 19341
ATTORNEY: 057544 TEL: 610-354-9700 11/23/99
ETHAN N. HALBERSTADT
POWELL TRACHTMAN LOGAN CARRLE
475 ALLENDALE ROAD, STE 200
KING OF PRUSSIA, PA 19406

VS.
DEFENDANT

PENNSYLVANIA POWER & LIGHT COMPANY (K/N/A)

A/K/A PP&L
2 NORTH 9TH ST
ALLENTOWN PA 18101
ATTORNEY: 041302 TEL: 215-963-5883 01/21/00
GLEN R. STUART
MORGAN LEWIS & BOCKIUS LLP
2000 ONE LOGAN SQUARE
PHILADELPHIA, PA 19103-6993
ATTORNEY: 078738 TEL: 215-963-5165 01/21/00
BRYANT DAVID LIM
MORGAN LEWIS & BOCKIUS LLP
1701 MARKET STREET
PHILADELPHIA, PA 19103-2921

SPECTRUM ENERGY SERVICES CORPORATION

ATTORNEY: 008137 TEL: 610 12/12/00
MALCOLM J GROSS
33 SOUTH 7TH STREET
PO BOX 4060
ALLENTOWN, PA 18105-4060

CERTIFIED
FROM THE RECORD
ATTEST *[Signature]*
DEPUTY PROTHONOTARY

4-13-01

DOCKETED
APR 12 2001

DOCUMENT
FOLDER

RECEIVED

APR 09 2001

PUBLIC UTILITY COMMISSION
OPERATIONS DIVISION

CASE SUMMARY REPORT

DATE

DOCKET INFORMATION

①	11/23/99 11/23/99 11/23/99	APPEARANCE OF ETHAN N. HALBERSTADT FOR COMMERCIAL UTILITY CONSULTANTS APPEARANCE OF ETHAN N. HALBERSTADT FOR PUBLIC UTILITY SERVICE CORPORATION COMPAN COMPLAINT FILED BY PLTF SERVED PENNA POWER & LIGHT CO NKA PP&L INC ON 12/03/99 AT 02:35 P PRELIMINARY OBJECTIONS OF DEFT PP&L INC CERTIFICATION OF SERVICE JURY TRIAL DEMANDED APPEARANCE OF GLEN R. STUART FOR PENNSYLVANIA POWER & LIGHT COMPANY (K/N/A APPEARANCE OF BRYANT DAVID LIM FOR PENNSYLVANIA POWER & LIGHT COMPANY (K/N/A BRIEF BY DEFT IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLTF'S COMPLAINT CERTIFICATION OF SERVICE PRAECIPE FOR DETERMINATION RESPONSE TO DEFT'S PRELIMINARY OBJECTIONS BY PLTF'S' JURY TRIAL DEMANDED CERTIFICATION OF SERVICE PRAECIPE FOR DETERMINATION BY PLTF'S CERTIFICATION OF SERVICE BRIEF BY PLTF'S IN OPPOSITION TO PRELIMINARY OBJECTIONS OF DEFT PP&L TO COMPLAINT CERTIFICATION OF SERVICE JURY TRIAL DEMANDED (MISC) REPLY BRIEF IN SUPPORT OF DEFT'S PRELIMINARY OBJECTIONS TO PLTF'S COMPLAINT BY DEFT CERTIFICATION OF SERVICE JURY
②	12/14/99	
③	01/21/00 01/21/00 01/21/00 01/21/00 01/21/00	
④	02/10/00 02/10/00 02/10/00	
⑤	03/01/00 03/01/00	
⑥	03/01/00 03/01/00	
⑦	03/01/00 03/01/00 03/01/00	
⑧	03/17/00 03/17/00 03/17/00	

CASE SUMMARY REPORT

9 03/31/00
03/31/00

TRIAL DEMANDED
ORDER
OF 3-30-2000 BY PLATT, J. CASE #99-09800 TO
BE CONSOLIDATED UNDER THIS ACTION. SEE ORDER.
COPIES SENT
GLEN R. STUART, ESQUIRE
ETHAN N. HALBERSTADT, ESQUIRE
BRYANT DAVID LIM, ESQUIRE

10 04/04/00
04/04/00

ORDER
OF 4-3-2000 BY PLATT, J. DEFT, PENNA POWER &
LIGHT'S PRELIMINARY OBJECTIONS TO COMPLAINT
ARE OVERRULED & DEFT IS TO FILE ANSWER TO
COMPLAINT W/IN 20 DAYS. SEE ORDER.
COPIES SENT
GLEN R. STUART, ESQUIRE
ETHAN N. HALBERSTADT, ESQUIRE
BRYANT DAVID LIM, ESQUIRE

11 04/24/00
04/24/00
04/24/00

NOTICE
TO PLEAD BY DEFENDANT
ANSWER AND NEW MATTER BY
OF DEFT TO PLTF'S COMPLAINT AND COUNTERCLAIM
CERTIFICATION OF SERVICE
ANSWER AND NEW MATTER

05/09/00

TRIAL SCHEDULED
ON 061200
ENTERED BY COURT ADMINISTRATOR

12 05/30/00
05/30/00

REPLY TO NEW MATTER BY
PLAINTIFF'S AND ANSWER TO COUNTERCLAIM W/
NEW MATTER
CERTIFICATE OF SERVICE
PLTF'S REPLY TO NEW MATTER

13 06/16/00
06/16/00

REPLY BY
DEFT-COUNTER REPLY- TO NEW MATTER OF COUNTERC
LAIM DEFT'S
CERTIFICATION OF SERVICE
COUNTER REPLY OF DEFT TO NEW MATTER COUNTERCL
AIM

14 07/03/00
07/03/00

JURY
DEMANDED BY PLTF
CERTIFICATION OF SERVICE

15 07/07/00
07/07/00

ADMINISTRATIVE CONFERENCE MEMO BY
DFT

16 -07/17/00

CERTIFICATION OF SERVICE

17 -07/17/00

ORDER
OF 7-17-00 BY PLATT, J. PURSUANT TO AN ADMINI
STRATIVE CONFERENCE HELD ON 7-13-00 THE TRIAL
READY LISTING IS DEFERRED TO JANUARY 2001. SE
E ORDER.
ORDER

CASE SUMMARY REPORT

DEFERMENT - OF 7-17-00 BY PLATT, J. FOLLOWING AN ADMINISTRATIVE CONFERENCE PURSUANT TO C.C.R.C.P. NO. 249.3, IT IS ORDERED THAT THE DATE UPON WHICH THIS CASE SHALL BE PLACED ON THE LIST OF TRIAL READY CASES IS DEFERRED TO JANUARY 2001. SEE ORDER.

17-07/17/00

COPIES SENT
GLEN R. STUART, ESQUIRE
ETHAN N. HALBERSTADT, ESQUIRE
BRYANT DAVID LIM, ESQUIRE

18-09/06/00

TRIAL READY LISTING DATE-DEFERMENT
1-2001
PER C/A

09/08/00

CERT PREREQ TO SVC OF SUBP 4009.22
ETHAN N. HALBERSTADT, ATTY FOR PLTF UPON CUSTODIAN OF RECORDS FOR FASSON ROLL DIVISION OF AVERY DENNISON CORP.

09/08/00

CERT PREREQ TO SVC OF SUBP 4009.22
ATTY FOR PLTF UPON CUSTODIAN OF RECORDS FOR CARLISLE PLASTICS, INC. D/B/A A&E PRODUCTS GROUP

09/08/00

CERT PREREQ TO SVC OF SUBP 4009.22
ATTY FOR PLTF UPON CUSTODIAN OF RECORDS FOR LANCASTER LEAF TOBACCO COMPANY

09/08/00

CERT PREREQ TO SVC OF SUBP 4009.22
ATTY FOR PLTF UPON CUSTODIAN OF RECORDS FOR HARRIS SEMICONDUCTOR

09/08/00

CERT PREREQ TO SVC OF SUBP 4009.22
ATTY FOR PLTF UPON CUSTODIAN OF RECORDS FOR THE WEST COMPANY

09/08/00

CERT PREREQ TO SVC OF SUBP 4009.22
ATTY FOR PLTF UPON CUSTODIAN OF RECORDS FOR POLYMENR DYNAMICS, INC.

09/08/00

CERTIFICATE OF SERVICE
CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS UPON GLEN R. STUART, ESQ.

11/02/00

TRIAL SCHEDULED
ON 120400

20-11/28/00

ENTERED BY COURT ADMINISTRATOR
MEMORANDUM OF LAW BY SPECTRUM ENERGY IN SUPPORT OF MOTION TO QUASH SUBPOENA

21-11/28/00

CERTIFICATION OF SERVICE
MOTION

11/28/00

22-11/28/00

OF SPECTRUM ENERGY TO QUASH SUBPOENA OR FOR OTHER PROTECTIVE RELIEF

11/28/00

CERTIFICATION

23-11/28/00

OF COUNSEL BY SPECTRUM
CERTIFICATION OF SERVICE

CASE SUMMARY REPORT

24 - 11/28/00
 25 - 12/04/00
 12/04/00

PRAECIPE FOR DETERMINATION BY SPECTRUM ENERGY SERVICES CORP STIPULATION & ORDER OF 11-28-00 BY PLATT, J. UPON CONSIDERATION OF THE PARTIES' STIPULATION, IT IS ORDERED THAT THE STIPULATION IS APPROVED AS AN ORDER OF COURT & THAT THE COURT'S ADMINISTRATIVE CONFERENCE ORDER IS AMENDED AS SET FORTH IN THE STIPULATION. SEE STIPULATION & ORDER.

COPIES SENT
 GLEN R. STUART, ESQUIRE
 ETHAN N. HALBERSTADT, ESQUIRE
 BRYANT DAVID LIM, ESQUIRE

26 - 12/06/00
 27 - 12/12/00
 12/12/00

TRIAL READY LISTING DATE-DEFERMENT 3-2-01

CERTIFICATE OF SERVICE
 ENTRY OF APPEARANCE UPON COUNSEL FOR OTHER PARTIES

APPEARANCE OF MALCOLM J GROSS FOR SPECTRUM ENERGY SERVICES CORPORATION RESPONSE TO

28 - 12/18/00
 12/18/00
 12/18/00

MOTION OF SPECTRUM ENERGY SERVICES CORP TO QUASH SUBPOENA OR FOR OTHER PROTECTIVE RELIEF BY PLTF

CERTIFICATION OF SERVICE
 JURY TRIAL DEMANDED

29 - 01/10/01
 01/10/01
 01/10/01
 01/30/01

MEMORANDUM OF LAW BY PLTFs IN OPPOSITION TO SPECTRUM ENERGY SERVICES' MOTION TO QUASH

JURY TRIAL DEMANDED
 CERTIFICATION OF SERVICE
 ORDER

30 - 01/30/01

OF 1-30-01 BY PLATT, J. IT IS ORDERED THAT ALL DISCOVERY IN THIS CASE SHALL BE STAYED DURING THE PENDENCY OF PROCEEDINGS BEFORE THE PUBLIC UTILITY COMMISSION. ORAL ARGUMENT SCHEDULED FOR 1-31-01 ON MOTION OF SPECTRUM ENERGY SERVICES CORPORATION TO QUASH SUBPOENA OR FOR OTHER PROTECTIVE RELIEF IS CONTINUED GENERALLY. UPON RESOLUTION OF PROCEEDINGS BEFORE THE PUC, THE PARTIES SHALL SCHEDULE AN ADMINISTRATIVE CONFERENCE W/THIS COURT TO ADDRESS ALL REMAINING DISCOVERY ISSUES. SEE ORDER.

COPIES SENT

CASE SUMMARY REPORT

MALCOLM J GROSS, ESQUIRE
GLEN R. STUART, ESQUIRE
ETHAN N. HALBERSTADT, ESQUIRE
BRYANT DAVID LIM, ESQUIRE

31 - 01/30/01

STIPULATION

BY ORDER OF 1-24-01 BY PLATT, J. IT IS ORDERED THAT THE STIPULATION IS APPROVED AS AN ORDER OF COURT & THAT THE FOREGOING ISSUES ARE REFERRED TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION FOR DETERMINATION. PROTHONOTARY IS DIRECTED TO TAKE APPROPRIATE ACTION TO FORWARD A CERTIFIED COPY OF THE RECORD IN THIS ACTION TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION. SEE ORDER.

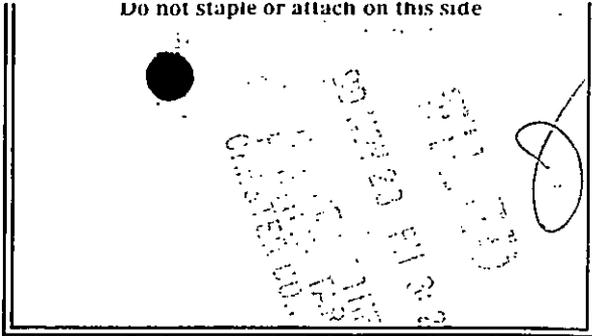
02/27/01

TRIAL SCHEDULED
ON 040201
ENTERED BY COURT ADMINISTRATOR

CHESTER COUNTY COURT OF COMMON PLEAS
CIVIL COVER SHEET

Do not staple or attach on this side

99 09799



1. CASE CAPTION: COMMERCIAL UTILITY CONSULTANTS and PUBLIC UTILITY SERVICE CORPORATION v. PENNSYLVANIA POWER & LIGHT COMPANY, now known as PP&L, Inc.
IA. CASE NO.:

2. PLAINTIFF(s): (Name, address)
See Attached

3. PLAINTIFF'S COUNSEL:
(Name, firm, address, telephone and attorney ID#)
Ethan N. Halberstadt/Atty ID#57544
Powell, Trachtman, Logan, Carrle, & Bowman & Lombardo, P.C.
475 Allendale Road, Suite 200
King of Prussia, PA 19406
610.354.9700

4. DEFENDANT(s): (Name, address)
PENNSYLVANIA POWER & LIGHT COMPANY
now known as PP&L, INC.
2 North 9th Street
Allentown, PA 18101

5. ARE THERE, ANY RELATED CASES?
(see C.C.R.C.P. 200B)
 Yes No
IF YES, SHOW CASE NOS. AND CAPTIONS:
Commercial Utility Consultants v.
Pennsylvania Power & Light Company,
now known as PP&L, Inc.

6. IF THIS IS AN APPEAL FROM A DISTRICT JUSTICE JUDGMENT, WAS APPELLANT PLAINTIFF OR DEFENDANT IN THE ORIGINAL ACTION?

7. CASE CODE: 43 DESCRIPTION: (see reverse side) Other

8. IS THIS AN ARBITRATION CASE? Yes No
(Arbitration Limit is \$50,000. See C.C.R.C.P. 1301.1)

ARBITRATION CASES ONLY
An Arbitration hearing in this matter is scheduled for _____ at _____ in the Jury Lounge, Chester County Court House, West Chester, PA. The parties and their counsel are directed to report to the Juror's Lounge for an arbitration hearing in this matter on the date and time set forth above.
This matter will be heard by a Board of Arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial *de novo* on appeal from a decision entered by a judge.

NOTICE OF TRIAL LISTING DATE
Pursuant to C.C.R.C.P. 249.3, if this case is not subject to compulsory arbitration it will be presumed ready for trial twelve (12) months from the date of the initiation of the suit and will be placed on the trial list one (1) year from the date the suit was filed unless otherwise ordered by the Court.
To obtain relief from automatic trial listing a party must proceed pursuant to C.C.R.C.P. 249.3(b), request an administrative conference and obtain a court order deferring the placement of the case on the trial list until a later date.

FILE WITH: Prothonotary of Chester County, 2 North High Street, Suite 130, P.O. Box 2748, West Chester, PA 19380-0991

THIS COVER SHEET IS REQUIRED BY C.C.R.P. 1018.1 (b) AND MUST BE SERVED UPON ALL OTHER PARTIES TO THE ACTION IMMEDIATELY AFTER FILING. SUBMIT ENOUGH COPIES FOR SERVICE

SEE REVERSE SIDE FOR CASE CODES AND DESCRIPTIONS (DETACH PRIOR TO FILLING OUT)

2. PLAINTIFFS (Name, address)

COMMERCIAL UTILITY CONSULTANTS
1556 McDaniel Drive
Westtown Business Center
West Chester, PA 19380

PUBLIC UTILITY SERVICE CORPORATION
Whiteland Business Park
750 Springdale Drive
Exton, PA 19341

POWELL, TRACHTMAN, LLOYAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

RECEIVED
JUL 23 1998
JUL 23 1998
JUL 23 1998

COMMERCIAL UTILITY CONSULTANTS 1556 McDaniel Drive Westtown Business Center West Chester, PA 19380	IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
and	
PUBLIC UTILITY SERVICE CORPORATION Whiteland Business Park 750 Springdale Drive Exton, PA 19341,	CIVIL ACTION — LAW
Plaintiffs,	
v.	JURY TRIAL DEMANDED
PENNSYLVANIA POWER & LIGHT COMPANY now known as PP&L, Inc. 2 North 9 th Street Allentown, PA 18101,	
Defendant.	NO.

COMPLAINT

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE

LEGAL REFERENCE SERVICE

15 West Gay Street
West Chester, PA 19380
(610) 429-1500

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

SERVICIO DE REFERENCIA LEGAL

Telefono:
SERVICIO DE REFERENCIA LEGAL
15 West Gay Street
West Chester, PA 19380
Telefono: (610) 429-1500

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

FILED
NOV 23 11 32 AM
PROthonary
DEPT. OF COURTS

COMMERCIAL UTILITY CONSULTANTS 1556 McDaniel Drive Westtown Business Center West Chester, PA 19380	IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
and	
PUBLIC UTILITY SERVICE CORPORATION Whiteland Business Park 750 Springdale Drive Exton, PA 19341, Plaintiffs,	CIVIL ACTION — LAW
v.	JURY TRIAL DEMANDED
PENNSYLVANIA POWER & LIGHT COMPANY now known as PP&L, Inc. 2 North 9 th Street Allentown, PA 18101, Defendant.	NO.

COMPLAINT

1. Plaintiffs herein are Commercial Utility Consultants ("CUC") and Public Utility Service Corporation ("PUSC"). CUC is a sole proprietorship with a usual place of business at 1556 McDaniel Drive, Westtown Business Center, West Chester, Pennsylvania 19380. PUSC is a Delaware corporation with a usual place of business at Whiteland Business Park, 750 Springdale Drive, Exton, Pennsylvania 19341. CUC and PUSC will hereinafter be collectively referred to as "Plaintiffs".

2. Defendant herein is the Pennsylvania Power & Light Company, now known as PP&L, Inc. (hereinafter "PP&L"), a Pennsylvania public utility with a registered place of business located at 2 North 9th Street, Allentown, Pennsylvania, 18101.

3. Plaintiffs are in the business of, *inter alia*, providing utility consulting services. Plaintiffs generally provide utility consulting services pursuant to "shared savings" written contracts with their customers. The "shared savings" agreements are typically one page documents wherein the utility consultant agrees to review the rates, tariffs, discounts, riders and total charges that apply to the customer's utility billings and to submit recommendations to the customer for possible savings, credits or refunds. No payment is owed to the consultant unless the customer implements the recommendation and experiences utility savings, credits, or refunds.

4. PUSC and CUC have maintained a business relationship with each other with respect to accounts in the PP&L territory for many years. For instance, PUSC provides sales services on behalf of CUC in the PP&L territory and CUC has served as a consultant to PUSC on numerous accounts in the PP&L territory.

5. Plaintiffs' customers find their contracts attractive because they do not have to pay the consultant anything unless savings are found. As is standard in the utility consulting industry, Plaintiffs generally receive 50% of any credit or refund they obtain for their clients, as well as 50% of the savings that results from their recommendations over a period of time. Once the period expires, the customer continues to enjoy the full amount of the savings as long as the rate remains available. Pursuant to this arrangement, Plaintiffs only receive payment for as long as their customer continues to enjoy the savings resulting from their recommendations.

6. As a result of years of experience in the industry, Plaintiffs have expertise in

examining their customers' utility billings and in finding rates and tariffs that will save their customers significant sums.

7. In the event that the Plaintiffs are able to find savings for their customers, they typically submit a written letter of recommendation to the customer or set up a face-to-face meeting to review the recommendations and, depending upon the recommendation made, to review the pros and cons of implementing the recommendation. In most instances, however, there is no downside to a recommendation. Most recommendations involve rate changes that have no impact on the customer's operations.

8. It was not until recently that there were changes effected by the legislature to begin to "deregulate" utility service in Pennsylvania. These changes are slowly being made. At the time of most of the events described in this Complaint, however, public utilities in Pennsylvania were not deregulated. As a result, the public utility servicing a particular area had a literal monopoly on utility service in that area.

9. As a result of this virtual monopoly, prior to deregulation the public utilities had very little need for marketing their services or for showing their customers ways in which the customer could lower its utility bills. From a practical standpoint, there was no competition for the public utility and any recommendation to the customer that would save the customer money would necessarily mean less money for the public utility. Under these circumstances, the public utilities had little incentive to save their customers money in their utility bills.

10. Although every public utility has a statutory duty to provide customers with the most advantageous rate available, PP&L frequently failed to do so. Simply put, although PP&L had a legal duty to inform its customers about the availability of better rates, it had not economic

incentive to do so; by passively allowing its customers to use higher rates than necessary, PP&L enjoyed a substantial windfall at its customers' expense.

11. Utility consultants, such as Plaintiffs, are successful in finding their customers savings for the foregoing reasons. Although lower rates and tariffs are available, the public utility has no incentive to bring these rates and tariffs to the customer's attention. The utility consultants, on the other hand, are highly motivated to find lower rates and tariffs for their customers because they are only paid if they succeed in doing so.

12. Like other public utilities, at all times relevant to this lawsuit PP&L had "marketing representatives" who were its primary contact with industrial customers for purposes of, *inter alia*, marketing the benefits of increasing production, and therefore electric usage, in the PP&L distribution area. Marketing representatives also purportedly assisted industrial customers in understanding PP&L's complex rate structure, and making decisions about what rate was best for their business. Given its "public utility" status, customers were generally led to believe that the marketing representatives were looking out after the customer's best interests.

13. Plaintiffs have had substantial success assisting PP&L's industrial customers achieve significant savings in their electric utility costs. The principals of Plaintiffs have been providing utility consulting in the PP&L region for approximately 20 years.

14. In every instance, plaintiff's recommendations to its industrial customers were entirely consistent with the principles and policies giving rise to the recommended rate, including, *inter alia*, economic development and system reliability. However, in many instances PP&L chose to ignore those principles and policies in order to increase its bottom line at its customers', and the Commonwealth's, expense.

15. Over the course of their dealings in the PP&L region, it is estimated that Plaintiffs have saved their customers millions of dollars in utility savings, further advancing the policies and principles which gave rise to the approval of the economic development and system reliability rates. However, these savings have partially diminished the substantial windfall which PP&L enjoys when charging more than the most advantageous rates available.

16. In addition to undermining PP&L's windfall, Plaintiff's have also caused PP&L representatives to be put in the uncomfortable position of having failed to disclose or recommend the most advantageous rate available. Plaintiffs' successes often lead to distrust and tension between the marketing representative and his customer contact, as the customer cannot understand why they were forced to pay a consultant to find a cheaper rate or tariff. The marketing representatives often come away looking badly in the eyes of the customer.

17. In addition to the foregoing, PP&L's marketing representatives envy what they perceive to be the large sums of money earned by the Plaintiffs. Some PP&L's representatives have taken the "if you can't beat them join them approach" and have become utility consultants themselves. Others, including at least one high level PP&L employee, Oliver Kaspar, have moonlighted as a utility consultant in competition with Plaintiffs while still an employee of PP&L.

18. The upshot of the foregoing is that PP&L, by and through its agents, employees and representatives, has taken affirmative action designed to interfere with Plaintiffs' ability to service their customers and to obtain the greatest level of savings for its customers. This active interference has taken numerous forms.

19. At all relevant times PP&L was aware of the written contracts that Plaintiffs

maintain with their customers. Correspondence to Plaintiffs' customers makes clear that, at all material times, PP&L was aware of the terms of the written contracts between Plaintiffs and their customers.

20. In addition to the foregoing, one PP&L representative, Larry Collins, went so far as to misrepresent himself to CUC in an effort to gain information about its utility consulting business. Mr. Collins contacted CUC and advised that he was "Carroll Collins" and that he represented Schoolhouse Graphics and that he might be able to get additional business for CUC through the Lancaster County School District. Mr. Collins requested all sales materials from CUC, which were forwarded by CUC's sales manager. CUC thereafter investigated the matter and learned that the person who had called was, in fact, Larry Collins. Mr. Collins was not interested in CUC's materials for Schoolhouse Graphics or the Lancaster County School District; rather, he was gathering information on behalf of PP&L.

21. At the time of the foregoing incident, Larry Collins had already displayed open hostility towards CUC in conjunction with some of CUC's clients. For instance, after CUC had presented recommendations to Kutco Printing & Products, Inc. and Reading Alloys, Mr. Collins advised those customers that they did not need CUC's assistance, that they should stay away from companies like CUC, that the customers should not deal with CUC but should deal directly with PP&L, and that PP&L would provide the same service as CUC without charge. At the time he made these statements Mr. Collins was aware that the customers were under written contract with CUC. In addition, as it relates to Kutco Printing & Products Company, Mr. Collins refused to apply PP&L's Industrial Development Initiatives Rider in accordance with the terms of PP&L's own tariff. When advised that he was applying the tariff improperly, Mr. Collins

informed CUC that he could implement the IDIR anyway that he wanted.

22. Mr. Collins is not the only PP&L representative to interfere with Plaintiffs' customer contracts. In fact, PP&L representatives regularly interfered with Plaintiffs' contractual relations by informing Plaintiffs' customers that the customers did not need Plaintiffs' assistance and that PP&L would do the work for the customers at no charge. These statements were not made in the context of general marketing, but rather with full knowledge of the terms of Plaintiffs' shared savings agreements, the fact that Plaintiffs had already provided recommendations to their customers, and with the intent to induce the customers to breach their contracts with Plaintiffs. Without access to PP&L's files, Plaintiffs cannot identify every client with whom PP&L actively interfered. However, the clients include Kutco Printing & Products Company, Bigbee Steel and Tank Company, Buck Company, Inc., Gentex Corporation, Carlisle Plastics, Inc., AMC, Polymer Dynamics, Inc., and Reading Alloys.

23. Another way in which PP&L has taken affirmative steps to interfere with Plaintiffs' contractual relations with its customers is by actually assisting the customer in purportedly terminating Plaintiffs' contracts. Plaintiff has repeatedly come across instances in the PP&L territory where it has made recommendations to customers that would save the customer large sums of money, only to receive a purported termination letter following the presentation or recommendation. In most instances the customer thereafter implements the recommendation that was provided by Plaintiffs. Plaintiffs have received such termination letters from customers such as Gentex Corporation, Carlisle Plastics, Inc., Buck Company, Inc., and Polymer Dynamics, Inc.

24. For example, PP&L went so far as to provide the actual wording to one customer

of PUSC, Buck Company, Inc., on how to terminate PUSC's contract with Buck Company, Inc. CUC was a consultant to PUSC with respect to Buck Company, Inc. and was financially harmed as a result of the actions described herein. As a result of this interference, PUSC was forced to institute suit against Buck Company, Inc. after it purportedly terminated PUSC's contract and refused to pay PUSC. Although PUSC ultimately settled the lawsuit against Buck Company, Inc., it lost thousands of dollars through the settlement and was forced to incur substantial attorney's fees and costs which would not have occurred except for PP&L's active interference in the account. Individuals at the highest levels of PP&L were aware of this interference, participated in same, but took no steps to stop same.

25. In addition to Buck Company, Inc., PP&L's interference has so dramatically harmed Plaintiffs' contractual relations with its clients that Plaintiffs were forced to commence legal action against other clients at great expense to Plaintiffs. This includes Gentex Corporation, Carlisle Plastics, Inc., and Bigbee Steel and Tank Company, former customers of CUC. PUSC provided sales services for CUC on these accounts and was financially harmed as a result of PP&L's actions as described herein. In each instance CUC received a termination letter, virtually identical to the termination letter received by PUSC from the Buck Company, Inc, which purportedly terminated the parties' utility consulting contract. In each instance, the client thereafter implemented CUC's recommendations and refused to compensate CUC.

26. Without the opportunity to review PP&L's files, there is no way for Plaintiffs to identify every customer with whom PP&L has interfered. However, Plaintiffs believe that there are numerous accounts that have been the subject of active interference by PP&L. The reason that Plaintiffs cannot identify every such customer is because every such interference is not

accompanied by a "termination" letter and there is often no explanation offered by the customer as to why they are not implementing Plaintiffs' recommendations. In addition, PP&L's interference takes other forms, as described below.

27. In addition to the foregoing interference, PP&L has actively interfered with Plaintiffs' contractual relations with its customers by providing false and misleading information to Plaintiffs' customers respecting the recommendations provided by Plaintiffs. By way of example, one of the more profitable recommendations for Plaintiffs has been the "interruptible" rate offered by PP&L. This is a very costly rate for PP&L in that it affords commercial users literally millions of dollars in savings over other "non-interruptible" rates. In essence, the interruptible rate is much less expensive than other rates because the user agrees, under certain conditions, to reduce its "demand" at the request of the utility. The downside is that by reducing its demand its operations may be effected; the upside is the tremendous utility savings the user can realize as a result.

28. At all relevant times PP&L was aware that Plaintiffs were advising qualifying industrial customers of the substantial benefits which their facilities would enjoy by subscribing to an "interruptible rate"; accordingly PP&L took affirmative steps to mislead customers respecting the risks and benefits of the interruptible rate and to effectively foreclose the rate to Plaintiffs' customers. These customers include the West Company, All-Steel, Inc., Longacre, and Fasson. PP&L was aware that, by doing so, Plaintiffs would be harmed.

29. PP&L attempted to obstruct access to the "interruptible rate" through several fronts. PP&L took the position that the rate was unavailable based upon an interpretation of the applicable tariffs which it knew was false and was contrary to its own testimony before the

Pennsylvania Public Utility Commission. By closing the interruptible rate to new customers, PP&L hoped to deprive Plaintiffs and their customers of millions of dollars of utility savings.

30. As a result of the position taken by PP&L, Plaintiffs' customers found that the interruptible rate was not available or, in the alternative, that they would be forced to litigate against PP&L before the PUC in order to obtain access to the rate. For many of Plaintiffs' clients, the prospect of litigating against a public utility was a taunting and unacceptable solution to the problem. In other situations, Plaintiffs would retain counsel on behalf of their clients to fight for the right to the interruptible rate. Plaintiffs do not seek damages for those customers who entered into settlement agreements, together with Plaintiffs, with PP&L regarding the customers' entitlement to and/or credits for the interruptible rate.

31. Even when PP&L took the position that the rate was available for customers, it presented false and misleading statistics to Plaintiffs' customers in an effort to dissuade the customer from implementing the interruptible rate. For instance, PP&L misrepresented to the customers the historical data respecting past interruptions. More specifically, PP&L routinely showed customers PP&L's history of interruptions from 1993 through 1996 showing 14 "interruptions." In fact, there were only 5 interruptions during that time period. In addition, PP&L would offer its customers incentives to leave the interruptible rate in violation of the applicable tariffs, notwithstanding the fact that the incentives were not authorized by applicable law. PP&L knew that in the event the customer left the interruptible rate that Plaintiffs would be harmed and intended this result.

32. An example of the foregoing type of interference involves PP&L decision to re-institute "grandfathered" riders such as the Economic Development Initiatives Rider on

customers' accounts who agreed to terminate interruptible service - in violation of the customers' interruptible contracts - notwithstanding the fact that such termination was not authorized by the applicable tariffs. PP&L took these affirmative steps, in violation of its own tariffs, with CUC's customers Carlisle Plastics, Inc. and Gentex Corporation. In addition, with respect to Carlisle Plastics, PP&L violated its own tariff by allowing Carlisle Plastics to leave the interruptible rate after six months and restoring the EDI credits. With respect to Gentex Corporation, PP&L provided false and misleading information regarding future savings in an effort to induce Gentex Corporation to terminate the interruptible rate.

33. Similarly, PP&L interfered with Plaintiffs' contractual relations with its customers by refusing to provide its clients with tariff options and/or benefits which the clients were legally entitled to receive. PP&L would take these positions because of the Plaintiffs' involvement in the process. For instance, PP&L refused to apply its tariffs as required by law in conjunction with C.R. Industries, a client of CUC. PUSC provided sales services for CUC and was financially harmed as a result of PP&L's actions.

34. In addition to the foregoing, PP&L interfered with Plaintiffs' ability to service their customers by taking actions designed to prevent Plaintiffs from delaying and/or obtaining account information from PP&L. Since PP&L had a literal monopoly on utility service in its area, it was the sole source of historical and usage data for Plaintiffs' customers in the area. In order to obtain this information from PP&L, Plaintiffs would have their customers execute authorizations permitting the release of the information to Plaintiffs. Notwithstanding these authorizations, PP&L would refuse the authorizations and/or intentionally delay responding to same. In addition, when the requests for information were made PP&L would notify its

marketing representatives of same. Once notified that Plaintiffs were seeking account information, PP&L representatives would thereafter meet with Plaintiffs' customers and attempt to dissuade the customers from doing business with Plaintiffs. For instance, PP&L delayed in providing account information to Bigbee Steel and Tank Company in order to provide its account representative an opportunity to present recommendations to CUC's client. As a direct result of these actions, CUC lost substantial revenues.

35. The foregoing interference by PP&L was done intentionally as part of an ongoing pattern and practice designed to harm Plaintiffs' financial interests. In addition and/or in the alternative to the foregoing, PP&L was aware that the interference with Plaintiffs' contractual relations and resultant financial harm to Plaintiffs was an inevitable consequence of its conduct.

36. Another form of damage caused by PP&L's interference is that it effectively destroys Plaintiffs' ability to obtain ongoing and future business from its clients. In ordinary circumstances, once clients realize the substantial savings that they are earning as a result of Plaintiffs' involvement, they are very receptive to additional recommendations from Plaintiffs.

37. As a result, Plaintiffs typically are able to provide ongoing recommendations to clients after they execute their contracts. In most instances clients have contracts with both CUC and PUSC. In many instances CUC will focus on electric, gas, sewer and water recommendations, and PUSC will focus on telecommunications savings. Clients will often implement electric, gas, sewer, and/or water recommendations through CUC and, thereafter, implement telecommunications recommendations through PUSC. PP&L's interference with Plaintiffs' contractual relations, as described above, effectively precludes Plaintiffs from maintaining and growing an ongoing relationship with the clients and to benefit from their cross

marketing efforts and services. The financial harm to Plaintiffs as a result is substantial.

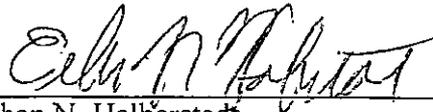
38. The actions by PP&L, as described above, were not privileged and had no legitimate business justification.

39. The actions by PP&L, as described above, were not isolated instances, but were part of an ongoing malicious campaign designed to harm Plaintiffs' interests. Given the ongoing nature of PP&L's conduct, and the outrageousness of its activities, especially in light of the monopoly position that it holds, Plaintiffs' are entitled to punitive damages in addition to such compensatory damages as may be allowed by law.

WHEREFORE, plaintiffs request this Court to enter judgment in their favor in an amount in excess of \$50,000.00, plus interest, costs, and such other relief as the Court deems appropriate.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:



Ethan N. Halberstadt
Attorneys for Plaintiffs

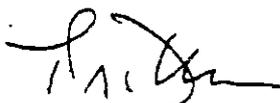
Dated: 11/23/24

VERIFICATION

I, Thomas J. Dunn, president of Public Utility Service Corporation, plaintiff in the within action, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Date:

11/23/99



Thomas J. Dunn

COUNTY OF CHESTER - OFFICE OF THE SHERIFF

CIVIL PROCESS COSTS/PROCEDURE (610) 344-5978

N. CHURCH ST., SUITE 126 P.O. BOX 2748 WEST CHESTER, PA 19380-0991 FAX: (610) 344-5345

RETURN PAPERS TO CHESTER COUNTY - including complete Chester County Return Form, Service Information and any refund checks. Thank you.

SHERIFF SERVICE PROCESS RECEIPT and AFFIDAVIT OF RETURN

INSTRUCTED BY AV...

1. PLAINTIFF/S/ COMMERCIAL UTILITY CONSULTANTS, et al. 2. COURT NUMBER 99-09799

3. DEFENDANT/S/ PENNSYLVANIA POWER & LIGHT COMPANY 4. TYPE OF WRIT OR COMPLAINT COMPLAINT (CIVIL)

SERVE AT 5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVICE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED OR SOLD PENNSYLVANIA POWER & LIGHT COMPANY, now known as PP&L, INC. 6. ADDRESS (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code) 2 NORTH 9th STREET, ALLENTOWN, PENNSYLVANIA 18101

7. INDICATE UNUSUAL SERVICE: [] PERSONAL [] PERSON IN CHARGE [X] DEPUTIZE [] CERT. MAIL [] REG. MAIL [] POSTED [] OTHER

Now, Nov 23 19 99, I, SHERIFF OF CHESTER COUNTY, PA, do hereby deputize the Sheriff of Lehigh County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. Robert A. Gilman SHERIFF OF CHESTER COUNTY

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE: PLEASE DEPUTIZE SHERIFF OF LEHIGH COUNTY TO EFFECTUATE SERVICE UPON DEFENDANT TO LEHIGH CO.: PLEASE SERVE PERSON-IN-CHARGE Check made payable to Lehigh County Sheriff in the amount of \$32.00 is enclosed for Lehigh's Cost.

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN- Any deputy sheriff levying or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

9. PRINT/TYPE NAME AND ADDRESS OF ATTORNEY/ORIGINATOR Ethan N. Halberstadt 475 Allendale Rd., Suite 200 King of Prussia, PA 19406 10. TELEPHONE NUMBER 610.354.9700 11. DATE 11/22/99 12. SIGNATURE [Signature]

SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above } SIGNATURE of Authorized CCSD Deputy or Clerk and Title [Signature] 14. Date Filed 11-23-99 15. Expiration/Hearing date 12-23-99

16. I hereby CERTIFY and RETURN that I [] have personally served, [] have legal evidence of service as shown in "Remarks", [] have executed as shown in "Remarks", the writ or complaint described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below by handling a TRUE and ATTESTED copy thereof.

17. [] I hereby certify and return a NO SERVICE because I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)

18. Name and title of individual served (if not shown above) Annette Taylor Legal Agent 19. A person of suitable age and discretion than residing in the defendant's usual place of abode []

20. Address of where served (complete only if different than shown above) (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP code) 21. Date of Service 12/3/99 22. Time 2:35 PM EST

Table with 4 columns: ATTEMPTS, Date, Time, Date, Time. Includes handwritten entries for 11/23/99 and 12/3/99.

24. Advance Costs 11-22-99 38.00 25. Service Costs 26. Notary Cert. 27. Mileage or Postage 28. Total Costs 29. COSTS DUE OR REFUND

30. REMARKS: SHERIFF'S SALE AND/OR EVICTION SCHEDULED FOR: DATE: TIME: [] AM [] PM IF YOU WISH TO PROCEED WITH SALE - ADVISE THIS OFFICE 24 HOURS PRIOR TO SALE DATE. NOT AFFIDAVIT OF SERVICE

31. AFFIRMED and subscribed to before me this 32. Signature of Dep. Sheriff 33. Date 34. day of 19 35. Signature of Sheriff of Chester County Robert A. Gilman 36. Date 37. Prothonotary/Deputy/Notary Public 38. Signature of Foreign Sheriff 39. Date

40. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED ISSUING AUTHORITY AND TITLE. 41. Date Received

COMMERCIAL UTILITY CONSULTANTS
VS
PENNSYLVANIA POWER & LIGHT CO.

DOC#: 1999-CV-3994
CASE: 1999-NC-1216
EXPIR: 23-Dec-1999
DEPOSIT: 32.00

COURT: COMPLAINT IN CIVIL ACTION
99-05799 (CHESTER COUNTY)
SERVE: PENNSYLVANIA POWER & LIGHT
AT: 2 N. 9TH ST. ALLENTOWN, PA 18101

PAID

RETURN OF SERVICE

1. NAME OF INDIVIDUAL SERVED: Annette Taylor
2. RELATIONSHIP TO DEFENDANT: Legal agent
3. DATE: 12-3-99 19 99 TIME: 2:35 pm. HOURS:
4. LOCATION OF SERVICE: 2 N. 9th St.
Allentown

5. UNABLE TO LOCATE:
() NUMBER OF ATTEMPTS TO LOCATE DEFENDANT AT LAST KNOWN ADDRESS:
1. DATE & TIME _____ 2. DATE & TIME _____
3. DATE & TIME _____ 4. DATE & TIME _____
5. DATE & TIME _____ 6. DATE & TIME _____

ACCEPTANCE OF SERVICE

I HEREBY ACCEPT SERVICE OF THE LEGAL PROCESS AS OUTLINED ON THE FRONT OF THE DOCUMENT. THIS SERVICE IS ACCEPTED ON BEHALF OF THE LISTED DEFENDANT(S) AND I HEREBY CERTIFY THAT I AM AUTHORIZED TO DO SO.

PRINTED NAME OF AUTHORIZED AGENT _____
DATE: _____

SIGNATURE OF AUTHORIZED AGENT _____
TIME: _____

SO ANSWERS

ENDORSED AND SUBSCRIBED BEFORE ME ON
December 7, 1999
Susan J. Sedora

Lee Jeter
DEPUTY SHERIFF
Ronald W. Koller
SHERIFF OF LEHIGH COUNTY

NOTARIAL SEAL
SUSAN J. SEDORA, NOTARY PUBLIC
CITY OF ALLENTOWN, LEHIGH COUNTY, PA
MY COMMISSION EXPIRES JUNE 25th, 2001

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

_____	:	
COMMERCIAL UTILITY	:	CIVIL ACTION - LAW
CONSULTANTS and	:	
PUBLIC UTILITY SERVICE	:	
CORPORATION,	:	NO. 99-09799
Plaintiffs,	:	
	:	
v.	:	
	:	
PENNSYLVANIA POWER &	:	
LIGHT COMPANY, now known as	:	
PP&L, INC.,	:	
	:	Jury Trial Demanded
Defendant.	:	
_____	:	Hon. Katherine B.L. Platt

ORDER

AND NOW, this _____ day of _____, 2000, upon consideration of the Preliminary Objections of Defendant PP&L, Inc. and any response thereto, it is hereby ORDERED that the Preliminary Objections are SUSTAINED. Plaintiffs' Complaint is hereby DISMISSED WITH PREJUDICE.

BY THE COURT:

Katherine B.L. Platt, J.

Glen R. Stuart
Identification No. 41302
Bryant D. Lim
Identification No. 78738
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5883/5165



07 JAN 21 AM 9:46
CLERK OF COURT
CHESTER COUNTY
PHILADELPHIA, PA.

Attorneys for Defendant
PP&L, Inc.

COMMERCIAL UTILITY	:	COURT OF COMMON PLEAS
CONSULTANTS and	:	CHESTER COUNTY, PENNSYLVANIA
PUBLIC UTILITY SERVICE	:	
CORPORATION,	:	
	:	CIVIL ACTION - LAW
Plaintiffs,	:	
	:	NO. 99-09799
v.	:	
	:	JURY TRIAL DEMANDED
PENNSYLVANIA POWER &	:	
LIGHT COMPANY, now known as	:	HON. KATHERINE B.L. PLATT
PP&L, INC.,	:	
	:	
Defendant.	:	ORAL ARGUMENT REQUESTED

PRELIMINARY OBJECTIONS OF DEFENDANT PP&L, INC.

Pursuant to Pennsylvania Rule of Civil Procedure 1028, defendant Pennsylvania Power & Light Co. (now known as PP&L, Inc.) ("PP&L"), by and through its undersigned counsel, hereby raises preliminary objections to the Complaint of Plaintiffs and in support thereof avers as follows:

1. On November 23, 1999, Plaintiffs Commercial Utility Consultants ("CUC") and Public Utility Service Corporation ("PUSC") (collectively, "Plaintiffs") filed a Complaint against PP&L (the "Complaint").

2. The Complaint alleges that Plaintiffs provide certain utility consulting services for customers. Compl., ¶ 3.

3. The Complaint alleges that Plaintiffs enter into one-page “shared savings” written contracts with their customers. *Id.*

4. The Complaint alleges that Plaintiffs “agree[] to review the rates, tariffs, discounts, riders and total charges that apply to the customer’s utility billings and to submit recommendations to the customer for possible savings, credits or refunds.” *Id.*

5. The Complaint alleges that it “is standard in the utility consulting industry ... [that] Plaintiffs generally receive 50% of any credit or refund they obtain for their clients, as well as 50% of the savings that results from their recommendations over a period of time.” *Id.*, ¶ 5.

6. The Complaint alleges that “PP&L had a legal duty to inform its customers about the availability of better rates, . . .” *Id.*, ¶ 10.

7. The Complaint alleges that PP&L marketing representatives “assisted industrial customers in understanding PP&L’s complex rate structure, and making decisions about what rate was best for their business.” *Id.*, ¶ 12.

8. The Complaint alleges that PP&L, as the public utility providing the utility services, “has taken affirmative action designed to interfere with Plaintiffs’ ability to service their customers and to obtain the greatest level of savings,” and, therefore, tortiously interfered with Plaintiffs’ existing contractual relations. *Id.*, ¶ 18.

9. The Complaint also alleges that “PP&L’s interference ... effectively destroy[ed] Plaintiffs’ ability to obtain ongoing and future business from its clients,” and, therefore, tortiously interfered with Plaintiffs’ prospective contractual relations. *Id.*, ¶¶ 36-37.

I. **PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER FOR FAILURE TO STATE A CAUSE OF ACTION FOR EXISTING CONTRACTUAL RELATIONS -- Pa. R. Civ. P. 1028(a)(4)**

10. Plaintiffs' cause of action against PP&L for tortious interference with existing contractual relations is legally insufficient as a matter of law because it fails to state a claim upon which relief can be granted.

11. The Complaint alleges that Plaintiffs' customers engage Plaintiffs "to review the rates, tariffs, discounts, riders and total charges that apply to the customer's utility billings and to submit recommendations to the customer for possible savings, credits or refunds." Compl., ¶ 3.

12. The Complaint fails to allege that Plaintiffs' written contracts with their customers are for a definite period of time.

13. There is a presumption under Pennsylvania law that such contracts are terminable at-will.

14. The contractual relationships between Plaintiffs and their customers are in the employment context.

15. The Complaint fails to state a claim for tortious interference with existing contractual relations because, under Pennsylvania law, one cannot tortiously interfere with an existing terminable-at-will relationship in the employment context.

WHEREFORE, defendant PP&L requests that the Court sustain its preliminary objection as to all claims for tortious interference with Plaintiffs' existing contracts, dismiss all such claims with prejudice, and award defendant its costs, expenses and such other relief deemed just and appropriate.

**II. PRELIMINARY OBJECTION IN THE NATURE OF A DEMURRER
FOR FAILURE TO STATE A CAUSE OF ACTION FOR PROSPECTIVE
CONTRACTUAL RELATIONS -- Pa. R. Civ. P. 1028(a)(4)**

16. Plaintiffs' claims against PP&L for tortious interference with prospective contractual relations (including their claims that PP&L's alleged interference caused their customers not to continue existing contracts terminable-at-will) are legally insufficient as a matter of law because they fail to state a claim upon which relief can be granted.

17. The Complaint alleges that the parties compete with each other by providing the same services to the customers at issue. *See, e.g.*, Compl., ¶¶ 3, 12 and 22.

18. Plaintiffs fail to state a claim for tortious interference with prospective contractual relations because, under Pennsylvania law, the Complaint does not establish that PP&L employed wrongful means or created an unlawful restraint of trade.

19. Plaintiffs fail to state a claim for tortious interference with prospective contractual relations because the competitor's privilege, in the absence of wrongful means or an unlawful restraint of trade, precludes Plaintiffs from asserting a cause of action for tortious interference with prospective contractual relations.

WHEREFORE, defendant PP&L requests that the Court sustain its preliminary objection as to all claims for tortious interference with Plaintiffs' prospective contractual relations, dismiss all such claims with prejudice, and award defendant its costs, expenses and such other relief deemed just and appropriate.

III. PLAINTIFFS' CLAIM FOR PUNITIVE DAMAGES FAILS AS A MATTER OF LAW BECAUSE PLAINTIFFS' UNDERLYING TORT CLAIMS FAIL AS A MATTER OF LAW; IN THE ALTERNATIVE, PLAINTIFFS HAVE NOT ALLEGED FACTS SUFFICIENT TO DEMONSTRATE EVIL MOTIVE OR RECKLESS INDIFFERENCE TO THE RIGHTS OF OTHERS -- Pa. R. Civ. P. 1028(a)(4)

20. The Complaint seeks punitive damages against PP&L. Compl., ¶ 39.

21. Plaintiffs have no valid tort claims and, therefore, no valid claim for punitive damages. *Id.*, ¶ 22.

22. Alternatively, even if a tort claim survives PP&L's demurrers in Paragraphs 10 to 19 above, Plaintiffs have not alleged facts sufficient to demonstrate outrageous conduct, evil motive or reckless indifference on the part of PP&L.

23. Therefore, Plaintiffs' demand for punitive damages should be stricken from the Complaint.

WHEREFORE, defendant PP&L requests that the Court sustain its preliminary objection to Plaintiffs' claims for punitive damages, dismiss those claims with prejudice, and award defendant its costs, expenses and such other relief deemed just and appropriate.

IV. PRELIMINARY OBJECTION AND MOTION TO STRIKE BASED UPON PLAINTIFFS' FAILURE TO JOIN IN SEPARATE COUNTS THEIR SEPARATE CAUSES OF ACTION, THEREBY FAILING TO CONFORM TO THE RULES OF LAW AND RULES OF COURT -- Pa. R. Civ. P. 1020(d)(1), 1028(a)(2)

24. The Complaint alleges that PP&L tortiously interfered with Plaintiffs' *existing* contractual relations. Compl., ¶¶ 22-26.

25. The Complaint also alleges that PP&L tortiously interfered with Plaintiffs' *prospective* contractual relations, including the continuation of existing terminable-at-will contracts. *Id.*, ¶¶ 36-37.

26. Under Pennsylvania law, tortious interference with *existing* contractual relations is a different cause of action, with different elements and subject to different defenses, than tortious interference with *prospective* contractual relations.

27. Pa. R. Civ. P. 1020(d)(1) requires as follows:

If a transaction or occurrence gives rise to more than one cause of action against the same person, including causes of action in the alternative, they *shall be* joined in separate counts in the action against any such person.

(Emphasis added.)

28. Plaintiffs have failed to comply with Pa. R. Civ. P. 1020(d)(1) by failing to set forth their separate claims for tortious interference with existing and prospective contractual relations (and for punitive damages) in separate counts, and, therefore, the Complaint should be stricken.

WHEREFORE, defendant PP&L requests that the Court sustain its preliminary objection, strike the Complaint for failure to conform to law or rule of court, and award defendant its costs, expenses and such other relief deemed just and appropriate.

V. PRELIMINARY OBJECTION AND MOTION TO STRIKE BASED UPON PLAINTIFFS' FAILURE TO ATTACH THE WRITTEN CONTRACTS AT ISSUE, THEREBY FAILING TO CONFORM TO THE RULES OF LAW AND RULES OF COURT -- Pa. R. Civ. P. 1019(h), 1028(a)(2)

29. The Complaint alleges that Plaintiffs "provide utility consulting services pursuant to 'shared savings' written contracts with their customers." Compl., ¶ 3.

30. The Complaint further identifies with specificity certain customers with whom Plaintiffs allege PP&L tortiously interfered with those written contracts. *Id.*, ¶ 22.

31. The Complaint purports to state claims for tortious interference with existing

contractual relations, and with the continuation of existing contractual relations. *See, e.g., id.*, ¶¶ 18, 33, 35 and 37.

32. Pa. R. Civ. P. 1019(h) states as follows:

A pleading shall state specifically whether any claim or defense set forth therein is based upon a writing. If so, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

33. Plaintiffs failed to comply with Pa. R. Civ. P. 1019(h) by failing to attach a copy of each contract upon which the Complaint is based.

WHEREFORE, defendant PP&L requests that the Court sustain its preliminary objection, strike the Complaint for failure to conform to law or rule of court, and award defendant its costs, expenses and such other relief deemed just and appropriate.

VI. PRELIMINARY OBJECTION AND MOTION TO STRIKE BASED UPON PLAINTIFFS' INCLUSION OF SCANDALOUS AND IMPERTINENT MATTER, THEREBY FAILING TO CONFORM TO THE RULES OF LAW AND RULES OF COURT -- Pa. R. Civ. P. 1028(a)(2)

34. For the reasons set forth above, Plaintiffs' Complaint fails to state a cause of action for tortious interference with existing and/or prospective contractual relations. By way of alternative argument, in the Complaint, Plaintiffs include scandalous and impertinent matter directed at the personal activities of two PP&L employees, Oliver Kasper and Larry Collins. Compl., ¶¶ 17 and 20.

35. The allegation directed to Mr. Kasper is that he has "moonlighted as a utility consultant in competition with Plaintiffs while still an employee of PP&L." *Id.*, ¶ 17.

36. The allegation directed to Mr. Collins is that he personally contacted Plaintiff

CUC and allegedly misrepresented himself in order to gain information about CUC's utility consulting business. *Id.*, ¶ 20.

37. Plaintiffs do not allege that the alleged individual conduct of Messrs. Kasper and Collins was sanctioned by PP&L. Nor were the individual activities of Messrs. Kasper and Collins directed to the alleged contractual relationships between CUC and PUSC and their customers.

38. Therefore, the allegations directed to the personal activities of Messrs. Kasper and Collins neither relate to nor support Plaintiffs' purported claims for tortious interference with Plaintiffs' contractual relationships with their customers.

WHEREFORE, defendant PP&L requests that the Court sustain its preliminary objection, strike the scandalous and impertinent matter referenced herein, and award defendant its costs, expenses and such other relief deemed just and appropriate.

VII. PRELIMINARY OBJECTION AND MOTION TO STRIKE BASED UPON THE INSUFFICIENT SPECIFICITY OF THE PLEADING -- Pa. R. Civ. P. 1028(a)(3)

39. For the reasons set forth above, Plaintiffs' Complaint fails to state a cause of action for tortious interference with existing and/or prospective contractual relations. By way of alternative argument, to the extent that the Complaint seeks to allege tortious interference with unidentified existing or prospective contractual relationships, the Complaint fails to provide sufficient specificity regarding the identity of the unidentified existing and/or prospective contractual relationships with which Plaintiffs contend PP&L interfered. *See, e.g.*, ¶¶ 26, 27 and 37.

40. Through their filing of writs of summons in August 1997 at Docket Nos. 97-

06580 and 97-07178, and the pendency of those matters for more than two years, as well as their participation in litigation against at least four of their customers (Compl., ¶¶ 24-25), and their participation in proceedings before the Pennsylvania Public Utility Commission involving other customers (including Plaintiffs' retention of counsel to represent the other customers in said proceedings) (*id.*, ¶ 30), Plaintiffs have had the opportunity to pursue discovery directed to these allegations.

41. Plaintiffs should not be permitted to proceed with claims against PP&L for tortious interference with *unidentified* contractual relationships.

WHEREFORE, defendant PP&L requests that the Court sustain its preliminary objection, strike those allegations directed to Plaintiffs' unidentified customers, and award defendant its costs, expenses and such other relief deemed just and appropriate. Alternatively, PP&L requests that the Court direct Plaintiffs to provide sufficient specificity about the identity of any customers beyond those already identified in the Complaint.

DATED: January 20, 2000

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Glen R. Stuart", written over a horizontal line.

Glen R. Stuart
Bryant D. Lim
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5883/5165

Attorneys for Defendant PP&L, Inc.

OF COUNSEL:

Augustus C. Martin
PP&L, Inc.
Two North Ninth Street
Allentown, PA 18101

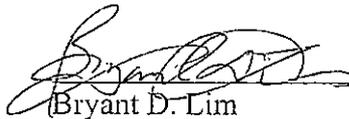
CERTIFICATE OF SERVICE

I, Bryant D. Lim, hereby certify that a true and correct copy of the Preliminary Objections of Defendant PP&L, Inc. to Plaintiffs' Complaint was served via first class mail on January 20, 2000, on the following:

Ethan N. Halberstadt, Esquire
POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.
475 Allendale Road, Suite 200
King of Prussia, PA 19406

Attorney for Plaintiffs

00 JAN 21 AM 9:56
FEB 1 2000
U.S. DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA, PA


Bryant D. Lim

Glen R. Stuart
Identification No. 41302
Bryant D. Lim
Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5883/5165

FILED
00 FEB 10 AM 9:38
OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA

Attorneys for Defendant
PP&L, Inc.

COMMERCIAL UTILITY
CONSULTANTS and
PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER &
LIGHT COMPANY, now known as
PP&L, INC.,

Defendant.

COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 99-09799

ORAL ARGUMENT REQUESTED

JURY TRIAL DEMANDED

HON. KATHERINE B.L. PLATT

PRAECIPE FOR DETERMINATION

TO THE PROTHONOTARY:

Kindly submit the following matter to Judge Katherine B.L. Platt for determination:

PRELIMINARY OBJECTIONS OF DEFENDANT PP&L, INC.

Date of filing/service: February 9, 2000

Oral argument is requested.



Glen R. Stuart
Bryant D. Lim
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5883/5165

Attorneys for Defendant PP&L, Inc.

Glen R. Stuart
Identification No. 41302
Bryant D. Lim
Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5883/5165

FILED
00 FEB 10 AM 9:38

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COMMERCIAL UTILITY
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JURY TRIAL DEMANDED

HON. KATHERINE B.L. PLATT

BRIEF IN SUPPORT OF THE
PRELIMINARY OBJECTIONS OF DEFENDANT
PP&L, INC. TO PLAINTIFFS' COMPLAINT

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I. INTRODUCTION

Plaintiffs Commercial Utility Consultants (“CUC”) and Public Utility Service Corporation (“PUSC”) (collectively, the “Plaintiffs”) filed a Complaint on November 23, 1999 against Pennsylvania Power & Light Co. (now known as PP&L, Inc.) (“PP&L”) claiming that PP&L interfered with their existing and prospective contractual relations. Because Plaintiffs’ Complaint, *inter alia*, fails to state a claim upon which relief can be granted and fails to conform to law or rule of court, PP&L filed Preliminary Objections on January 21, 2000.^{1/} For the reasons set forth herein, PP&L respectfully submits that this Court should grant PP&L’s Preliminary Objections and dismiss Plaintiffs’ Complaint with prejudice.

II. STATEMENT OF THE CASE

In their Complaint, Plaintiffs allege that they are in the business of providing certain utility consulting services for certain named and unnamed customers. Compl., ¶ 3.^{2/} Plaintiffs allege that they enter into one-page “shared savings” written contracts with their customers. *Id.* Pursuant to these contracts, Plaintiffs “agree[] to review the rates, tariffs, discounts, riders and total charges that apply to the customer’s utility billings and to submit recommendations to the customer for possible savings, credits or refunds.” *Id.* Plaintiffs allege that it “is standard in the

^{1/} On November 23, 1999, CUC alone filed a Complaint in this Court alleging identical facts and legal theories. *See* Docket No. 99-09800 (assigned to Judge Paula Francisco Ott). Due to the duplicative nature of the CUC-only Complaint, PP&L filed nearly identical preliminary objections in that case.

^{2/} For purposes of testing the legal sufficiency of Plaintiffs’ claims at the preliminary objection stage, all well-pleaded, material and relevant facts (but not conclusions of law, unwarranted inferences of fact, argumentative allegations or expressions of opinion) alleged in the Complaint are deemed true. Thus, the allegations set forth in this Section are based upon Plaintiffs’ allegations in the Complaint.

utility consulting industry ... [that] Plaintiffs generally receive 50% of any credit or refund they obtain for their clients, as well as 50% of the savings that results from their recommendations over a period of time.” *Id.*, ¶ 5.

Just as Plaintiffs allege that they “are in the business of ... providing consulting services,” (*id.*, ¶ 3), they allege that PP&L marketing representatives “assisted industrial customers in understanding PP&L’s complex rate structure, and making decisions about what rate was best for their business.” *Id.*, ¶ 12. They also allege that PP&L representatives informed Plaintiffs’ customers that they “did not need Plaintiffs’ assistance and that PP&L would do the work for the customers at no charge.” *Id.*, ¶ 22. Plaintiffs allege that PP&L, as the public utility providing the utility services, “has taken affirmative action designed to interfere with Plaintiffs’ ability to service their customers and to obtain the greatest level of savings,” and, therefore, tortiously interfered with Plaintiffs’ existing contractual relations. *Id.*, ¶ 18. They also allege that “PP&L’s interference ... effectively destroy[ed] Plaintiffs’ ability to obtain ongoing and future business from its [sic] clients,” and, therefore, tortiously interfered with Plaintiffs’ prospective contractual relations. *Id.*, ¶¶ 36-37.

III. STATEMENT OF QUESTIONS PRESENTED

A. Where Plaintiffs only have terminable-at-will contracts in the employment context with their customers, can Plaintiffs state a claim for tortious interference with existing contractual relations?

B. Where Plaintiffs’ allegations do not establish that PP&L employed wrongful means or created an unlawful restraint of trade, can Plaintiffs state a claim for tortious interference with prospective contractual relations?

C. Where Plaintiffs' underlying tort claims fail, can Plaintiffs state a claim for punitive damages?

D. Where Plaintiffs fail to join in separate counts their separate causes of action for tortious interference with existing and prospective contractual relations (and for punitive damages), does the Complaint comply with Pa. R. Civ. P. 1020(d)(1)?

E. Where Plaintiffs fail to attach the written contracts at issue, does the Complaint comply with Pa. R. Civ. P. 1019(h)?

F. Where Plaintiffs' Complaint contains scandalous and impertinent matter, does the Complaint comply with Pa. R. Civ. P. 1028(a)(2)?

G. Where Plaintiffs allege tortious interference with unidentified contractual relations, is the Complaint sufficiently pled as required by Pa. R. Civ. P. 1028(a)(3)?

For all the reasons set forth below, this Court should answer each of the foregoing questions in the negative and sustain PP&L's Preliminary Objections.

IV. SUMMARY OF ARGUMENT

Plaintiffs' Complaint suffers from numerous substantive and procedural deficiencies. First, Plaintiffs fail to state a cause of action for existing contractual relations because the contracts at issue are terminable-at-will in the employment context; therefore, Plaintiffs cannot state a cause of action for tortious interference with those existing contractual relations. Second, Plaintiffs' claims for tortious interference with prospective contractual relations fail as a matter of law because Plaintiffs, as PP&L's competitors, do not allege that PP&L engaged in "wrongful means" or created an "unlawful restraint of trade." Third, given that Plaintiffs' tort claims fail, Plaintiffs' claims for punitive damages likewise fail. (Alternatively, even if this Court found that

the tort claims somehow survive, Plaintiffs' claims for punitive damages fail because Plaintiffs do not aver facts sufficient to demonstrate "evil motive or reckless indifference to others.")

The Complaint contains the following additional deficiencies:

- ▶ In violation of Pa. R. Civ. P. 1020(d)(1), Plaintiffs fail to join in separate counts their distinct causes of action for tortious interference with existing and prospective contractual relations.
- ▶ In violation of Pa. R. Civ. P. 1019(h), Plaintiffs fail to attach the written contracts at issue.
- ▶ In violation of Pa. R. Civ. P. 1028(a)(2), Plaintiffs include scandalous and impertinent matter concerning the individual acts of two PP&L employees.
- ▶ In violation of Pa. R. Civ. P. 1028(a)(3), Plaintiffs fail to provide sufficient specificity about the identity of certain contractual relations with which Plaintiffs contend PP&L interfered.

In short, this Court should hold that Plaintiffs' Complaint fails to state a cause of action for tortious interference upon which relief can be granted, sustain PP&L's preliminary objections, and dismiss Plaintiffs' Complaint with prejudice.

V. ARGUMENT

A. The Court Should Grant PP&L's Preliminary Objections In The Nature Of Demurrers.

Pursuant to Pa. R. Civ. P. 1028(a)(4), PP&L raised three Preliminary Objections in the nature of demurrers. *See* Preliminary Objections, I, II and III. The standard for ruling on such preliminary objections is well-settled. Preliminary objections in the nature of a demurrer must be

sustained when the Complaint fails to set forth factual allegations sufficient to entitle a plaintiff to relief. *Parano v. O'Connor*, 433 Pa. Super. 570, 574, 641 A.2d 607, 609 (1994). Although well-pleaded, material and relevant facts are accepted as true for the purpose of testing the legal sufficiency of a claim, a court should not consider as true the pleading's conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. *Giffin v. Chronister*, 151 Pa. Commw. 286, 290, 616 A.2d 1070, 1072 (1992). See also *C&K Enterprises, Inc. v. Dallas Area Mun. Auth.*, 16 Pa. D&C 4th 195, 1992 WL 554207, at *2-3 (Luzerne C.C.P. 1992) (attached hereto as Ex. A)^{3/} (where allegations in support of action for tortious interference with contractual relations were "conspicuously devoid" of factual averments necessary to support legal conclusions, the court sustained preliminary objections in the nature of a demurrer). When the facts as pleaded clearly fail to allege a valid cause of action, the court should sustain defendant's demurrer. *Savitz v. Weinstein*, 395 Pa. 173, 174, 149 A.2d 110, 111 (1959).

1. Plaintiffs fail to state a claim for tortious interference with existing contractual relations because one cannot tortiously interfere with an existing terminable-at-will contract.

In its first demurrer, PP&L focuses on Plaintiffs' claim that PP&L tortiously interfered with Plaintiffs' contracts to provide consulting services to their existing customers by inducing or encouraging those customers to terminate those contracts. However, under Pennsylvania law, there is no cause of action for tortious interference with existing terminable-at-will contracts in the employment context.

In *Hennessy v. Santiago*, 708 A.2d 1269, 1278-79 (Pa. Super. 1998), the Pennsylvania

^{3/} For the convenience of the Court and the parties, PP&L attaches hereto all unpublished opinions cited herein.

Superior Court affirmed the trial court's decision to grant defendant's Preliminary Objection with respect to plaintiff's claim for tortious interference with existing contractual relations. In doing so, the Superior Court explained that "an action for intentional interference with performance of a contract in the employment context applies only to interference with a prospective employment relationship whether at-will or not, not a presently existing at-will employment relationship." *Id.* See also *Buckwalter v. Parker*, No. 96-4795, 1998 WL 195701, *2, *4 (E.D. Pa. Mar. 25, 1998) (attached hereto as Ex. B) (relying on the Pennsylvania Superior Court's decision in *Hennessy*, the *Buckwalter* court granted defendant's motion for reconsideration and dismissed plaintiff's action for tortious interference), *aff'd*, 175 F.3d 1010 (3d Cir. 1999). Therefore, if Plaintiffs' existing contracts with their customers are terminable-at-will contracts in the employment context, then Plaintiffs have no claim for tortious interference with those contracts.

The existing contractual relations with which PP&L allegedly interfered constitute at-will contracts. Under Pennsylvania law, there is a presumption that employment contracts are at-will. See, e.g., *Stumpp v. Stroudsburg Mun. Auth.*, 540 Pa. 391, 396, 658 A.2d 333, 335 (1995); *Scott v. Extracorporeal, Inc.*, 376 Pa. Super. 90, 94-95, 545 A.2d 334, 336 (1988). In fact, the burden of overcoming the presumption and proving that one is not employed at-will "rest squarely" with the employee. *Luteran v. Loral Fairchild Corp.*, 455 Pa. Super. 364, 370, 688 A.2d 211, 214, *app. denied*, 549 Pa. 717, 701 A.2d 578 (1997).^{4/} Courts have found consulting agreements such

^{4/} Plaintiffs do not allege facts supporting any of the following exceptions that could rebut the presumption: (1) an agreement for a definite duration; (2) an agreement specifying that the employee will be discharged for cause only; (3) sufficient additional consideration; or (4) an applicable recognized public policy exception. *Luteran*, 455 Pa. Super. at 370, 688 A.2d at 214 (citing *Robertson v. Atlantic Richfield Petroleum Prods.*

(continued...)

2. Plaintiffs fail to state a claim for tortious interference with prospective contractual relations because Plaintiffs' allegations do not establish that PP&L employed wrongful means or created an unlawful restraint of trade.

In its second demurrer, PP&L focuses on Plaintiffs' separate cause of action for tortious interference with prospective contractual relations (and the continuation of existing contractual relations).^{5/} Given that Plaintiffs allege that PP&L and Plaintiffs compete in the business of providing information about utility rates to their customers, Plaintiffs fail to allege facts (as opposed to conclusions) that PP&L acted without privilege or justification, a necessary element of this cause of action. *See, e.g., Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 530 (3d Cir. 1998) (applying Pennsylvania law); and *Silver v. Mendel*, 894 F.3d 598, 602 (3d Cir. 1990) ("In Pennsylvania, however, it is clear that the burden is on the Plaintiff to show an absence of privilege/justification.").^{6/}

^{5/} The Pennsylvania Supreme Court has observed that "[d]efining a 'prospective contractual relation' is admittedly problematic. To a certain extent, the term has an evasive quality, eluding precise definition. It is something less than a contractual right, something more than a mere hope." *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 209, 412 A.2d 466, 471 (1979).

^{6/} The elements of tortious interference with prospective contractual relations are:

1. the existence of a prospective contractual relationship between the plaintiff and a third party;
2. purposeful action on the part of the defendant, specifically intended to harm the plaintiff by interfering with the prospective contractual relationship;
3. the absence of privilege or justification for such interference;
4. damages resulting from the defendant's conduct; and
5. a reasonable likelihood that the relationship would have occurred but for the interference of the defendant.

Brokerage Concepts, 140 F.3d at 530 (analyzing Pennsylvania authority); Restatement
(continued...)

PP&L's demurrer to this claim is based upon the privilege afforded to competitors to compete with one another in the pursuit of their own interests. In order to invoke that privilege (and before discussing the governing principles under that privilege), PP&L must demonstrate that PP&L and Plaintiffs are competitors. Fortunately, Plaintiffs' Complaint provides substantial support for that conclusion.

Case law precedent and Blacks Law Dictionary define "competitors" as "persons endeavoring to do the same thing and each offering to perform the act . . . or render the services better or cheaper than his rival." *Glberman Assocs. v. J. Kinderman & Sons, Inc.*, No. 98-3711, 1999 WL 98588, at *5 (E.D. Pa. Feb. 25, 1999) (attached hereto as Ex. C), quoting *Blacks Law Dictionary* 6th ed. (1990), at 284 (emphasis added). With the benefit of that definition, this Court should find that Plaintiffs' allegations demonstrate that PP&L and Plaintiffs are competitors. First, Plaintiffs' description of the services provided by Plaintiffs mirrors their description of the services provided by PP&L's marketing representatives:

6/(...continued)

(Second) of Torts, § 766 (1977) (emphasis added).

Description of Plaintiffs' Services	Description of PP&L's Services
<p>“Plaintiffs are in the business of, <i>inter alia</i>, providing utility consulting services.... [Plaintiffs] review the rates, tariffs, discounts, riders and total charges that apply to the customer’s utility billings and to submit recommendations to the customer for possible savings, credits or refunds.”</p> <p>Compl., ¶ 3</p>	<p>PP&L’s marketing representatives “assisted industrial customers in understanding PP&L’s complex rate structure, and making decisions about what rate was best for their business.”</p> <p>Compl., ¶ 12.</p>

Second, because Plaintiffs allege that PP&L, as a public utility, “has a statutory duty to provide customers with the most advantageous rate available,” (Compl., ¶ 10), Plaintiffs by definition must compete with PP&L in providing the rate information to their customers. Third, the interference alleged by Plaintiffs is that PP&L informed “plaintiffs’ customers that the customers did not need Plaintiffs’ assistance and that PP&L would do the work for the customers at no charge.” Compl., ¶ 22 (emphasis added). The very nature of that alleged interference (*i.e.*, to displace and replace Plaintiffs in the provision of the same services) confirms that they compete with each other in that business.^{7/}

Given that PP&L is Plaintiffs’ competitor, this Court should assess PP&L’s potential liability for tortious interference under the competitor’s privilege.^{8/} In *Brokerage Concepts*, 140 F.3d at 530, the Court described that privilege as follows:

^{7/} Comment (c) to Section 768 of the Restatement (Second) of Torts emphasizes that the competitor’s privilege “applies whether the actor and the person harmed are competing as sellers or buyers or in any other way, and regardless of the plane on which they compete.”

^{8/} In his treatise, Prosser notes that “considerable weight of authority holds that there is a privilege of competition which extends to inducing the termination of agreements terminable at will, whether they concern equipment or other relations.” W. Prosser, *Torts*, § 129, at 945-46 (4th ed. 1971).

One who intentionally causes a third person not to enter into a prospective contractual relation with another who is his competitor or not to continue an existing contract terminable at will does not interfere improperly with the other's relation if

- (a) the relation concerns a matter involved in the competition between the actor and the other and
- (b) the actor does not employ wrongful means and
- (c) his action does not create or continue an unlawful restraint of trade and
- (d) his purpose is at least in part to advance his interest in competing with the other.

Id. (quoting Restatement (Second) of Torts, § 768(1)). See also *Brokerage Concepts*, 140 F.3d at 530 (stating that Pennsylvania courts are guided by the Restatement of Torts in the area of tortious interference); and *Glaberman*, 1999 WL 98588, at *5 (same). The Pennsylvania Superior Court has recognized the policy underlying the competitor's privilege:

One's privilege to engage in business and to compete with others implies a privilege to induce third persons to do their business with him rather than with his competitors. In order not to hamper competition unduly, the rule stated in this Section [768] entitles one not only to seek to divert business from his competitors generally but also from a particular competitor. And he may seek to do so directly by express inducement as well as indirectly by attractive offers of his own goods and services.

Gilbert v. Otterson, 379 Pa. Super. 481, 489, 550 A.2d 550, 554 (1988) (quoting comment b to Restatement (Second) of Torts, § 768), *app. denied*, 522 Pa. 596, 562 A.2d 320 (1989).

As explained by the Third Circuit, “[t]he Pennsylvania Supreme Court has yet to provide a definition of ‘wrongful means,’ and thus we turn to the Restatement for guidance.” *Brokerage Concepts*, 140 F.3d at 531. In defining what kind of means are wrongful, comment e to Section 768 provides, in part, as follows:

The predatory means discussed in § 767, Comment C, *physical violence, fraud, civil suits and criminal prosecutions*, are all wrongful in the situation covered by this Section.

Id. (emphasis added). As a result of these requirements, several courts have required a plaintiff to assert independently actionable conduct in order to assert a cause of action for tortious interference with prospective contractual relations. *See, e.g., DP-Tek, Inc. v. AT&T Global Info. Sol'ns Co.*, 100 F.3d 828, 833 (10th Cir. 1996) (“wrongful means” requires independently actionable conduct); *Amerinet Inc. v. Xerox Corp.*, 972 F.2d 1483, 1507 (8th Cir. 1992) (“‘Wrongful means,’ as those words are used in Restatement Section 768[1](b), ‘refer[] to means which are intrinsically wrongful -- that is, conduct which is itself capable of forming the basis of liability of the actor.’”), *cert. denied*, 506 U.S. 1080 (1993); *Glaberman*, 1999 WL 98588, at *5 (dismissing plaintiff’s claim for tortious interference with prospective contractual relations where plaintiff had not alleged “independently-actionable conduct required to support a claim for tortious interference against a business competitor.”).^{9/}

The competitor’s privilege exists to protect and promote legitimate business concerns. As explained by the Third Circuit, “[o]ur cases accord substantial deference to defendants whose conduct, despite its conflict with plaintiff’s interest, protects an existing legitimate business

^{9/} *See also San Francisco Design Ctr. Assocs. v. Portman Cos.*, 41 Cal.App.4th 29, 50 Cal. Rptr.2d 716, 723 (1995) (“In order to defeat the privilege the defendant’s conduct must be . . . independently actionable”), *review dismissed*, 50 Cal. Rptr.2d 698, 911 P.2d 1373 (1996); *Conoco Inc. v. Inman Oil Co.*, 774 F.2d 895, 907 (8th Cir. 1985) (same); *Briner Elec. Co. v. Sachs Elec. Co.*, 680 S.W.2d 737, 741 (Mo. Ct. App. 1984) (“competitive conduct which is neither illegal nor independently actionable does not become actionable because it interferes with another’s prospective contractual relations” and “the weight of authority supports the conclusion that the wrongful means tests of section 768 requires independently actionable conduct.”).

concern.” *Windsor Secs., Inc. v. Hartford Life Ins. Co.*, 986 F.2d 655, 665 (3d Cir. 1993).^{10/} In

addition:

[W]here an actor is motivated by a genuine desire to protect legitimate business interests, this factor weighs heavily against finding an improper interference. These cases also make clear the *social interest in allowing an actor freedom to protect its legitimate business interests*. See Restatement of Torts (Second) § 767(e).

Id. (emphasis added). Additionally, “[c]ompetition also provides defendant’s justification for interfering with plaintiff’s at-will contracts. While one cannot interfere as a matter of malice or spite with an at-will contract, it is altogether legitimate for a provider of services to persuade potential purchasers of those services that it can do the superior job.” *Waldrep Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co.*, 992 F.2d 59, 62 (4th Cir. 1993).

With respect to the competitor’s privilege, the *Glaberman* case is particularly instructive in analyzing “wrongful means” between competitors. In *Glaberman*, plaintiff and defendant entered into a contract in which plaintiff agreed to buy Christmas decorations from defendant and then sold them at a higher price to plaintiff’s customers. *Id.* at *1. After receiving the order, defendant shipped the products to the customer, but billed the plaintiff not the customer. The plaintiff then billed his customers, who were not aware of the prices paid to the defendant, and therefore unaware of the extent of the “middleman” mark-up. *Id.* After the contract between the plaintiff and defendant expired, plaintiff alleged that defendant contacted plaintiff’s customers,

^{10/} As noted by the *Windsor* court, “[m]ost courts have not infringed on the freedom to keep or to breach a contract traditionally afforded a party by the common law and endorsed by the notion of efficient breach.” 986 F.2d at 664 (citing 3 E. Allan Farnsworth, *Contracts*, § 12.8, at 194-95 (2d ed. 1990)).

informing the customers that they could save 10% to 20% by purchasing the same goods directly from defendant. *Id.* at *2. On defendant's motion to dismiss plaintiff's claim for tortious interference with prospective business relationships, the Court found that "[i]t is clear on the face of the complaint that defendant was acting as a competitor with plaintiff and seeking to advance its own competitive interests when it contacted plaintiff's customers and attempted to sell its products to them directly." *Id.* at *5. The Court found that, even though defendant's conduct may have humiliated plaintiff and hurt his business (and defendant acted in "such a way as to intentionally" cause plaintiff embarrassment), this behavior "simply does not constitute the sort of criminal, fraudulent or independently-actionable conduct required to support a claim for tortious interference against a business competitor." *Id.*

Plaintiffs do not allege that PP&L engaged in independently actionable conduct. Nor do they allege that PP&L engaged in "wrongful means," such as physical violence, fraud, civil suits or criminal prosecutions. Viewing the Complaint in a light most favorable to Plaintiffs, the harm alleged amounts at most to a disclosure to PP&L's customers of the risks associated with the interruptible rate, at most affecting Plaintiffs' ability to persuade certain customers to go on or stay on the interruptible rate. Compl., ¶¶ 30-31. This is not the type of "wrongful means" required to support a claim for tortious interference with prospective contractual relations. As in *Glaberman*, 1999 WL 98588, *5, "[i]t is clear on the face of the complaint that defendant was acting as a competitor with plaintiff[s] and seeking to advance its own competitive interests[.]"

Given that the Complaint establishes that PP&L is Plaintiffs' business competitor and fails to allege facts sufficient to overcome the competitor's privilege, PP&L respectfully requests this Court to sustain PP&L's demurrer to Plaintiffs' claims for tortious interference with

Plaintiffs' prospective contractual relations.

3. Plaintiffs fail to state a claim for punitive damages because Plaintiffs' underlying tort claims fail.

In the Complaint, Plaintiffs also seek punitive damages against PP&L. Compl., ¶ 39. As discussed above, Plaintiffs' claims for tortious interference with existing and prospective contractual relations fail. It is axiomatic that a claim for punitive damages arises out of the underlying cause of action, and therefore, absent a viable cause of action, an independent claim of damages cannot stand. *Kirkbride v. Lisbon Contractors, Inc.*, 521 Pa. 97, 101, 555 A.2d 800, 802 (1989). Therefore, Plaintiffs have no valid claim for punitive damages.

Alternatively, even if Plaintiffs' tort claims could survive PP&L's demurrers, Plaintiffs have not alleged facts sufficient to demonstrate outrageous conduct, evil motive or reckless indifference on the part of PP&L. Pennsylvania law makes clear that punitive damages may only be awarded for tortious conduct that is outrageous because of defendant's evil motive or reckless indifference to the rights of others. "Punitive damages are proper only if an actor's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others." *Costa v. Roxborough Mem. Hosp.*, 708 A.2d 490, 497 (Pa. Super.), *app. denied*, 556 Pa. 691, 727 A.2d 1120 (1998). Where the complaint fails to allege facts sufficient to support a finding of outrageous conduct, evil motive, or reckless indifference on the part of a defendant, the court should sustain a preliminary objection to plaintiffs' claim for punitive damages. *Id.*

In *Costa*, the Superior Court affirmed the trial court's decision to sustain the defendant's preliminary objection to the plaintiff's claim for punitive damages, holding as follows: "Taking as true all of the Appellant's pleaded facts as true, there is absolutely no evidence indicating that

Appellee [acted] willfully or recklessly.... Therefore, we find that the court properly sustained Appellee's preliminary objections." *Id.* The Superior Court affirmed the trial court's decision to dismiss plaintiff's claim for punitive damages despite plaintiff's conclusory allegations that defendant acted with "wanton disregard." *Id.* Similarly, in *Richette v. Philadelphia Magazine*, No. 96-802, 1996 WL 756953 (Jan. 23, 1996 Phila. C.C.P.) (attached hereto as Ex. D), the Court stated:

In the case at bar, we find that the allegations contained in Plaintiff's complaint do not contain the requisite facts amounting to outrageous conduct, ill will and actual malice. Since punitive damages are not recoverable under the facts averred in the complaint, Defendants' preliminary objections are granted.

Id. at *5.

Plaintiffs simply do not allege sufficient facts to show that PP&L engaged in any outrageous conduct or acted with an evil motive or ill will towards Plaintiffs.^{11/} Even when viewed in a light most favorable to Plaintiffs, Plaintiffs allege that PP&L competed with Plaintiffs and defended itself against Plaintiffs' assertions that PP&L had failed to fulfill its obligations to its customers. Such claims, based on ordinary competition between two businesses, do not meet the standard for an award of punitive damages. Accordingly, the Court should sustain PP&L's Preliminary Objections to Plaintiffs' claim for punitive damages.

^{11/} In sole support of its claim for punitive damages, Plaintiffs aver that "[g]iven the . . . *outrageousness of its activities*," the Court should award Plaintiffs punitive damages. Compl., ¶ 39. For purposes of these Preliminary Objections, of course, a court may not consider as true the pleading's conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. *Giffin*, 151 Pa. Commw. at 290, 616 A.2d at 1072.

B. The Court Should Grant PP&L's Preliminary Objection And Motion To Strike Due To Plaintiffs' Failure To Join In Separate Counts Their Separate Causes Of Action.

PP&L also has asserted that Plaintiffs violated Pa. R. Civ. P. 1020(d)(1) by failing to join in separate counts their separate causes of action. *See* Preliminary Objections, IV. If this Court does not grant PP&L's demurrers, then it should, at a minimum, strike Plaintiffs' Complaint for failing to comply with Pa. R. Civ. P. 1020(d)(1).

Plaintiffs attempt to assert two separate causes of action: (1) tortious interference with *existing* contractual relations (Compl., ¶¶ 22-26); and (2) tortious interference with *prospective* contractual relations, including the continuation of existing terminable-at-will contracts (*id.*, ¶¶ 36-37). Under Pennsylvania law, tortious interference with *existing* contractual relations is a different cause of action, with different elements and subject to different defenses, than tortious interference with *prospective* contractual relations. *Thompson*, 488 Pa. at 208, 412 A.2d at 470-71. *See also Glaberman*, 1999 WL 98588, *4 n.10 (recognizing that the distinction between the two causes of action is significant under Pennsylvania law).

Pa. R. Civ. P. 1020(d)(1) expressly requires:

If a transaction or occurrence gives rise to more than one cause of action against the same person, including causes of action in the alternative, they *shall be* joined in separate counts in the action against any such person.

(Emphasis added.)

Thus, Plaintiffs have not complied with Pa. R. Civ. P. 1020(d)(1). Pursuant to Pa. R. Civ. P. 1028(a)(2), this Court should strike the Complaint.

C. The Court Should Grant PP&L's Preliminary Objection And Motion To Strike Due To Plaintiffs' Failure To Attach The Written Contracts At Issue.

PP&L also filed a preliminary objection contending that Plaintiffs failed to comply with Pa. R. Civ. P. 1019(h) because they did not attach the written contracts at issue in their Complaint. *See* Preliminary Objections, V. If this Court does not grant PP&L's demurrers, then it should, at a minimum, strike Plaintiffs' Complaint for violating Pa. R. Civ. P. 1019(h), which provides as follows:

A pleading shall state specifically whether any claim or defense set forth therein is based upon a writing. If so, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

See also Adamo v. Cini, 656 A.2d 576, 579 (Pa. Commw. 1995) (stating that “[o]rdinarily a complaint should be stricken for failure to attach an essential document.”); *and* 4 Std.

Pennsylvania Practice 2d, Complaints, Generally, § 21:68.

Plaintiffs allege that they “provide utility consulting services pursuant to ‘shared savings’ written contracts with their customers.” Compl., ¶ 3; *see id.*, ¶ 22 (further identifying with specificity certain customers with whom Plaintiffs allege PP&L tortiously interfered with those written contracts). Although Plaintiffs’ claims rely on the existence of contractual relations, as set forth in their existing contracts with their customers, Plaintiffs have failed to attach a copy of those contracts. Therefore, this Court should strike their Complaint for failure to comply with Pa. R. Civ. P. 1019(h).

D. The Court Should Grant PP&L's Preliminary Objection And Motion To Strike Due To Plaintiffs' Inclusion Of Scandalous And Impertinent Matter.

For the reasons set forth above, Plaintiffs' Complaint fails to state a cause of action for tortious interference with existing or prospective contractual relations. However, if this Court does not dismiss Plaintiffs' Complaint in its entirety, then it should grant PP&L's preliminary objection to Plaintiffs' inclusion of scandalous and impertinent matter directed at the personal activities of two PP&L employees, Oliver Kasper and Larry Collins. *See* Preliminary Objections, VI; and Compl., ¶¶ 17 and 20.

Pa. R. Civ. P. 1028(a)(2) prohibits the "inclusion of scandalous and impertinent matter." For allegations to be scandalous or impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action. *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108 (Pa. Commw. 1998). In addition, some courts require the party moving to strike the allegations to demonstrate prejudice. *See, e.g., Commonwealth v. Hartford Acc. & Indem. Co.*, 40 Pa. Commw. 133, 137, 396 A.2d 885, 888 (1979).

A review of the Complaint's allegations directed to Messrs. Kasper and Collins reveals that the allegations are immaterial and inappropriate. For example, the allegation directed to Mr. Kasper is that he has "moonlighted as a utility consultant in competition with Plaintiffs while still an employee of PP&L." *Id.*, ¶ 17. With respect to Mr. Collins, the Complaint alleges that Mr. Collins personally contacted Plaintiff CUC and misrepresented himself in order to gain information about CUC's utility consulting business. *Id.*, ¶ 20.

Plaintiffs do not allege that the alleged individual conduct of Messrs. Kasper and Collins was sanctioned by PP&L. In fact, the allegation that Mr. Kasper "moonlighted as a utility

consultant” (emphasis added), by its very nature, reflects that he was not acting within the scope of his employment at PP&L. *See Kinloch v. Tonsey*, 325 Pa. Super. 476, 482-83, 473 A.2d 167, 170 (1984) (describing “moonlighting” as outside employment conducted during periods and in locations unconnected to regular employment); and *Blacks Law Dictionary*, 6th ed. (1990), at 1008 (defining “moonlighting” as “[w]orking at another job after hours of regular job.”). In addition, the individual activities of Messrs. Kasper and Collins in no manner manifest or support PP&L’s alleged interference with Plaintiffs’ contracts with their customers. In short, there is no nexus between the alleged activities of these PP&L employees and PP&L’s alleged tortious interference. Moreover, these allegations are prejudicial to the PP&L employees named and to PP&L. The allegations of the Complaint may be used to define the scope of discovery. As a result, PP&L will be prejudiced in defending against these irrelevant factual assertions.

Because the allegations directed to the personal activities of Messrs. Kasper and Collins neither relate to nor support Plaintiffs’ purported claims for tortious interference by PP&L with Plaintiffs’ contractual relations, this Court should sustain PP&L’s Preliminary Objection and strike this scandalous and impertinent matter.

E. The Court Should Grant PP&L’s Preliminary Objection And Motion To Strike Based Upon The Insufficient Specificity Of The Complaint.

As set forth above, Plaintiffs fail to state a cause of action for tortious interference with existing and/or prospective contractual relations. However, if this Court does not dismiss the Complaint in its entirety, then it should grant PP&L’s motion to strike Plaintiffs’ allegations directed to unspecified customers. *See Preliminary Objections*, VII.

Plaintiffs’ Complaint fails to provide sufficient specificity regarding the identity of the

unidentified customers with whom Plaintiffs contend PP&L interfered. See, e.g., Compl., ¶¶ 26, 27 and 37. Through their filing of writs of summons in August 1997, see Docket Nos. 97-06580 and 97-07178, and the pendency of those matters for more than two years, as well as their participation in litigation against at least four of their customers (Compl., ¶¶ 24-25), and their participation in proceedings before the Pennsylvania Public Utility Commission involving other customers (including Plaintiffs' retention of counsel to represent the other customers in said proceedings) (*id.*, ¶ 30), Plaintiffs have had the opportunity to pursue discovery directed to these allegations. Yet they still attempt to proceed with claims against PP&L for tortious interference with *unidentified* contractual relations.

With respect to such *unidentified* customers, Plaintiffs do not and cannot establish that there was a "reasonable likelihood or probability" that such customers would have become Plaintiffs' customers even in the absence of PP&L's alleged conduct. PP&L has no ability to defend itself against claims that it interfered with unknown and/or unidentified customers. And Plaintiffs should not be permitted to pursue unlimited discovery about PP&L's communications with all other customers with whom Plaintiffs may have sought to establish relations.

Accordingly, PP&L respectfully requests that the Court sustain its preliminary objection and strike those allegations directed to Plaintiffs' unidentified customers. In the alternative, PP&L requests that the Court direct Plaintiffs to provide sufficient specificity relating to the identity of any customers beyond those already identified in the Complaint.

VI. CONCLUSION

For the reasons stated above, defendant PP&L respectfully requests that this Court sustain its Preliminary Objections and dismiss Plaintiffs' Complaint with prejudice.

DATED: February 9, 2000

Respectfully submitted,



Glen R. Stuart
Bryant D. Lim
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5883/5165

Attorneys for Defendant PP&L, Inc.

OF COUNSEL:

Augustus C. Martin
PP&L, Inc.
Two North Ninth Street
Allentown, PA 18101

Exhibit A

C&K Enterprises Inc.
v.
Dallas Area Municipal Authority

No. 4670-C of 1991.

Court of Common Pleas of Pennsylvania, Luzerne
County.

August 12, 1992

Preliminary objections to complaint.

MUNICIPAL CORPORATIONS ⇔ 226
268k226

Municipalities are empowered by the Pennsylvania Borough Code, 53 P.S. § 46202, and the Second Class Township Code, 53 P.S. § 65708, to enact ordinances to regulate, transport and dispose of solid waste within their boundaries, and may monopolize and control the business of waste handling even if doing so terminates contracts of private competing waste haulers.

Philip T. Medico Jr, for plaintiff C&K Enterprises Inc. and Searles Sanitation.

Albert J. Flora, for plaintiff Dave Wojciechowicz, t/a Dave's Sanitation.

David Heisler and Robert N. Opel II, for defendant Kingston Township.

Frank Townend, for defendant Dallas Township.

Benjamin R. Jones III, for defendant Dallas Area Municipal Authority.

Theodore L. Krohn and John S. Fine Jr, for defendant Dallas Borough.

TOOLE, P.J.

This matter comes before the court on preliminary objections by defendant, Dallas Area Municipal Authority, Kingston Township, Kingston Township Board of Supervisors, Dallas Township, Dallas Township Board of Supervisors, Dallas Borough, (township defendants), to the complaint filed by plaintiffs, C&K Enterprises Inc., Searles Sanitation and Dave Wojciechowicz, t/a Dave's Sanitation (plaintiffs). [FN1] Plaintiffs' complaint alleges claims for tortious interference of contract and

prospective contracts, deprivation of substantive due process under 42 U.S.C. §1983, and Article 1 and 17 of the Pennsylvania Constitution and deprivation of procedural due process under 42 U.S.C. §1983 and Article 1, section II of the Pennsylvania Constitution. Timely objections and briefs were filed. Oral argument was entertained by the court and the matter is ripe for resolution at this time.

FN1. Also named as defendants were the individual persons who comprise each of the Board of Supervisors and the DAMA Commission.

Plaintiffs' complaint arises out of the actions taken by each township defendant to enact ordinances which regulate the collection, transportation and disposal of solid waste in each of the municipalities. Prior to the ordinances taking effect on July 1, 1991, each resident of these municipalities was free to arrange for the disposal of their waste.

Plaintiffs were all licensed businesses in the solid waste disposal business and had each entered into oral agreements with residents to dispose of the waste. The agreements were for one calendar year periods with practically assured renewals. Simply stated, after the ordinance went into effect, their business with residents in the municipalities terminated completely.

Upon enacting the ordinances, the municipalities named defendant DAMA as their agent to properly carry out the terms of the ordinances. Defendant DAMA then contracted with Danella Environmental Technologies Inc., to actually collect, transport and dispose of the solid waste. [FN2] Since the ordinances had exclusivity provisions, under these terms, it was impossible for individual residents to use any other waste hauler other than through defendant DAMA.

FN2. It is not clear how Danella was awarded the duties as waste hauler for defendant DAMA or whether or not plaintiffs were given the opportunity to bid on the contract. Danella, however, is not a party to this lawsuit and therefore, proper procedure is presumed.

As a result of the termination of their agreements with the residents, plaintiffs filed this suit alleging wrongful interference with existing or prospective contracts and that they have been deprived of their

(Publication page references are not available for this document.)

ability to earn a living and run a business. Specifically, plaintiffs argue that the actions of the township defendants constituted an invalid exercise of police power under color of state law and that they have been deprived of the rights of liberty to contract and engage in lawful occupation.

Defendants demur to and ask that we dismiss the complaint on the basis that the allegations fail to state any cause of action upon which relief can be granted.

The law in Pennsylvania when considering the preliminary objections in the nature of a demurrer is well known. A demurrer should only be sustained in those cases which are free and clear from doubt. *Legman v. Scranton School District*, 432 Pa. 343, 247 A.2d 566 (1968). Where any doubt exists as to whether or not preliminary objections should be sustained, that doubt should be resolved by refusing to sustain the objections. *Commonwealth v. Creamer*, 464 Pa. 2, 345 A.2d 702 (1975). To sustain a demurrer it must appear with certainty that upon the facts alleged the law will not permit recovery by plaintiffs. *Creamer*, supra.

Preliminary objections in the nature of a demurrer admit as true all well pleaded material, factual averments and inferences fairly deducible therefrom, but no conclusions of law. *Greenspan v. United Services Auto Assn.*, 324 Pa. Super. 315, 471 A.2d 856 (1984). Further, if a demurrer is sustained, the court must evaluate whether or not there is a reasonable possibility that the plaintiffs can amend the complaint to cure the deficiency. If so, the plaintiffs must be given that opportunity. *Harley Davidson Motor Co. Inc. v. Hartman*, 296 Pa. Super. 37,442 A.2d 284 (1982). With the above as our guide, we shall evaluate defendants' proposals. Defendants initially demur to Count I of plaintiffs' complaint claiming "tortious interference of contract and prospective contracts." The elements of tortious interference with contractual relations are set out in Restatement 2d of Torts, §766. They are: (1) an intentional or improper interfering with a performance of a contract; (2) between another and a third person; (3) inducing or otherwise causing the third person not to perform the contract; and (4) pecuniary loss. The issue before us is the propriety of defendants' actions or, as stated by the defendants, the absence of justification or privilege on the part of defendants.

A review of the case law cited in the briefs convinces us that municipalities do have the right to regulate, transport and dispose of the solid waste within their boundaries. [FN3] Clearly, the process of enacting the ordinances and entering into the agreements with defendant DAMA and Danella is not in and of itself grounds for the lawsuit filed by plaintiffs. Therefore, it is necessary to carefully review the allegations of the complaint to determine if in fact plaintiffs have factually pled the requirements of tortious interference of contract and prospective contracts. In so doing, we are of the opinion that plaintiffs have not met their burden on this issue.

FN3. See *C.E. Refuse Removal Service v. South Hanover Township*, 90 Dauphin Leg. J. 359 (1969); *Borough of Coopersburg v. Cliff*, 16 D&C2d 576 (1958); and *Clearfield Borough v. Rider*, 17 Pa. D. & C. 197 (1931)

Plaintiffs' complaint alleges only that through the adoption and enforcement of the aforesaid ordinance, intentionally and willfully engaged in misconduct with actual malice, by intentionally and improperly interfering with the existing contracts and prospective contractual relations between plaintiffs and adult residents and taxpayers

Further, allegations again state only that the conduct of the township defendants acted willfully, intentionally, and with actual malice. [FN4] The allegations are conspicuously devoid, however, of factual averments to support the legal conclusions that are alleged. Nowhere in their complaint do plaintiffs allege the manner of impropriety conducted by the township defendants. Since the law does not prohibit the enactment of the ordinances, the lack of factual averments is sufficient to cause this court to agree with defendants that the demurrer to Count I of plaintiffs' complaint should be sustained.

FN4. Plaintiffs alleged the foregoing in several paragraphs and phrased the wording in several ways.

To further bolster defendants' arguments and confirm our decision that the demurrer to Count I should be sustained, we take note of the language of the ordinance which is attached to plaintiffs' complaint. [FN5] Clearly, the regulation of the waste by the township defendants bears a real and

(Publication page references are not available for this document.)

substantial relationship to the health, safety and welfare of the residents. Additionally, the purpose of the ordinance was identified as being, in part, to handle the waste in the most efficient and economically sound manner, to reduce the volume of garbage and solid waste disposed of within the municipality, and to conserve natural resources and provide a clear and healthy environment to the residents. Plaintiffs have not alleged any facts in their complaint to counter the legitimate goals of the township to the residents. Plaintiffs have not alleged any facts in their complaint to counter the legitimate goals of the township defendants. Therefore, defendants' demurrer to Count I, tortious interference with contracts and prospective contracts, is hereby sustained.

FN5. Plaintiffs have attached the complete ordinance of the Borough of Dallas. They have informed the court in paragraph 16 of the complaint, however, that each municipal ordinance is identical.

Defendants demur to the remaining counts of the complaint relating to the deprivation of procedural and substantive due process. Specifically, defendants argue that the demurrer should be sustained in that plaintiffs have not been deprived of a constitutionally protected property right. Defendants' position is that the state of the law allows the township defendants to enact ordinances which monopolize and control the collections, transportation and disposal of residential waste. Further, in so doing, the fact that plaintiffs cannot continue with contracts in place does not rise to the level of unconstitutional impairment of contractual obligations.

Plaintiffs correctly highlight the lack of Pennsylvania case law directly on point. It incorrectly argues, however, that the lack of case law restricts this court's ability to sustain the demurrer. We believe the statutory law and the decisional law cited herein supports and sustains the actions of defendants. The Pennsylvania Borough Code as well as the Pennsylvania Second Class Township Code, clearly grant the township defendants' authority for the ordinances enacted. [FN6] A comparison of the relevant Code sections with the ordinances reveals that the township defendants did not overstep the authority granted to them.

FN6. 53 P.S. §46202 and 53 P.S. §65708 respectively. With respect to defendant DAMA, see the Pennsylvania Municipal Authorities Act, 53 P.S. §306.

Although it is our opinion that the minimal case law coupled with legislative acts granting waste handling powers to the township defendants would support sustaining the demurrer, we cannot ignore the case law from other jurisdictions. Foremost, we find persuasive the U.S. Supreme Court cases cited by defendants, *California Reduction Co. v. Sanitary Reduction Works*, 199 U.S. 306 (1905), and *Gardner v. Michigan*, 199 U.S. 325 (1905), long ago established that municipalities can monopolize and control the business of waste handling, even if doing so terminates the competition and contracts of private waste haulers. Those cases unequivocally addressed the issue of due process rights of private haulers by holding that municipal monopolies of the garbage industry is not regarded as a taking of private property and substantive due process does not protect the property rights of garbage collectors. *Gardner*, supra, 199 U.S. at 333. These cases have continued to be the law.

Plaintiffs' complaint does not contain any allegations nor its brief any argument prompting us to disregard these enunciations by the highest court of the land.

In reaching our decision, we have carefully considered the allegations in the plaintiffs' complaint as well as applicable statutory and decisional law. Our decision then has not been reached lightly. Allowing citizens to have their day in court has become a cornerstone of our society. We cannot, however, ignore the rights of defendants by allowing this matter to continue as it is pleaded. Plaintiffs will be granted an opportunity, if possible, to correct the deficiencies. Therefore, we enter the following

ORDER

It is hereby ordered and decreed that defendants' demurrer is sustained.

Plaintiffs shall have 30 days to file an amended complaint.

END OF DOCUMENT

Exhibit B

Charles Q. BUCKWALTER, Jr., Plaintiff,
v.
Vernon PARKER, Defendant.

No. CIV. 96-CV-4795.

United States District Court, E.D. Pennsylvania.

March 25, 1998.

Donald P. Russo, Allentown, for Charles Q. Buckwalter, Jr., Plaintiff.

Steven R. Wall, Michael S. Burkhardt, Morgan, Lewis & Bockius, Phila, for ICI Explosives USA Inc., ICI Americas Inc., Vernon Parker, Defendants.

MEMORANDUM AND ORDER

VAN ANTWERPEN, J.

I. INTRODUCTION [FN1]

FN1. This memorandum assumes knowledge of the facts of this case which are fully discussed in *ICI v. Buckwalter Explosives USA, Inc.*, 1998 WL 54355 (E.D.Pa. Jan.8, 1998).

*1 Defendant Vernon Parker has filed a motion to reconsider our prior order denying summary judgment as to the intentional interference with contract complaint leveled against him by the Plaintiff. For the reasons that follow we will grant the Defendant the relief which he seeks.

On January 8, 1997, this court dismissed every count of the Plaintiff's complaint, except one count of intentional interference of contractual relations against Defendant Vernon Parker. *Buckwalter v. ICI Explosives USA, Inc.*, 1998 WL 54355, *1 (E.D.Pa. Jan.8, 1998). In his initial motion for summary judgment, Defendant Parker argued that he could not be liable, as a matter of law, for interfering with Plaintiff's employment relationship because Plaintiff was an at-will employee. Defendant, however, presented no case-law to support this position. We therefore asked the parties to re-brief the issue, focusing their attention on matters of fact. *Id.* at *19-20. The parties submitted their briefs, and on February 27, 1998,

we held that, though we doubted the merits of the Plaintiff's case, the Defendant had not met its burden of showing that there were no issues of material fact and that the Plaintiff was entitled to take his case before a jury. February 27, 1998 Order.

On March 5, 1998, the Defendant filed a motion to reconsider our February 27 Order denying summary judgment. Plaintiff has directed our attention to *Hennessy v. Santiago*, --- A.2d ---, 1998 WL 67586, *1 (Pa.Super.Feb.20, 1998), a Pennsylvania Superior Court case that was decided on February 20, 1998--after Plaintiff had filed both of his memorandums of law discussing his motion for summary judgment. This case directly supports Defendant's argument that Plaintiff cannot sue the Defendant for intentional interference with contractual relationships because the Plaintiff was an at-will employee. For the reasons discussed below, we will reconsider our prior memorandum and orders in light of *Hennessy* and dismiss the Plaintiff's only remaining claim against Defendant Vernon Parker.

II. DISCUSSION

A. We Will Reconsider Our Prior Memorandum and Orders in Light of *Hennessy*.

The court in *Hennessy*, 1998 WL 67586 at *9, explicitly held that under Pennsylvania law, "an action for intentional interference with performance of a contract in the employment context applies only to interference with a prospective employment relationship, whether at-will or not, not a presently existing at-will employment relationship."

While we do not agree with the superior court's reasoning in *Hennessy* for the reasons already discussed in our January 8, 1998 Memorandum and Order in this case, *Buckwalter v. ICI Explosives USA, Inc.*, 1998 WL 54355, *1, *19 (E.D.Pa. Jan.8, 1998), we believe that *Hennessy* accurately predicts how the Pennsylvania Supreme Court would rule on this matter. As the Third Circuit has explained, "[i]n adjudicating a case under state law, we are not free to impose our own view of what state law should be; rather, we are to apply state law as interpreted by the state's highest court in an effort to predict how that court would decide the precise legal issues before us In the absence of

guidance from the state's highest court, we are to consider decisions of the state's intermediate appellate courts for assistance in predicting how the state's highest court would rule." *Rush v. Scott Specialty Gases, Inc.*, 113 F.3d 476, 486 (3d Cir.1997)(quoting *Gares v. Willingboro Township*, 90 F.3d 720, 725 (3d Cir.1996)). Thus, considering the absence of any appellate case-law stating otherwise, we predict that the rule set out in *Hennessy* would be adopted by the Pennsylvania Supreme Court. We will therefore reconsider our prior memorandum and orders in light of this recent decision.

B. Under *Hennessy*, We Must Grant Defendant's Motion for Summary Judgment as a Matter of Law

*2 In our February 27, 1998 Order we stated that, despite our own serious doubts of the merits of the Plaintiff's case, we felt that there was sufficient evidence to entitle the Plaintiff to take its case before a jury on the issue of intentional interference with contractual relationships. We also noted that Plaintiff had (barely) provided sufficient evidence to survive summary judgment on the claim that Mr. Parker interfered with the Plaintiff's contract with ICI by moving the Plaintiff's job to Canada and taking actions to ensure that Plaintiff would not succeed Mr. Parker after the Defendant left the company. Plaintiff, however, cannot succeed, as a matter of law, on his claim that Defendant interfered with his then existing employment relationship with ICI since Plaintiff was an at-will employee and, under *Hennessy*, "an action for intentional interference with performance of a contract in the employment context applies only to interference with a prospective employment relationship, whether at-will or not, not a presently existing at-will employment relationship." 1998 WL 67586 at *9.

Plaintiff tries to save his claim against Mr. Parker by arguing that Mr. Parker also interfered with the Plaintiff's prospective employment relationships by preventing Plaintiff's transfer to Dallas to work as an assistant to Mr. Brawner. However, Plaintiff fails to provide sufficient evidence from which a reasonable jury could find that Mr. Parker interfered with Plaintiff's prospective 1996 contract.

Indeed, the crux of Plaintiff's case against the Defendant is that Mr. Parker interfered with

Plaintiff's 1992 contract, not that Defendant interfered with the prospective 1996 contract. As Plaintiff himself admits, a "key component of the Plaintiff's interference claim is the allegation that Defendant Vernon Parker did not want the Plaintiff to take over his (Parker's) job because Parker intended to 'take the work with him,' so to speak, after he retired." Plaintiff's February 13, 1998 Supplemental Memorandum of Law ("Plaintiff's Supplemental Memorandum " at 5. Indeed, the grand majority of Plaintiff's Supplemental Memorandum, which sets out the facts which support Plaintiff's case, is devoted to proving that Defendant interfered with the 1992 contract.

Plaintiff, however, fails to provide evidence from which a jury could conclude that Mr. Parker interfered with the Plaintiff's prospective 1996 job in Dallas working for Mr. Brawner. At various points throughout the Supplemental Memorandum Plaintiff asserts that Mr. Parker sabotaged Plaintiff's prospective job working with Mr. Brawner. However, Plaintiff relies solely on assumptions and conjectures.

Plaintiff asserts that Mr. Brawner withdrew Plaintiff's offer after Mr. Brawner visited the U.K. where he met with Messrs. Hammersmith, Ransom & Holdsworth and that Mr. Holdsworth was the Defendant's supervisor. Plaintiff's Supplemental Memorandum at 15. Yet the mere fact that Mr. Brawner withdrew Plaintiff's offer some time after meeting with the Defendant's boss does not, in any way, prove that Mr. Parker interfered with the 1996 contract.

*3 Plaintiff also asserts that Mr. Clinch, Mr. Brawner's supervisor, wrote a memorandum which stated that he agreed that Mr. Buckwalter should move to Dallas. Plaintiff states that "[i]n this document, Mr. Clinch ... approved the Plaintiff's move to the new position in Dallas. Nevertheless, this job never came about. Therefore the question must be asked: why? This is another jury question. If all the 'channels had been cleared[,] and the transfer ... approved ... then something must have happened to destroy the Plaintiff's chances before the position ever came to pass." Plaintiff's Supplemental Memorandum at 16. Plaintiff, however, presents no evidence that the "something that must have happened," was the interference of Mr. Parker. Again, Plaintiff is trying to make a

case based merely on his own assumptions.

Plaintiff also points to evidence that Mr. Parker was angry at the Plaintiff because of accusations made by the Plaintiff that the Defendant was planning on taking some of ICI's legal business with him when he moved to his new job at a British Law Firm. Plaintiff claims that "what impact all of this had on the Plaintiff's demise three months afterwards is certainly an issue to be looked at by the jury." Plaintiff's Supplemental Memorandum at 17. However, again while Plaintiff shows that Mr. Parker may have had a motive to sabotage Plaintiff's 1996 contract, Plaintiff presents no evidence that Vernon Parker actually did anything to interfere with the prospective 1996 contract.

Plaintiff also points to a 1995 memo, written by Mr. Brawner, which states that Mr. Brawner was "overwhelmed by the ferocity and the uniformity with which the ICI legal function has turned on one of its own that it has hired, rated highly over many years, and now wants to dump." Plaintiff's Supplemental Memorandum at 20. However, this "piece de resistance" (as the Plaintiff calls it) relates to the 1992 contract and not the proposed 1996 contract. Thus, this evidence (even had it named Mr. Parker directly) does not support Plaintiff's claim that the Defendant interfered with his prospective 1996 contract.

One of the reasons that the Plaintiff's job was ultimately withdrawn was that Plaintiff would have worked for Mr. Brawner and Mr. Brawner had decided to leave ICI. "It is the Plaintiff's position that Defendant Vernon Parker influenced the negotiations between Plaintiff and Brawner, and, as part and parcel of these interventions, Brawner became a casualty as well. A jury should be allowed to consider whether Brawner was 'forced to retire' (as intimated by Vernon Parker in his deposition) in order to stop the Plaintiff from getting the Dallas job." Plaintiff's Supplemental Memorandum at 22-23. However, though Plaintiff presents some evidence that Mr. Brawner's retirement may not have been entirely voluntary, again he provides no evidence that Mr. Parker did anything to force Mr. Brawner to retire.

*4 Finally, Plaintiff points to a memorandum from Mr. Herlihy which states, "From what I have heard of Chuck Buckwalter, I have to question whether we

want him involved in ICI Explosives' issues in the manner which Joe Brawner appears to be contemplating ... shouldn't this be stopped?" Plaintiff's Supplemental Memorandum at 27. Plaintiff claims that the "inference arises, that Mr. Herlihy may have been receiving negative information about the Plaintiff from Defendant or from Defendant's boss, Fred Pearson." Yet again, Plaintiff has provided not one shred of evidence that Mr. Herlihy in fact received any negative information from the Defendant--this is just the Plaintiff's unsupported assumption.

Indeed, after close examination of the evidence offered by the Plaintiff, we find that there is no evidence from which a reasonable jury could conclude that Mr. Parker interfered with the Plaintiff's prospective 1996 contract. And, while there is evidence from which a jury might possibly be able to find that the Defendant interfered with Mr. Buckwalter's existing employment relationship by transferring the Plaintiff's job to Canada, under Hennessy, Plaintiff cannot succeed on this claim as a matter of law. We will therefore grant summary judgment and dismiss the intentional interference of contract claim against Mr. Parker.

III. CONCLUSION

We will reconsider our January 8, 1998 Opinion and our February 27, 1998 Order in light of Hennessy. We conclude that, as a matter of law, Plaintiff cannot sue the Defendant for intentionally interfering with his employment with ICI as a patent attorney because, under Hennessy, a Defendant cannot interfere with an existing at-will employment relationship. We further find that Plaintiff's claim that Mr. Parker interfered with his prospective 1996 Dallas contract is not supported by any evidence from which a reasonable jury could find for the Plaintiff. We will therefore vacate our February 27, 1998 Order in this case and issue a new order dismissing the intentional interference with contract complaint against Defendant Vernon Parker.

An appropriate order follows.

ORDER

AND NOW, this 25th day of March, 1998, upon consideration of Defendants' ICI Explosives USA, Inc., ICI Americas, Inc., Imperial Chemical

Industries, PLC, November 14, 1997 Motion for Summary Judgment and Supporting Memorandum of Law; Defendant Vernon Parker's November 14, 1997 Motion for Summary Judgment and Supporting Memorandum of Law; Plaintiff's Complaint; Plaintiff's December 2, 1997 Answer to and Memorandum of Law in Opposition to Motion for Summary Judgment Filed by Defendants ICI Explosives USA, Inc., ICI Americas, Inc., and Imperial Chemical Industries, PLC; Plaintiff's December 2, 1997 Answer to and Memorandum of Law in Opposition to Motion for Summary Judgment Filed by Defendant Vernon Parker; Defendant Vernon Parker's January 30, 1998 Supplemental Memorandum of Law in Support of Summary Judgment; Plaintiff's February 13, 1998 Supplemental Memorandum of Law Filed Pursuant to the Court's Preliminary Memorandum and Order Dated January 8, 1998; Defendant Vernon Parker's March 5, 1998 Motion and Memorandum of Law in Support of His Motion for Reconsideration; and Plaintiff's March 19, 1998 Memorandum of Law in Opposition to Defendant Vernon Parker's Motion for Reconsideration, it is hereby ORDERED consistent with the foregoing memorandum that:

- *5 1. Defendant Vernon Parker's March 5, 1998 Motion for Reconsideration is GRANTED;
2. This court's February 27, 1998 Order denying Defendant Vernon Parker's November 14, 1997 Motion for Summary Judgment is VACATED;
3. Defendant Vernon Parker's November 14, 1997 Motion for Summary Judgment is GRANTED with respect to Count III of Plaintiff's Complaint charging Vernon Parker with Intentional Interference with Contractual Relationships;
4. The remaining counts of Plaintiff's complaint are DISMISSED against all Defendants pursuant to this court's January 8, 1998 Memorandum and Order;
5. Judgment is entered in favor of all Defendants and against the Plaintiff. This case is closed.

END OF DOCUMENT



Exhibit C

GLABERMAN ASSOCIATES, INC., dba
Christmas Promotions,

v.

J. KINDERMAN & SONS, dba Brite Star
Manufacturing Company and Brite Star Hong
Kong.

No. CIV. A. 98-3711.

United States District Court, E.D. Pennsylvania.

Feb. 25, 1999.

MEMORANDUM

ONEILL.

*1 In this diversity action, plaintiff alleges breach of contract and a variety of commercial torts. [FN1] Before the Court is defendant's motion to dismiss the complaint for failure to state a claim upon which relief can be granted. See Fed.R.Civ.Proc. 12(b)(6). For the reasons set forth below, the motion will be granted.

FN1. Plaintiff filed suit in the United States District Court for the Eastern District of New York. On July 13, 1998, that Court, inter alia, granted defendant's motion to transfer venue to this Court. See Court's Memorandum and Order dated July 13, 1998 (Sifton, Chief Judge).

I.

In considering defendant's motion to dismiss, I accept as true the well-pleaded factual allegations in the complaint and construe them in the light most favorable to plaintiff. I may grant the motion only if I determine that plaintiff may not prevail under any set of facts that may be proven consistent with the allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984); *Jordan v. Fox, Rothchild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir.1994).

II.

The following facts are alleged in plaintiff's complaint. Plaintiff Glaberman Associates, Inc., [FN2] a New Jersey corporation owned by Sam Glaberman, sells Christmas decorations to retailers in the New York and New Jersey areas. Defendant

J. Kinderman & Sons, doing business as "Brite Star Manufacturing Company," ("Brite Star") is a Pennsylvania partnership that manufactures and imports Christmas decorations. (Compl. ¶¶ 1-3.) [FN3]

FN2. D/b/a "Christmas Promotions."

FN3. Defendant contends, and plaintiff has not disputed, that Kinderman & Sons is actually a Pennsylvania corporation. See Mem. and Order dated July 13, 1998, supra, at 2, note 1.

On February 1, 1996, Sam Glaberman and Brite Star entered into a written agreement that was to last through the 1996 calendar year. [FN4] It appears from the complaint that the parties undertook two different sorts of transactions pursuant to this agreement. First, Glaberman served as a sales representative for certain established Brite Star accounts in the New York area, for which he was paid by commission. Second, Glaberman made so-called "drop ship" sales of Brite Star products to his own established customers, who had not previously bought Brite Star products and/or had not been able to obtain credit from Brite Star to buy its products. (Compl. ¶¶ 5, 14, 17.) Pursuant to "drop ship" sales arrangements, which are customary in the Christmas decorations industry, the sales representative (Glaberman) buys decorations from the manufacturer (Brite Star) and sells them at a higher price to his own customers (retailers). Upon receiving an order, the manufacturer ships the products directly to the sales representative's customer but does not bill the customer. Rather, the manufacturer bills the sales representative, who then bills his customers, the retailers. Thus, Glaberman's drop ship customers did not know the prices he paid to Brite Star and therefore could not learn the amount of his "middleman" mark-up. (See Compl. ¶¶ 11-16.)

FN4. Plaintiff incorporates the sales agreement in his complaint, but only one page of the two page contract is attached to the complaint. The entire contract is attached as Exhibit A to Defendant's Supplemental Brief filed August 27, 1998.

The contract between Glaberman and Brite Star expired at the end of 1996 and was not renewed. Glaberman alleges that Brite Star failed to pay \$8,622.07 in commissions due him under this

contract, and sues in part to recover this sum. (Compl. ¶¶ 6-9.) Defendant does not challenge the legal sufficiency of this claim in its motion to dismiss.

*2 The remainder of plaintiff's claims, which defendant does challenge, concern defendant's alleged conduct immediately following the termination of the parties' contract at the end of 1996. The complaint alleges in relevant part:

19. [After the relationship between plaintiff and defendant terminated] defendant Brite Star ... contacted the "drop ship" customers of Glaberman.

20. Defendant told customers of plaintiff, inter alia, that because Sam Glaberman no longer represented the defendants that the customers could save 10% to 20%. Defendant, Brite Star ... disclosed the prices paid by Glaberman to Brite Star to Glaberman's "drop ship" customers.

21. Defendant, by its aforesaid actions, caused Glaberman embarrassment, harm and damages and/or disparaged plaintiff Glaberman in the Christmas decorations trade....

These allegations are elaborated upon by Sam Glaberman in an affidavit, which I will consider as evidence of additional facts plaintiff might allege in support of its claims should it be granted leave to amend its complaint. According to the affidavit, defendant sent a letter to all plaintiff's drop ship customers stating that they could save 10-20% by buying direct from Brite Star. [FN5] Glaberman further states "on information and belief" that as a follow-up to the letter defendants' representatives

FN5. According to the affidavit, the letter stated:

Please take notice that as of January 1, 1997 Sam Glaberman and Christmas Promotions no longer represent Brite Star Manufacturing Company.

Buy direct and save 10% to 20%. Either Leon Vilinsky or John Sherow will be calling you for a February Toy Show appointment.

Don't wait until late spring to review Christmas decorations. You'll miss early buy order discounts in February.

Hope you had a good sell-through [sic]

Regards,

Sandy Kinderman Vice President

Brite Star Mfg.

made statements to my drop ship accounts to the effect that I was over charging [sic] them, cheating

them, disclosed my cost prices to my drop ship customers and lowered Brite Stars quotations using exactly the same items I sold to specific drop ship customers to undercut my best prices, to make me look overpriced. Brite Star specifically told my customers what my cost prices were."

(Glaberman Aff. at 10-11.) As a result, plaintiff lost eighteen of his long- time drop ship customers and had to lower his prices to keep three others. (Id. at 11.)

Plaintiff claims that as a result of defendant's actions he has lost or will lose sales of \$1.5 million and profits of \$250,000. He seeks compensatory and punitive damages on a variety of contract and tort theories: (1) breach of contract; (2) breach of defendant's confidential relationship with plaintiff; (3) willful and malicious breach of contract; and (4) tortious interference with plaintiff's business relationships. Plaintiff has withdrawn a claim for unfair competition.

III.

As an initial matter, I note that the parties disagree as to whether this action is governed by New York or Pennsylvania law. Because there is no conflict between New York and Pennsylvania law with regard to any of plaintiff's claims, I will not engage in a choice of law analysis. See *Williams v. Stone*, 109 F.3d 890, 893 (3rd Cir.1997); *Howard v. Clifton Hydraulic Press Co.*, 830 F.Supp. 708, 712 (E.D.N.Y.1993).

A.

Glaberman first alleges that Brite Star breached its contract with him "by disclosing information to plaintiff's customers that defendant was obligated to conceal." (Compl. at ¶ 25.) The information to which plaintiff apparently refers is his costs for Brite Star products. (See Compl. ¶ 20.) In other words, plaintiff claims that Brite Star is liable in contract for disclosing its own prices to potential customers.

*3 These allegations fail to state a claim for breach of contract for the simple reason that they do not identify any contractual obligation that was breached. [FN6] According to plaintiff's allegations, the one and only written contract between the parties expired in 1996. Plaintiff does not identify, and I have not found, any provision in that contract

requiring that Brite Star keep the prices it charged Glaberman confidential after the parties' relationship expired. (See Def.Supp.Brief, Ex. A.) Nor, as to the drop ship sales, does plaintiff allege or attach to the complaint any contract requiring Brite Star to keep the prices it charged Glaberman secret after the sales were completed. [FN7]

FN6. To state a claim for breach of contract, plaintiff must, of course, allege both the existence and the breach of a contractual obligation. See, e.g. *Universal Marine Medical Supply, Inc. v. Lovecchio*, 1998 WL 354050, at *7 (E.D.N.Y. June 30, 1998) (setting forth elements of breach of contract claim under New York law); *Rototherm Corp. v. Penn Linen & Uniform Service, Inc.*, 1997 WL 419627, at *12 (E.D.Pa. July 3, 1997) (setting forth elements of claim under Pennsylvania law).

FN7. Plaintiff appears to argue that both industry custom and an oral promise made by Sandy Kinderman obliged defendant to keep the prices it charged Glaberman confidential from his "drop ship" customers. See Compl. ¶ 15 ("The custom and usage of 'drop ship' sales mandates that shipper's cost prices be kept confidential from drop ship customers. The customer is invoiced by the shipper, the shipper is invoiced by the manufacturer. The manufacturer ships directly to the customer"); *Glaberman Aff.* at 8-9 (stating that Sandy Kinderman "orally agreed that prices charged to Glaberman were to be kept confidential he assured me that my cost prices would be kept from my drop ship customers and the packing slips would block out any prices from being shown to the purchasers of the goods.") Plaintiff makes no allegations, however, from whence it could be inferred that such an obligation of confidentiality was to continue even after the shipper-manufacturer relationship had ended. To the contrary, the allegations suggest that such a duty existed only with regard to the actual performance of the "drop ship" sales arrangements.

In any event, any "industry custom" requiring that prices be kept secret even after the drop-ship sale is made and the manufacturer and shipper have terminated their relationship would be an unenforceable artificial restraint on trade. Cf. *SI Handling Systems, Inc. v. Heisley*, 753 F.2d 1244, 1257 (3d Cir.1985) ("[T]he information SI wishes to enjoin appellants from using (the identity of the vendors and the price of their merchandise) is already in the hands of third parties--i.e., the bearing

suppliers--who have every incentive, and every right, to disclose it to their customers. To prevent appellants from using this information would put an undue burden on the innocent vendors, as well as place an artificial constraint on the free market.")

In sum, there was no contractual obligation that defendant could have breached when it solicited plaintiff's customers in early 1997. Accordingly, plaintiff's claims for breach of contract and for "malicious and willful" breach of contract will be dismissed.

B.

Plaintiff next claims that Brite Star breached a confidential relationship by revealing his costs (i.e., Brite Star's prices) to his retail customers. (See Compl. ¶¶ 28-29.) A tort claim for breach of a confidential relationship may arise where the defendant owes the plaintiff a duty of confidentiality independent of a contract. See, e.g., *Morelli v. Leach & Garner Co.*, 1986 WL 3576, at *2 (E.D.Pa. March 20, 1986) (applying Pennsylvania law and concluding that, where alleged breach of duty of confidentiality arose within scope of a contract, claim for breach had to be brought in contract rather than tort); *Feinman v. Parker*, 675 N.Y.S.2d 711, 712 (N.Y.App.Div.1998) (breach of a contract does not give rise to tort claim unless duty independent of contract is violated). In a commercial context, such a duty may arise if the relationship between the parties involves a trade secret. [FN8] Thus, the threshold issue presented by plaintiff's claim is "not whether there was a confidential relationship, but whether, in fact, there was a trade secret to be misappropriated." *Tyson Metal Products, Inc. v. McCann*, 376 Pa.Super. 461, 546 A.2d 119, 121 (Pa.Super.Ct.1988). If a trade secret was involved, the next question is whether it was improperly obtained or improperly used or disclosed by the defendant. See *Restatement (First) of Torts § 757* (1939).

FN8. Aside from trade secret cases, claims concerning confidential relationships (or fiduciary duties) arise in both the New York and Pennsylvania case law in the context of unequal relationships in which one party relies upon or places trust in the greater strength or knowledge of another. See, e.g., *Drapeau v. Joy Technologies, Inc.*, 447 Pa.Super. 560, 670 A.2d 165, 172 (Pa.Super.Ct.1996)

(concurring opinion) (a confidential relationship is one "with trust and reliance on one side and a corresponding opportunity to abuse that trust for personal gain on the other") (citation omitted). The stronger or more knowledgeable party in such relationships may be required to act with the utmost good faith and in the best interests of the weaker party. See e.g., *Rebidas v. Murasko*, 450 Pa.Super. 546, 677 A.2d 331, 334 (Pa.Super.Ct.1996) (attorney trustee in confidential relationship with settlor of trust); In the Matter of the Estate of Marie Antoinette, 238 A.D.2d 762, 657 N.Y.S.2d 97, 98 (N.Y.App.Div.1997) (elderly decedent had been in confidential relationship with niece who persuaded her to change her will to niece's benefit); cf. *Societe Nationale D'Exploitation Industrielle des Tabacs et Allumettes v. Salomon Brothers Int'l. Ltd.*, 674 N.Y.S.2d 648, 649 (N.Y.App.Div.1998) (confidential relationship may arise between parties to a business relationship); *Drapeau*, 670 A.2d at 172 (concurring opinion) (same).

No such relationship appears from plaintiff's allegations here. The parties are businesses which are experienced in their industry and undertook an arms-length contractual relationship. There is no basis in the complaint or in reason for finding that defendant was obligated to act in other than its own interests. To the extent plaintiff relied upon defendant to act otherwise, his reliance was unreasonable. See, e.g., *Gaidon v. Guardian Life Ins. Co. of Am.*, 679 N.Y.S.2d 611, 611 (N.Y.App.Div.1998) (even if confidential relationship exists, plaintiff must show his reliance was reasonable to recover for breach).

To determine whether certain information could constitute a trade secret, both New York and Pennsylvania courts look to § 757 of the Restatement (First) of Torts. See *SI Handling Systems, Inc. v. Heisley*, 753 F.2d 1244, 1256 (3d Cir.1985); *Tyson*, 546 A.2d at 121; *Hancock v. Essential Resources, Inc.*, 792 F.Supp. 924, 926 (S.D.N.Y.1992). The factors to be considered include: (1) to what extent the information is known outside of the owner's business; (2) whether the information is known by others involved in the owner's business; (3) the measures taken by the owner to keep the information secret; (4) the value of the information to the owner and its competitors; (5) the effort and money spent to develop or obtain the information; and (6) the difficulty with which the information could be obtained or duplicated by

others. Restatement (First) of Torts § 757 cmt b.

*4 Plaintiff appears to allege that two types of confidential information were misappropriated by defendant: (1) the identities of his customers and (2) his costs (i.e., the prices he paid defendant for its products). As to the latter, I think it obvious that plaintiff's costs--i.e., Brite Star's prices-- could not constitute a trade secret. [FN9] Even if they could, however, the information was Brite Star's, not plaintiff's. Absent a contractual obligation not to do so, Brite Star was entitled to disclose its prices to whomever it wished.

FN9. Cf. *Tyson Metal Products, Inc. v. McCann*, 376 Pa.Super. 461, 546 A.2d 119, 121-122 (Pa.Super.Ct.1988) (refusing to enjoin plaintiff's former employee from revealing to a competitor the prices plaintiff paid a supplier and holding that the supplier's price list was not a trade secret); *SI Handling Systems, Inc. v. Heisley*, 753 F.2d 1244, 1257 (3d Cir.1985) (" 'Material sources and costs' are 'something that would be learned in any productive industry.' "), quoting *Van Products Co. v. General Welding and Fabricating Co.*, 419 Pa. 248, 213 A.2d 769, 776 (Pa.1965).

I also think it clear that the identities of plaintiff's customers is not information entitled to trade secret protection. There is nothing in plaintiff's allegations to suggest that his customers were not readily ascertainable to the extent they were not already known to Brite Star. (See Compl. ¶ 14 ("Sales made by "drop ship" were to customers of Glaberman's who were unable to obtain credit from Brite Star and/or were not prior customers of Brite Star.")) At any rate, plaintiff does not allege that he took any steps to keep these customers "secret," that they could have been kept secret, or that defendant could not have identified them easily through independent means. Thus, there are no allegations to support a claim that plaintiff's customer list could constitute a trade secret. Compare *Hancock v. Essential Resources, Inc.*, 792 F.Supp. 924, 926-27 (S.D.N.Y.1992) (noting "[g]enerally where the customers are readily ascertainable outside the employer's business as prospective users or consumers of the employer's services or products, trade secret protection will not attach" to customer information) (citation and inner quotations omitted).

Defendant's alleged disclosures of plaintiff's costs

and its solicitation of his customers did not involve any information entitled to trade secret protection. As plaintiff alleges no other facts that could give rise to a duty of confidentiality on defendant's part, his claim for breach of confidential relationship must be dismissed.

C.

Finally, plaintiff claims that defendant tortiously interfered with his prospective business relations when it "disclosed confidential and private information" to his customers "in such a way as to intentionally cause embarrassment, harm and injury" to his longstanding business relationships. (Compl. ¶¶ 43-44.) Again construing the complaint liberally in plaintiff's favor, these allegations appear to refer to defendant's conduct in disclosing his costs to his customers and stating that plaintiff was "overcharging" and "cheating" them. (See Comp. ¶ 20; Glaberman Aff. at 10-11.)

Both New York and Pennsylvania courts look to the Restatement (Second) of Torts § 768 to define the scope of the cause of action for tortious interference with prospective business relations. [FN10] See, e.g., *Hannex Corp. v. GMI, Inc.*, 140 F.3d 194, 205-206 (2d Cir.1998) (applying New York law); *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 529-31 (3d Cir.1998) (applying Pennsylvania law). A claim for this tort will lie only where a defendant acted without privilege or justification and for the purpose of harming plaintiff's business relations. *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 530 (3d Cir.1998), citing, inter alia, *Pelagotti v. Cohen*, 370 Pa.Super. 422, 536 A.2d 1337, 1343 (Pa.Super.Ct.1988); *Thompson Coal Company v. Pike Coal Company*, 488 Pa. 198, 412 A.2d 466, 470 (Pa.1979). In this case, defendant claims the competitor's privilege set forth in § 768 of the Restatement (Second) of Torts, which provides in relevant part:

FN10. Plaintiff's complaint merely asserts a claim for "tortious interference" with its "longstanding [business] relationships;" it does not specify whether the claim is one for interference with existing contracts or with only prospective or terminal-at-will contracts. The distinction is significant under both New York and Pennsylvania law, both of which follow the Restatement (Second) of Torts. Compare

§ 768(1), quoted in the text above, with § 768(2) ("The fact that one is a competitor of another for the business of a third person does not prevent his causing a breach of an existing contract with the other from being an improper interference if the contract is not terminable at will.")

It is clear from the complaint, however, that plaintiff can only be asserting a claim for improper interference with prospective business relations, as (1) there is no allegation that defendant interfered with any existing contract between plaintiff and one of its customers and (2) the allegations show that plaintiff's relationships with customers involved only prospective sales or terminable-at-will contracts for sales.

*5 (1) One who intentionally causes a third person not to enter into a prospective contractual relation with another who is his competitor or not to continue an existing contract terminable at will does not interfere improperly with the other's relation if

- (a) the relation concerns a matter involved in the competition between the actor and the other and
- (b) the actor does not employ wrongful means and
- (c) his action does not create or continue an unlawful restraint on trade and
- (d) his purpose is at least in part to advance his interest in competing with the other.

Restatement (Second) of Torts § 768 (1977).

It is clear on the face of the complaint that defendant was acting as a competitor with plaintiff and seeking to advance its own competitive interests when it contacted plaintiff's customers and attempted to sell its products to them directly. [FN11] Plaintiff does not contend otherwise. Accordingly, defendant may be held liable for tortious interference with plaintiff's prospective business relations only if it "employ[ed] wrongful means" in its competitive efforts.

FN11. See BLACKS' LAW DICTIONARY 284 (defining "competitors" as "persons endeavoring to do the same thing and each offering to perform the act, furnish the merchandise, or render the services better or cheaper than his rival"); see also Compl. ¶ 28 (defendant "exploit[ed] information about plaintiff's business for its own economic benefit"), ¶ 32-35 (stating claim, now withdrawn, that defendant unfairly competed with plaintiff).

"Wrongful means" as used in § 768 includes "physical violence, fraud, civil suits and criminal prosecutions," § 768, cmt. e, and may also include conduct that is independently actionable. See *Brokerage Concepts*, 140 F.3d at 531; *Hannex Corp.*, 140 F.3d at 206. No such conduct has been alleged by plaintiff. Plaintiff alleges that defendant disclosed the prices it charged plaintiff to his customers and did so in "such a way as to intentionally" cause plaintiff embarrassment. While this conduct may have humiliated plaintiff and hurt his business, it simply does not constitute the sort of criminal, fraudulent, or independently-actionable conduct required to support a claim for tortious interference against a business competitor. Accordingly, plaintiff's claim for tortious interference must be dismissed.

(2) the remainder of plaintiff's claims are DISMISSED.

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Conclusion

Plaintiff's only remaining claim is for the \$8,622.07 in commissions Brite Star allegedly owes it under the 1996 contract. As this claim does not meet the amount in controversy requirement for diversity jurisdiction, see 28 U.S.C. § 1332, I have discretion as to whether I will exercise supplemental jurisdiction over the claim pursuant to 28 U.S.C. § 1367(c). See *Shanaghan v. Cahill*, 58 F.3d 106 (4th Cir.1995); *Friedrich v. U.S. Computer Systems, Inc.*, 1996 WL 32888, at *3-4 (E.D.Pa. Jan.22, 1996). Because I discern no compelling reason at this early stage of the litigation to exercise supplemental jurisdiction over the claim, I decline to do so. Accordingly, Count I will be dismissed without prejudice. [FN12]

FN12. The attention of plaintiff's counsel is directed to 42 Pa.C.S.A. § 5103(b).

ORDER

AND NOW, this day of February, 1999, upon consideration of defendants' motion to dismiss the complaint for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) and the parties' filings related thereto, it is hereby ORDERED that the motion is GRANTED

*6 (1) plaintiff's first cause of action, for commissions allegedly due from defendants, is DISMISSED without prejudice; and

Exhibit D

Lisa A. RICHETTE, Plaintiff,
v.
PHILADELPHIA MAGAZINE; Philadelphia
Magazine, a division of Metrocorp;
Metrocorp; Eliot Kaplan, Editor Loren Feldman,
Executive Editor; Duane
Swierczynski, Defendants.

No. 802.

Court of Common Pleas of Pennsylvania,
Philadelphia County.

Jan. 23, 1996.

A. Charles Peruto, Philadelphia, PA, for plaintiff.

Alan Lieberman, Schnader, Harrison, Segal &
Lewis, Philadelphia, PA, for defendants.

ORDER

GRIFO, Senior Judge.

*1 AND NOW, this 18th day of January, 1996,
Defendants' Preliminary Objections are hereby
disposed as follows:

A. Defendants' Preliminary Objection in the nature
of a demurrer to Count I, Plaintiff's claim for libel,
is GRANTED.

B. Defendants' Preliminary Objection in the nature
of a motion for more specific pleading to Count II,
Plaintiff's claim for invasion of privacy, is
GRANTED.

C. Defendants' Preliminary Objection in the nature
of a demurrer to Count III, Plaintiff's claim for
intentional infliction of emotional distress, is
GRANTED.

D. Defendants' Preliminary Objection in the nature
of a demurrer to Count IV, Plaintiff's claim for
negligent infliction of emotional distress, is
GRANTED.

E. Defendants' Preliminary Objection in the nature
of a demurrer to Count V, Plaintiff's claim for false
light, is GRANTED.

F. Defendants' Preliminary Objection in the nature
of a demurrer to (first) Count VI, Plaintiff's claim
for negligence, is GRANTED.

G. Defendants' Preliminary Objection in the nature
of a demurrer to (second) Count VI, Plaintiff's
claim for punitive damages, is GRANTED.

H. Plaintiff is hereby granted leave to file an
amended complaint as to Count II only within
twenty (20) days.

STATEMENT OF REASONS

Before the Court are Defendants' preliminary
objections to Plaintiff's complaint setting forth
seven separate counts, asserting respectively, libel,
invasion of privacy, intentional infliction of
emotional distress, negligent infliction of emotional
distress, false light, negligence, and punitive
damages. Defendants argue that Plaintiff's complaint
must be dismissed for failure to state a cause of
action. In reviewing preliminary objections in the
nature of a demurrer, the Court must accept as true
the well-pleaded material facts of the party against
whom the motion is granted, and all reasonable
inferences drawn therefrom. *Lampus v. Lampus*, ---
Pa. ---, 660 A.2d 1308, 1309 (1995). In addition,
in order to sustain the demurrer, it is essential that
the Plaintiff's complaint indicate on its face that
Plaintiff's claim cannot be sustained, and the law
will not permit recovery. *Id.*

Plaintiff in this action is the Honorable Lisa A.
Richette, a Court of Common Pleas Judge for the
First Judicial District of the Commonwealth of
Pennsylvania. The basis of Plaintiff's defamation
claim is an article that appeared in the July, 1993,
edition of Philadelphia Magazine, entitled "Five
Angry Men". The article focused on the activities of
a group of elderly men who attend trials for
entertainment at Philadelphia's City Hall. In
describing a day in the life of these men,
collectively known as Roving Jurors, the author
made passing mention of the Plaintiff, the
Honorable Lisa A. Richette.

One of the Roving Jurors sitting in Plaintiff's
courtroom at City Hall is quoted on page 48 as
saying: "She's an emotional wreck. She's always in

a world of confusion". The same individual is quoted as saying that if he sees the Plaintiff waiting to get to the elevator, he'll slow up just to make sure they don't share a car. Also on page 48, the author of the article describes an incident in the courtroom:

*2 Richette has just called a recess because the wire on her bench microphone is frayed. She was throwing a minor hissy fit a minute ago, but now she's talking to her court assistants about Israeli chocolate.

On page 50, the article describes Plaintiff on the phone, during recess, apparently to a seamstress. One of the Roving Jurors comments: "There's a case going on and she's worried about a dressmaker". On page 50, two paragraphs later, another Roving Juror refers to Plaintiff as "a horse's ass", in disagreement with a sentence imposed by Plaintiff upon a criminal defendant.

Count I of the complaint avers a cause of action against Defendants for libel. In an action for defamation:

[A] trial court must first determine whether the offending statement, taken in context, would be interpreted by a reasonable reader as defamatory. If not, the court should dismiss the action.

MacElree v. Philadelphia Newspaper, Inc., 437 Pa. Super. 598, 650 A.2d 1068, 1070 (1994). The plaintiff has the burden of proving the defamatory character of the publication. 42 Pa.C.S.A. § 8343(a)(1) (1982). Under Pennsylvania law:

A communication is defamatory if it tends to deter third persons from associating with the subject of the communication or to harm his reputation by lowering him in the estimation of the community.

Parano v. O'Connor, 433 Pa. Super. 570, 574, 641 A.2d 607, 609 (1994).

In determining whether certain types of communications are defamatory, Pennsylvania courts have held that statements which are merely embarrassing or annoying to the subject do not rise to the level of defamation. Kryeski v. Schott Glass Technologies, Inc., 426 Pa. Super. 105, 116, 626 A.2d 595, 600 (1993). Expressions of opinion are not actionable. *Id.* at 116, 626 A.2d at 601. "Whether a particular statement constitutes a fact or an opinion is a question of law for the trial court to determine." Mathias v. Carpenter, 402 Pa. Super. 358, 362, 587 A.2d 1, 3 (1991). A certain amount of vulgar name-calling is tolerated, on the theory

that it is properly understood by reasonable listeners to amount to nothing more. MacElree, 437 Pa. Super. 598 at ---, 650 A.2d at 1071, citing Restatement (Second) of Torts § 566, cmt. e (1984).

In the case at bar, we agree that the descriptions of Plaintiff are unflattering, annoying and embarrassing, but they are far from libelous. Courts in Pennsylvania have found other far more offensive characterizations non-defamatory. See, e.g., MacElree v. Philadelphia Newspaper, Inc., 437 Pa. Super. 598, 650 A.2d 1068, 1070 (1994) (referring to an individual as a racist is not enough to support a defamation action).

We find, therefore, that the statements published about Plaintiff, when taken in context, do not rise to the requisite level to support a claim for defamation. Further, we find that the statements made by the Roving Jurors about Plaintiff constitute expressions of their opinion and, as such, are not actionable. Finally, the vulgar name-calling quoted in the article is not defamatory since reasonable readers recognize that it is merely rhetoric and nothing more. Accordingly, since we find that the published statements are not defamatory and are only expressions of opinion, Plaintiff's claim for libel must be dismissed.

*3 Plaintiff's second claim is for invasion of privacy. Under Pennsylvania law, the cause of action for invasion of privacy is not one tort, but a complex of four. Curran v. Children's Service Center of Wyoming County, Inc., 396 Pa. Super. 29, 38, 578 A.2d 8, 12 (1990).

These four potential causes of action consist of: (1) unreasonable intrusion upon the seclusion of another; (2) appropriation of the other's name or likeness; (3) unreasonable publicity given to the other's private life; and, (4) publicity that unreasonably places the other in a false light before the public.

Id., citing Restatement (Second) of Torts § 652A (1984). Since Plaintiff fails to aver which tort serves as the basis for her claim in Count II of the complaint, we must grant Defendants' motion for more specific pleading to Count II.

The basis for Count III of Plaintiff's complaint is a claim for intentional infliction of emotional distress. In Pennsylvania, the tort of intentional infliction of emotional distress has not been adopted or made part

of the law. *Armstrong v. Paoli Memorial Hosp.*, 430 Pa. Super. 36, 43, 633 A.2d 605, 608 n.1 (1993). Our Supreme Court, however, has acknowledged that the tort exists as described in Restatement (Second) of Torts § 46(1). *Fewell*, No. 01828 Pitts.1994, 1995 WL 501424, at *4 (Pa. Super. Aug. 24, 1995). In order to prevail, a Plaintiff must show that the Defendant's conduct was intentional, outrageous, and that the resulting emotional distress has produced medically documented physical symptoms. *Armstrong*, 430 Pa. Super. at 43, 633 A.2d at 608. In the case at bar, we find that the Defendants' conduct does not rise to the level of outrage required to support a claim for intentional infliction of emotional distress. Additionally, since Plaintiff has not averred the existence of medically documented physical symptoms resulting from Defendants' conduct, we must dismiss Count III for failure to state a cause of action.

Count IV of Plaintiff's complaint is a claim for negligent infliction of emotional distress. In order to sustain a cause of action for negligent infliction of emotional distress, a Plaintiff must demonstrate some type of physical injury or harm. *Fewell v. Besner*, No. 01828 Pitts.1994, 1995 WL 501424, at *5 (Pa. Super. Aug. 24, 1995). See also, *Armstrong v. Paoli Memorial Hosp.*, 430 Pa. Super. 36, 633 A.2d 605 (1993) (physical injury must be averred to sustain action for negligent infliction of emotional distress). Since Plaintiff's complaint does not aver physical harm or injury, we must dismiss Plaintiff's claim for failure to state a cause of action for negligent infliction of emotional distress.

Count V of Plaintiff's complaint states a cause of action for invasion of privacy, false light. Under Pennsylvania law, a Plaintiff must show that a publication is not true, is highly offensive to a reasonable person, and is publicized with knowledge of its falsity and in reckless disregard of the false light in which the Plaintiff would be placed. *Parano*, 433 Pa. Super. at 575, 641 A.2d at 609, citing Restatement (Second) of Torts § 652E, cmt. b (1984). Further, a publication must cause mental suffering, shame or humiliation to a person of ordinary sensibilities. *Neish v. Beaver Newspapers, Inc.*, 398 Pa. Super. 588, 597, 581 A.2d 619, 625 (1990). A tortious invasion of privacy exists only when:

*4 [T]he defendant knows that the plaintiff, as a

reasonable man, would be justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity. It is only when there is such a major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position, that there is a cause of action for invasion of privacy.

Curran, 396 Pa. Super. at 39-40, 578 A.2d at 12-13, citing Restatement (Second) of Torts § 652E, cmt. c (1984).

In the present case, we find that the statements made by the Defendants in the magazine article cannot be considered highly offensive to a reasonable person. The remarks of a few elderly men who observe trials for entertainment are hardly the kind of offensive comments that serve as the basis for a cause of action for the tort of invasion of privacy. We do not find that Plaintiff has been placed in a false light, nor do we find that a person of ordinary sensibilities would experience intense mental suffering, shame or humiliation as a result of the publication. Accordingly, we dismiss Plaintiff's claim for invasion of privacy, false light.

Count VI (first) of Plaintiff's complaint states a cause of action for negligence. In a defamation action, a public official or public figure must produce clear and convincing evidence of actual malice as a prerequisite to liability. *McDermott v. Biddle*, 436 Pa. Super. 94, 107-08, 647 A.2d 514, 520-21 (1994), citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). "Mere negligence or carelessness is not evidence of actual malice". *Reiter*, 436 Pa. Super. at 197, 647 A.2d at 565.

"It is the function of the court to ascertain in the first instance whether the plaintiff is a public or private figure". *Iafrate v. Hadesty*, 423 Pa. Super. 619, 623, 621 A.2d 1005, 1007 (1993). Pennsylvania Courts have consistently held that public officials are public figures who are required to establish actual malice rather than mere negligence in a defamation action. See, e.g., *Sprague v. Walter*, --- Pa. Super. ---, 656 A.2d 890 (1995) (former assistant district attorney must prove actual malice); *Reiter v. Manna*, 436 Pa. Super. 192, 647 A.2d 562 (1994) (political candidate must prove actual malice); *McDermott v. Biddle*, 436 Pa. Super. 94, 647 A.2d 514 (1994) (Supreme Court

Justice must prove actual malice); *Coleman v. Philadelphia Newspapers, Inc.*, 391 Pa. Super. 140, 570 A.2d 552 (1990) (president of city council must prove actual malice).

In light of Plaintiff's position as a Court of Common Pleas Judge, we find that Plaintiff is a public figure who must plead and prove actual malice in a defamation action. Accordingly, we dismiss Count VI (first) of Plaintiff's complaint for failure to state a cause of action.

Count VI (second) of Plaintiff's complaint states a claim for punitive damages. Pennsylvania Courts have addressed the issue of punitive damages in a public official defamation case:

*5 [I]n order to recover both compensatory and punitive damages, the plaintiff must not only prove actual malice, but must also demonstrate that the defendant acted with common law malice in publishing the defamatory statement. Common law malice involves conduct that is outrageous because of the defendant's evil motive or his reckless indifference to the rights of others, and is malicious, wanton, reckless, willful, or oppressive.

Sprague, --- Pa. Super. at %BF---, 656 A.2d at 922.

With regard to proof of actual malice, Pennsylvania Courts have stated:

Reckless disregard for the truth, i.e. actual malice, is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity.... [W]hile it arguably may be negligent not check independently the veracity of information before publication, this fault does not rise to the level of actual malice.

Reiter, 436 Pa. Super. at 197, 647 A.2d at 565.

In determining whether a defendant's conduct rises to the requisite level to establish common law malice, the focus is on the defendant's disposition toward the plaintiff at the time of the wrongful act. *Id.* "Thus, before punitive damages will be allowed in a case involving the defamation of a public official, the plaintiff must prove that the defendant

displayed actual or apparent ill will." *Id.* "This is so because punitive damages in public official defamation actions are specifically intended to punish and deter publication with actual or apparent ill will." *Id.* "Therefore, in the context of a public official defamation action, punitive damages must be limited to only those cases where common law malice is shown." *Id.* Accordingly, whenever the defendant's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct resulting from either an evil motive or because of a reckless indifference to the rights of others, an assessment of punitive damages is proper. *Id.*

In the case at bar, we find that the allegations contained in Plaintiff's complaint do not contain the requisite facts amounting to outrageous conduct, ill will and actual malice. Since punitive damages are not recoverable under the facts averred in the complaint, Defendants' preliminary objections are granted.

Finally, "[a] request for punitive damages does not constitute a cause of action in and of itself. Rather, a request for punitive damages is merely incidental to a cause of action". *Nix v. Temple Univ. of the Commw. Sys. of Higher Educ.*, 408 Pa. Super. 369, 380, 596 A.2d 1132, 1138 (1991). Count VI (second) of Plaintiff's complaint is a request for punitive damages that cannot stand as an independent cause of action. Accordingly, we dismiss Count VI (second) for failure to state a cause of action.

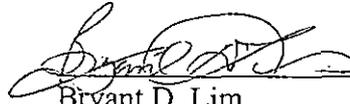
END OF DOCUMENT

CERTIFICATION OF SERVICE

This is to certify that in this case, assigned to Judge Katherine B. L. Platt, complete copies of all papers contained in the Brief in Support of the Preliminary Objections of Defendant PP&L, Inc. to Plaintiffs' Complaint and Praecipe for Determination have been served on the following persons, by the following means and on the date stated:

<u>Name:</u>	<u>Means of Service:</u>	<u>Date:</u>
Ethan N. Halberstadt, Esquire POWELL, TRACHTMAN, LOGAN, CARRLE, BOWMAN & LOMBARDO, P.C. 475 Allendale Road, Suite 200 King of Prussia, PA 19406	First Class Mail (postage prepaid)	February 9, 2000

Attorney for Plaintiffs



Bryant D. Lim
Attorney Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5165

**POWELL, TRACHTMAN, LOMBARD, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney I.D. #57544
By: Mary J. Pedersen
Attorney I.D. #80552
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760



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PROBATE JUDICIAL
OFFICE OF CHESTER CO., PA.

COMMERCIAL UTILITY CONSULTANTS and PUBLIC UTILITY SERVICE CORPORATION Plaintiffs,	IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
v.	CIVIL ACTION — LAW .
PENNSYLVANIA POWER & LIGHT COMPANY now known as PP&L, Inc. Defendant.	JURY TRIAL DEMANDED NO. 99-09799

PLAINTIFFS' RESPONSE TO DEFENDANT'S PRELIMINARY OBJECTIONS

Plaintiffs Commercial Utility Consultants ("CUC") and Public Utility Service Corporation ("PUSC"), through their undersigned counsel, hereby respond to defendant Pennsylvania Power and Light Company's ("PP&L") preliminary objections as follows:

1. Admitted.
2. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself. A true and correct copy of the Complaint is attached hereto as Exhibit "A."
3. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.
4. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.
5. Denied. The averment of this paragraph attempts to characterize the provisions of

a document of record which speaks for itself.

6. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

7. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

8. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

9. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

1. Response to Preliminary Objection in the Nature of a Demurrer for Failure to State a Cause of Action for Existing Contractual Relations – Pa. R.Civ.P. 1028(a)(4)

10. Denied as a conclusion of law to which no response is required.

11. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

12. Denied. To the contrary the Complaint specifically alleges that once plaintiffs' recommendations are implemented, the customer is obligated to pay plaintiff for a specific period of time. (Complaint, paragraph 5). That period of time is generally 60 months.

13. Denied as a conclusion of law to which no response is required.

14. Denied. Plaintiffs are independent utility consultants. The "shared savings" agreements are consulting agreements, not employment agreements. Plaintiffs are not considered employees of their customers.

15. Denied as a conclusion of law to which no response is required.

WHEREFORE, plaintiffs CUC and PUSC respectfully request that this Court overrule defendant PP&L's preliminary objection to plaintiffs' claims for tortious interference with

existing contractual relations and award plaintiffs such other relief as deemed appropriate by this Court.

II. Response to Preliminary Objection in the Nature of a Demurrer for Failure to State a Cause of Action for Prospective Contractual Relations – Pa.R.Civ.P. 1028(a)(4)

16. Denied as a conclusion of law to which no response is required.

17. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

18. Admitted. Plaintiffs are not asserting any claim for tortious interference with prospective contractual relations and therefore, this preliminary objection is improper and unnecessary.

19. Denied as a conclusion of law to which no response is required.

WHEREFORE, plaintiffs CUC and PUSC respectfully request that this Court overrule defendant PP&L's second preliminary objection as plaintiffs have not alleged a claim for tortious interference with prospective contractual relations and as such the objection is improper, and award plaintiffs such other relief as deemed appropriate by this Court.

III. Response to Preliminary Objection to Plaintiffs' Claim for Punitive Damages Because the Underlying Tort Claims Fail as a Matter of Law or in the Alternative Plaintiffs have not Alleged Facts Sufficient to Demonstrate Evil Motive or Reckless Indifference to the Rights of Others – Pa.R.Civ.P. 1028(a)(4)

20. Admitted.

21. Denied. To the contrary plaintiffs' have asserted a valid claim for tortious interference with existing contractual relations.

22. Denied. To the contrary plaintiffs' Complaint alleges sufficient facts to demonstrate that defendant's conduct was malicious, outrageous, and in reckless disregard to

plaintiffs' contractual rights for purposes of disposing of preliminary objections. (See, e.g., Complaint, paragraphs 17-34).

23. Denied.

WHEREFORE, plaintiffs CUC and PUSC respectfully request that this Court overrule defendant PP&L's preliminary objection to plaintiffs' claim for punitive damages and award plaintiffs such other relief as deemed appropriate by this Court.

IV. Response to Preliminary Objection and Motion to Strike Based Upon Plaintiffs' Failure to Join in Separate Counts Their Separate Causes of Action, Thereby Failing to Conform to the Rules of Law and Rules of Court – Pa.R.Civ.P. 1020(a)(1), 1028(d)(2)

24. Admitted.

25. Denied. The allegations of paragraphs 36-37 of the Complaint assert "another form of damage" suffered by plaintiffs as a result of defendant's tortious interference with existing contractual relations and do not purport to assert a separate cause of action for tortious interference with prospective contractual relations.

26. Denied as a conclusion of law to which no response is required.

27. Admitted.

28. Denied for the reasons set forth in the foregoing paragraphs which are incorporated herein as if set forth at length.

WHEREFORE, plaintiffs CUC and PUSC respectfully request that this Court overrule defendant PP&L's preliminary objection to strike plaintiffs' Complaint for failure to conform to Pa.R.Civ.P. 1020(d)(1) as said objection is improper and unnecessary and award plaintiffs such other relief as deemed appropriate by this Court.

V. Response to Preliminary Objection and Motion to Strike Based Upon Plaintiffs' Failure to Attach the Written Contracts at Issue— Pa.R.Civ.P. 1019(h), 1028(a)(2)

29. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

30. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

31. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

32. Admitted.

33. Denied as a conclusion of law to which no response is required.

WHEREFORE, plaintiffs CUC and PUSC respectfully request that this Court overrule defendant PP&L's preliminary objection to strike plaintiffs' Complaint for failure to conform to Pa.R.Civ.P. 1020(d)(1), and award plaintiffs such other relief as deemed appropriate by this Court.

VI. Response to Preliminary Objection and Motion to Strike Based Upon Plaintiffs' Inclusion of Scandalous and Impertinent Matter -- Failure to Conform to Rule of Court -- Pa.R.Civ.P. 1028(a)(2)

34. Denied as a conclusion of law to which no response is required. Denied further for the reason that the corresponding paragraph characterizes the Complaint, a document of record that speaks for itself.

35. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

36. Denied. The averment of this paragraph attempts to characterize the provisions of a document of record which speaks for itself.

37. Denied as a conclusion of law to which no response is required. Denied further for the reason that the corresponding paragraph characterizes the Complaint, a document of record that speaks for itself.

38. Denied for the reasons set forth above in paragraphs 34-37.

WHEREFORE, plaintiffs CUC and PUSC respectfully request that this Court overrule defendant PP&L's preliminary objection seeking to strike plaintiffs' Complaint for alleged inclusion of scandalous and impertinent matter and award plaintiffs such other relief as deemed appropriate by this Court.

VII. Response to Preliminary Objection and Motion to Strike Based Upon the Insufficient Specificity of the Pleadings – Pa.R.Civ.P. 1028(a)(3)

39. Denied as a conclusion of law to which no response is required. Denied further as plaintiffs have pled sufficient facts to satisfy the Pennsylvania Rules of Civil Procedure and have set forth a valid cause of action for tortious interference with existing contractual relations.

40. Denied as the averments of this paragraph attempt to incorporate facts and issues not of record in this proceeding. Denied further as plaintiffs have pled sufficient facts to satisfy the Pennsylvania Rules of Civil Procedure and have set forth a valid cause of action for tortious interference with existing contractual relations.

41. Denied as a conclusion of law to which no response is required. By way of further answer see answers to paragraphs 39 and 40 above.

WHEREFORE, plaintiffs CUC and PUSC respectfully request that this Court overrule defendant PP&L's preliminary objection seeking to strike plaintiffs' Complaint for alleged inclusion of scandalous and impertinent matter and award plaintiffs such other relief as deemed

appropriate by this Court.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C., P.C.

Date: March 1, 2000

By: _____



Ethan N. Halberstadt
Mary J. Pedersen
Attorneys for Plaintiffs

Exhibit A

CIVIL COVER SHEET

1. CASE CAPTION: COMMERCIAL UTILITY CONSULTANTS and PUBLIC UTILITY SERVICE CORPORATION v. PENNSYLVANIA POWER & LIGHT COMPANY, now known as PP&L, Inc.

1A. CASE NO.: 94-09799

RECEIVED
SHERIFF'S OFFICE
CHESTER COUNTY, PA.
1999 NOV 23 PM 3:30

2. PLAINTIFF(s): (Name, address)
See Attached

3. PLAINTIFF'S COUNSEL:
(Name; firm, address, telephone and attorney ID#)
Ethan N. Halberstadt/Atty ID#57844
Powell, Trachtman, Logan, Carrle
Bowman & Lombardo, P.C.
475 Allendale Road, Suite 200
King of Prussia, PA 19406
610.354.9700

4. DEFENDANT(s): (Name, address)
PENNSYLVANIA POWER & LIGHT COMPANY
now known as PP&L, INC.
2 North 9th Street
Allentown, PA 18101

5. ARE THERE ANY RELATED CASES?
(see C.C.R.C.P. 200B)
 Yes No
IF YES, SHOW CASE NOS. AND CAPTIONS:
Commercial Utility Consultants v.
Pennsylvania Power & Light Company,
now known as PP&L, Inc.

6. IF THIS IS AN APPEAL FROM A DISTRICT JUSTICE JUDGMENT, WAS APPELLANT PLAINTIFF OR DEFENDANT IN THE ORIGINAL ACTION?

7. CASE CODE: 43 DESCRIPTION: (see reverse side) Other

8. IS THIS AN ARBITRATION CASE? Yes No
(Arbitration Limit is \$50,000. See C.C.R.C.P. 1301.1)

ARBITRATION CASES ONLY
An Arbitration hearing in this matter is scheduled for _____ at _____ in the Jury Lounge, Chester County Court House, West Chester, PA. The parties and their counsel are directed to report to the Juror's Lounge for an arbitration hearing in this matter on the date and time set forth above.
This matter will be heard by a Board of Arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial *de novo* on appeal from a decision entered by a judge.

NOTICE OF TRIAL LISTING DATE
Pursuant to C.C.R.C.P. 249.3, if this case is not subject to compulsory arbitration it will be presumed ready for trial twelve (12) months from the date of the initiation of the suit and will be placed on the trial list one (1) year from the date the suit was filed unless otherwise ordered by the Court.
To obtain relief from automatic trial listing a party must proceed pursuant to C.C.R.C.P. 249.3(b), request an administrative conference and obtain a court order deferring the placement of the case on the trial list until a later date.

FILE WITH: Prothonotary of Chester County, 2 North High Street, Suite 130, P.O. Box 2748, West Chester, PA 19380-0991

THIS COVER SHEET IS REQUIRED BY C.C.R.P. 1018.1 (b) AND MUST BE SERVED UPON ALL OTHER PARTIES TO THE ACTION IMMEDIATELY AFTER FILING. SUBMIT ENOUGH COPIES FOR SERVICE

2. PLAINTIFFS (Name, address)

COMMERCIAL UTILITY CONSULTANTS
1556 McDaniel Drive
Westtown Business Center
West Chester, PA 19380

PUBLIC UTILITY SERVICE CORPORATION
Whiteland Business Park
750 Springdale Drive
Exton, PA 19341

POWELL, TRACHTMAN, MORGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

COMMERCIAL UTILITY CONSULTANTS 1556 McDaniel Drive Westtown Business Center West Chester, PA 19380	IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
and	
PUBLIC UTILITY SERVICE CORPORATION Whiteland Business Park 750 Springdale Drive Exton, PA 19341,	CIVIL ACTION — LAW
Plaintiffs,	
v.	JURY TRIAL DEMANDED
PENNSYLVANIA POWER & LIGHT COMPANY now known as PP&L, Inc. 2 North 9 th Street Allentown, PA 18101,	
Defendant.	NO.

COMPLAINT

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE

LEGAL REFERENCE SERVICE
15 West Gay Street
West Chester, PA 19380
(610) 429-1500

KOP:149812.12557-21

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SERVICIO DE REFERENCIA LEGAL

Telephono:
SERVICIO DE REFERENCIA LEGAL
15 West Gay Street
West Chester, PA 19380
Telefono: (610) 429-1500

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

COMMERCIAL UTILITY CONSULTANTS 1556 McDaniel Drive Westtown Business Center West Chester, PA 19380 and PUBLIC UTILITY SERVICE CORPORATION Whiteland Business Park 750 Springdale Drive Exton, PA 19341, Plaintiffs, v. PENNSYLVANIA POWER & LIGHT COMPANY now known as PP&L, Inc. 2 North 9 th Street Allentown, PA 18101, Defendant.	IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA CIVIL ACTION — LAW JURY TRIAL DEMANDED NO.
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COMPLAINT

1. Plaintiffs herein are Commercial Utility Consultants ("CUC") and Public Utility Service Corporation ("PUSC"). CUC is a sole proprietorship with a usual place of business at 1556 McDaniel Drive, Westtown Business Center, West Chester, Pennsylvania 19380. PUSC is a Delaware corporation with a usual place of business at Whiteland Business Park, 750 Springdale Drive, Exton, Pennsylvania 19341. CUC and PUSC will hereinafter be collectively referred to as "Plaintiffs".

2. Defendant herein is the Pennsylvania Power & Light Company, now known as PP&L, Inc. (hereinafter "PP&L"), a Pennsylvania public utility with a registered place of business located at 2 North 9th Street, Allentown, Pennsylvania, 18101.

3. Plaintiffs are in the business of, *inter alia*, providing utility consulting services. Plaintiffs generally provide utility consulting services pursuant to "shared savings" written contracts with their customers. The "shared savings" agreements are typically one page documents wherein the utility consultant agrees to review the rates, tariffs, discounts, riders and total charges that apply to the customer's utility billings and to submit recommendations to the customer for possible savings, credits or refunds. No payment is owed to the consultant unless the customer implements the recommendation and experiences utility savings, credits, or refunds.

4. PUSC and CUC have maintained a business relationship with each other with respect to accounts in the PP&L territory for many years. For instance, PUSC provides sales services on behalf of CUC in the PP&L territory and CUC has served as a consultant to PUSC on numerous accounts in the PP&L territory.

5. Plaintiffs' customers find their contracts attractive because they do not have to pay the consultant anything unless savings are found. As is standard in the utility consulting industry, Plaintiffs generally receive 50% of any credit or refund they obtain for their clients, as well as 50% of the savings that results from their recommendations over a period of time. Once the period expires, the customer continues to enjoy the full amount of the savings as long as the rate remains available. Pursuant to this arrangement, Plaintiffs only receive payment for as long as their customer continues to enjoy the savings resulting from their recommendations.

6. As a result of years of experience in the industry, Plaintiffs have expertise in

examining their customers' utility billings and in finding rates and tariffs that will save their customers significant sums.

7. In the event that the Plaintiffs are able to find savings for their customers, they typically submit a written letter of recommendation to the customer or set up a face-to-face meeting to review the recommendations and, depending upon the recommendation made, to review the pros and cons of implementing the recommendation. In most instances, however, there is no downside to a recommendation. Most recommendations involve rate changes that have no impact on the customer's operations.

8. It was not until recently that there were changes effected by the legislature to begin to "deregulate" utility service in Pennsylvania. These changes are slowly being made. At the time of most of the events described in this Complaint, however, public utilities in Pennsylvania were not deregulated. As a result, the public utility servicing a particular area had a literal monopoly on utility service in that area.

9. As a result of this virtual monopoly, prior to deregulation the public utilities had very little need for marketing their services or for showing their customers ways in which the customer could lower its utility bills. From a practical standpoint, there was no competition for the public utility and any recommendation to the customer that would save the customer money would necessarily mean less money for the public utility. Under these circumstances, the public utilities had little incentive to save their customers money in their utility bills.

10. Although every public utility has a statutory duty to provide customers with the most advantageous rate available, PP&L frequently failed to do so. Simply put, although PP&L had a legal duty to inform its customers about the availability of better rates, it had not economic

incentive to do so; by passively allowing its customers to use higher rates than necessary, PP&L enjoyed a substantial windfall at its customers' expense.

11. Utility consultants, such as Plaintiffs, are successful in finding their customers savings for the foregoing reasons. Although lower rates and tariffs are available, the public utility has no incentive to bring these rates and tariffs to the customer's attention. The utility consultants, on the other hand, are highly motivated to find lower rates and tariffs for their customers because they are only paid if they succeed in doing so.

12. Like other public utilities, at all times relevant to this lawsuit PP&L had "marketing representatives" who were its primary contact with industrial customers for purposes of, *inter alia*, marketing the benefits of increasing production, and therefore electric usage, in the PP&L distribution area. Marketing representatives also purportedly assisted industrial customers in understanding PP&L's complex rate structure, and making decisions about what rate was best for their business. Given its "public utility" status, customers were generally led to believe that the marketing representatives were looking out after the customer's best interests.

13. Plaintiffs have had substantial success assisting PP&L's industrial customers achieve significant savings in their electric utility costs. The principals of Plaintiffs have been providing utility consulting in the PP&L region for approximately 20 years.

14. In every instance, plaintiff's recommendations to its industrial customers were entirely consistent with the principles and policies giving rise to the recommended rate, including, *inter alia*, economic development and system reliability. However, in many instances PP&L chose to ignore those principles and policies in order to increase its bottom line at its customers', and the Commonwealth's, expense.

15. Over the course of their dealings in the PP&L region, it is estimated that Plaintiffs have saved their customers millions of dollars in utility savings, further advancing the policies and principles which gave rise to the approval of the economic development and system reliability rates. However, these savings have partially diminished the substantial windfall which PP&L enjoys when charging more than the most advantageous rates available.

16. In addition to undermining PP&L's windfall, Plaintiff's have also caused PP&L representatives to be put in the uncomfortable position of having failed to disclose or recommend the most advantageous rate available. Plaintiffs' successes often lead to distrust and tension between the marketing representative and his customer contact, as the customer cannot understand why they were forced to pay a consultant to find a cheaper rate or tariff. The marketing representatives often come away looking badly in the eyes of the customer.

17. In addition to the foregoing, PP&L's marketing representatives envy what they perceive to be the large sums of money earned by the Plaintiffs. Some PP&L's representatives have taken the "if you can't beat them join them approach" and have become utility consultants themselves. Others, including at least one high level PP&L employee, Oliver Kaspar, have moonlighted as a utility consultant in competition with Plaintiffs while still an employee of PP&L.

18. The upshot of the foregoing is that PP&L, by and through its agents, employees and representatives, has taken affirmative action designed to interfere with Plaintiffs' ability to service their customers and to obtain the greatest level of savings for its customers. This active interference has taken numerous forms.

19. At all relevant times PP&L was aware of the written contracts that Plaintiffs

maintain with their customers. Correspondence to Plaintiffs' customers makes clear that, at all material times, PP&L was aware of the terms of the written contracts between Plaintiffs and their customers.

20. In addition to the foregoing, one PP&L representative, Larry Collins, went so far as to misrepresent himself to CUC in an effort to gain information about its utility consulting business. Mr. Collins contacted CUC and advised that he was "Carroll Collins" and that he represented Schoolhouse Graphics and that he might be able to get additional business for CUC through the Lancaster County School District. Mr. Collins requested all sales materials from CUC, which were forwarded by CUC's sales manager. CUC thereafter investigated the matter and learned that the person who had called was, in fact, Larry Collins. Mr. Collins was not interested in CUC's materials for Schoolhouse Graphics or the Lancaster County School District; rather, he was gathering information on behalf of PP&L.

21. At the time of the foregoing incident, Larry Collins had already displayed open hostility towards CUC in conjunction with some of CUC's clients. For instance, after CUC had presented recommendations to Kutco Printing & Products, Inc. and Reading Alloys, Mr. Collins advised those customers that they did not need CUC's assistance, that they should stay away from companies like CUC, that the customers should not deal with CUC but should deal directly with PP&L, and that PP&L would provide the same service as CUC without charge. At the time he made these statements Mr. Collins was aware that the customers were under written contract with CUC. In addition, as it relates to Kutco Printing & Products Company, Mr. Collins refused to apply PP&L's Industrial Development Initiatives Rider in accordance with the terms of PP&L's own tariff. When advised that he was applying the tariff improperly, Mr. Collins

informed CUC that he could implement the IDIR anyway that he wanted.

22. Mr. Collins is not the only PP&L representative to interfere with Plaintiffs' customer contracts. In fact, PP&L representatives regularly interfered with Plaintiffs' contractual relations by informing Plaintiffs' customers that the customers did not need Plaintiffs' assistance and that PP&L would do the work for the customers at no charge. These statements were not made in the context of general marketing, but rather with full knowledge of the terms of Plaintiffs' shared savings agreements, the fact that Plaintiffs had already provided recommendations to their customers, and with the intent to induce the customers to breach their contracts with Plaintiffs. Without access to PP&L's files, Plaintiffs cannot identify every client with whom PP&L actively interfered. However, the clients include Kutco Printing & Products Company, Bigbee Steel and Tank Company, Buck Company, Inc., Gentex Corporation, Carlisle Plastics, Inc., AMC, Polymer Dynamics, Inc., and Reading Alloys.

23. Another way in which PP&L has taken affirmative steps to interfere with Plaintiffs' contractual relations with its customers is by actually assisting the customer in purportedly terminating Plaintiffs' contracts. Plaintiff has repeatedly come across instances in the PP&L territory where it has made recommendations to customers that would save the customer large sums of money, only to receive a purported termination letter following the presentation or recommendation. In most instances the customer thereafter implements the recommendation that was provided by Plaintiffs. Plaintiffs have received such termination letters from customers such as Gentex Corporation, Carlisle Plastics, Inc., Buck Company, Inc., and Polymer Dynamics, Inc.

24. For example, PP&L went so far as to provide the actual wording to one customer

of PUSC, Buck Company, Inc., on how to terminate PUSC's contract with Buck Company, Inc. CUC was a consultant to PUSC with respect to Buck Company, Inc. and was financially harmed as a result of the actions described herein. As a result of this interference, PUSC was forced to institute suit against Buck Company, Inc. after it purportedly terminated PUSC's contract and refused to pay PUSC. Although PUSC ultimately settled the lawsuit against Buck Company, Inc., it lost thousands of dollars through the settlement and was forced to incur substantial attorney's fees and costs which would not have occurred except for PP&L's active interference in the account. Individuals at the highest levels of PP&L were aware of this interference, participated in same, but took no steps to stop same.

25. In addition to Buck Company, Inc., PP&L's interference has so dramatically harmed Plaintiffs' contractual relations with its clients that Plaintiffs were forced to commence legal action against other clients at great expense to Plaintiffs. This includes Gentex Corporation, Carlisle Plastics, Inc., and Bigbee Steel and Tank Company, former customers of CUC. PUSC provided sales services for CUC on these accounts and was financially harmed as a result of PP&L's actions as described herein. In each instance CUC received a termination letter, virtually identical to the termination letter received by PUSC from the Buck Company, Inc, which purportedly terminated the parties' utility consulting contract. In each instance, the client thereafter implemented CUC's recommendations and refused to compensate CUC.

26. Without the opportunity to review PP&L's files, there is no way for Plaintiffs to identify every customer with whom PP&L has interfered. However, Plaintiffs believe that there are numerous accounts that have been the subject of active interference by PP&L. The reason that Plaintiffs cannot identify every such customer is because every such interference is not

accompanied by a "termination" letter and there is often no explanation offered by the customer as to why they are not implementing Plaintiffs' recommendations. In addition, PP&L's interference takes other forms, as described below.

27. In addition to the foregoing interference, PP&L has actively interfered with Plaintiffs' contractual relations with its customers by providing false and misleading information to Plaintiffs' customers respecting the recommendations provided by Plaintiffs. By way of example, one of the more profitable recommendations for Plaintiffs has been the "interruptible" rate offered by PP&L. This is a very costly rate for PP&L in that it affords commercial users literally millions of dollars in savings over other "non-interruptible" rates. In essence, the interruptible rate is much less expensive than other rates because the user agrees, under certain conditions, to reduce its "demand" at the request of the utility. The downside is that by reducing its demand its operations may be effected; the upside is the tremendous utility savings the user can realize as a result.

28. At all relevant times PP&L was aware that Plaintiffs were advising qualifying industrial customers of the substantial benefits which their facilities would enjoy by subscribing to an "interruptible rate"; accordingly PP&L took affirmative steps to mislead customers respecting the risks and benefits of the interruptible rate and to effectively foreclose the rate to Plaintiffs' customers. These customers include the West Company, All-Steel, Inc., Longacre, and Fasson. PP&L was aware that, by doing so, Plaintiffs would be harmed.

29. PP&L attempted to obstruct access to the "interruptible rate" through several fronts. PP&L took the position that the rate was unavailable based upon an interpretation of the applicable tariffs which it knew was false and was contrary to its own testimony before the

Pennsylvania Public Utility Commission. By closing the interruptible rate to new customers, PP&L hoped to deprive Plaintiffs and their customers of millions of dollars of utility savings.

30. As a result of the position taken by PP&L, Plaintiffs' customers found that the interruptible rate was not available or, in the alternative, that they would be forced to litigate against PP&L before the PUC in order to obtain access to the rate. For many of Plaintiffs' clients, the prospect of litigating against a public utility was a taunting and unacceptable solution to the problem. In other situations, Plaintiffs would retain counsel on behalf of their clients to fight for the right to the interruptible rate. Plaintiffs do not seek damages for those customers who entered into settlement agreements, together with Plaintiffs, with PP&L regarding the customers' entitlement to and/or credits for the interruptible rate.

31. Even when PP&L took the position that the rate was available for customers, it presented false and misleading statistics to Plaintiffs' customers in an effort to dissuade the customer from implementing the interruptible rate. For instance, PP&L misrepresented to the customers the historical data respecting past interruptions. More specifically, PP&L routinely showed customers PP&L's history of interruptions from 1993 through 1996 showing 14 "interruptions." In fact, there were only 5 interruptions during that time period. In addition, PP&L would offer its customers incentives to leave the interruptible rate in violation of the applicable tariffs, notwithstanding the fact that the incentives were not authorized by applicable law. PP&L knew that in the event the customer left the interruptible rate that Plaintiffs would be harmed and intended this result.

32. An example of the foregoing type of interference involves PP&L decision to re-institute "grandfathered" riders such as the Economic Development Initiatives Rider on

customers' accounts who agreed to terminate interruptible service - in violation of the customers' interruptible contracts - notwithstanding the fact that such termination was not authorized by the applicable tariffs. PP&L took these affirmative steps, in violation of its own tariffs, with CUC's customers Carlisle Plastics, Inc. and Gentex Corporation. In addition, with respect to Carlisle Plastics, PP&L violated its own tariff by allowing Carlisle Plastics to leave the interruptible rate after six months and restoring the EDI credits. With respect to Gentex Corporation, PP&L provided false and misleading information regarding future savings in an effort to induce Gentex Corporation to terminate the interruptible rate.

33. Similarly, PP&L interfered with Plaintiffs' contractual relations with its customers by refusing to provide its clients with tariff options and/or benefits which the clients were legally entitled to receive. PP&L would take these positions because of the Plaintiffs' involvement in the process. For instance, PP&L refused to apply its tariffs as required by law in conjunction with C.R. Industries, a client of CUC. PUSC provided sales services for CUC and was financially harmed as a result of PP&L's actions.

34. In addition to the foregoing, PP&L interfered with Plaintiffs' ability to service their customers by taking actions designed to prevent Plaintiffs from delaying and/or obtaining account information from PP&L. Since PP&L had a literal monopoly on utility service in its area, it was the sole source of historical and usage data for Plaintiffs' customers in the area. In order to obtain this information from PP&L, Plaintiffs would have their customers execute authorizations permitting the release of the information to Plaintiffs. Notwithstanding these authorizations, PP&L would refuse the authorizations and/or intentionally delay responding to same. In addition, when the requests for information were made PP&L would notify its

marketing representatives of same. Once notified that Plaintiffs were seeking account information, PP&L representatives would thereafter meet with Plaintiffs' customers and attempt to dissuade the customers from doing business with Plaintiffs. For instance, PP&L delayed in providing account information to Bigbee Steel and Tank Company in order to provide its account representative an opportunity to present recommendations to CUC's client. As a direct result of these actions, CUC lost substantial revenues.

35. The foregoing interference by PP&L was done intentionally as part of an ongoing pattern and practice designed to harm Plaintiffs' financial interests. In addition and/or in the alternative to the foregoing, PP&L was aware that the interference with Plaintiffs' contractual relations and resultant financial harm to Plaintiffs was an inevitable consequence of its conduct.

36. Another form of damage caused by PP&L's interference is that it effectively destroys Plaintiffs' ability to obtain ongoing and future business from its clients. In ordinary circumstances, once clients realize the substantial savings that they are earning as a result of Plaintiffs' involvement, they are very receptive to additional recommendations from Plaintiffs.

37. As a result, Plaintiffs typically are able to provide ongoing recommendations to clients after they execute their contracts. In most instances clients have contracts with both CUC and PUSC. In many instances CUC will focus on electric, gas, sewer and water recommendations, and PUSC will focus on telecommunications savings. Clients will often implement electric, gas, sewer, and/or water recommendations through CUC and, thereafter, implement telecommunications recommendations through PUSC. PP&L's interference with Plaintiffs' contractual relations, as described above, effectively precludes Plaintiffs from maintaining and growing an ongoing relationship with the clients and to benefit from their cross

marketing efforts and services. The financial harm to Plaintiffs as a result is substantial.

38. The actions by PP&L, as described above, were not privileged and had no legitimate business justification.

39. The actions by PP&L, as described above, were not isolated instances, but were part of an ongoing malicious campaign designed to harm Plaintiffs' interests. Given the ongoing nature of PP&L's conduct, and the outrageousness of its activities, especially in light of the monopoly position that it holds, Plaintiffs' are entitled to punitive damages in addition to such compensatory damages as may be allowed by law.

WHEREFORE, plaintiffs request this Court to enter judgment in their favor in an amount in excess of \$50,000.00, plus interest, costs, and such other relief as the Court deems appropriate.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:



Ethan N. Halberstadt
Attorneys for Plaintiffs

Dated: 11/23/99

VERIFICATION

I, Thomas J. Dunn, president of Public Utility Service Corporation, plaintiff in the within action, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Date: _____

11/23/99



Thomas J. Dunn

CERTIFICATE OF SERVICE

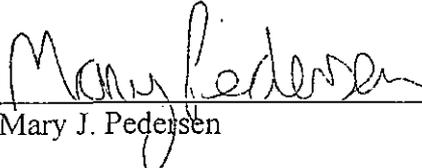
FILED

I, Mary J. Pedersen, Esquire, hereby certify that a true and correct copy of the foregoing Plaintiffs' Response to Defendant's Preliminary Objections was served via first class mail postage prepaid upon the following:

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11:55 AM
PHILADELPHIA
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PHILADELPHIA, PA.

Glen R. Stuart, Esquire
Morgan, Lewis & Bockius, LLP
2000 One Logan Square
Philadelphia, PA 19103-6993

Date: March 1, 2000


Mary J. Pedersen

FILED
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11:55 AM
PHILADELPHIA
POST OFFICE
PHILADELPHIA, PA.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By: Ethan N. Halberstadt
Attorney Identification No. 57544
By: Mary J. Pedersen
Attorney Identification No. 80552
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

2:19 PM
00 MAR -1 PM 3:45

Handwritten signature and initials.

COMMERCIAL UTILITY CONSULTANTS and PUBLIC UTILITY SERVICE CORPORATION Plaintiffs,	IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
v.	CIVIL ACTION — LAW
PENNSYLVANIA POWER & LIGHT COMPANY now known as PP&L, Inc. Defendant.	JURY TRIAL DEMANDED NO. 99-09799

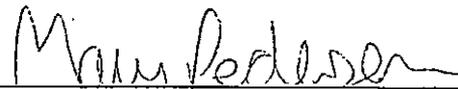
PRAECIPE FOR DETERMINATION

Kindly submit the following matter to the Honorable Katherine B.L. Platt for
determination: Plaintiffs' Response to Preliminary Objections of Defendant PP&L to Complaint.

Date of Filing: March 1, 2000

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:



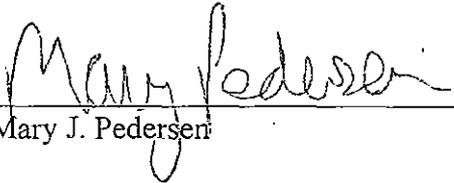
Ethan N. Halberstadt
Mary J. Pedersen
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE 00 MAR -1 PM 3:45

I, Mary J. Pedersen, Esquire, hereby certify that on this date a true and correct copy of the Praecipe for Determination regarding Plaintiffs' Response to Preliminary Objections to Complaint was served via first-class mail, postage prepaid, addressed as follows:

Glen R. Stuart, Esquire
Morgan, Lewis & Bockius, LLP
2000 One Logan Square
Philadelphia, PA 19103-6993

Date: March 1, 2000



Mary J. Pedersen

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney Identification No. 57544
By: Mary J. Pedersen
Attorney Identification No. 80552
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

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CHESTER CO., PA.

Attorneys for Plaintiffs

COMMERCIAL UTILITY CONSULTANTS and PUBLIC UTILITY SERVICE CORPORATION Plaintiffs,	IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
v.	CIVIL ACTION — LAW
PENNSYLVANIA POWER & LIGHT COMPANY now known as PP&L, Inc. Defendant.	JURY TRIAL DEMANDED NO. 99-09799

**PLAINTIFFS COMMERCIAL UTILITY CONSULTANTS AND PUBLIC UTILITY
SERVICE CORPORATION'S BRIEF IN OPPOSITION TO PRELIMINARY
OBJECTIONS OF DEFENDANT PP&L TO COMPLAINT**

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I. INTRODUCTION

On November 23, 1999 plaintiffs Public Utility Service Corporation ("PUSC") and Commercial Utility Consultants ("CUC") filed a Complaint against defendant Pennsylvania Power & Light Co. ("PP&L") asserting a claim for tortious interference with plaintiffs' contractual relationship with its existing customers. A true and correct copy of the Complaint is attached to Plaintiffs' Response to Defendant's Preliminary Objections as Exhibit "A." On or about January 21, 2000, PP&L filed preliminary objections to the Complaint. For the reasons set forth herein, plaintiffs request that this Court overrule PP&L's preliminary objections and direct PP&L to file an Answer to the Complaint as set forth in the proposed Order.

II. COUNTER STATEMENT OF THE CASE

Plaintiffs are in the business of; *inter alia*, providing utility consulting services. (Complaint, paragraph 3). Plaintiffs generally provide utility consulting services pursuant to "shared savings" written contracts with their customers. (Complaint, paragraph 3). The "shared savings" agreements are typically one page documents wherein the utility consultant agrees to review the rates, tariffs, discounts, riders and total charges that apply to the customer's utility billings and to submit recommendations to the customer for possible savings, credits or refunds. (Complaint, paragraph 3). No payment is owed to the consultant unless the customer implements the recommendation and experiences utility savings, credits, or refunds. Once the recommendation is implemented, however, the customer is obligated to pay plaintiffs over a specific period of time. (Complaint, paragraph 5). Once the period expires, the customer continues to enjoy the full amount of the savings as long as the rate remains available. (Complaint, paragraph 5). Pursuant to this arrangement, plaintiffs only receive payment for as

long as their customer continues to enjoy the savings resulting from their recommendations. (Complaint, paragraph 5). As a result of years of experience in the industry, plaintiffs have expertise in examining their customers' utility billings and in finding rates and tariffs that will save their customers significant sums. (Complaint, paragraph 6).

Utility consultants, such as plaintiffs, are successful in finding their customers savings for the foregoing reasons. Although lower rates and tariffs are available, the public utility has no incentive to bring these rates and tariffs to the customer's attention. (Complaint, paragraph 11). The utility consultants, on the other hand, are highly motivated to find lower rates and tariffs for their customers because they are only paid if they succeed in doing so. (Complaint, paragraph 11).

Plaintiffs have had substantial success assisting PP&L's industrial customers achieve significant savings in their electric utility costs. (Complaint, paragraph 13). The principals of plaintiffs have been providing utility consulting in the PP&L region for approximately 20 years. (Complaint, paragraph 13). Over the course of their dealings in the PP&L region, it is estimated that plaintiffs have saved their customers millions of dollars in utility savings, further advancing the policies and principles which gave rise to the approval of the economic development and system reliability rates. (Complaint, paragraph 15). However, these savings have partially diminished the substantial windfall which PP&L enjoys when charging more than the most advantageous rates available. (Complaint, paragraph 15). In addition to undermining PP&L's windfall, plaintiffs have also caused PP&L representatives to be put in the uncomfortable position of having failed to disclose or recommend the most advantageous rate available. (Complaint, paragraph 16).

In order to prevent plaintiffs from continuing their services to customers in PP&L's area and with full awareness of plaintiffs' contractual relationship with those customers, PP&L took affirmative action designed to interfere with plaintiffs' ability to service their customers and to obtain the greatest level of savings for its customers. (Complaint, paragraph 18). In their Complaint, plaintiffs detailed numerous specific instances of active interference by PP&L with plaintiffs' contractual relations with its customers. (See, Complaint, paragraphs 17-34) For example, plaintiffs have averred that the PP&L was aware of plaintiffs' contractual relationship with their customers but nevertheless made deceitful calls to plaintiffs' offices in order to obtain information on their services (Complaint, paragraph 20); made statements indicating that PP&L could perform plaintiffs' services at no charge despite being aware that plaintiffs had already provided recommendations to these customers pursuant to their contract (Complaint, paragraph 22); encouraged and aided plaintiffs' customers to terminate their contracts (Complaint, paragraph 23); in at least one instance provided the actual termination language to plaintiffs' customer (Complaint, paragraph 24); provided false and misleading information to plaintiffs' customers about plaintiffs' recommendations (Complaint, paragraph, 25); took steps to mislead plaintiffs' customers about particular rates and about particular benefits and risks associated with rates which were available and recommended by plaintiffs (Complaint, paragraphs 27 and 28); and provided false and misleading statistics to plaintiffs' customers regarding a particular rate in order to dissuade the customer from implementing that recommendation (Complaint, paragraph 30). As a result of PP&L's interference with plaintiffs' contractual relationships with their existing customers, plaintiffs filed their Complaint seeking damages.

Included among the damages sought by plaintiffs are compensation for the destruction of

plaintiffs' ability to obtain ongoing and future business from its clients. (Complaint, paragraph 36). In ordinary circumstances, once clients realize the substantial savings that they are earning as a result of plaintiffs' involvement, they are very receptive to additional recommendations from plaintiffs. (Complaint, paragraph 36). As a result, plaintiffs typically are able to provide ongoing recommendations to clients after they execute their contracts. (Complaint, paragraph 37). PP&L's interference with plaintiffs' contractual relations effectively terminated plaintiffs' existing contractual relations and precluded plaintiffs from maintaining and growing an ongoing relationship with their existing clients.

III. COUNTER STATEMENT OF QUESTIONS PRESENTED

A. Whether PP&L's first preliminary objection seeking dismissal of plaintiffs' claim for tortious interference with existing contracts should be overruled since plaintiffs' contracts are not at-will employment agreements?

Suggested Answer: Yes.

B. Whether PP&L's second preliminary objection should be overruled as plaintiffs have not asserted a claim for tortious interference with prospective contractual relationships and thus the preliminary objection is improper and unnecessary?

Suggested Answer: Yes.

C. Whether PP&L's third preliminary objection seeking dismissal of plaintiffs' claim for punitive damages should be overruled where plaintiffs have asserted a valid claim for tortious interference with existing contractual relationships such that punitive damages are recoverable?

Suggested Answer: Yes.

D. Whether PP&L's fourth preliminary objection seeking to strike the Complaint for

failure to plead multiple causes of action in separate counts should be overruled as plaintiffs' have plead only one cause of action?

Suggested Answer: Yes.

E. Whether PP&L's fifth preliminary objection based upon Pa.R.Civ.P. 1019(h) should be overruled where the claim asserted against PP&L is not based upon a writing?

Suggested Answer: Yes.

F. Whether PP&L's sixth preliminary objection seeking to strike two paragraphs of the Complaint based upon PP&L's assertion that they contain scandalous and impertinent matter should be overruled where the paragraphs allege facts which are pertinent to the interference claim and demonstrate examples of PP&L's officers or agents interference with plaintiffs' contracts with their customers?

Suggested Answer: Yes.

G. Whether PP&L's seventh preliminary objection based upon lack of specificity should be overruled where plaintiffs have listed nine customers with whom they alleged PP&L interfered and where plaintiffs have explained their inability at this point in the litigation to list every customer they believe was interfered with by PP&L?

Suggested Answer: Yes.

IV. SUMMARY OF THE ARGUMENT

PP&L's preliminary objections are without merit and should be overruled. PP&L's first preliminary objection to plaintiffs' claim for tortious interference with existing contractual relations should be overruled as plaintiffs' contracts are not employment contracts. Plaintiffs are not employees of their customers and therefore the case law cited by PP&L is not applicable to this case. Furthermore, plaintiff's contracts with their customers are not at-will as the customers are not free to terminate the contract at any time once a recommendation is implemented.

PP&L's second and third preliminary objections should be dismissed as plaintiffs have not asserted a claim for tortious interference with prospective contractual relations. PP&L's fourth preliminary objection should be overruled since plaintiff has only asserted one cause of action and therefore, Pa.R.Civ.P. 1020(d)(1) does not apply.

As it relates to PP&L's preliminary objections to plaintiffs' claim for punitive damages, plaintiffs have asserted a valid claim of tortious interference with exiting contractual relations and have asserted facts that support a finding that the defendant acted maliciously or with reckless disregard for the rights of the plaintiffs and thus the preliminary objection should be overruled on that basis as well.

PP&L's fifth preliminary objection pursuant to Pa.R.Civ.P. 1019(h) should be overruled since the claim against PP&L in the Complaint is not based upon a writing and as such no writing is required to be attached to the Complaint.

PP&L's sixth preliminary objection should be overruled since the Complaint does not contain any scandalous and impertinent matter regarding PP&L employees but merely alleges pertinent facts demonstrating PP&L's interference with plaintiffs' contracts and motive in

interfering with plaintiffs' contractual relations. Further, PP&L has failed to prove it suffers from any prejudice by the inclusion of the challenged paragraphs.

Finally, PP&L's seventh preliminary objection should be overruled since plaintiffs have pled sufficient facts regarding what clients were allegedly interfered with such that PP&L can prepare an appropriate response.

In sum, when taking as true all of the allegations in plaintiffs' Complaint, the Complaint sets forth a cause of action for tortious interference with existing contractual relations and therefore PP&L's preliminary objections should be overruled and PP&L should be directed to file an Answer to the Complaint.

V. ARGUMENT

A. **PP&L's Preliminary Objections in the Nature of a Demurrer Should be Overruled as Plaintiffs Have Set Forth a Claim for Tortious Interference with Existing Contractual Relations.**

1. **Standard for Preliminary Objections in the Nature of a Demurrer**

It is well settled in Pennsylvania that a preliminary objection in the nature of a demurrer, the end result of which would be dismissal of a cause of action, should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief can be granted. Mazzagatti v. Everingham, 512 Pa. 266, 516 A.2d 672 (1986); County of Allegheny v. Commonwealth, 507 Pa. 360, 490 A.2d 402 (1985). If a demurrer is sustained, the court must evaluate whether or not there is a reasonable possibility that the plaintiff can amend the complaint to cure the deficiency. If so, the plaintiff must be given that opportunity. Harley Davidson Motor Co., Inc. v. Hartman, 296 Pa. Super. 37, 442 A.2d 284 (1982).

The question presented to a court by a preliminary objection in the nature of a demurrer is

whether, on the facts averred in the Complaint, the law says with certainty that no recovery is possible. Where doubt exists as to whether the demurrer should be granted, the doubt should be resolved in favor of overruling the objection. Scarpitti v. Weborg, 530 Pa. 366, 609 A.2d 147 (1992). The plaintiff need not prove his case in the Complaint, rather “[t]he issue then before the court, and the only issue is, whether the facts in the Complaint itself are sufficient to entitle the plaintiff to relief.” International Union of Operating Engineers v. Linesville Construction Co., 457 Pa. 220, 223, 322 A.2d 353, 356 (1974).

For the purpose of testing the legal sufficiency of a pleading, all well-pleaded material and relevant facts are taken as true together with such reasonable inferences that may be drawn, from those facts. Scarpitti, 609 A.2d at 148; Gabel v. Cambruzzi, 532 Pa. 584, 616 A.2d 1364 (1992). Santiago v. Pennsylvania National Mutual Casualty Inc. Co., 418 Pa. Super. 178, 613 A.2d 1235 (1992).

2. **PP&L’s First Preliminary Objection to Plaintiffs’ Claim of Tortious Interference with Existing Contractual Relations Should be Overruled as Plaintiffs’ Contracts do not Involve At-Will Employment Relationships**

In order to assert a claim for tortious interference with contractual relations a party must allege the following: 1) the existence of a contractual relation between the complainant and a third party; 2) the purposeful action on the part of the defendant specifically intended to harm the existing relation; 3) the absence of privilege or justification on the part of the defendant; 4) the occasioning of actual legal damage as a result of the defendant’s conduct. Strickland v. University of Scranton, 700 A.2d 979 (1997). PP&L does not contest that plaintiffs have properly pled these elements. Rather, PP&L erroneously relies upon a line of cases which discusses tortious interference with contractual relations in the context of at will employees. See,

e.g., Hennessy v. Santiago, 708 A.2d 1269 (Pa. Super. 1998); but compare, Curran v. Children's Service Center of Wyoming County, Inc., 396 Pa. Super. 29, 578 A.2d 8 (1990) (holding that a cause of action for intentional interference with an existing contractual relationship may be sustained even though the employment relationship is at-will). This case does not involve an at will employee or, for that matter, an "at will" employment contract.¹

The present factual situation is similar to the case of Adler, Barish, Daniels, Levin and Creskoff v. Epstein, 482 Pa. 416, 393 A.2d 1175 (1978).² In Adler the plaintiff was a law firm which brought suit against former associates for interference with its existing contractual relationships with its clients. Adler, 393 A.2d at 1177. The defendants were attempting to procure business on behalf of their new firm by contacting plaintiff's clients by telephone and in person and informing them that they could leave the plaintiff's firm and by providing them with form letters which could be used to discharge plaintiff. Id. at 1178. The court considered the defendants' conduct and found that it was improper and that the defendants intentionally interfered with plaintiff's existing contractual relationships with their clients. Id. at 1184. The court then reversed the holding of the Superior Court which dismissed the Complaint and reinstated the holding of the Court of Common Pleas which enjoined the defendants from continuing their improper interference with plaintiff's clients. Id. at 1175.

¹The utility consulting agreements are not employment contracts, nor are they "at will." Rather, the utility consulting agreements have specified payment terms. A client is not free to terminate the contract at any time. Rather, it is obligated to pay either PUSC or CUC for its recommendations for a period of 60 months.

²Applying the rationale used by the defendant, there could not be a claim for tortious interference in the Adler Barish case because the law firm which maintained contractual relations with its clients were "employed" by the clients.

In the present case, plaintiffs are in the business of, *inter alia*, providing utility consulting services pursuant to written contracts with their customers. (Complaint, paragraph 3). Like the attorneys in Adler, the plaintiffs in this case have contractual relationships with their customers but are not considered employees of their customers and do not enter into employment agreements with their customers. Instead the contracts used by plaintiffs are typically one page documents wherein the utility consultant agrees to review the rates, tariffs, discounts, riders and total charges that apply to the customer's utility billings and to submit recommendations to the customer for possible savings, credits or refunds. (Complaint, paragraph 3). When plaintiffs sign these contracts with a customer, they are not put on the customer's payroll as an employee and they do not collect the benefits to which typical employees are entitled. Once the customers implement plaintiffs' recommendations, they are obligated to pay plaintiffs for a specific period of time. There is nothing "at will" about the contractual relationship. Taking all of plaintiffs' allegations as true, plaintiffs have not pled an employment relationship and as such, the case law cited by PP&L is inapplicable and PP&L's first preliminary objection must be overruled.

In an effort to argue that every consulting agreement is an "employment agreement", PP&L places heavy reliance upon Somers v. Somers, 418 Pa.Super. 131, 613 A.2d 1211 (1992). That case, however, does not even deal with tortious interference with contractual relations. Rather, it deals with the breach of an employment agreement. Thus, to the extent Somers has any relevance to a claim for tortious interference, it falls squarely into the line of cases dealing with employers and employees. In fact, in that case the Superior Court had previously affirmed the trial court's earlier holding that the contract at issue was to be construed as an "employment

agreement.” Id. at 1213.³ PP&L’s reliance upon Somers is therefore totally misplaced. There is nothing in Somers which even remotely suggests that *every* consulting relationship is to be treated like an employer/employee relationship. To the contrary, there is no analysis in the opinion with respect to the issue at all.

As it is clear that plaintiffs’ contracts with their clients are independent consulting contracts, and not employment contracts, PP&L’s case law is inapplicable and plaintiffs have set forth a valid claim for tortious interference with existing contractual relationships. Accordingly, PP&L’s first preliminary objection should be dismissed.

3. **Plaintiffs Have Not Asserted a Claim for Tortious Interference with Prospective Contractual Relations and Therefore PP&L’s Second Preliminary Objection is Improper and Should be Overruled**

PP&L’s second preliminary objection is based upon its misconception that plaintiffs have asserted a claim of tortious interference with prospective contractual relations. Plaintiffs’ Complaint does not include such a claim. Plaintiffs only claim against PP&L is that of tortious interference with the contractual relationships already existing between plaintiffs and their customers. With regard to that claim, plaintiffs seek as one element of damages, the loss of

³The facts of Somers are dramatically different than those in this case. In Somers the plaintiff and his nephew entered into a stock purchase agreement whereby the plaintiff sold to his nephew a portion of his stock in the family corporation and surrendered to the corporation for redemption the remainder of his outstanding shares. Somers, 613 A.2d at 1212. As a result of this transfer, the nephew became the sole stockholder and sole director. Id. In conjunction with this stock transfer agreement the plaintiff and his nephew entered into an employment agreement whereby the uncle was employed by the company as a consultant respecting general corporate matters and with the authority to act for the corporation on one particular project, the Wallkill project. Id. The employment agreement provided the plaintiff with a monthly consulting fee but not a specified term. Id. In addition the employment agreement provided that plaintiff was to receive additional compensation for his services of 50% of any net profits made from the Wallkill project. Id.

ongoing and future business from the clients with whom PP&L interfered.

Specifically the Complaint reads, “[a]nother form of damage caused by PP&L’s interference is that it effectively destroys Plaintiffs’ ability to obtain ongoing and future business from its clients. In ordinary circumstances, once clients realize the substantial savings that they are earning as a result of Plaintiffs’ involvement, they are very receptive to additional recommendations from Plaintiffs.” (Complaint, paragraph 36). Thus, once plaintiffs establish a contractual relationship with a customer and the customer begins to experience savings with respect to one area of savings, in most cases the customer is anxious for plaintiffs to uncover additional areas of savings.⁴ As a result of PP&L’s interference with the existing contracts with these customers, plaintiffs are unable to develop and maintain an ongoing relationship with their customers and to benefit from their cross marketing efforts and services. (Complaint, paragraph 37). As such plaintiffs seek to recoup this loss as an element of damages in their tortious interference with existing contractual relations claim. However, plaintiffs have not brought a separate claim against PP&L for tortious interference with prospective contractual relations. Consequently, PP&L’s second preliminary objection is improper and unnecessary and should be overruled.

4. **Plaintiffs Have Alleged Sufficient Facts to Support an Award of Punitive Damages and Therefore PP&L’s Third Preliminary Objection Should Be Overruled**

As set forth in section A(2) above, plaintiffs have set forth a valid claim against PP&L for tortious interference with existing contractual relations and therefore are entitled to seek an

⁴ CUC generally focuses on electric, gas, sewer and water recommendations, and PUSC generally focuses on telecommunications savings.

award of punitive damages for that tort claim. Consequently, PP&L's third preliminary objection should be overruled.

PP&L argues alternatively that plaintiffs failed to plead sufficient facts to support an award of punitive damages. PP&L's assertion is incorrect. Plaintiffs agree that punitive damages are only available where the defendant's conduct was outrageous due to the defendant's reckless disregard to the rights of others. SHV Coal, Inc. v. Continental Grain Co., 526 Pa. 489, 587 A.2d 702 (1991). Thus, the only issue for this Honorable Court's review is whether sufficient material facts have been pled to support the plaintiffs' claim for punitive damages.

Outrageous conduct sufficient to support an award of punitive damages is an act which is done with a bad motive or with reckless indifference to the interests of others. Rizzo v. Haines, 520 Pa. 484, 555 A.2d 58 (1989). Reckless indifference to the rights of others or, as it is sometimes referred to, "wanton misconduct" means that "the actor had intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow." Evans v. Philadelphia Transportation Co., 418 Pa. 567, 212 A.2d 440 (1965) (citation omitted). Further, state of mind of the actor, by necessity, must be averred generally. Hall v. Horstman Builders, Inc., 37 Pa. D. & C. 3d 255, 260 (C.P. Crawford, 1984) (holding that the complaint, viewed as a whole, had sufficiently pled specific factual averments and a general averment of the defendant's wanton or malicious state of mind and as such was sufficient to support a claim for punitive damages).

In the case at bar, the Complaint, read in its entirety, sufficiently pleads facts and conduct which would support a finding that the PP&L's actions were, at a minimum, in reckless

indifference to the interests and rights of the plaintiffs. Taken in a light most favorable to plaintiffs, the allegations of the Complaint set forth a malicious and systematic pattern of conduct designed to harm plaintiffs. In direct contrast to the cases cited by PP&L in its brief, plaintiffs have pled more than just bare conclusory allegations that PP&L acted recklessly or maliciously. Plaintiffs have set forth seventeen paragraphs describing PP&L's wrongful conduct. (See, Complaint, paragraphs 17-34). Specifically, plaintiffs have averred that the PP&L was aware of plaintiffs' contractual relationship with their customers but nevertheless made deceitful calls to plaintiffs' offices in order to obtain information on their services (Complaint, paragraph 20); made statements indicating that PP&L could perform plaintiffs' services at no charge despite being aware that plaintiffs had already provided recommendations to these customers pursuant to their contract (Complaint, paragraph 22); encouraged and aided plaintiffs' customers to terminate their contracts (Complaint, paragraph 23); in at least one instance provided the actual termination language to plaintiffs' customer (Complaint, paragraph 24); provided false and misleading information to plaintiffs' customers about plaintiffs' recommendations (Complaint, paragraph, 25); took steps to mislead plaintiffs' customers about particular rates and about particular benefits and risks associated with rates which were available and recommended by plaintiffs (Complaint, paragraphs 27 and 28); and provided false and misleading statistics to plaintiffs' customers regarding a particular rate in order to dissuade the customer from implementing that recommendation (Complaint, paragraph 30). These allegations are more than sufficient to support a claim of punitive damages. See, e.g., Shared Communications Services of 1800-80 JFK Blvd. Inc. v. Bell Atlantic Properties. Inc., ___ Pa. Super. ___, 692 A.2d 570 (1997) (awarding over 2 million dollars in punitive damages for defendants tortious interference with a single

contract).

Moreover, the court must keep in mind that we are merely at the pleading stage and that as discovery proceeds and additional facts are uncovered, the outrageousness of the PP&L's actions will become even more clear. As such, PP&L's third preliminary objection should be overruled.

B. PP&L's Fourth Preliminary Objection in the Nature of a Motion to Strike for Failure to Conform to a Rule of Court Regarding Multiple Causes of Action Should be Overruled Since Plaintiffs Have Only Pled One Cause of Action

PP&L's fourth preliminary objection is based upon its misconception that plaintiffs have asserted two separate claims for tortious interference with contractual relations. As explained in subpart A(3) this Brief, plaintiffs have only asserted a claim based upon PP&L's tortious interference with plaintiffs' existing contractual relationships. As such, PP&L's fourth preliminary objection in the nature of a motion to strike should be overruled.

C. PP&L's Fifth Preliminary Objection in the Nature of a Motion to Strike for Failure to Attach Written Contracts Should be Overruled as Plaintiffs' Claim is not Based Upon a Writing

PP&L's fifth preliminary objection is based upon Pa.R.Civ.P. 1019(h) which requires a party to attach a copy of the writing upon which any claim is based if the pleading asserts that the claim is based upon a writing. Pa.R.Civ.P. 1019(h). This rule is inapplicable to the Complaint at bar.

The nature of plaintiffs' claim against PP&L is in tort for interference with plaintiffs' contractual relationships with its customers. The basis of that claim is the particular conduct of the PP&L that plaintiffs contend was wrongful. The claim is not based upon any written contract that plaintiffs had with PP&L. PP&L's liability does not depend on any language or provision

found in those contracts and therefore, plaintiffs' claim is not based upon a writing as provided in Rue 1019(h). Because Rule 1019(h) is inapplicable to the Complaint, plaintiffs are not required to attach every contract they had with every customer with whom they contend PP&L interfered. Accordingly, PP&L's fifth preliminary objection in the nature of a motion to strike should be denied.

D. PP&L's Sixth Preliminary Objection in the Nature of a Motion to Strike Paragraphs 17 and 20 of the Complaint Should be Denied as These Paragraphs are Relevant to the Complaint and Because PP&L Failed to Establish It is Prejudiced by their Inclusion

In its sixth preliminary objection PP&L argues alternatively that paragraphs 17 and 20 of the Complaint assert scandalous and impertinent matter and should be stricken pursuant to Pa.R.Civ.P. 1028(a)(2). The remedy of striking impertinent matter in a Complaint should only be sparingly exercised and only when a party can affirmatively show prejudice. Commonwealth of Pennsylvania Department of Environmental Resources v. Hartford Accident and Indemnity Co., 40 Pa. Commw. 133, 138, 396 A.2d 885 (1979) (declining to dismiss allegedly impertinent damages claim).

In this case paragraphs 17 and 20 make allegations that are pertinent to the issues raised by the Complaint. Although PP&L contends that there is no "nexus" between these allegations and plaintiffs' claims, this is simply not the case. Plaintiffs have alleged specific facts regarding Mr. Collin's and Mr. Kaspar's conduct to demonstrate the malice directed toward plaintiffs and some of the motivation behind PP&L's conduct. Thus, in Paragraph 20 plaintiffs refer to Mr. Collins' covert efforts to uncover information on CUC to demonstrate PP&L's malice towards CUC and the type of conduct directed to CUC. Similarly, in Paragraph 17 plaintiffs explain some of the motivation behind PP&L's actions; namely, that PP&L's representatives envy what

they perceive to be the large sums of money earned by plaintiffs - to the point that at least one high level manager, such as Mr. Kaspar, has taken the “if you can’t beat them join them approach” and have become utility consultants.

The Complaint only sets forth those facts relating to the conduct of Mr. Kasper and Mr. Collins which can be imputed to PP&L, which demonstrates their active interference with plaintiffs’ existing contracts with its customers on behalf of PP&L, and which demonstrates, in part, PP&L’s motivation for harming plaintiffs. It should go without saying that a business entity such as PP&L can only act through its agents, employees and representatives; accordingly it is not necessary for plaintiffs to aver in every allegation that the actions of the particular agent, employee or representative are that of PP&L. Moreover, plaintiffs have specifically alleged in paragraph 18 of the Complaint allege that PP&L “by and *through its agents, employees and representatives* took affirmative steps designed to interfere with Plaintiffs’ ability to service their customers and to obtain the greatest level of savings for its customers.” (emphasis added). Thereafter, plaintiffs allege in paragraph 20 of the Complaint that Larry Collins is a “PP&L representative”. Plaintiffs similarly allege in Paragraph 17 that Mr. Kaspar is a “high level PP&L employee.”

It should further be noted that PP&L is attempting to find fault with plaintiffs for attempting to plead facts demonstrating the wrongful nature of PP&L’s conduct and some of the motivation underlying same. It is ironic that PP&L finds fault with plaintiffs in this regard, while at the same time complaining that there are insufficient facts to establish an entitlement to punitive damages or insufficient specificity with respect to its claims.

Finally, PP&L has failed to show how the inclusion of these two particular paragraphs

prejudice its case. PP&L's claim of prejudice is its fear that the allegations of the Complaint will shape the discovery in the case. As the allegations relating to the conduct of Kaspar and Collins are relevant to the issues raised by the Complaint, there is no need for fear that they will broaden the scope of discovery in this matter. Furthermore, discovery is far broader than admissibility for trial purposes and therefore merely because something is uncovered in discovery does not automatically indicate that it will be admissible at trial and therefore, there is no prejudice to PP&L's case in permitting the allegations regarding Kaspar and Collins to remain.

E. PP&L's Seventh Preliminary Objection Regarding Lack of Specificity in the Complaint Should be Dismissed as Plaintiffs' Have Pled Sufficient Facts to Support Their Claim for Tortious Interference

In the alternative, in its seventh preliminary objection PP&L argues that the Complaint fails to set forth the identity of each and every customer with whom plaintiffs' contend PP&L interfered. This objection should be overruled as the Complaint is sufficiently specific.

Pennsylvania is a fact pleading state, and the Rules of Civil Procedure require only that a plaintiff plead the "material facts" in a "concise and summary form" Pa.R.Civ.P. 1019(a). A Complaint need only be sufficiently specific so as to enable an opposing party to prepare a response. Commonwealth of Pennsylvania Environmental Pollution Strike Force v. Jeannette, 9 Pa. Commw. 306, 305 A.2d 774 (1973). In the Complaint plaintiffs specifically identify nine customers with whom PP&L interfered. (See, Complaint, paragraph 22). Plaintiffs then explain that they believe that there may be additional customers with whom PP&L interfered but without the opportunity to review PP&L's files, there is no way at the pleading stage, for plaintiffs to identify every such customer. (Complaint, paragraph 26). Plaintiffs' Complaint alleges sufficient facts to enable PP&L to prepare a response. Plaintiffs are not required to plead all of the

evidence necessary to prove their case in the pleadings stage. PP&L may inquire further as to the particular additional customers with whom plaintiffs contend it interfered as discovery progresses and plaintiffs have had the opportunity to review the relevant documents maintained by PP&L in its files. As the Complaint pleads sufficient facts to permit PP&L to formulate a response, PP&L's seventh preliminary objection should be overruled.

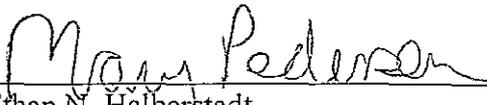
VI. CONCLUSION

For the foregoing reasons, plaintiffs Commercial Utility Consultants and Public Utility Service Corporation respectfully request that this Honorable Court overrule defendant Pennsylvania Power & Light Company's Preliminary Objections and direct defendant to file an Answer as set forth in the proposed Order.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

Date: March 1, 2000

By:


Ethan N. Halberstadt
Mary J. Pedersen
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Mary J. Pedersen, Esquire, hereby certify that a true and correct copy of the foregoing Plaintiffs' Brief in Opposition to Preliminary Objections of Defendant PP&L To Complaint was served via first class mail, postage prepaid upon the following:

Glen R. Stuart, Esquire
Morgan, Lewis & Bockius, LLP
2000 One Logan Square
Philadelphia, PA 19103-6993

Date: 3/1/00

Mary J. Pedersen
Mary J. Pedersen

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U.S. DISTRICT COURT
PHILADELPHIA, PA

FILED

00 MAR 17 AM 10:36

Glen R. Stuart
Identification No. 41302
Bryant D. Lim
Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5883/5165

OFFICE OF THE
PROthonARY
CHESTER CO., PA.

Attorneys for Defendant
PPL ELECTRIC UTILITIES
CORPORATION

COMMERCIAL UTILITY
CONSULTANTS and
PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER &
LIGHT COMPANY,

Defendant.

COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 99-09799

ORAL ARGUMENT REQUESTED

JURY TRIAL DEMANDED

HON. KATHERINE B.L. PLATT

REPLY BRIEF IN SUPPORT OF DEFENDANT'S
PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

Defendant PPL Electric Utilities Corporation (formerly Pennsylvania Power & Light Company) ("PPL") respectfully submits this Reply Brief to focus the issues for oral argument scheduled for March 30, 2000 and to reply to a limited number of assertions made in Plaintiffs' March 1, 2000 Brief. PPL rests on its opening Brief on all issues not addressed herein.

I. PPL's Second And Fourth Preliminary Objections Are Now Moot.

Based on the imprecision of Plaintiffs' Complaint, it appeared Plaintiffs had asserted causes of action for tortious interference with both existing and prospective contractual relations. For that reason, PPL filed its second and fourth Preliminary Objections. In Plaintiffs' Response to Defendant's Preliminary Objections and in their Brief, Plaintiffs clarify they only seek to

assert a cause of action for tortious interference with existing contractual relations.^{1/}

Thus, PPL's Preliminary Objections II and IV are now moot.

II. This Court Should Dismiss Plaintiffs' Claim For Tortious Interference With Existing Contractual Relations.

In an attempt to overcome PPL's first preliminary objection, Plaintiffs make three arguments not specifically addressed in PPL's opening brief: (1) their contracts are not "at-will" because the customers "are obligated to pay plaintiffs for a specific period of time";^{2/} (2) the case of Curran v. Children's Serv. Center, 396 Pa. Super. 29, 578 A.2d 8 (1990), supports a cause of action for intentional interference with an existing contractual relationship even if the employment relationship is at-will; and (3) the facts of this case are similar to Adler, Barish, Daniels, Levin and Creskoff v. Epstein, 482 Pa. 416, 393 A.2d 1175 (1978). PPL replies briefly to each of these assertions.

First, without providing copies of the contracts at issue, Plaintiffs argue that those contracts are not terminable-at-will because the customer "is obligated to pay either PUSC or CUC for its recommendations for a period of 60 months." Plaintiffs' Brief, at 9 n.1.^{3/} Plaintiffs

^{1/} Plaintiffs should not be permitted to evade the obstacles to their assertion of a claim for tortious interference with prospective (or the continuation of existing) relations, as set forth in PPL's second Preliminary Objection, by contending that the speculative future damages are simply "another form of damage" flowing from the alleged interference with existing contractual relations.

^{2/} PPL relies on Section V.A.1. of its opening Brief (at 6-7), and its discussion of the *Somers* case therein, to support its characterization of the consulting contracts at issue here as employment agreements terminable-at-will.

^{3/} As noted in Section V.C. of PPL's opening Brief and Section III below, the need for Plaintiffs to attach the pertinent contracts, in compliance with Pa. R. Civ. P. 1019(h), is
(continued...)

elaborate as follows: “Once the customers implement plaintiffs’ recommendations, they are obligated to pay plaintiffs for a specific period of time.” *Id.* at 10. However, Plaintiffs’ argument misses the mark. They focus on the period over which payment may occur for services rendered (*i.e.*, if the customer obtains savings by implementing Plaintiffs’ recommendation). However, the fact that an obligation to make future payments, arising out of past services rendered, may continue to exist for a defined period of time after termination of the contract does not alter the fact that the employment is terminated.

Second, Plaintiffs seek to cast doubt on the case of Hennessy v. Santiago, 708 A.2d 1269 (Pa. Super. 1998), on which PPL relies to support its position that Plaintiffs cannot assert a claim for tortious interference with an existing at-will relationship in the employment context. They do so by citing the Pennsylvania Superior Court’s 1990 decision, eight years earlier than Hennessy, in the Curran case. Plaintiffs’ Brief, at 9. Plaintiffs characterize the Curran case as “holding that a cause of action for intentional interference with an existing contractual relationship may be sustained even though the employment relationship is at-will[.]” *Id.* However, that characterization of the holding in Curran is simply wrong. That case did not hold that the defendant was liable for tortious interference with an existing contractual relationship. The Superior Court affirmed the dismissal of the Complaint after finding that the defendant could not be held liable for tortious interference because he was an agent of the corporate employer. *Id.* at 40, 578 A.2d at 13. That case did cite a footnote in a 1980 Superior Court case, Yaindl v. Ingersoll-Rand Co., 281 Pa. Super. 560, 575 n.6, 422 A.2d 611, 618 n.6 (1980), for the

3/(...continued)

illustrated by the relevance of the contractual terms to the issues now before the Court.

proposition that such a cause of action might be sustained. However, in Hennessy, 708 A.2d at 1278-79, the Superior Court expressly rejected reliance on footnote 6 of the Yaindl decision, stating:

We cannot accept Appellant's argument for a number of reasons. First, the language from the footnote is dicta because it was not essential to the holding of the panel. Second, Appellant brings no cases to our attention where this doctrine has been extended to the ambit of at-will employment. Thus, we are constrained to hold that an action for intentional interference with performance of a contract in the employment context applies only to interference with a prospective employment relationship whether at-will or not, not a presently existing at-will employment relationship.

Given the Pennsylvania Superior Court's express rejection of the same footnote in Yaindl upon which the Curran court relied, there is no excuse for Plaintiffs' misleading citation in this case.

Third, Plaintiffs place heavy reliance on the Adler, Barish case even though that case addressed significant policy issues totally absent here. That case involved the active solicitation of a law firm's clients by that firm's associates when they left to form their own firm. As a result, it implicated the former associates' use of confidential information gained by their employment with the first firm and their solicitation of clients in a manner that violated the Code of Professional Responsibility. 482 Pa. at 434, 393 A.2d at 1184. As a result, the Supreme Court emphasized that the "'rules of the game' which society has adopted" did not sanction appellees' conduct. *Id.* The Supreme Court stated:

Indeed, the rules which apply to those who enjoy the privilege of practicing law in this Commonwealth expressly disapprove appellees' method of obtaining clients. *Supra* Part IIA, discussing Code of Professional Responsibility, DR 2-103(A). We find such a departure from "(r)ecognized ethical codes" "significant in evaluating the nature of (appellees') conduct."

Id., citing Restatement (Second) of Torts, § 767. The Court also emphasized the violation of agency principles under the Restatement (Second) of Agency, § 396(a), by stressing the "special

responsibility" incumbent upon members of licensed professionals, stating that lawyers are not only "self-employed businessmen," but also "trusted agents" and "assistants to the court in search of a just solution to disputes." 482 Pa. at 434, 393 A.2d at 1185.

In the current case, no such policy considerations are present. Even when viewed in a light most favorable to Plaintiffs, the Complaint alleges that PPL told its customers that they were free to terminate their consulting contracts with Plaintiffs. Given the at-will nature of their retention, Plaintiffs' claim is simply that PPL allegedly told the customer that which is true: the customers may terminate Plaintiffs' contract at any time. No policy considerations here make such an alleged comment actionable. On the contrary, such advice is part of the normal course of free enterprise in this country.

For the reasons set forth herein and in PPL's opening Brief, this Court should sustain PPL's first Preliminary Objection and dismiss Plaintiffs' Complaint.

III. This Court Should Strike Plaintiffs' Complaint For Their Continuing Failure To Attach The Contracts At Issue.

PPL's fifth Preliminary Objection notes that Plaintiffs have violated Pa. R. Civ. P. 1019(h) by failing to attach the written contracts at issue. *See also* 4 Std. Pennsylvania Practice 2d, Complaints, Generally, § 21:68. Without citing any case law in support of their conclusory assertion, Plaintiffs assert that Rule 1019(h) "is inapplicable to the Complaint at bar." Plaintiffs' Brief, at 15. They argue that "PP&L's liability does not depend on any language or provision found in those contracts and therefore, plaintiffs' claim is not based upon a writing as provided by Rule 1019(h)." *Id.* at 15-16. Plaintiffs also contend that Plaintiffs' "claim is not based upon any written contract that plaintiffs had with PP&L[,] as if that assertion somehow discharges

their obligation to attach the contracts. *Id.* at 15.

The absurdity of this position is apparent. Plaintiffs would have no basis to contend that PPL somehow tortiously interfered with Plaintiffs' existing contractual relations if Plaintiffs had no contracts with their customers. Obviously, the existence of any such contracts is a necessary predicate for Plaintiffs' claims. As a result, Plaintiffs' claims are based upon those writings. As evidenced by PPL's challenge to the sufficiency of Plaintiffs' cause of action for tortious interference with existing contractual relations, and Plaintiffs' arguments in response thereto, the nature and terms of Plaintiffs' contracts are relevant. PPL respectfully submits that Plaintiffs have not provided this Court with copies of their contracts because those contracts demonstrate the at-will nature of Plaintiffs' employment as utility consultants.^{4/}

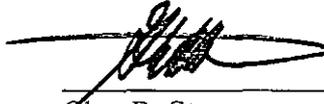
Therefore, if this Court does not dismiss Plaintiffs' Complaint, then it should, at a minimum, strike the Complaint for failure to comply with Pa. R. Civ. P. 1019(h).

^{4/} At page 16 of their Brief, Plaintiffs argue that they "are not required to attach every contract they had with every customer with whom they contend PP&L interfered." Plaintiffs have not even attached one contract with one customer.

For the reasons stated above and in its opening Brief, defendant PPL respectfully requests that this Court sustain its Preliminary Objections remaining at issue and dismiss Plaintiffs' Complaint with prejudice.

DATED: March 16, 2000

Respectfully submitted,



Glen R. Stuart
Bryant D. Lim
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5883/5165

Attorneys for Defendant PPL
Electric Utilities Corporation

OF COUNSEL:

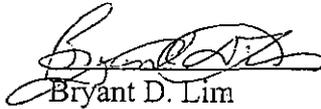
Augustus C. Martin
PPL Electric Utilities Corp.
Two North Ninth Street
Allentown, PA 18101

CERTIFICATION OF SERVICE

This is to certify that in this case, assigned to Judge Katherine B.L. Platt, complete copies of all papers contained in the Reply Brief in Support of the Preliminary Objections of Defendant PPL Electric Utilities Corp. to Plaintiffs' Complaint have been served on the following persons, by the following means and on the date stated:

<u>Name:</u>	<u>Means of Service:</u>	<u>Date:</u>
Ethan N. Halberstadt, Esquire POWELL, TRACHTMAN, LOGAN, CARRLE, BOWMAN & LOMBARDO, P.C. 475 Allendale Road, Suite 200 King of Prussia, PA 19406	First Class Mail (postage prepaid)	March 16, 2000

Attorney for Plaintiffs



Bryant D. Lim
Attorney Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5165

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CHESTER COUNTY, PA.

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COMMERCIAL UTILITY CONSULTANTS: IN THE COURT OF COMMON PLEAS
& PUBLIC UTILITY SERVICE
CORPORATION COMPANY : CHESTER COUNTY, PENNSYLVANIA
-vs-
PENNSYLVANIA POWER & LIGHT : NO. 99-09799 ←
COMPANY a/k/a PP&L : CIVIL ACTION

COMMERCIAL UTILITY : IN THE COURT OF COMMON PLEAS
CONSULTANTS : CHESTER COUNTY, PENNSYLVANIA
vs. : CIVIL ACTION-LAW
PENNSYLVANIA POWER & LIGHT : NO. 99-09800
COMPANY a/k/a PP&L

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Ethan N. Halberstadt, Esquire, Attorney for Plaintiffs
Glen R. Stuart, Esquire, Attorney for Defendant
Bryant David Lim, Esquire, Attorney for Defendant

ORDER

AND NOW, this 30th day of March, 2000, by agreement of the parties, it is hereby ORDERED that:

1. The above actions are consolidated at 99-09799 for all purposes and the Prothonotary is ordered to amend the docket accordingly.

BY THE COURT:

Katherine B. L. Platt
Katherine B. L. Platt J.

gmg

APR 06 2000

<p>COMMERCIAL UTILITY CONSULTANTS and PUBLIC UTILITY SERVICE CORPORATION Plaintiffs,</p> <p>v.</p> <p>PENNSYLVANIA POWER & LIGHT COMPANY now known as PP&L, Inc. Defendant.</p>	<p>IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA</p> <p>CIVIL ACTION — LAW</p> <p>JURY TRIAL DEMANDED</p> <p>NO. 99-09799 <i>CONSOLIDATED CAPTION</i></p>
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ORDER

AND NOW, this *3rd* day of *April*, 2000, upon consideration of defendant
 Pennsylvania Power and Light's Preliminary Objections to the Complaint and plaintiffs
 Commercial Utility Consultants and Public Utility Service Corporations response thereto, it is
 hereby ORDERED that the Preliminary Objections are OVERRULED. Defendant is
 DIRECTED to file an Answer to the Complaint within ten ^{*20*}~~(10)~~ days of the date of this Order.

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BY THE COURT:

Kathleen B. Platt
 J.

BS

Glen R. Stuart
Identification No. 41302
Bryant D. Lim
Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5883/5165

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CLERK OF COURT
JUDICIAL BRANCH
CHESTER COUNTY, PA

Attorneys for Defendant
PPL ELECTRIC UTILITIES
CORPORATION

COMMERCIAL UTILITY
CONSULTANTS and
PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER &
LIGHT COMPANY,

Defendant.

COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Nos. 99-09799

(Consolidated Cases)

JURY TRIAL DEMANDED

HON. KATHERINE B.L. PLATT

NOTICE TO PLEAD

To: Commercial Utility Consultants and Public Utility Service Corporation

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.

Date: April 24, 2000



Glen R. Stuart
Bryant D. Lim
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

Attorneys for Defendant
PPL Electric Utilities Corporation

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CHESTER CO. PA.

Glen R. Stuart
Identification No. 41302
Bryant D. Lim
Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5883/5165

Attorneys for Defendant
PPL ELECTRIC UTILITIES
CORPORATION

COMMERCIAL UTILITY
CONSULTANTS and
PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER &
LIGHT COMPANY,

Defendant.

COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Nos. 99-09799

(Consolidated Cases)

JURY TRIAL DEMANDED

HON. KATHERINE B.L. PLATT

ANSWER AND NEW MATTER OF DEFENDANT
PPL ELECTRIC UTILITIES CORPORATION TO
PLAINTIFFS' COMPLAINT AND COUNTERCLAIM

Pursuant to Pennsylvania Rules of Civil Procedure 1017 and 1029, defendant PPL Electric Utilities Corporation (formerly Pennsylvania Power & Light Company) ("PPL"), through its undersigned attorneys, answers Plaintiffs' Complaint in the above-captioned consolidated action in accordance with the numbered paragraphs of the Complaint filed in Civil Action No. 99-09799 as follows:

1. Admitted in part, denied in part. It is admitted only that Plaintiffs are Commercial Utility Consultants ("CUC") and Public Utility Service Corporation ("PUSC") (individually or

collectively, the "Plaintiffs"). PPL is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 1 and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant.

2. Admitted in part, denied in part. It is admitted that PPL is a Pennsylvania public utility with a registered place of business located at 2 North 9th Street, Allentown, Pennsylvania 18101. It is denied that PPL is now known as PP&L, Inc. To the contrary, Defendant is now known as PPL Electric Utilities Corporation.

3. Admitted in part, denied in part. It is admitted that Plaintiffs are in the business of, inter alia, providing utility consulting services. The remaining allegations of Paragraph 3 purport to characterize Plaintiffs' document, the terms of which speak for themselves and, therefore, those allegations are denied.

4. Denied. PPL is without knowledge or information sufficient to form a belief as to whether Plaintiffs have maintained a business relationship with each other with respect to accounts in the PPL territory, or the nature of the relationship and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant.

5. Denied. PPL is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 5 and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant. By way of further answer, the allegations of Paragraph 5 purport to characterize Plaintiffs' documents, the terms of which speak for themselves and, therefore, those allegations are denied.

6. Denied. PPL is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 6 and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant.

7. Denied. PPL is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 7 and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant. By way of further answer, in certain instances with which PPL is familiar, there are significant risks (i.e., downsides) to Plaintiffs' recommendations.

8. Denied as stated. To the contrary, the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801 et seq. (the "Act"), was enacted on December 3, 1996 seeking to increase competition in the electric generation market in Pennsylvania. The terms of the Act speak for themselves and, therefore, any characterization thereof is denied. The remaining allegations of Paragraph 8 are conclusions of law to which no response is required and, therefore, are deemed denied.

9. Denied. To the contrary, even before the enactment of the Act, PPL faced significant competition from other utilities, particularly with respect to the attraction and expansion of industrial customers to and in PPL's service territory. Therefore, PPL and its marketing representatives had significant incentive to save their customers money in their utility bills.

10. Denied. Certain allegations of Paragraph 10 are conclusions of law to which no response is required and, therefore, are deemed denied. To the extent that the remaining

allegations are factual, they are denied. To the contrary, PPL had incentive to work with its customers and to ensure that its customers were on the most advantageous comparable rate.

11. Admitted in part, denied in part. PPL is without knowledge or information sufficient to form a belief as to whether utility consultants such as Plaintiffs are successful in finding their customers certain savings and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant. By way of further answer, PPL denies that it has no incentive to bring alternative rates and tariffs to the customer's attention. To the contrary, even before the Act's enactment, PPL faced competition from other utilities in attracting and expanding industrial customers. As a result, PPL regularly discussed the costs and benefits of alternate rates with its industrial customers. It is admitted that Plaintiffs are highly motivated to find lower rates and to encourage their customers to go on those rates whether or not the costs thereof outweigh the benefits.

12. Admitted in part, denied in part. It is admitted that PPL employed marketing representatives as the primary contacts to work with PPL's industrial customers to understand their rates, and to attract and expand industrial customers. The pejorative connotations of the remaining allegations of Paragraph 12 are denied. To the contrary, PPL's marketing representatives assisted PPL's industrial customers in understanding PPL's rates and expanding their operations.

13. Denied. PPL is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 13 and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant.

14. Denied. PPL is without knowledge or information sufficient to form a belief with respect to the allegations in the first sentence of Paragraph 14 and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant. PPL denies the allegations in the second sentence of Paragraph 14. To the contrary, PPL worked with its industrial customers to attract, retain and expand those customers and their operations. PPL's activities sought to attract industrial customers to the Commonwealth.

15. Denied. PPL is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 15 and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant. By way of further answer, PPL has not enjoyed a substantial windfall by charging more than the most advantageous rate available. To the contrary, PPL has worked with its industrial customers to provide information that permits the customer to select the rate that best meets all of its needs.

16. Denied. PPL is without knowledge or information sufficient to form a belief with respect to certain allegations of Paragraph 16 and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant. By way of further answer, PPL denies that PPL representatives failed to disclose or recommend the appropriate rate.

17. Admitted in part, denied in part. It is admitted that Mr. Kasper has provided consulting services as an independent consultant to one customer outside PPL's service territory. It is denied that "[o]thers, including at least one high level PP&L employee, Oliver Kaspar [sic], have moonlighted as a utility consultant in competition with Plaintiffs while still an employee of PP&L." To the contrary, Mr. Kasper has not competed with Plaintiffs.

18. Denied. The allegations of Paragraph 18 are conclusions of law to which no response is required and, therefore, are deemed denied. To the extent that these allegations are factual, they are denied. To the contrary, PPL has not taken affirmative action designed to interfere with Plaintiffs' ability to service their customers and obtain the greatest level of savings for their customers.

19. Denied in part, admitted in part. Due to the imprecision and breadth of the allegations of Paragraph 19, PPL denies that it knew all of the customers with whom Plaintiffs had written contracts and/or that it knew all the terms of those written contracts with all of the customers. To the contrary, although it is admitted that PPL knew Plaintiffs had written contracts with certain customers and that PPL knew the basic nature of certain contracts, PPL did not know all of the customers with such contracts and/or the terms of all such contracts.

20. Denied. To the contrary, Mr. Collins contacted CUC for his own personal purposes and was not acting on behalf of PPL in doing so.

21. Denied. Certain allegations of Paragraph 21 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the remaining allegations of Paragraph 21. To the contrary, Mr. Collins did not display open hostility towards CUC. By way of further answer, Mr. Collins discussed with customers similar savings that could be achieved by speaking with PPL directly.

22. Admitted in part, denied in part. It is admitted only that certain PPL marketing representatives may have noted that its customers did not need to engage Plaintiffs and that PPL would not charge its customers for providing information with respect to the customers' rates. Certain allegations of Paragraph 22 are conclusions of law to which no response is required and

therefore, are deemed denied. PPL denies the remaining allegations of Paragraph 22. To the contrary, although PPL's marketing representatives may have explained the accuracy of their advice to their customers in response to Plaintiffs' apparent criticism, they did not interfere with Plaintiffs' contracts.

23. Denied. Certain allegations of Paragraph 23 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the remaining allegations. To the contrary, PPL did not repeatedly assist Plaintiffs' customers in terminating Plaintiffs' contracts. By way of further answer, PPL is without knowledge or information sufficient to form a belief as to whether "plaintiff [sic] has repeatedly come across instances in the PPL territory where it has made recommendations to customers that would save the customer large sums of money, only to receive a purported termination letter...." and, therefore, denies that allegation. On one occasion, in response to the customer's request for advice, PPL's marketing representative accurately observed that the customer could terminate its contract with PUSC.

24. Denied. Certain allegations of Paragraph 24 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 24. To the contrary, on one occasion, PPL did respond to its customer's frustration with PUSC and its request for advice by accurately observing that the customer could terminate its contract with PUSC. In addition, because PPL had previously advised that customer of the rate option recommended by PUSC, the customer accurately asserted that PUSC had not recommended a rate option unknown to the customer. By way of further answer, PPL is without knowledge or information sufficient to form a belief with respect to the allegations regarding

Plaintiffs' alleged losses and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant.

25. Denied. Certain allegations of Paragraph 25 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 25. To the contrary, PPL is without knowledge or information sufficient to form a belief as to what caused Plaintiffs to commence legal actions against their own clients, whether Plaintiffs received termination letters, and/or the extent to which each client raised legitimate defenses to Plaintiffs' claims and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant.

26. Denied. Certain allegations of Paragraph 26 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 26. To the contrary, PPL is without sufficient knowledge or information to form a belief as to those allegations and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant. By way of further answer, PPL denies the inferences and innuendo implicit in Plaintiffs' speculations.

27. Denied. Certain allegations of Paragraph 27 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 27. To the contrary, PPL has not interfered with any of Plaintiffs' customers by providing any false or misleading information. As recognized by Plaintiffs' own allegations about the interruptible rate, the customer must evaluate the risks and benefits of that rate in the context of its individual business.

28. Denied. Certain allegations of Paragraph 28 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 28. To the contrary, PPL continued to provide assistance to its customers by providing a balanced consideration of the risks and benefits of certain rate options so that each customer would be able to make an informed decision based upon its own evaluation of those options in the context of its own individual business.

29. Denied. Certain allegations of Paragraph 29 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 29. To the contrary, PPL did not obstruct access to the interruptible rate, did not take an inconsistent position with its testimony before the Pennsylvania Public Utility Commission (the "Commission"), and did not take a position it knew was false. By way of further answer, PPL took appropriate steps, after review and approval by the Commission, to close and limit the availability of the interruptible rate based upon broader considerations recognized and sanctioned by the Commission.

30. Denied in part, admitted in part. PPL is without knowledge or information sufficient to form a belief as to the motivations and determinations made by Plaintiffs' customers and, therefore, those allegations are denied and PPL demands proof thereof at trial, if deemed relevant. By way of further answer, PPL is also without knowledge or information sufficient to form a belief as to whether the possibility of litigating against PPL was a "taunting and unacceptable solution" and, therefore, denies that allegation and demands proof thereof at trial, if deemed relevant. It is admitted that Plaintiffs retained counsel to represent certain clients against

PPL and that Plaintiffs do not, and cannot, seek damages for those customers that entered into settlement agreements, together with Plaintiffs, with PPL.

31. Admitted in part, denied in part. It is admitted only that PPL, after review and approval by the Commission, made the interruptible rate available to its customers at certain times and under certain conditions. Certain allegations of Paragraph 31 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 31. To the contrary, PPL did not present false and misleading statistics to Plaintiffs' customers in an effort to dissuade the customers from implementing the interruptible rate. By way of further answer, when certain customers sought to get off that rate for their own business reasons, PPL permitted those customers to do so up to six months after signing up for the interruptible rate.

32. Denied. Certain allegations of Paragraph 32 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 32. To the contrary, PPL did not violate its tariff. By way of further answer, when certain customers sought to get off that rate for their own business reasons, PPL permitted those customers to do so up to six months after signing up for the interruptible rate.

33. Denied. Certain allegations of Paragraph 33 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 33. To the contrary, PPL did not refuse to provide its customers with tariff options and benefits, but rather applied the tariff options and benefits in compliance with the law. PPL did not refuse to apply its tariffs to C.R. Industries. By way of additional answer, PPL is without knowledge or information to form a belief as to whether PUSC provided sales services for CUC

or whether it was financially harmed by the alleged actions of PPL and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant.

34. Admitted in part, denied in part. It is admitted only that PPL requires a written authorization from its customers for third parties to obtain information about PPL's customers due to the sensitive, confidential and/or proprietary nature of that information. Certain allegations of Paragraph 34 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 34. To the contrary, PPL did not take actions designed to prevent any authorized entity from obtaining account information from PPL, attempt to dissuade the customers from doing business with Plaintiffs, and/or intentionally delay in responding to same. By way of further answer, because certain unauthorized entities, including CUC, sought to obtain customer data from PPL improperly, PPL took reasonable steps to protect PPL and its customers from such unauthorized access and to provide notice to its customers to ensure only authorized release of customer data.

35. Denied. Certain allegations of Paragraph 35 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 35. To the contrary, PPL took reasonable steps to protect and pursue its broad corporate objectives in an appropriate, lawful and reasonable manner. That Plaintiffs, parties competing with PPL in the provision of utility rate information to customers, may have been economically harmed by PPL's legitimate competitive objectives in no manner demonstrates a tortious intent to interfere with Plaintiffs' contractual relations.

36. Denied. Certain allegations of Paragraph 36 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of

Paragraph 36. To the contrary, PPL is without knowledge or information sufficient to form a belief as to whether Plaintiffs' clients are receptive to additional recommendations from Plaintiffs and, therefore, denies that allegation and demands proof thereof at trial, if deemed relevant.

37. Denied. Certain allegations of Paragraph 37 are conclusions of law to which no response is required and, therefore, are deemed denied. PPL denies the factual allegations of Paragraph 37. To the contrary, PPL is without knowledge or information sufficient to form a belief as to the accuracy of Plaintiffs' predictive and speculative assertions about future interactions with Plaintiffs' customers and, therefore, denies those allegations and demands proof thereof at trial, if deemed relevant.

38. Denied. The allegations of Paragraph 38 are conclusions of law to which no response is required and, therefore, are deemed denied. By way of further answer, PPL's actions were privileged and PPL had numerous legitimate business justifications for its actions. PPL, inter alia, sought to provide balanced advice to its industrial customers designed to permit those customers to make informed, balanced decisions about rate options designed to maximize both short-term and long-term benefits without unacceptable risks, decisions that can only ultimately be made by those customers based on their unique business context.

39. Denied. The allegations of Paragraph 39 are conclusions of law to which no response is required and, therefore, are deemed denied. By way of further answer, PPL incorporates its answer to Paragraph 38 above.

WHEREFORE, Defendant PPL demands judgment in its favor, together with an award of costs, counsel fees, and such other relief as may be appropriate.

NEW MATTER

Pursuant to Pennsylvania Rule of Civil Procedure 1030, and in further answer to Plaintiffs' Complaint, PPL avers the following New Matter:

40. PPL provides, inter alia, numerous services to its customers. Among the services it provides to its customers, PPL, through its marketing representatives, often provides information to its customers about the costs and benefits of alternate rate options.

41. Recognizing that each customer must make the final decision about its rate options, PPL's marketing representatives attempt to provide balanced information about the risks and benefits of rate options being considered by the customer.

42. Plaintiffs provide consulting services to their customers in which they may make recommendations about ways in which the customer may save on utility rates, including its electricity rates.

43. PPL and Plaintiffs compete with each other in the provision of information about electric utility rates.

44. Upon information and belief, in connection with the provision of their consulting services, Plaintiffs generally enter into a contract with their customers similar to the form agreement (the "Agreement") attached hereto as Exhibit A.

45. The Agreement contains only the following provisions:

- a. "[The customer] authorize[s] [CUC or PUSC] to analyze the rates, tariffs, discounts, riders and total charges that apply to [the customer's] utility billings and to submit recommendations for possible savings, credits or refunds."
- b. "In lieu of any retainer fee for this analysis, [the customer] agree[s] to pay [CUC or PUSC] as follows:

1. Fifty percent (50%) of each savings resulting from your recommendations for a period of thirty six (36) months beginning with the first month each savings is realized. Payment will be made within thirty (30) days after the savings are received by [the customer].
2. Fifty percent (50%) of any refund or credit resulting from [CUC's or PUSC's] recommendations. Payment will be made within thirty (30) days of receipt of such credit or refund.
3. All recommendations made by [CUC or PUSC] are subject to [the customer's] approval before implementation. [CUC or PUSC] shall only be paid for savings resulting from recommendations which [the customer] choose[s] to implement."

46. The Agreement may be terminated at any time by either Plaintiffs or the PPL customers.

47. The Agreement does not provide CUC or PUSC with a definite period or term of engagement.

48. If Plaintiffs do not make a recommendation, the customer may terminate the Agreement at any time.

49. Even if Plaintiffs do make a recommendation that the customer approves and implements, the customer may terminate the Agreement at any time; however, the obligation of the customer to pay Plaintiffs fifty-percent (50%) of any savings resulting from the implementation of the Plaintiffs' recommendation would remain.

50. Plaintiffs' agreements with their customers are terminable-at-will.

51. Plaintiffs' claims are barred, in whole or in part, because PPL's actions were privileged.

52. Because PPL and Plaintiffs are competitors, PPL did not either directly or indirectly cause or induce any compensable loss and/or damage to Plaintiffs.

53. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' customers had the option to terminate their agreement(s) with Plaintiffs at any time.

54. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands and/or other equitable doctrines.

55. Plaintiffs' claims are barred, in whole or in part, by accord and satisfaction.

56. Plaintiffs' damages, if any, are not of the nature and extent alleged.

57. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to mitigate their alleged damages.

58. Plaintiffs' claims are barred, in whole or in part, by collateral estoppel.

59. Plaintiffs' claims for punitive damages are barred, in whole or in part, by Plaintiffs' failure to allege facts that rise to the level of outrageous conduct.

60. Plaintiffs' claims are barred, in whole or in part, because PPL was justified in defending itself against unjustified and misleading criticism of PPL by Plaintiffs.

61. Plaintiffs' claims are barred, in whole or in part, because PPL's statements were not false or misleading, but rather were truthful.

62. Plaintiffs' claims are barred, in whole or in part, by Pennsylvania's Statute of Limitations.

WHEREFORE, Defendant PPL demands judgment in its favor, together with an award of costs, counsel fees, and such other relief as may be appropriate.

COUNTERCLAIM

Pursuant to Pennsylvania Rule of Civil Procedure 1031, PPL, through their undersigned attorneys, hereby asserts the following counterclaim against CUC and PUSC as follows:

The Parties

63. Counterclaim Plaintiff PPL is a Pennsylvania corporation with its principal place of business located at 2 North Ninth Street, Allentown, PA 18101.

64. Counterclaim Defendant CUC is, upon information and belief, registered to conduct business in the Commonwealth of Pennsylvania with a usual place of business at 1556 McDaniel Drive, Westtown Business Center, West Chester, PA 19380.

65. Counterclaim Defendant PUSC is, upon information and belief, a corporation registered to conduct business in the Commonwealth of Pennsylvania with a usual place of business at Whiteland Business Park, 750 Springdale Drive, Exton, PA 19341 (collectively or individually CUC and/or PUSC shall be referred to as "Counterclaim Defendants").

The Relationship Between The Parties

66. PPL is a Pennsylvania public utility that provides, inter alia, electric utility services in its defined service territory.

67. Pursuant to a tariff approved by the Commission, PPL has established certain rates for different customer classes.

68. As part of the services that it provides to its customers, PPL also employs marketing representatives, who, inter alia, consult with its customers to understand PPL's electric utility rates.

69. PPL's marketing representatives frequently inform its customers as to the risks associated with and benefits of the rates available to the customers.

70. Counterclaim Defendants began soliciting PPL customers to provide utility consulting services for a number of years before instituting these actions.

71. Counterclaim Defendants knew that the entities that they were soliciting were customers of PPL.

72. Upon information and belief, in connection with their efforts to induce PPL customers to enter into an agreement, Counterclaim Defendants provided a one-page form "shared-savings" contract. A true and correct copy of Counterclaim Defendants' sample agreement is attached hereto as Exhibit A.

73. Upon information and belief, the contract provided that the relationship did not pose a risk to the PPL customer because if the customer did not have any savings as a result of a recommendation by Counterclaim Defendants, the customer owed no money to the Counterclaim Defendants.

The Counterclaim Defendants' Misconduct

74. After entering into "shared-savings" contracts with their customers, Counterclaim Defendants made recommendations, on a systematic basis, to its customers that those customers be placed on the interruptible rate.

75. The interruptible rate is a rate by which the customer is charged a lower rate for its electricity in exchange for the obligation to lower the customers' demand during system emergencies and other conditions (the "Interruptible Rate").

76. Recognizing that the failure to recommend a lower rate would prevent any possibility of recovering any fee, Counterclaim Defendants recommended without reservation to PPL's large industrial customers that they adopt the Interruptible Rate, emphasizing the attractive nature of the lower rate while de-emphasizing the risk of interruptions to each customer's business.

77. Failing to act in the best interest of the customer, Counterclaim Defendants either did not inform the PPL customers of the nature and degree of the risk of assuming the Interruptible Rate or significantly understated that risk.

78. When certain industrial customers went on the Interruptible Rate as a result of Counterclaim Defendants' misrepresentations and inducement, those customers often quickly discovered that the risk of the Interruptible Rate exceeded the apparent benefit.

79. Counterclaim Defendants went so far as to retain counsel to represent their customers in the pursuit of litigation against PPL.

80. Counterclaim Defendants knew that PPL had existing contractual relations to provide electricity services to customers within the PPL service territory.

81. Counterclaim Defendants intentionally interfered with PPL's existing customer relationships by knowingly providing PPL customers with misleading and inaccurate statements or material omissions about the risks associated with the Interruptible Rate.

82. Counterclaim Defendants were not justified or privileged in making these representations or omissions to PPL customers.

83. Counterclaim Defendants' systematic interference with PPL's existing contractual relations constitutes outrageous conduct.

83. As a direct and proximate result of Counterclaim Defendants' interference with PPL's existing contractual relations, PPL has been damaged by Counterclaim Defendants' conduct.

WHEREFORE, PPL demands judgment in its favor for compensatory and punitive damages in excess of \$50,000, together with an award of costs, counsel fees, and such other relief as may be appropriate.

DATED: April 24, 2000

Respectfully submitted,



Glen R. Stuart
Bryant D. Lim
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5883/5165

Attorneys for Defendant
PPL Electric Utilities Corporation

OF COUNSEL:

Augustus C. Martin
PPL Electric Utilities Corp.
Two North Ninth Street
Allentown, PA 18101

COMMERCIAL UTILITY
CONSULTANTS and
PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs

v.

PENNSYLVANIA POWER &
LIGHT COMPANY,

Defendant

: COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
:
: CIVIL ACTION – LAW
:
: Nos. 99-09799
:
: (Consolidated Cases)
:
: JURY TRAIL DEMANDED
:
: HON. KATHERINE B.L. PLATT

VERIFICATION

Oliver G. Kasper hereby states that he is Manager-Pricing & Contract Administration of PPL Electric Utilities Corporation and that, as such, he is authorized to make this Verification on behalf of Defendant PPL Electric Utilities Corporation in connection with the above-captioned matter; and that the averments of facts contained in the foregoing Answer, New matter and Counterclaim are true and correct to the best of his knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: April 20, 2000



Manager-Pricing & Contract Administration
PPL Electric Utilities Corporation

Exhibit A

Commercial Utility Consultants

1556 McDANIEL DR.
WESTTOWN BUSINESS CENTER
WEST CHESTER, PA 19380
(215) 431-4400
(215) 431-1023 (FAX)

AGREEMENT

We hereby authorize Commercial Utility Consultants (CUC) to analyze the rates, tariffs, discounts, riders and total charges that apply to our utility billings and to submit recommendations for possible savings, credits or refunds.

In lieu of any retainer fee for this analysis, we agree to pay Commercial Utility Consultants as follows:

- 1 - Fifty percent (50%) of each savings resulting from your recommendations for a period of thirty six (36) months beginning with the first month each savings is realized. Payment will be made within thirty (30) days after the savings are received by us.
- 2 - Fifty percent (50%) of any refund or credit resulting from your recommendations. Payment will be made within thirty (30) days of receipt of such credit or refund.
- 3 - All recommendations made by Commercial Utility Consultants are subject to our approval before implementation. CUC shall only be paid for savings resulting from recommendations which we choose to implement.

FIRM NAME _____

AUTHORIZED
SIGNATURE _____

TITLE _____

ADDRESS _____

CITY _____

STATE _____ ZIP _____

TELEPHONE # _____

FACSIMILE # _____

DATE ACCEPTED _____
COMMERCIAL UTILITY CONSULTANTS

BY _____

TITLE

CERTIFICATION OF SERVICE

FILED

00 APR 26 AM 11:18

This is to certify that in this case, assigned to Judge Katherine B.L. Platt, complete copies of all papers contained in the Answer and New Matter to Plaintiffs' Complaint and Counterclaim of Defendant PPL Electric Utilities Corporation have been served on the following persons, by the following means and on the date stated:

<u>Name:</u>	<u>Means of Service:</u>	<u>Date:</u>
Ethan N. Halberstadt, Esquire POWELL, TRACHTMAN, LOGAN, CARRLE, BOWMAN & LOMBARDO, P.C. 475 Allendale Road, Suite 200 King of Prussia, PA 19406	First Class Mail (postage prepaid)	April 24, 2000

Attorney for Plaintiffs



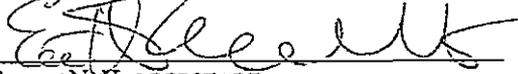
Bryant D. Lim
Attorney Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5165

PT

NOTICE TO PLEAD

TO: DEFENDANT

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE ENCLOSED **NEW MATTER** WITHIN (20) DAYS FROM SERVICE HEREOF OR A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.



ETHAN N. HALBERSTADT
ATTORNEYS FOR PLAINTIFFS

FILED
00 MAY 30 PM 12:30
CLERK OF THE
PROBATE AND
ORPHANS COURT
CHESTER CO., PA.

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney Identification No. 57544
By: Mary J. Pedersen
Attorney Identification No. 80552
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

COMMERCIAL UTILITY CONSULTANTS
and PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER & LIGHT
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW

JURY TRIAL DEMANDED

NO. 99-09799
(Consolidated Cases)

**PLAINTIFFS' REPLY TO NEW MATTER AND
ANSWER TO COUNTERCLAIM WITH NEW MATTER**

Plaintiffs Commercial Utility Consultants ("CUC") and Public Utility Service Corporation ("PUSC"), through their undersigned counsel, hereby responds to defendant

Pennsylvania Power & Light Company's ("PP&L") New Matter and Counterclaim:

40. Admitted only that PP&L, through its marketing representatives, under some circumstances provides information to its customers about the costs and benefits of alternate rate options. However, by no means does PP&L provide even-handed information or promote all of the rate options that are available. By way of example only, it is believed and therefore averred that marketing representatives are often directed not to promote certain rate options to industrial customers in light of the relative lack of profitability of those options to PP&L.

41. Denied. It is believed and therefore averred that PP&L's representatives are at times directed not to promote certain rate options and, to the extent the customer requests information on certain rate options, to provide information to customers which emphasizes the risks of those rate options.

42. Admitted.

43. Denied as a conclusion of law to which no response is required. To the extent deemed factual, at all relevant times PP&L was a monopoly regulated by the PUC that was in the business of the generation, transmission, and distribution of electricity. In conjunction with these activities, PP&L employed marketing representatives to act as the liaisons with its customers. Plaintiffs are not in the business of the generation, transmission, and distribution of electricity. Plaintiffs are independent utility consultants.

44. Admitted only that the contracts generally used by PUSC and CUC are shared savings agreements that are similar in form to the contract attached as Exhibit "A", although the terms may vary.

45. Denied as the corresponding averment characterizes Exhibit "A" to defendant's

New Matter, a blank document of record that speaks for itself.

46. Denied as a conclusion of law to which no response is required. Denied further for the reason that the corresponding averment attempts to characterize Exhibit "A", a document of record that speaks for itself.

47. Denied as a conclusion of law to which no response is required. Denied further for the reason that the corresponding averment attempts to characterize Exhibit "A", a document of record that speaks for itself.

48. Denied as a conclusion of law to which no response is required. Denied further for the reason that the corresponding averment attempts to characterize Exhibit "A", a document of record that speaks for itself.

49. Denied as a conclusion of law to which no response is required. Denied further for the reason that the corresponding averment attempts to characterize Exhibit "A", a document of record that speaks for itself.

50. Denied as a conclusion of law to which no response is required. Denied further for the reason that the corresponding averment attempts to characterize plaintiffs' written contracts with their customers.

51. Denied as a conclusion of law to which no response is required.

52. Denied as a conclusion of law to which no response is required. By way of further answer, PP&L directly caused compensable loss and damage to plaintiffs. Plaintiffs incorporate their response to paragraph 43 as if set forth in full herein.

53. Denied as a conclusion of law to which no response is required. Denied that Plaintiffs' customers had the option to terminate their agreement(s) with plaintiffs at any time.

54. Denied as a conclusion of law to which no response is required.
55. Denied as a conclusion of law to which no response is required.
56. Denied as a conclusion of law to which no response is required. Plaintiffs'

damages are of the nature and extent alleged.

57. Denied as a conclusion of law to which no response is required.
58. Denied as a conclusion of law to which no response is required.
59. Denied as a conclusion of law to which no response is required.
60. Denied as a conclusion of law to which no response is required. Denied that

plaintiffs have engaged in any unjustified and misleading criticism of PP&L.

61. Denied as a conclusion of law to which no response is required. Denied that PP&L statements were truthful.

62. Denied as a conclusion of law to which no response is required. By way of further answer, the parties entered into written tolling agreements with respect to the application of the statute of limitations.

WHEREFORE, plaintiffs request this Court to dismiss Defendant's New Matter, to enter judgment in Plaintiffs' favor, and award plaintiffs such other relief as deemed appropriate by this Court.

ANSWER TO COUNTERCLAIM

63. Admitted.
64. Admitted.
65. Admitted, except that PUSC now regularly conducts business at 734 Springdale

Drive, Exton, Pennsylvania.

66. Admitted.

67. Admitted.

68. Admitted that PP&L employs marketing representatives. Denied that said marketing representatives are employed to consult with customers to understand PP&L's electric rates. Plaintiffs incorporate their responses to Paragraph 40, 41, and 43 as if set forth in full herein.

69. Denied. Plaintiffs incorporate their response to Paragraphs 40, 41, and 43 as if set forth in full herein.

70. Admitted that Plaintiffs have been marketing their services in the PP&L territory for numerous years. Admitted that Plaintiffs conducted these marketing efforts prior to and after the institution of these actions.

71. Denied. Plaintiffs' are not always aware of which utility may be providing service to its prospective customers; however, in many instance the Plaintiffs are aware that the prospective customer receives service from PP&L. Part of the function of Plaintiffs' marketing representatives is to obtain copies of utility bills from the customer. It is upon Plaintiffs' review of these bills that Plaintiffs are generally able to verify the identity of the utility that is providing service.

72. Denied. Customers typically execute a one page "shared savings" contract with Plaintiffs because they are interested in obtaining the lowest utility rates possible. The contract is not provided to the customers to "induce" them to enter into an agreement.

73. Denied as the corresponding averment attempts to characterize the written

contracts that Plaintiffs have with their customers. By way of further answer, prior to the implementation of any recommendation, Plaintiffs explain the benefits and risks, if any, associated with the implementation of the recommendation. In fact, many rates change recommendations pose no risk to the customer. In those cases, the customer is able to save money without the risk because the utility's "marketing representative" failed to inform the customer of the most cost effective rate available.

74. Denied. At no time did Plaintiffs make "systematic" recommendations to customers to go onto the interruptible rate. To the contrary, following the analysis of any particular customer's bills, Plaintiffs sometimes make recommendations with respect to savings that may be available by implementing a new utility rate. Sometimes this included a recommendation to implement an interruptible rate. However, at the time that any recommendation is made, including a recommendation to implement an interruptible rate, the benefits and the risks, if any, are fully explained to the customer.

75. Denied to the extent that the corresponding averment attempts to characterize the "Interruptible Rate", the terms of which are set forth in the applicable tariff. Admitted that under appropriate circumstances a customer may be charged a lower rate for electricity in exchange for the obligation to lower the customer's demand during specified events.

76. Denied. To the contrary, Plaintiffs never recommended the Interruptible Rate without fully explaining the risks of using interruptible service, as well as the cost benefits.

77. Denied. Plaintiffs have always acted in the best interest of their customers. Plaintiffs have always explained to their customers the nature and degree of the risk, as well as the benefits, of implementing any interruptible rate.

78. Denied that Plaintiffs have ever made any misrepresentations or false statements to induce the implementation of any interruptible rate. Customers implemented the interruptible rate knowing all of the risks and benefits of interruptible service. As alleged in the Complaint, PP&L improperly induced customers to switch off of interruptible service in violation of its own tariffs and without explaining, as Plaintiffs had done, all of the options available to the customers.

79. Denied. In order to maximize its own profits in violation of its own tariffs, PP&L refused to provide certain services and benefits to some of Plaintiff's customers. In conjunction with its agreements with its customers, Plaintiffs retained counsel to represent affected customers in order to enforce their rights to obtain all services and benefits that PP&L was obligated by law to provide.

80. Admitted that Plaintiffs were aware that PP&L had customers throughout its territory by virtue of its monopoly in the area serviced by PP&L. Denied that Plaintiffs are aware of the terms of any contracts, if any, that PP&L maintains with its customers prior to providing consulting services to any particular client.

81. Denied. At no time did Plaintiffs provide misleading or inaccurate statements or material omissions to anyone about the risks associated with the Interruptible Rate. Strict proof thereof is demanded. Denied that Plaintiffs in any way improperly interfered with PP&L's existing customer relationships.

82. Denied. To the contrary, at all times the information and recommendations provided by Plaintiffs were truthful and privileged.

83. Denied that Plaintiffs engaged in any "systematic interference" with PP&L's

existing contractual relations or that Plaintiffs have done anything that constitutes “outrageous conduct.”

83. [sic] Denied that Plaintiffs have in any way improperly interfered with PP&L’s existing contractual relations. Denied that PP&L has in any way been damaged by any improper conduct of Plaintiffs. Strict proof thereof is demanded.

WHEREFORE, Commercial Utility Consultants and Public Utility Service Corporation request this Court to dismiss the Counterclaim, to enter judgment in their favor, and to award such other relief as the Court deems appropriate.

REPLY TO NEW MATTER

85. PP&L’s claims are barred by the doctrine of estoppel.

86. PP&L’s claims are barred because CUC’s and PUSC’s conduct was justified.

87. PP&L’s claims are barred by laches.

88. PP&L’s claims are barred by the applicable statute of limitations.

89. PP&L’s claims are barred because CUC’s and PUSC’s business activities and statements are privileged.

90. PP&L’s claims are barred by release.

91. PP&L’s claims are barred because CUC and PUSC at all times made truthful statements.

92. PP&L’s claims are barred by waiver.

WHEREFORE, Commercial Utility Consultants and Public Utility Service Corporation request this Court to dismiss the Counterclaim, to enter judgment in their favor, and to award

such other relief as the Court deems appropriate.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

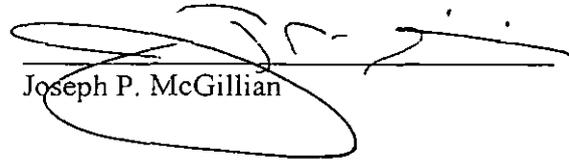
By: 
Ethan N. Halberstadt
Mary J. Pedersen
Attorneys for Plaintiffs

Dated: May 30, 2000

VERIFICATION

I, Joseph P. McGillian, President of Commercial Utility Consultants, plaintiff in the within action, verify that the statements made in the foregoing Reply to New Matter and Answer to Counterclaim with New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Date: May 25, 2000



Joseph P. McGillian

CERTIFICATE OF SERVICE

I, Ethan N. Halberstadt, Esquire, hereby certify that on this date a true and correct copy of the foregoing Plaintiff's Reply to New Matter and Answer to Counterclaim with New Matter was served upon counsel for defendant via first class mail, postage prepaid, addressed as follows:

Glen R. Stuart, Esquire
Morgan, Lewis & Bockius, LLP
2000 One Logan Square
Philadelphia, PA 19103-6993

FILED
MAY 30 11:12:30
CLERK OF COURT
PHILADELPHIA, PA.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By: 
Ethan N. Halberstadt
Attorneys for Plaintiffs

Dated: May 30, 2000

FD

Glen R. Stuart
Identification No. 41302
Bryant D. Lim
Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5883/5165

Attorneys for Defendant
PPL ELECTRIC UTILITIES
CORPORATION

COMMERCIAL UTILITY
CONSULTANTS and
PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER &
LIGHT COMPANY,

Defendant.

COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Nos. 99-09799

(Consolidated Cases)

JURY TRIAL DEMANDED

HON. KATHERINE B.L. PLATT

FILED
00 JUN 16 AM 10:02
PPL ELECTRIC UTILITIES
CORPORATION
CHESTER COUNTY, PA

COUNTER-REPLY OF PPL ELECTRIC UTILITIES CORPORATION
TO NEW MATTER OF COUNTERCLAIM DEFENDANTS

Pursuant to Pennsylvania Rules of Civil Procedure 1017 and 1029, PPL Electric Utilities Corporation (formerly Pennsylvania Power & Light Company) ("PPL"), through its undersigned attorneys, sets forth this counter-reply to the May 30, 2000 New Matter of Counterclaim Defendants (which Counterclaim Defendants erroneously style "Reply to New Matter") in the above-captioned consolidated action in accordance with the numbered paragraphs thereof as follows:

85. Denied. The allegations of Paragraph 85 are conclusions of law to which no response is required and, therefore, are deemed denied.

86. Denied. The allegations of Paragraph 86 are conclusions of law to which no response is required and, therefore, are deemed denied.

87. Denied. The allegations of Paragraph 87 are conclusions of law to which no response is required and, therefore, are deemed denied.

88. Denied. The allegations of Paragraph 88 are conclusions of law to which no response is required and, therefore, are deemed denied.

89. Denied. The allegations of Paragraph 89 are conclusions of law to which no response is required and, therefore, are deemed denied. To the extent the allegations contained in Paragraph 89 are factual, they are denied. To the contrary, the business activities and statements of Counterclaim Defendants were not privileged.

90. Denied. The allegations of Paragraph 90 are conclusions of law to which no response is required and, therefore, are deemed denied.

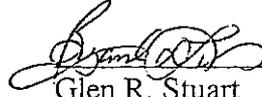
91. Denied. The allegations of Paragraph 91 are conclusions of law to which no response is required and, therefore, are deemed denied. To the extent the allegations contained in Paragraph 91 are factual, they are denied. To the contrary, the statements made by Counterclaim Defendants were not at all times truthful.

92. Denied. The allegations of Paragraph 92 are conclusions of law to which no response is required and, therefore, are deemed denied.

WHEREFORE, Defendant and Counterclaimant PPL demands judgment in its favor,
together with an award of costs, counsel fees, and such other relief as may be appropriate.

DATED: June 15, 2000

Respectfully submitted,



Glen R. Stuart

Bryant D. Lim

MORGAN, LEWIS & BOCKIUS LLP

1701 Market Street

Philadelphia, PA 19103-2921

(215) 963-5883/5165

Attorneys for Defendant

PPL Electric Utilities Corporation

OF COUNSEL:

Augustus C. Martin

PPL Electric Utilities Corp.

Two North Ninth Street

Allentown, PA 18101

COMMERCIAL UTILITY
CONSULTANTS and
PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER &
LIGHT COMPANY,

Defendant.

COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Nos. 99-09799

(Consolidated Cases)

JURY TRIAL DEMANDED

HON. KATHERINE B.L. PLATT

VERIFICATION

Oliver G. Kasper hereby states that he is Manager - Pricing & Contract Administration of PPL Electric Utilities Corporation and that, as such, he is authorized to make this verification on its behalf in connection with the above-captioned matter; and that the factual information contained herein is true and correct to the best of his knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

Dated: June 14, 2000



Manager - Pricing & Contract Administration
PPL Electric Utilities Corporation

CERTIFICATION OF SERVICE

This is to certify that in this case, assigned to Judge Katherine B.L. Platt, complete copies of all papers contained in the Counter-Reply of Defendant PPL Electric Utilities Corporation to the New Matter of Counterclaim Defendants have been served on the following persons, by the following means and on the date stated:

Name:

Ethan N. Halberstadt, Esquire
POWELL, TRACHTMAN, LOGAN,
CARRLE, BOWMAN & LOMBARDO, P.C.
475 Allendale Road, Suite 200
King of Prussia, PA 19406

Attorney for Plaintiffs

Means of Service:

First Class Mail
(postage prepaid)

FILED
00 JUN 16 AM 02
JUN 15 2000
U.S. DISTRICT COURT
PHILADELPHIA, PA



Bryant D. Lim
Attorney Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5165

FILED

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

00 JUL -3 PM 3: 57

By: Ethan N. Halberstadt
Attorney Identification No. 57544
By: Mary J. Pedersen
Attorney Identification No. 80552
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

OFFICE OF THE
PROTHONOTARY
CHESTER CO. PA.

COMMERCIAL UTILITY CONSULTANTS
and PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER & LIGHT
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW

JURY TRIAL DEMANDED

NO. 99-09799
(Consolidated Cases)

PLAINTIFFS' JURY DEMAND PURSUANT TO C.C.R.C.P. 1007.1.A.

Plaintiffs Commercial Utility Consultants and Public Utility Service Corporation,
through their undersigned counsel, hereby demand a jury by twelve pursuant to C.C.R.C.P.
1007.1.A.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

Date: June 27, 2000

By:



Ethan N. Halberstadt
Mary J. Pedersen
Attorneys for Plaintiffs

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney Identification No. 57544
By: Mary J. Pedersen
Attorney Identification No. 80552
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

FILED
00 JUL -3 PM 3: 57
OFFICE OF THE
PROTHONOTARY
CHESTER CO. PA.

COMMERCIAL UTILITY CONSULTANTS
and PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER & LIGHT
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW

JURY TRIAL DEMANDED

NO. 99-09799
(Consolidated Cases)

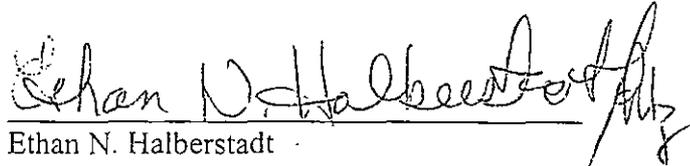
CERTIFICATE OF SERVICE

I, Ethan N. Halberstadt, hereby certify that a true and correct copy of the foregoing
Plaintiffs' Jury Demand Pursuant to C.C.R.C.P. 1007.1.A. was served upon counsel for
defendant via first class mail, postage prepaid, addressed as follows:

Glen R. Stuart, Esquire
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103-2921

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:


Ethan N. Halberstadt

Attorneys for Plaintiffs

Dated: June 27, 2000

JS

Glen R. Stuart
Identification No. 41302
Bryant D. Lim
Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5883/5165

FILED

00 JUL -7 PM 2:06

Attorneys for Defendant and
Counterclaimant PPL
ELECTRIC UTILITIES
CORPORATION

COMMERCIAL UTILITY
CONSULTANTS and
PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs and
Counterclaim Defendants,

v.

PENNSYLVANIA POWER &
LIGHT COMPANY,

Defendant and
Counterclaimant.

COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Nos. 99-09799

(Consolidated Cases)

JURY TRIAL DEMANDED

HON. KATHERINE B.L. PLATT

ADMINISTRATIVE CONFERENCE MEMORANDUM

Pursuant to Chester County Civil Court Rule 249.1.C, Defendant and Counterclaimant PPL Electric Utilities Corporation, formerly Pennsylvania Power & Light Company ("PPL"), through its undersigned attorneys, files this Administrative Conference Memorandum in the above-captioned consolidated action.

(1) Nature of the Action

This is an action for alleged tortious interference with existing contractual relations brought by Commercial Utility Consultants and Public Utility Service Corporation ("Plaintiffs") and against PPL. PPL's Preliminary Objections and Answer set forth numerous defenses to

Plaintiffs' claims, including but not limited to Plaintiffs' failure to state a cause of action and Defendant's competitor's privilege. In its Counterclaim, PPL asserts a tortious interference claim against Plaintiffs for interference with PPL's existing contractual relations.

(2) Statement of the Salient Facts of the Case

In their Complaint, Plaintiffs allege that they are in the business of providing certain utility consulting services for certain named and unnamed customers. Plaintiffs allege that they enter into one-page "shared savings" written contracts with their customers. Plaintiffs assert that, pursuant to these contracts, Plaintiffs agree to review the rates, tariffs, discounts, riders and total charges that apply to the customer's utility billings and to submit recommendations to the customer for possible savings, credits or refunds. Plaintiffs allege that it is standard in the utility consulting industry that Plaintiffs receive 50% of any credit or refund they obtain for their clients, as well as 50% of the savings that results from their recommendations over a period of time.

Plaintiffs also allege that PPL marketing representatives assisted industrial customers in understanding PPL's complex rate structure, and making decisions about what rate was best for their business. Plaintiffs allege that PP&L representatives informed Plaintiffs' customers that they did not need Plaintiffs' assistance and that PP&L would do the work for the customers at no charge. Plaintiffs allege that PP&L, as the public utility providing the utility services, has taken affirmative action designed to interfere with Plaintiffs' ability to service their customers and to obtain the greatest level of savings, and, therefore, tortiously interfered with Plaintiffs' existing contractual relations.

In PPL's Answer, PPL denied Plaintiffs' claims of tortious interference, justified the conduct of its marketing representatives as consistent with the competitive marketplace known as free enterprise, and explained that PPL's conduct was not actionable. To the contrary, PPL properly explained the costs and benefits of alternative rates available to its customers, leaving the ultimate decision to the customer. PPL naturally defended its conduct and its recommendations to its customers against Plaintiffs' criticism.

In its Counterclaim, PPL alleges that CUC and PUSC tortiously interfered with PPL's existing customers. Specifically, PPL alleges that CUC and PUSC made recommendations, on a systematic basis, to its customers that those customers be placed on the interruptible rate. CUC and PUSC made these recommendations de-emphasizing the risk of interruptions to each customer's business, while emphasizing the attractive nature of the lower rate. After certain customers went on the interruptible rate as a result of CUC and PUSC's recommendations, those customers discovered that the risks outweighed the apparent benefit.

(3) List of Monetary Damages Claimed

To date, Plaintiffs have not specified the amount of any monetary damages claimed. PPL has requested that Plaintiffs specify the amount of damages allegedly sustained by Plaintiffs through pending discovery requests. With respect to PPL's Counterclaim for monetary damages, discovery is ongoing.

(4) Special Comments

None at this time.

(5) Brief Statement of the Status of Discovery and Other Pretrial Matters

On June 1, 2000, PPL served Plaintiffs with a set of interrogatories and a request for production of documents. Although Plaintiffs' response to PPL's discovery was due on July 3, 2000, Plaintiffs have not yet responded. On July 5, 2000, counsel for Plaintiffs requested a twenty (20) day extension of time to respond to PPL's discovery. In response, PPL granted Plaintiffs an extension to provide substantive responses (not objections) until July 24, 2000.

No depositions have been scheduled.

(a) Proposed Schedule for the Completion of Discovery

A proposed pretrial order setting forth a schedule for the completion of discovery and other pretrial matters is attached at Ex. A for the court's convenience.

(b) Status of all Outstanding Pretrial Motions and Petitions

There are no pending pretrial motions or petitions.

(c) Further Pretrial Motions or Petitions Contemplated

Depending upon developments during the discovery phase, PPL anticipates filing a motion for summary judgment at the close of discovery.

(6) Estimated Number of Days Required for Trial

PPL is unable to currently estimate the number of days required for trial.

DATED: July 7, 2000

Respectfully submitted,



Glen R. Stuart
Bryant D. Lim
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5883/5165

Exhibit A

COMMERCIAL UTILITY
CONSULTANTS and
PUBLIC UTILITY SERVICE
CORPORATION,

Plaintiffs,

v.

PENNSYLVANIA POWER &
LIGHT COMPANY,

Defendant.

COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Nos. 99-09799

(Consolidated Cases)

JURY TRIAL DEMANDED

HON. KATHERINE B.L. PLATT

PROPOSED PRETRIAL ORDER

Pursuant to Chester County Civil Rule 249.1, it is hereby ordered that the parties shall comply with the following schedule in the above-captioned action:

1. Plaintiffs shall identify any expert witness upon whom they intend to rely at trial, and the subject matter of his or her proposed testimony, on or before **September 29, 2000**.
2. Defendant shall identify any expert witness upon whom it intends to rely at trial, and the subject matter or his or her proposed testimony, on or before **October 13, 2000**.
3. All fact discovery shall be completed on or before **October 31, 2000**. Any interrogatories or document requests shall be served so that responses are due on or before that date and depositions shall be scheduled so as to be conducted on or before that date.
4. Plaintiffs shall provide the substance of the facts and opinions to which each expert identified pursuant to Paragraph 1 above is expected to testify and a summary of the grounds for each such opinion on or before **November 10, 2000**. (Alternatively, Plaintiffs may provide the expert report of any such expert on or before the date specified.)

5. Defendant shall provide the substance of the facts and opinions to which each expert identified pursuant to Paragraph 2 above is expected to testify and a summary of the grounds for each such opinion on or before **November 24, 2000**. (Alternatively, Defendant may provide the expert report of any such expert on or before the date specified.)

6. The parties shall conduct any depositions of the experts identified pursuant to Paragraphs 1 and 2 on or before **December 15, 2000**.

7. All case and issue dispositive motions and an opening brief and affidavits, if any, in support of the motion(s), shall be served and filed by **December 22, 2000**. Opposing briefs shall be served and filed by **January 19, 2001**. Reply briefs shall be served and filed by **February 2, 2001**.

8. On **February __, 2001**, at __.__.m., the Court will hold a final pretrial conference with counsel.

9. Trial will commence at __.__.m. on **March __, 2001** in Courtroom __ or at such other time as the Court may determine.

So Ordered:

Katherine B.L. Platt, J.

CERTIFICATE OF SERVICE

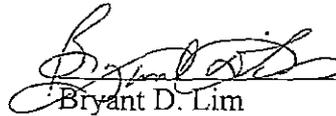
FILED

This is to certify that foregoing Administrative Conference Memorandum of Defendant
and Counterclaimant PPL Electric Utilities Corporation, has been served on the following
person, by the following means and on the date stated:

00 JUL -7 AM 8:06
U. S. DISTRICT COURT
CHESTER CO. PA.

<u>Name:</u>	<u>Means of Service:</u>	<u>Date:</u>
Ethan N. Halberstadt, Esquire POWELL, TRACHTMAN, LOGAN, CARRLE, BOWMAN & LOMBARDO, P.C. 475 Allendale Road, Suite 200 King of Prussia, PA 19406	First Class Mail (postage prepaid)	July 7, 2000

Attorney for Plaintiffs



Bryant D. Lim
Attorney Identification No. 78738
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5165

gBM

COMMERCIAL UTILITY CONSULTANTS: IN THE COURT OF COMMON PLEAS
& PUBLIC UTILITY SERVICE
CORPORATION COMPANY : CHESTER COUNTY, PENNSYLVANIA
-vs- :
: NO. 99-09799
PENNSYLVANIA POWER & LIGHT
COMPANY a/k/a PP&L : CIVIL ACTION

Ethan N. Halberstadt, Esquire, Attorney for Plaintiffs
Glen R. Stuart, Esquire, Attorney for Defendant
Bryant David Lim, Esquire, Attorney for Defendant

COPIES SENT
JUL 13 2000

FILED
00 JUL 17 PM 3:51
CLERK OF COURT
CHESTER COUNTY PA

ADMINISTRATIVE CONFERENCE ORDER

The following Order is entered pursuant to an Administrative Conference held July 13, 2000 in the above matter.

1. Pleadings

xxx closed;

ongoing, and the following additional pleadings may be filed within _____ days of the date of the conference

2. Pre-trial Motions:

any further shall be filed

xxx motions in limine to be filed by the earlier of: two

weeks before a firm trial date or one week before any scheduled pre-trial conference.

Dispositive motions - see below

3. Discovery:

complete, unless further specially allowed by Court;

xxx to be completed as follows:

a. Plaintiffs shall identify any expert witness upon whom they intend to rely at trial, and the subject matter of his or her proposed testimony, on or before October 27, 2000;

b. Defendant shall identify any expert witness upon whom it intends to rely at trial, and the subject matter or his or per proposed testimony, on or before November 13, 2000;

c. All fact discovery shall be completed on or before November 30, 2000. Any interrogatories or document request shall be served so that responses are due on or before that date and depositions shall be scheduled so as to be conducted on or before that date;

d. Plaintiff shall provide the substance of the facts and opinions to which each expert identified pursuant to Paragraph a above is expected to testify and a summary of the grounds for each such opinion on or before December 11, 2000. (Alternatively, Plaintiffs may provide the expert report of any such expert on or before the date specified);

e. Defendant shall provide the substance of the facts and opinions to which each expert identified pursuant to Paragraph b above is expected to testify and a summary of the grounds for each such opinion on or before December 22, 2000. (Alternatively, Defendant may provide the expert report of any such expert on or before the date specified);

f. The parties shall conduct any depositions of the experts identified pursuant to Paragraphs a and b on or before January 12, 2001;

g. All case and issue dispositive motions and an opening brief and affidavits, if any, in support of the motion(s), shall be served and filed by January 19, 2001.

Opposing briefs shall be served and filed by February 16, 2001. Reply briefs shall be served and filed by March 2, 2001.

4. Anticipated Trial Listing Date: **TRIAL READY LISTING DEFERRED TO JANUARY, 2001.**

_____ matter to be scheduled for arbitration.

X Jury; _____ Non-Jury Trial

5 day(s) - anticipated length of trial;

NOTICE TO COUNSEL:

Once a case appears on a trial list, there shall be no further pre-trial motions filed without leave of Court. The parties may take depositions for use at trial by agreement, but the failure or inability to complete discovery or take depositions shall not be grounds for a continuance. If plaintiff's demand falls below \$50,000.00, the case shall be automatically listed for arbitration. Court Administration shall notify the parties of all trial listings.

BY THE COURT:


Katherine B. L. Platt, J.

JUL 16 2000

JBM

COMMERCIAL UTILITY CONSULTANTS: IN THE COURT OF COMMON PLEAS
& PUBLIC UTILITY SERVICE
CORPORATION COMPANY : CHESTER COUNTY, PENNSYLVANIA

-vs-

: NO. 99-09799

PENNSYLVANIA POWER & LIGHT
COMPANY a/k/a PP&L

: CIVIL ACTION

FILED
00 JUL 17 1 PM 3:51
PROthon (TAR)
CHESTER CO PA

Ethan N. Halberstadt, Esquire, Attorney for Plaintiffs
Glen R. Stuart, Esquire, Attorney for Defendant
Bryant David Lim, Esquire, Attorney for Defendant

TRIAL READY LISTING DATE

DEFERMENT ORDER

AND NOW, this 17th day of July, 2000, following an administrative conference pursuant to C.C.R.C.P. No. 249.3, it is hereby ordered that the date upon which this case shall be placed upon the list of trial ready cases is hereby deferred to January 2,001.

BY THE COURT:

Katherine B. L. Platt
Katherine B. L. Platt J.

41

Commercial
Plaintiff(s)

: IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA

VS.

: NO. 99-07799

Berna Bower
Defendant(s)

: CIVIL ACTION-LAW/EQUITY

NOV 11 11:30 AM '00

TRIAL READY LISTING DATE

AND NOW, this 6 day of Sept, 2000, it is hereby
ordered that the date upon which this case shall be placed upon the list of trial ready cases
is hereby Jan-01.

BY THE COURT:

Bern Curran
J.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

FILED
00 SEP -8 AM 11:09
OFFICE OF THE
PROthonotary
CHESTER CO. PA.

Attorneys for Plaintiffs

COMMERCIAL UTILITY CONSULTANTS
and PUBLIC UTILITY SERVICE
CORPORATION

Plaintiffs/Counterclaim Defendants,

v.

PENNSYLVANIA POWER & LIGHT
COMPANY,

Defendant/Counterclaimant.

IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW

JURY TRIAL DEMANDED

NO. 99-09799

(Consolidated Cases)

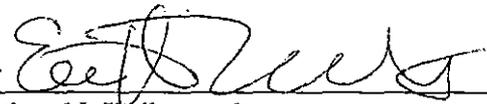
**CERTIFICATE PREREQUISITE TO SERVICE OF
SUBPOENAS PURSUANT TO RULE 4009.22**

As a prerequisite to service of subpoenas for documents and things pursuant to Rule 4009.22, plaintiffs certify:

- (1) a Notice of Intent to serve the subpoenas with copies of the subpoenas attached thereto was mailed or delivered to counsel for defendant at least twenty days prior to the date on which the subpoenas were sought to be served,
- (2) a copy of the Notices of Intent, including the proposed subpoenas, is attached to this certificate,
- (3) no objections to the subpoenas have been received, and
- (4) the subpoenas which will be served are identical to the subpoenas which are attached to the Notices of Intent to serve the subpoenas.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:


Ethan N. Halberstadt
Attorneys for Plaintiff

Date: 9-6-00

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

Attorneys for Plaintiffs

COMMERCIAL UTILITY CONSULTANTS
and PUBLIC UTILITY SERVICE
CORPORATION

Plaintiffs/Counterclaim Defendants,

v.

PENNSYLVANIA POWER & LIGHT
COMPANY,
Defendant/Counterclaimant.

IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW .

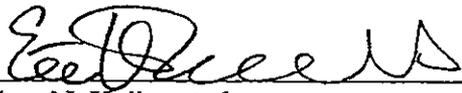
JURY TRIAL DEMANDED
NO. 99-09799
(Consolidated Cases)

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff, Commercial Utility Consultants, intends to serve a subpoena upon Fasson Roll Division of Avery Dennison Corp. identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:


Ethan N. Halberstadt
Attorneys for Plaintiffs

Dated: August 7, 2000

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

COMMERCIAL UTILITY CONSULTANTS & PUBLIC UTILITY SERVICE CORPORATION

Civil Action No. 99-09799

VS

PENNSYLVANIA POWER & LIGHT COMPANY

To: CUSTODIAN OF RECORDS FASSON ROLL DIVISION OF AVERY DENNISON CORP. PERSON OR ENTITY 35 Penn Am Drive Quakertown, PA 18951

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: SEE ATTACHED.

at 475 Allendale Rd., Suite 200, King of Prussia, PA 19406 (Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Ethan N. Halberstadt Attorney's Name

57544

475 Allendale Road, Suite 200 King of Prussia, PA 19406

Address

610.354.9700

Telephone Number

Date

Attorney for Plaintiffs

Seal of the Court

BY THE COURT

By: Alysia Bell Royce Prothonotary

Documents to be produced

1. A copy of your Pennsylvania Power & Light Company ("PP&L") electric bill for one month during each of the following years: 1995, 1996, 1997, 1998, 1999, and 2000. For instance, you can satisfy this request by producing your PP&L electric bill for January, 1995, January, 1996, January, 1997, January, 1998, January, 1999, and January, 2000.
2. All letters, memos, and other documents that were provided to you by PP&L that relate or refer to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
3. All letters or other documents that you sent to PP&L that refer to or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
4. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any meetings that you had with PP&L representatives wherein any of the following topics was discussed: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
5. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

Attorneys for Plaintiffs

COMMERCIAL UTILITY CONSULTANTS
and PUBLIC UTILITY SERVICE
CORPORATION

Plaintiffs/Counterclaim Defendants,

v.

PENNSYLVANIA POWER & LIGHT
COMPANY,
Defendant/Counterclaimant.

IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW

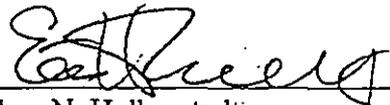
JURY TRIAL DEMANDED
NO. 99-09799
(Consolidated Cases)

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff, Commercial Utility Consultants, intends to serve a subpoena upon Carlisle
Plastics, Inc. d/b/a A&E Products Group identical to the one that is attached to this notice. You
have twenty (20) days from the date listed below in which to file of record and serve upon the
undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:


Ethan N. Halberstadt
Attorneys for Plaintiffs

Dated: August 7, 2000

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

COMMERCIAL UTILITY CONSULTANTS
& PUBLIC UTILITY SERVICE CORPORATION

Civil Action No. 99-09799

VS

PENNSYLVANIA POWER & LIGHT COMPANY

CUSTODIAN OF RECORDS
CARLISLE PLASTICS, INC. d/b/a
To: A&E PRODUCTS GROUP
PERSON OR ENTITY
c/o CT Corporation
1635 Market St.
Philadelphia, PA 19103

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: SEE ATTACHED.

at 475 Allendale Road, Suite 200, King of Prussia, PA 19406
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Ethan N. Halberstadt
Attorney's Name

57544

Identification Number
475 Allendale Road, Suite 200
King of Prussia, PA 19406

Address

610.354.9700

Telephone Number

Attorney for Plaintiffs.

Date _____

Seal of the Court

BY THE COURT

By: Allison Bell Royce
Prothonotary

Documents to be produced

1. A copy of your Pennsylvania Power & Light Company ("PP&L") electric bill for one month during each of the following years: 1995, 1996, 1997, 1998, 1999, and 2000. For instance, you can satisfy this request by producing your PP&L electric bill for January, 1995, January, 1996, January, 1997, January, 1998, January, 1999, and January, 2000.
2. All letters, memos, and other documents that were provided to you by PP&L that relate or refer to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
3. All letters or other documents that you sent to PP&L that refer to or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
4. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any meetings that you had with PP&L representatives wherein any of the following topics was discussed: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
5. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

Attorneys for Plaintiffs

COMMERCIAL UTILITY CONSULTANTS
and PUBLIC UTILITY SERVICE
CORPORATION

Plaintiffs/Counterclaim Defendants,

v.

PENNSYLVANIA POWER & LIGHT
COMPANY,

Defendant/Counterclaimant.

IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW

JURY TRIAL DEMANDED

NO. 99-09799

(Consolidated Cases)

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff, Commercial Utility Consultants, intends to serve a subpoena upon Lancaster Leaf Tobacco Company identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:



Ethan N. Halberstadt
Attorneys for Plaintiffs

Dated: August 7, 2000

In the Court of Common Pleas of Chester County, Pennsylvania

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

COMMERCIAL UTILITY CONSULTANTS & PUBLIC UTILITY SERVICE CORPORATION

Civil Action No. 99-09799

vs

PENNSYLVANIA POWER & LIGHT COMPANY

To: CUSTODIAN OF RECORDS LANCASTER LEAF TOBACCO COMPANY 198 W. Liberty St. P.O. Box 897 Lancaster, PA 17608-0897

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: SEE ATTACHED.

at 475 Allendale Rd., Suite 200, King of Prussia, PA 19406 (Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Ethan N. Halberstadt Attorney's Name 57544 Identification Number 475 Allendale Road, Suite 200 King of Prussia, PA 19406 Address 610.354.9700 Telephone Number Plaintiffs Attorney for

Date

Seal of the Court

BY THE COURT

By: Allison Bell Royce Prothonotary

Documents to be produced

1. A copy of your Pennsylvania Power & Light Company ("PP&L") electric bill for one month during each of the following years: 1995, 1996, 1997, 1998, 1999, and 2000. For instance, you can satisfy this request by producing your PP&L electric bill for January, 1995, January, 1996, January, 1997, January, 1998, January, 1999, and January, 2000.
2. All letters, memos, and other documents that were provided to you by PP&L that relate or refer to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
3. All letters or other documents that you sent to PP&L that refer to or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
4. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any meetings that you had with PP&L representatives wherein any of the following topics was discussed: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
5. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

Attorneys for Plaintiffs

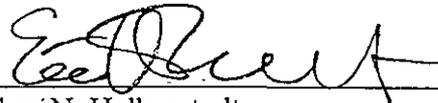
COMMERCIAL UTILITY CONSULTANTS and PUBLIC UTILITY SERVICE CORPORATION Plaintiffs/Counterclaim Defendants,	IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
v.	CIVIL ACTION — LAW
PENNSYLVANIA POWER & LIGHT COMPANY, Defendant/Counterclaimant.	JURY TRIAL DEMANDED NO. 99-09799 (Consolidated Cases)

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff, Commercial Utility Consultants, intends to serve a subpoena upon Harris Semiconductor identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:



Ethan N. Halberstadt
Attorneys for Plaintiffs

Dated: August 7, 2000

In the Court of Common Pleas, of Chester County, Pennsylvania

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

COMMERCIAL UTILITY CONSULTANTS & PUBLIC UTILITY SERVICE CORPORATION

Civil Action No. 99-09799

VS

PENNSYLVANIA POWER & LIGHT COMPANY

To: CUSTODIAN OF RECORDS HARRIS SEMICONDUCTOR c/o CT CORPORATION SYSTEMS 1635 Market Street Philadelphia, PA 19103

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: See attached.

at 475 Allendale Rd., Suite 200, King of Prussia, PA 19406 (Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Ethan N. Halberstadt Attorney's Name 57544 Identification Number 475 Allendale Rd., Suite 200 King of Prussia, PA 19406 Address 610.354.9700 Telephone Number Attorney for Plaintiffs

Date

Seal of the Court

BY THE COURT

By: Allison Bell Royce Prothonotary

Documents to be produced

1. A copy of your Pennsylvania Power & Light Company ("PP&L") electric bill for one month during each of the following years: 1995, 1996, 1997, 1998, 1999, and 2000. For instance, you can satisfy this request by producing your PP&L electric bill for January, 1995, January, 1996, January, 1997, January, 1998, January, 1999, and January, 2000.
2. All letters, memos, and other documents that were provided to you by PP&L that relate or refer to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
3. All letters or other documents that you sent to PP&L that refer to or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
4. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any meetings that you had with PP&L representatives wherein any of the following topics was discussed: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
5. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).

**POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.**

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

Attorneys for Plaintiffs

COMMERCIAL UTILITY CONSULTANTS
and PUBLIC UTILITY SERVICE
CORPORATION

Plaintiffs/Counterclaim Defendants,

v.

PENNSYLVANIA POWER & LIGHT
COMPANY,
Defendant/Counterclaimant.

IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW

JURY TRIAL DEMANDED
NO. 99-09799
(Consolidated Cases)

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff, Commercial Utility Consultants, intends to serve a subpoena upon The West Company identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:



Ethan N. Halberstadt
Attorneys for Plaintiffs

Dated: August 7, 2000

In the Court of Common Pleas of Chester County, Pennsylvania

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

COMMERCIAL UTILITY CONSULTANTS & PUBLIC UTILITY SERVICE CORPORATION

Civil Action No. 99-09799

vs

PENNSYLVANIA POWER & LIGHT COMPANY

To: CUSTODIAN OF RECORDS THE WEST COMPANY PERSON OR ENTITY 2921 Reach Rd. Williamsport, PA 17701

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: SEE ATTACHED

at 475 Allendale Rd., Suite 200, King of Prussia, PA 19406 (Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Ethan N. Halberstadt Attorney's Name 57544 Identification Number 475 Allendale Road, Suite 200 King of Prussia, PA 19406 Address 610.354.9700 Telephone Number Plaintiffs Attorney for

Date

Seal of the Court

BY THE COURT

By: Allison Bell Royce Prothonotary

Documents to be produced

1. A copy of your Pennsylvania Power & Light Company ("PP&L") electric bill for one month during each of the following years: 1995, 1996, 1997, 1998, 1999, and 2000. For instance, you can satisfy this request by producing your PP&L electric bill for January, 1995, January, 1996, January, 1997, January, 1998, January, 1999, and January, 2000.
2. All letters, memos, and other documents that were provided to you by PP&L that relate or refer to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
3. All letters or other documents that you sent to PP&L that refer to or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
4. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any meetings that you had with PP&L representatives wherein any of the following topics was discussed: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
5. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road, Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

Attorneys for Plaintiffs

COMMERCIAL UTILITY CONSULTANTS
and PUBLIC UTILITY SERVICE
CORPORATION

Plaintiffs/Counterclaim Defendants,

v.

PENNSYLVANIA POWER & LIGHT
COMPANY,
Defendant/Counterclaimant.

IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

CIVIL ACTION — LAW

JURY TRIAL DEMANDED
NO. 99-09799
(Consolidated Cases)

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff, Commercial Utility Consultants, intends to serve a subpoena upon Polymer Dynamics identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:



Ethan N. Halberstadt
Attorneys for Plaintiffs

Dated: August 7, 2000

Documents to be produced

1. A copy of your Pennsylvania Power & Light Company ("PP&L") electric bill for one month during each of the following years: 1995, 1996, 1997, 1998, 1999, and 2000. For instance, you can satisfy this request by producing your PP&L electric bill for January, 1995, January, 1996, January, 1997, January, 1998, January, 1999, and January, 2000.
2. All letters, memos, and other documents that were provided to you by PP&L that relate or refer to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
3. All letters or other documents that you sent to PP&L that refer to or relate to any of the following: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
4. All documents (including but not limited to all memoranda, letters, and similar documents) that refer or relate to any meetings that you had with PP&L representatives wherein any of the following topics was discussed: (a) any interruptible service rate; (b) "shared savings" agreements; or (c) utility consultants (including but not limited to Commercial Utility Consultants and Public Utility Service Corporation).
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POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By: Ethan N. Halberstadt
Attorney Identification No. 57544
475 Allendale Road - Suite 200
King of Prussia, PA 19406
Tel: 610.354.9700 / Fax: 610.354.9760

Attorneys for Plaintiffs

FILED
00 SEP -8 AM 11:09
OFFICE OF THE
PROTHONOTARY
CHESTER CO. PA.

COMMERCIAL UTILITY CONSULTANTS and PUBLIC UTILITY SERVICE CORPORATION

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA

Plaintiffs/Counterclaim Defendants,

v.

CIVIL ACTION — LAW

PENNSYLVANIA POWER & LIGHT COMPANY,

JURY TRIAL DEMANDED

Defendant/Counterclaimant.

NO. 99-09799

(Consolidated Cases)

CERTIFICATE OF SERVICE

I, Ethan N. Halberstadt, hereby certify that on this date a true and correct copy of the foregoing Certificate Prerequisite to Service of Subpoenas Pursuant to Rule 4009.22 was served upon the defendant via first-class mail, postage prepaid, addressed as follows:

Glen R. Stuart, Esquire
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

POWELL, TRACHTMAN, LOGAN, CARRLE,
BOWMAN & LOMBARDO, P.C.

By:



Ethan N. Halberstadt
Attorneys for Plaintiff

Date: 9-6-00

FILE

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