



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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June 27, 1995

JOHN G ALFORD SECRETARY
PA PUBLIC UTILITY COMMISSION
P O BOX 3265
HARRISBURG PA 17105-3265

Re: Pa. P.U.C. v. Pennsylvania
Power & Light Company
Docket No. R-00943271

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Dear Secretary Alford:

Enclosed please find an original and nine (9) copies of the Reply Brief of the Office of Trial Staff for filing in the above-captioned proceeding. Copies are being served upon all active parties of record.

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Very truly yours,

Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

Enclosures

JES:sjh

cc: Honorable Robert Christianson
Parties of Record

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Chief Administrative Law Judge
Robert Christianson, Presiding

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

PENNSYLVANIA POWER & LIGHT
COMPANY

Docket No. R-943271

REPLY BRIEF
OF THE
OFFICE OF TRIAL STAFF

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Dated: June 27, 1995

ORIGINAL

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I. INTRODUCTION

A. The Office Of Trial Staff's Reply Brief

On June 16, 1995, the Office of Trial Staff ("OTS") filed its Main Brief in this proceeding, setting forth the evidence and law in support of its recommendation that Pennsylvania Power & Light Company ("Company" or "PP&L") recover no more than \$20,455,000 in additional base rate revenue. Main Briefs were also filed by PP&L, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Department of Defense ("DOD"), Bethlehem Steel Corporation, PP&L Industrial Customer Alliance, Sierra Club, Central Easter Pennsylvania Fuel Oil Dealers, University/ College Coalition, Crown American Corporation and Commission on Economic Opportunity.

OTS's Reply Brief is supplemental to its Main Brief and is limited to those matters raised by the other participants in their Main Briefs and not specifically addressed by OTS in its Main Brief, and to those matters previously addressed by OTS but which require additional discussion as a result of the Main Briefs of the other participants.

II. RATE BASE

A. PP&L Filed a Negative Cash Working Capital Of (\$530,000) With Its Original Filing.

On page 62 of its Main Brief, the Company asserts that "PP&L has made no claim for cash working capital in this proceeding." After that statement, the Company proceeds to criticize OTS witness Weakley and OCA witness Catlin for proposing adjustments that results in negative cash working capital, as if these adjustments were created after the Company filed a zero cash working capital. OTS submits that it is disingenuous for the Company to impliedly suggest that adjustments were made to their cash working capital after the Company filed a zero cash working capital. The record evidence is clear that the Company in its original filing, claimed a negative cash working capital of (\$530,000). OTS Main Brief, pp. 15-16. It was only after OTS and OCA made their respective adjustments that the Company on rebuttal revised their cash working capital claim to zero; however, PP&L's supporting data detailing its cash working capital study, by the Company's own admission, shows a "negative cash working capital".

Furthermore, in both Pennsylvania Public Utility Commission v. Pennsylvania Power Company, 67 Pa. PUC 91, 129 (1988) and Pennsylvania Public Utility Commission v. Duquesne Light Company, 66 Pa. PUC 518, 654 (1988), adjustments reflecting a negative cash working capital

were made after the Company claimed a zero cash working capital. In the instant proceeding, the adjustments reflecting a negative cash working capital were made after the Company itself had claimed a negative cash working capital.

Accordingly, the arguments of the Company should be rejected, and the recommendations of OTS should be adopted by the ALJ and the Commission.

III. EXPENSES

A. Decommissioning Expense

Decommissioning expense is the cost incurred when removing a major electric generating unit or station from utility service. OTS St. 2, p. 4. In this proceeding, PP&L has proposed to recover in advance the cost of retiring sixteen (16) fossil fuel generating units at five different sites, as well as the decommissioning costs of two (2) large jointly owned nuclear units at the Susquehanna Steam Electric Station ("SSES"). PP&L St. 13, p. 2. OTS discussed these issues in a comprehensive manner at pp. 36-53 of OTS's Main Brief. OTS responds in the following sections to specific arguments made by PP&L in its Main Brief.

1. PP&L's Request For \$55,570,000 Of Annual Decommissioning Expense For Its Fossil Fuel Plants, Should Be Denied.

Initially, PP&L acknowledges that its proposal to recover decommissioning costs during the remaining operating lives of its fossil plants "is a departure from the way those costs would be handled under existing ratemaking procedures. Thus, absent Commission approval of the

Company's proposal, decommissioning costs would be recoverable as a form of net negative salvage.^{1/} PP&L Main Brief, pp. 147-148.

PP&L claims that while the Commission's established policy to allow net negative salvage is adequate for the small removal costs associated with the ordinary retirements of individual units of mass property and interim retirements of the components of larger facilities, "as applied to the significant expenditures necessary to decommission entire generating facilities, that method would result in an inadequate distribution of costs among different generations of customers." PP&L Main Brief, p. 148.

PP&L then provides an example of how the simultaneous retirement of the Brunner Island and Montour Steam Electric Stations ("SES") would create large annual expenses for which it would be unfair to recover from "future" customers.^{2/} PP&L Main Brief, pp. 148-149.

^{1/} In this regard, see Pennsylvania Public Utility Commission v. Pennsylvania American Water Company, Docket No. R-00932670 (entered July 26, 1994); West Penn Power Company v. Pennsylvania Public Utility Commission, 54 Pa. P.U.C. 602 (1981). Consequently, the Commission has found that net negative salvage may be recovered only after it has been incurred; at which point it is charged to ratepayers over a five (5) year period.

^{2/} PP&L claims that if the Brunner Island and Montour SESs are simultaneously retired the decommissioning costs for those facilities will be \$368.3 million and \$330.0 million, respectively. The five year amortization of those costs would peak at approximately \$139.7 million per year ($\$368.3 \text{ million} + \$330.0 \text{ million} \div 5 \text{ years}$). PP&L Main Brief, p. 149.

In response, OTS submits that the "inter-generational equity" argument does not hold up under close scrutiny and the numbers identified for Brunner Island and Montour are inflated and unrealistic. First, OTS has demonstrated on the record in this proceeding that the allowance of net negative salvage does not unfairly burden future customers. OTS witness Joseph J. Sivulich has testified that future customers will not be disadvantaged because under net negative salvage "[p]resent customers will also be future customers when some of the studied power plants are retired. The removal of power plants and their associated equipment is an ongoing activity. Present customers are certainly paying for the removal of some plant that served previous generations of ratepayers."^{3/} OTS St. 2, pp. 16-17.

^{3/} PP&L has challenged this statement by arguing that present PP&L customers are not bearing any fossil fuel plant decommissioning costs. The Company states "in the last 23 years, PP&L has decommissioned one generating unit, which was a small (23 MW) combustion turbine that caused only nominal removal costs." PP&L Main Brief, p. 154 (Emphasis in original). However, PP&L witness Mr. Krall has acknowledged under cross examination that there are customers on PP&L's system today that have been receiving service for 20, 30, 40, or even 60 years. Tr. 1883-1884. In fact, Mr. Krall has even agreed under cross examination that "current" PP&L customers will indeed be "future" PP&L customers. Tr. 1883. Moreover, Mr. Krall further acknowledged under cross examination that significant turbine generator repair was recently completed at Sunbury SES and that a turbine generator was recently replaced at Martins Creek. Tr. 1906. Accordingly, it appears clear that the Company has misrepresented the facts in both respects.

In this regard, PP&L witness Douglas A. Krall has testified under cross examination that there are customers on PP&L's system currently that have been on PP&L's system for 20, 30,40 or even 60 years. Tr. 1883-1884. He further acknowledged that customers leave and return to PP&L's system at all points during the life cycle of the existing power plants. Tr. 1884. This demonstrates that PP&L's attempt to strictly separate its customers into "current" customers and "future" customers is a distortion. In fact, as discussed by OTS witness Mr. Sivulich, PP&L's existing customers are actually an amalgam of new and old customers who have been on PP&L's system for varying periods of time. Since customers continually come on to the system and leave the system, the Commission's allowance of net negative salvage does not, in any way, favor one group of customers over another.

PP&L's argument that the simultaneous retirement of the Brunner Island and Montour SESs would create large annual costs under the five year average of net negative salvage is similarly flawed. First, the hypothetical is unrealistic in that it requires the retirement of the units at Brunner Island and Montour at the same time. However, PP&L's own exhibits indicate that PP&L currently plans to retire Brunner Island in 2014 and Montour in 2017. PP&L Ex. DAK-4. Moreover, OTS witness Mr. Sivulich has testified that PP&L should "consider lengthening the

depreciation life spans of its fossil fueled power production plants in future depreciation studies for book and ratemaking purposes. It is likely that the 1989 Depreciation Study overstates total depreciation expense for these plants." OTS St. 2, p. 29. This demonstrates that even the current estimate of the retirement dates for Brunner Island and Montour are in question, further weakening PP&L's hypothetical.

Finally, it appears that PP&L's claim of decommissioning costs of \$368.3 million for Brunner Island and \$330.0 million for Montour include the inflation and contingency factors that OTS witness Mr. Sivulich has testified should be removed from PP&L's claim. See, PP&L Ex. F. 1, D-12; OTS St. 2, p. 12. Thus, evidence of record in this proceeding demonstrates that PP&L's hypothetical is unrealistic and should be rejected.

PP&L next claims that it is aware that the Commission has recently rejected a claim for prospective net negative salvage involving a fossil fuel plant in Pennsylvania Public Utility Commission v. West Penn Power Company, Docket No. R-00942986 (entered December 29, 1994) ("West Penn"), but claims the issue should be revisited because of the health threat posed by the presence of asbestos in the plants and to ensure that the cost of decommissioning does not have a great impact on future ratepayers. PP&L Main Brief, pp.150-151.

OTS has already adequately responded above to PP&L's allegation that the cost of fossil fuel decommissioning will have a significant impact on future ratepayers. In fact, as indicated above, future ratepayers will not be disadvantaged. The record indicates that the health risk posed by the presence of asbestos, does not rise to the level which would require the Commission to allow for prospective net negative salvage. PP&L witness Mr. LaGuardia has testified that though certain of the older^{4/} fossil units contain asbestos, its presence is to be expected in units of the same type and vintage and does not present an "unusual hazard". Tr. 963-964. In any event, nothing has been presented in this proceeding which would distinguish the units involved here from the fossil fuel units at issue in the recent West Penn order.

The Commission has prohibited the recovery of prospective net negative salvage since the Pennsylvania Superior Court's decision in Penn Sheraton Hotel v. Pennsylvania Public Utility Commission, 198 Pa. Superior Ct. 618, 184 A.2d 324 (1962) ("Penn Sheraton"). This decision prohibited the Commission from charging current ratepayers for the prospective

^{4/} The most recently built fossil units, such as Martins Creek 4 and Montour 2, presumably do not contain asbestos since they were built after federal requirements prohibiting the use of asbestos were enacted.

removal of steam mains in the City of Pittsburgh. The Court determined that the speculative nature of claim is its greatest weakness:

Negative salvage attributed to existing plant is purely prospective; it is a cost which has not yet been incurred; it is uncertain when and if it will be incurred; and it is not a part of the original cost of construction of the facilities when first devoted to public service. To permit the recovery of prospective negative salvage is to permit the recovery of a total amount in excess of the original cost of construction prior to the actual expenditure of those costs and, in our opinion, represents the recovery of something in the nature of a future reproduction cost. The established law in this Commonwealth does not permit the recovery by annual depreciation of any prospective excess. It is therefore the prospective nature of future negative salvage that prevents it from being considered either in accrued depreciation or in the allowance for annual depreciation; they must have a consistent basis under our law.

198 Pa. Superior Ct. at p. 627.

The Court goes on to state that the speculative nature of the claim prohibits its recovery in advance. However, "the negative salvage actually incurred by the utility either upon the actual retirement of a property without replacement or upon the replacement of an item of property is of course entitled to consideration in a rate proceeding." 198 Pa. Superior Ct. at pp. 628-629.

The discussion in Penn. Sheraton demonstrates that the prohibition against the recovery of prospective net negative salvage is well

established in the law of this Commonwealth and is not merely a product of the reasoning in orders of the Pennsylvania Public Utility Commission. Since 1970 the Commission has pursued a plan to allow all net salvage on a current basis for all utilities, with the notable exception of nuclear plant decommissioning expense.^{5/}

PP&L has argued that the hazardous work involved in asbestos abatement and the risk to the public of not dismantling the fossil fuel plants properly, justify extending the recovery of prospective net negative salvage beyond the nuclear exception. PP&L Main Brief, pp. 152-153. However, as indicated above PP&L has failed to demonstrate that the Commission must approve prospective net negative salvage in order for PP&L to pay for the cost of decommissioning the fossil fuel units. In this regard, PP&L has not stated whether it has seriously entertained any alternatives to the use of prospective net negative salvage for the fossil units. In the recent West Penn

^{5/} Nuclear power plants are the only exception to the Commission's established policy of handling net salvage on a current basis. In its orders allowing decommissioning expense for nuclear power plants, the Commission has stressed that it departed from its "after the fact" treatment because of the nuclear threat to health and safety and the need to have money available at the time of retirement of radioactive plants in order to protect the public. The Commission has also required that the annuity and its accumulated interest be placed in an escrow fund and remain unavailable until the dismantling of the nuclear generating unit. In this regard, see, Pennsylvania Public Utility Commission v. Philadelphia Electric Company, Docket No. R-811626 (entered June 30, 1982).

order, the Commission stated that in order to obtain prospective net negative salvage treatment for a non-nuclear unit, a company must show that the proposal is reasonable and cost effective:

...In this case... the Company fails to demonstrate that their proposal is reasonable and cost-effective ... We believe we would be acting unreasonably if we simply approved an alleged expense of this magnitude absent any proof that the Company has considered other less costly methods of achieving the same goal.... In addition, there is no guarantee that these costs need even be incurred in this case...

Order at p. 63, f.n.10.

OTS witness Mr. Sivulich has demonstrated that PP&L can recover the cost of retiring the fossil units on an after-the-fact basis without creating unusually high costs for its customers. In this regard, Mr. Sivulich has estimated that if PP&L witness Mr. LaGuardia's total Sunbury SES decommissioning cost estimate were divided by four (representing four generating units) and then divided by Mr. LaGuardia's estimated number of months to decommissioning, the result would be approximately \$1 million per month. Tr. 1686. A review of PP&L's negative net salvage claim by month for the years 1990-1994 indicates that individual claims exceeded \$1 million (for Steam Production) on at least nine (9) occasions and was close to \$1 million (greater than \$800,000) on four (4) other occasions during this period. See, OTS Ex. 2, Sched. 7, pp. 2-3. This evidence

demonstrates that PP&L has not explored all other opportunities to reasonably collect the costs attributable to the decommissioning of the fossil units.

PP&L next argues that OTS witness Mr. Sivulich's claim that Mr. LaGuardia's fossil fuel claim is "speculative" should be rejected because "the mere fact that a claim is based on estimated data does not render it unduly "speculative" for ratemaking purposes." PP&L Main Brief, pp. 155-156. OTS has identified the fact that Mr. LaGuardia's fossil fuel plant decommissioning cost estimate is based on at least 49 major assumptions. OTS Main Brief, p. 40, f.n.18. However, the main thrust of OTS's argument that Mr. LaGuardia's claim is "speculative" concerns the fact that it includes \$95.9 million in contingencies as well as an inflation factor. The Commission has recognized that contingencies can be speculative and has rejected them in nuclear production plant decommissioning allowances. See, Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company, 59 Pa. P.U.C. 332, 383 (1985); Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company, 57 Pa. P.U.C. 559, 604 (1982).^{6/}

^{6/} However, in Pennsylvania Public Utility Commission v. Pennsylvania Power Company, 64 P.U.C. 308, 350 (1987), the Commission apparently approved a contingency fee without discussing the merits of (continued...)

Moreover, OTS has identified the claim as "speculative" in the same way that "speculative" was used in the Penn Sheraton and West Penn matters discussed above. In this regard, PP&L has failed to demonstrate that it is reasonable for the Commission to depart from its normal practice and allow prospective net negative salvage in this instance. PP&L has simply failed to demonstrate that such a change is warranted.

Accordingly, OTS recommends that the ALJ and the Commission reject the Company's proposed operating expense claim for the test year ended September 30, 1995 of \$55,570,000^{7/} related to the future decommissioning of fossil fuel power production plant that is still in service.

2. PP&L Has Inflated Its Nuclear Fueled Production Plant Decommissioning Expense By \$11,745,000.

Nuclear fueled production expense is defined as the present yearly expense of recovering the cost of retiring two nuclear fueled generating units at the Susquehanna SES in the future over the estimated remaining lives of those units. OTS St. 2, pp. 19-20. The Company's claim

^{6/}(...continued)

the claim. There may have been no discussion because no party opposed the contingency claim.

^{7/} The Pennsylvania Jurisdiction equivalent amount is \$45,284,000. The Revenue Requirement equivalent amount is \$47,718,000. See, Appendix A, Table II, attached to the OTS Main Brief.

for operating expenses includes \$22.9 million as an annual annuity accrual to fund decommissioning costs for SSES Units 1 & 2 totalling \$804.3 million (1993 dollars). PP&L Ex. Future 1, Sched. D-11.

OTS witness Mr. Sivulich has recommended an allowance of \$18,297,000 for nuclear decommissioning expense instead of the \$30,042,000 claimed by the Company. This results in an OTS adjustment of \$11,745,000^{8/}. This allowance is based upon Mr. LaGuardia's 1993 cost estimate without the \$122.8 million in contingencies^{9/}, the inflation factor cost estimate of 4% per year and the trust fund estimated after-tax 5.5% per year growth. OTS St. 2, p. 22.

^{8/} See, PP&L's response to OTS-RB-41, which has been included in OTS Ex. 2, Sched. 2, p. 2.

^{9/} Mr. Sivulich removed the contingency amounts and inflation factor based upon determinations made by the Commission in two previous PP&L cases. See, Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company, 59 Pa. P.U.C. 332, 384 (1985); Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company, 57 Pa. P.U.C. 559, 606-607 (1987). PP&L has argued at p. 136 of its Main Brief that the Commission approved a 25% contingency in two Penn Power base rate cases. Pennsylvania Public Utility Commission v. Pennsylvania Power Company, 85 PUR 4th 323 (1987); Pennsylvania Public Utility Commission v. Pennsylvania Power Company, 67 Pa. P.U.C. 91 (1983). The Commission apparently did approve the contingency in the 1987 case although there is no discussion of the merits of the contingency and it was apparently not opposed by any party. However, there is no evidence in the written order in the 1983 case that a contingency was approved. See, 67 Pa. P.U.C. at pp. 139-140.

PP&L initially argues in its Main Brief that the Commission rejected the use of a contingency in PP&L's 1985 base rate case because the contingency was applied to cost estimates derived from generic decommissioning studies and without a specific analysis of the areas likely to experience problems^{10/}. PP&L Main Brief, p. 136. However, in this proceeding PP&L argues Mr. LaGuardia "analyzed each area having a high probability for problems, delays or additional costs, and determined an appropriate contingency factor based on that analysis and the actual experience of dismantling and decontaminating nuclear plants." Id.

However, the 1985 PP&L order indicates that the Commission has developed a method of analyzing nuclear decommissioning claims which considers whether the claim is "speculative." See, 59 Pa. P.U.C. at p. 384. PP&L argues that the Commission based its determination in the 1985 order on a recent rejection of a contingency by the Massachusetts Department of Public Utilities. PP&L Main Brief, p.136.

In fact, the Commission merely identified the Massachusetts case as an example of a claim which is primarily based upon conjecture. The Commission's rejection of contingencies in previous PP&L cases appears

^{10/} However, under cross examination after reviewing PP&L's 1985 order, PP&L witness Mr. LaGuardia acknowledged that the Commission did not state that it was denying PP&L's contingency factor because it was not "site-specific." Tr. 2079-2080.

to be based upon the fact that the contingencies were based upon estimates of where problems could occur. This creates the situation where PP&L has added to an estimate (the cost of decommissioning) with another estimate (the cost of unforeseen events which may occur).

In contrast, the Commission orders clearly indicate that the Commission is willing to consider periodic increases to the level of funding based upon the cost of unforeseen events as they occur. OTS St.2, p. 23. In this regard, the Commission has previously determined that it is inappropriate to recognize inflation in regard to a nuclear decommissioning fund when the company plans to periodically update its cost levels and decommissioning technology in future proceedings. Pennsylvania Public Utility Commission v. Pennsylvania Power Company, 64 Pa. P.U.C. 308, 351 (1987). In this proceeding, PP&L witness George T. Jones has stated "PP&L will review the Susquehanna Decommissioning Cost Estimate at two-year intervals, or more frequently, if there are material changes to the applicable estimation information, to assure that the estimate is kept current throughout the life of the plant." See, OCA Cross Examination Ex. 15 (Sched. II, Q. 2). This is the process that the Commission desires.

Instead of providing an estimate of the problems that might (or might not) occur, the Commission appears to believe it is better to establish the decommissioning fund based upon an estimate of the total cost and then

to update that estimate with adjustments based upon events that have actually occurred^{11/}. Since PP&L has already indicated that it will update its claim at regular intervals in the future, there is no need for the Commission to allow this claim to be inflated now based upon unforeseen events which may never occur.

PP&L next argues that OTS witness Mr. Sivulich improperly applied the "accrual method" in determining the annual nuclear decommissioning expense because he failed to reflect the recovery of deficiencies in prior accruals over a one year period, as was done in the previous case. PP&L Main Brief, pp. 144-145. OTS adequately demonstrated that this statement is in error at pp. 50-53 of OTS's Main Brief. The record clearly indicates that Mr. Sivulich appropriately allowed for the recovery of the decommissioning expense over the remaining life of

^{11/} PP&L has argued that a contingency factor has been approved for decommissioning funds in published guidelines and decisions of other state and federal regulatory agencies, in an apparent attempt to demonstrate that the Commission is out-of-step with other jurisdictions. PP&L Main Brief, pp. 129-134. However, the Commission has recently found that its goal is to protect the interests of Pennsylvania ratepayers based upon precedent that is well established in this Commonwealth. See, Pennsylvania Public Utility Commission v. West Penn Power Company, Docket No. R-00942986 (entered December 29, 1994), Order at pp. 61-63.

the plant^{12/}, given the fact that the prior accruals in this proceeding accumulated over a an 11-12 year period as opposed to a one year period in PP&L's last proceeding. See, OTS St. SR-2, pp. 2-3.

PP&L next argues that the accrual method implicitly assumes that earnings on the trust fund will always be sufficient to offset increases in the cost of decommissioning, which is not the case. PP&L Main Brief, p. 146. However, PP&L has already stated that it plans to update its decommissioning expense claim at regular intervals. See, OCA Cross Examination Ex. 15. If the earnings are insufficient, the Company could propose an adjustment at that time. In fact, PP&L has proposed in this proceeding that it be relieved of the Black Lung restrictions so that it may increase the earning potential of the nuclear decommissioning reserve fund.

^{12/} PP&L further argues that by amortizing the funding deficiency over the remaining life of the plant, future customers would be burdened with ever-increasing revenue requirements. PP&L Main Brief, p. 145-146. However, as PP&L witness Mr. Krall has acknowledged, in many respects "present" customers will be "future" customers. Tr. 1883-1884. Moreover, PP&L witness Ronald E. Hill has testified that if there is an excess in the SSES decommissioning fund after the plant is demolished, it will be returned to "future" customers (or current customers at that time). Tr. 402-403. Thus, it appears that, as OTS has argued in this proceeding, it is difficult to distinguish between "present" and "future" PP&L customers. In any event, it appears that the benefits and burdens facing present customers and those who will be on the system in twenty (20) years, are about equal. Mr. Sivulich's method of applying the "accrual method" will not alter this equation.

See, PP&L St. 1, pp. 8-11. This ability adequately addresses the concern raised by PP&L.

Accordingly, the record clearly demonstrates that OTS witness Mr. Sivulich properly removed the contingency and inflation factors and reasonably applied the accrual method in determining the appropriate level of nuclear decommissioning expense for PP&L. Consequently, OTS submits that PP&L's claim for Nuclear Decommissioning Expense of \$30,042,000, should be reduced by \$11,745,000^{13/} because it has been improperly inflated by the Company's inclusion of contingency and inflation factors. OTS recommends an allowance of \$18,297,000 for Nuclear Decommissioning Expense.

B. Depreciation Expense

Depreciation expense is the annual allowance for the recovery of the loss of value to utility property which occurs due to usage or the passage of time. In this filing, PP&L has proposed to reduce the life spans for the fossil fuel units at Martins Creek (Units 1 & 2), Sunbury and Holtwood and extend the life spans at Conemaugh and Keystone. In addition, PP&L has proposed to change from modified sinking fund ("MSF")

^{13/} The Pennsylvania Jurisdiction equivalent amount is \$8,581,000. The Revenue Requirement equivalent amount is \$9,043,000. See, Appendix A, Table II, attached to the OTS Main Brief.

to straight line depreciation at the Susquehanna nuclear plant for property installed prior to January 1, 1989.

OTS supports the life extensions at Conemaugh and Keystone because the record demonstrates that these units will not be retired as early as PP&L had previously stated and reflects a management trend to extend the lives of fossil fuel plants. However, OTS strongly opposes the shortening of life spans at the identified plants because such a proposal (which alleges that these units will be retired in the year 2003) is inconsistent with PP&L management's demonstrated plans to continue to operate these fossil fuel units until at least the year 2014. OTS also opposes the change from MSF to straight line depreciation at Susquehanna because it would create a higher revenue requirement for PP&L in this proceeding. Moreover, the record demonstrates that such a change is not required to ensure that PP&L fully recovers its depreciation cost.

OTS discussed these issues in a comprehensive manner at pp. 53-67 of OTS's Main Brief. OTS responds in the following sections to specific arguments made by PP&L in its Main Brief.

1. PP&L's Fossil Fuel Power Production Plant Depreciation Expense Should Be Reduced By \$18,642,000.

PP&L initially argues that 2003 is a "watershed" year in that PP&L will have to achieve final compliance with the nitrogen oxide ("NOX") limitations under Title I of the 1990 Clean Air Act Amendments ("CAAA") and expects to make reductions in emissions of "air toxics" as mandated by Title III of the CAAA. PP&L argues further "[s]imply stated, by the year 2003, PP&L either must have deactivated its older fossil-fired units or have made significant investments to achieve environmental compliance." PP&L Main Brief, p. 169 (Emphasis in original).

Accordingly, PP&L maintains that these circumstances "make it unlikely that the investments necessary for life extension will be economically justifiable." Id. See, also PP&L Main Brief, pp. 167-171.

In response, OTS submits that PP&L is asking the Commission to issue it a "blank check" which will enable the Company to enjoy the additional funding until the year 2003 at which point, by its own admission, it will decide the best method to employ in order to comply with the CAAA. OTS has demonstrated on the record in this proceeding that the granting of this request would be inappropriate for several reasons. First, as discussed in OTS's Main Brief, PP&L witnesses have consistently testified that PP&L

has no plans to retire any generating unit within the next twenty (20) years.

In this regard, PP&L witness Donald S. Hoch has testified as follows:

Q. Mr. Hoch, looking at the first document in OTS Cross-Examination Exhibit No. 2, would you agree that this is the cover sheet from the Pennsylvania Power & Light Company resource planning report dated May, 1994 and page 4-7 from that report?

A. That's what it appears to be.

Q. Would you agree that it indicates, in the second paragraph on page 4-7, it indicates that PP&L has no plans to retire any steam electric stations during the next 20 years?

A. That's what it says.

Q. Now, would you agree that under this scenario, PP&L would not retire a steam electric station before the year 2014?

A. Based on that, yes.

Tr. 110.

In addition, PP&L witness Mr. Krall has testified that "[a] decision was made to reflect the possibility that they would be retired earlier in the depreciation schedule.... Again, we're using the term "retirement date," and I don't want to leave the impression that we have a current plan to retire those plants in 2003." Tr. 188. There is no plan to retire the fossil fuel units because PP&L has no intention of doing so. In fact, as indicated by Mr. Krall, the Company has indicated that it might retire the units in the

year 2003 in order to obtain the higher revenue requirement that is produced by the shortening of the life spans^{14/}.

Second, as indicated in OTS's Main Brief, PP&L has greatly exaggerated the possible costs of compliance with Titles I and II of the CAAA. For example, PP&L acknowledges that with regard to many of the requirements it fears will be implemented, scientific studies have not yet been completed and regulations have yet to be written. See, PP&L St. 5-R, p. 10. Moreover, PP&L witness Mr. Krall has testified that there are no specific requirements concerning "air toxics" at this time and that the Company's estimate as to the cost of compliance with the expected air toxics requirement is merely a "guesstimate." Tr. 169-170.

Third, PP&L is still considering several alternatives in addition to the remote possibility of retiring the fossil fuel units in 2003 in order to comply with CAAA requirements. In this regard, Mr. Krall has testified that PP&L would consider re-powering the fossil fuel units in question or other generating stations, as well as technical options for replacing that capacity. Tr. 162. Moreover, Mr. Krall has testified that PP&L will also have allowances available to it that would serve to minimize the cost of CAAA

^{14/} In this regard, PP&L witness Mr. Hoch has admitted that reducing the life spans of the fossil fuel stations would produce a higher revenue requirement for PP&L than if the original life spans were continued. Tr. 111.

compliance. Tr. 1901. Most importantly, Mr. Krall has acknowledged that at the point PP&L's full exposure with regard to CAAA compliance is known and certain, it will have ample opportunity (at that time) to make the decisions necessary to pursue the most cost effective method of compliance. Tr. 1940-1941.

PP&L next alleges that the opposing parties have demanded a greater degree of proof for the Company's selection of a deactivation date of 2003 than is normally required for depreciation purposes. PP&L Main Brief, p. 172. In response, OTS would first remind PP&L that it carries the burden of proof in this rate proceeding. See, 66 Pa. C.S. §315(a). Section 315(a) evinces a legislative intent that the utility carry the burden of proving the justness and reasonableness of proposed and existing rates. This burden of proof extends to justifying every accounting entry questioned during the investigation. It is well established that the evidence adduced by a utility to meet this burden must be substantial. Lower Frederick Township v. Pennsylvania Public Utility Commission, 48 Pa. Commonwealth Ct. 222, 226-227, 409 A.2d 505, 507 (1980). Accordingly, PP&L should be aware that to the extent the opposing parties have found inconsistencies within its depreciation claim, it must provide additional evidence in order to further substantiate its claim. OTS submits that it has failed to do so.

Next PP&L argues that "the opposing parties have argued in favor of recognizing life extensions of the Company's older fossil-fired units for purposes of reducing depreciation expense in this case, but have ignored the substantial capital additions that unquestionably would be required in order for such life extensions to occur." PP&L Main Brief, p. 172 (Emphasis in original). In fact, PP&L refuted a "straw man" argument that it has creatively imposed on the opposing parties. OTS has simply challenged PP&L's allegation that it plans to retire the identified fossil fuel units in the year 2003. OTS St. 2, pp. 27-28. The record indicates that in fact PP&L plans to operate those units at least until the year 2014. Tr. 110-111. OTS has assumed that PP&L will claim (in the appropriate rate proceedings) the cost of any capital additions that are necessary to allow the units to operate until the year 2014. However, OTS believes that PP&L should first identify the method it definitely plans to use to comply with CAAA before the Commission allows depreciation changes which will involve a higher revenue requirement. Since, as the record indicates, PP&L has not yet made the final decision as to its CAAA compliance plans, the Commission should not allow the life span reduction^{15/}.

^{15/} PP&L has also argued that the opposing parties position against recognizing the reduced life spans, would benefit "current" customers at the expense of "future" customers since "future" customers' revenue (continued...)

PP&L next argues that OTS witness Mr. Sivulich "misconstrued" the nature of PP&L's recent capital additions when he determined that such additions would allow the units to be operated over the long term. PP&L alleges "[a]ll of the projects relating to the Company's older fossil-fired units were necessary to assure operation only through 2003, not over a longer term..." PP&L Main Brief, p. 178. OTS witness Mr. Sivulich has testified that PP&L is maintaining its generating units in a manner that will allow them to operate well past the proposed shortened retirement date of 2003. In fact, Mr. Krall has repeatedly stated that PP&L has no current plans to retire any major generating unit in the next 20 years." OTS St. SR-2, p. 9. A probing analysis of this issue demonstrates that Mr. Sivulich did not misconstrue the nature of the capital additions he reviewed. Mr. Sivulich has testified that his life span recommendation is not dependent upon future additions:

...My life span recommendations are based on the company's 1988 depreciation study and the current

^{15/}(...continued)

requirements would be greater in order to pay for the capital extensions which would be required. PP&L Main Brief, pp. 172-175. However, as discussed earlier in this Reply Brief, "present" customers will be "future" customers. Tr. 1883-1884. PP&L's attempt to strictly separate customers does not hold true in reality. Since customers continually enter and leave the system, the Commission's refusal to allow the life span reduction would not favor one group of customers over another.

plans of PP&L as expressed in its 1994 and 1995 resource plans. The fact that PP&L may have to make additions to the plans should not deter it from using reasonable life span estimates that are consistent with management plans. To do otherwise is padding depreciation estimates for unforeseen contingencies^{16/}.

Tr. 2036.

Finally, PP&L alleges generally that OTS witness Mr. Sivulich has not provided support for his statement that there is an industry trend of maintaining, upgrading and extending the life spans of fossil fuel power plants. PP&L Main Brief, pp.179-180. In fact, Mr. Sivulich has testified that the Company's recent investment in pollution control equipment, new turbine generator parts and new boiler parts are illustrations of the Company's intent to upgrade and maintain the fossil fuel units for CAAA compliance. Moreover, PP&L witness Mr. Krall has acknowledged under cross examination that significant turbine generator repair work was recently completed at Sunbury SES and that a turbine generator was recently replaced at Martins Creek. Tr. 1906. Mr. Krall later admitted that when you replace a turbine generator you have extended the life span of the unit. Tr. 1905. Thus, it is clear that OTS has demonstrated on the record in this proceeding

^{16/} The Superior Court in Penn Sheraton has found that the padding of depreciation estimates for unforeseen contingencies is illegal. 198 Pa. Superior Ct. at p. 628.

that PP&L is engaged in an effort to extend the life spans at its fossil fuel plants.

Accordingly, the record clearly demonstrates that PP&L has failed to prove that it is appropriate to reduce the life spans for Martins Creek (Units 1 & 2), Sunbury (Units 1, 2, 3 & 4) and Holtwood 17. Consequently, OTS recommends that PP&L's claim for Fossil Fuel Power Production Plant Depreciation Expense be reduced by \$18,642,000^{17/}.

2. PP&L's Claim For Susquehanna SES Power
Production Plant Depreciation Expense,
Should Be Reduced By \$30,388,000.

Property installed at the Susquehanna SES prior to January 1, 1989 is depreciated using MSF. Under the terms of the agreement, the depreciation expense increases each year through 1998 and will revert to straight line remaining life depreciation on January 1, 1999. Plant installed after December 31, 1988 is depreciated using the straight line method with the average life span procedure and remaining life technique. OTS St. 2, p. 30. The MSF method was constructed by the Company and accepted by this Commission as a means of deferring a portion of the large revenue requirement increase which occurred in connection with the in service dates

^{17/} The Pennsylvania Jurisdiction equivalent amount is \$15,191,000. The Revenue Requirement equivalent amount is \$16,007,000. See, Appendix A, Table II, attached to the OTS Main Brief.

of Susquehanna Units 1 & 2. In this proceeding, the Company is proposing a change to straight line for the identified property that will result in a higher level of depreciation expense for this rate case. OTS opposes the change for four reasons discussed in our Main Brief. See, OTS Main Brief, pp. 64-65.

PP&L initially alleges that OTS witness Mr. Sivulich's first point - that allowing MSF to continue will produce a lower revenue requirement in this case is "undercut" by his fourth - point that the Company will eventually collect all of the depreciation expense that it is entitled to if MSF is continued. According to PP&L this means that continuing MSF will mean higher depreciation recovery for the periods at issue. PP&L Main Brief, p. 163.

In response, OTS submits that it is fair to require PP&L to "live up to" the deal it cut during its last base rate case. At that time, the Commission determined that it was appropriate to allow MSF in order to lessen the blow of the increase in that proceeding. That determination was made with the understanding that depreciation rates would be increased at a certain point in the future in order to provide for complete recovery. OTS believes it is fair for both the Company and its ratepayers to continue along the course that has been set. PP&L has acknowledged that the continuation of MSF will not prevent it from recovering all of the depreciation expense to which it is entitled. PP&L Main Brief, p. 161. OTS believes that it is fair

to ask customers to enjoy a lower revenue requirement in this case, with the understanding that there will be higher depreciation expenses in future PP&L rate cases based upon MSF.

PP&L next argues that continuation of MSF will require it to file more rate cases than it would otherwise^{18/}. PP&L Main Brief, p. 163. However, PP&L witness Mr. Hoch acknowledged under cross examination that he was not aware of a single instance in the past where PP&L had filed for a rate increase based solely upon the need to change its depreciation rates. Tr. 1857. Thus, this final^{19/} allegation should be rejected.

^{18/} PP&L has apparently abandoned Mr. Hoch's ill-advised statement that the continuation of MSF would prevent the Company from recovering all of its investment in nuclear plant. PP&L St. 4-R, p. 3. OTS witness Mr. Sivulich has refuted this allegation completely. He states "[t]he allegation that PP&L will not actually collect these amounts from ratepayers unless it files rate cases every year is of no consequence since whenever PP&L does file a rate case in the future, it will be allowed to utilize the increased depreciation it was allowed to book under MSF." OTS St. SR-2, p.6.

^{19/} PP&L also argues that Mr. Sivulich's observation that a change from MSF had not been mandated by the Financial Accounting Standards Board ("FASB") was not dispositive of the issue because the FASB rarely comments upon issues raised in rate proceedings. PP&L Main Brief, pp. 163-164. PP&L is in error, the FASB often issues regulations which, depending upon the issue involved, must be adhered to for rate case purposes. The fact that FASB had not spoken on the issue was provided to offer an example of a potential "good" reason for discontinuing MSF.

Accordingly, OTS recommends PP&L's request to change from MSF to straight line depreciation for Susquehanna SES property installed prior to January 1, 1989, be denied. Consequently, PP&L's Susquehanna depreciation expense for the future test year should be reduced by \$30,388,000^{20/}.

C. Environmental Remediation Costs

At pages 105 through 107 of its Main Brief, the Company attempted to articulate its position relative to its claim for "Environmental Remediation Costs". Surprisingly, the Company suggested that OTS witness Weakley, "reduced his proposed adjustment to \$326,000, but offered no explanation to support the development of this new figure (OTS St. SR-4, p. 5)." OTS would remind the ALJ that it was the Company that provided the needed information for Mr. Weakley reduced proposed adjustment of \$326,000. Based on the Company's information, Mr. Weakley testified on surrebuttal in pertinent part as follows:

. . . In my Direct Testimony, OTS Statement No. 4, I had proposed a reduction of \$1,304,000. Since then, on April 27, 1995, PP&L and the DER has reached an agreement regarding the

^{20/} The Pennsylvania Jurisdiction equivalent for this amount is \$23,832,000. The Revenue Requirement equivalent amount is \$25,112,000. See, Appendix A, Table II, attached to the OTS Main Brief.

Company's ongoing clean up efforts. This agreement states, during the next 10 years, PP&L will investigate all 134 sites and spend up to \$5 million a year on investigation and clean up operations. Therefore, I am reducing my recommended disallowance from \$1,304,000 to \$326,000 ($\$400,000 \times 81.4815\%$), in recognition of PP&L's commitment. (Emphasis Added)

OTS St. SR-4, p. 5; PP&L Ex. MJB-9.

It is un rebutted that Mr. Weakley's reduced proposed adjustment was based on an Exhibit provided by the Company, which outlined the agreement between PP&L and DER ("Agreement"). See, PP&L Ex. MJB-9. Further, it is un rebutted that the Company was given ample opportunity to provide evidence as to whether the press release did not accurately reflected the Agreement. Notably, on cross-examination, PP&L witness Berish acknowledged that the "press release" reflected in PP&L Exhibit MJB-9 did not differ in any respect from the Agreement. Tr. 2012.^{21/} In the absence of a contrary answer on redirect examination, the parties must assume that the Agreement obligates the Company to pay at least \$5 million for "Environmental Remediation Expense. It is axiomatic from simple contract law, that if the Company was obligated to \$5.4 million, the language of the Agreement would have provided that the Company has

^{21/} There was no redirect by the Company's counsel on this specific answer by Mr. Berish to a cross-examination question.

agreed to pay more than \$5 million, instead the Agreement indicates that the Company has "agree to pay up to \$5 million", not more than \$5 million. The plain language of the Agreement must be recognized in this proceeding, which provides only for a maximum payment of \$5 million for Environmental Remediation Expense.

Accordingly, Mr. Weakley recognized that there was \$400,000 difference between the agreed upon amount between PP&L and DER of \$5 million and the Company's claim of \$5,400,000 in this proceeding. In recognition of this \$400,000 difference, Mr. Weakley appropriately reduced OTS's recommended disallowance from \$1,304,000 to \$326,000 ($\$400,000 \times 81.4815\%$).^{22/} OTS St. SR-4, p. 5. Contrary, to the Company's assertion, it is clear that Mr. Weakley has provided an explanation to support the development of a recommended disallowance of \$326,000 for Environmental Remediation Expenses. The difference between the Company and OTS is due to the Company unwillingness to recognize and/or explain the difference in the expenditures as reflected in the Agreement and the Company's claim in the instant proceeding. For example, after the submission of Mr. Weakley's surrebuttal testimony, the Company had an opportunity on rejoinder to provide the record with an explanation for the \$400,000

^{22/} 81.4815% represents the Pennsylvania Public Utility Commission jurisdiction allocation.

difference between the Agreement and its claim; however, the Company failed to provide an explanation, and thus PP&L has failed its burden of proof. With respect to the Company's specific arguments relative to the low costs in March 1995 and providing updates through April 1995, OTS submit that those updated costs are reflected in the Agreement between PP&L and DER to pay up to \$5 million a year for Environmental Remediation costs. Accordingly, the updates are not additional costs up to and beyond the annual \$5 million agreed upon costs between PP&L and DER.

Consequently, the Company's argument on this issues should be rejected, and the recommendation of OTS to reduce PP&L Environmental Remediation expense by \$326,000 should be adopted.

D. Rate Case Expense

On pages 111 through 113 of its Main Brief, the Company presented its position to normalized its rate case expense over a two-year period. In its presentation, the Company has not provided any substantive arguments to support its position, but rather has relied on speculation. For example, the Company suggests that "the conditions that enabled PP&L to delay the filing of the instant base rate case are unlikely to recur in the near future." Clearly, such an observation is speculation, and should be rejected. Hypothetically, if the ALJ followed the flawed logic of speculation as

expressed by PP&L for eliminating Mr. Weakley's filing interval of 125 months, that flawed logic would require additional eliminations of filing intervals. For example, an acceptance of the rationale of PP&L, would require the removal of PP&L's 15 and 16 months filing intervals due to the construction Susquehanna Units 1 and 2, since there are no nuclear power plants or similar expenses expected to be placed into base rates in the near future. Then the ALJ is left with adopting PP&L's two-year normalization based on the rationale that the Company "had no better choice"..., "because PP&L used two years in the last base rate case, and decided to use two years in this case." Tr. 536. With all due respect, such a rationale as presented by PP&L is not only illogical, but also is without substance and should be rejected.

The continued argument by PP&L in support of its two-year normalization represents a fundamental lack of understanding that PP&L's history regarding the frequency of its base rate case filings is an essential element in determining the normalized level of rate case expense for ratemaking purposes. See OTS Main Brief, pp. 67-71. In Pennsylvania Public Utility Commission v. Mechanicsburg Water Company, 80 Pa. PUC 212, 317 (1993), the ALJ recognized that "to properly normalize the expense, history should be consulted." Id., p. 317. In recognition of the need to consult history for the purpose of normalizing rate case expense,

OTS noted on page 71 of its Main Brief that the purpose for averaging historical filing intervals is to mitigate the aberrations of long (filing intervals of 125 months) and short (filing intervals of 15 and 16 months) periods that may have occurred during the historical period. See, OTS Ex. 4, Sched. 5.

Additionally, the Company suggests in its Main Brief that it "may be forced to file its next base rate case in less than two years." PP&L Main Brief, p. 112. Aside from the fact that the Company's assertion is pure speculation, as Mr. Weakley explained, the reason for normalizing rate case expense based on a historical average is that no one know when PP&L will file its next base rate case." OTS Main Brief, p. 71.

Consequently, the Company has provided no support for a claimed two-year amortization of its rate case expense. In contrast, OTS has provided detailed analysis, case law and explanations to support its recommendation. Accordingly, OTS's adjustment of \$373,000 to PP&L rate case expense claim should be adopted.

E. Pension Expense

In its Main Brief, pages 84 through 98, the Company presented its arguments relative to several pension expense related adjustments made by various opposing parties in the proceeding. Consistent with the Company's

Main Brief, OTS will address its adjustments under the "Pension Expense" in enumerated fashion for ease of reference by the ALJ and the Commission.

1. SFAS 87

On pages 85 through 89 of its Main Brief, the Company presented arguments as to why OTS's rejection should be rejected, and why PP&L's treatment of pension expense on an accrual basis should be adopted. Interestingly, in the beginning of its argument, the Company relies upon the explanation provided by OTS witness Weakley as to the two different pension expense calculations required to be performed by PP&L each year, and then proceeds to criticize Mr. Weakley's recommendation. PP&L Main Brief, p. 85.

The Company asserts that its claim in the instant case is virtually identical to the claim approved by the Commission in Pennsylvania Public Utility Commission v. West Penn Power Company, Docket No. R-00942986, 1994 Pa. PUC LEXIS 144 (Order entered December 29, 1994) ("West Penn 1994"). PP&L Main Brief, pp. 87-89. OTS submits that PP&L's assertion is incorrect, as there are factual difference between West Penn 1994 and the instant proceeding. In West Penn 1994, the Company filed a rate case with a test year ending December 31, 1994. During the pendency of the hearings in West Penn 1994, the Company offered an update

by its actuary, dated July 29, 1994, whereby the need for a pension payment was presented for the period July 1, 1994 through June 30, 1995. Since the time period for the pension payment included at least six months of the test year ending December 31, 1994, the Commission in West Penn 1994 concluded in pertinent part as follows:

The record evidence shows that the Company will be required to make a payment into the pension funding during the test year. (Emphasis added)

Order, p. 44.

In comparing PP&L's claim in the instance proceeding with the record evidence in West Penn 1994 there are noted differences in the facts surrounding the respective cases. In the instant proceeding, PP&L has not presented any record evidence to show that the Company will be required to make a payment into the pension funding during the test year ending September 30, 1995.^{23/} In the absence of such evidence, PP&L's claim fails the Commission criteria in "that the first determination is whether a payment to the pension fund is due during the test year."

Second, the Company has attempted to satisfy the Commission's ruling in West Penn 1994 by suggesting that "the record

^{23/} In West Penn 1994, the Commission noted that the ALJ is correct in finding that the first determination is whether a payment to the pension fund is due during the test year. Order, p. 44.

evidence demonstrates that PP&L currently intends to make a cash contribution to its pension fund as early as the third quarter of 1996, which is within the first year that the rates set in this case will be in effect." (Emphasis added). PP&L Main Brief, p. 88. The fact that PP&L has quantified its potential contribution as "currently intends" suggests the tentative nature of the Company's statement. OTS submits that the Company has deliberately quantified its potential cash contribution to its pension plan, because the record evidence shows that PP&L's actuarial study certified that no cash contribution is required at any time during the future test year. On the other hand, PP&L's actuarial study failed to certify that the Company must make a cash contribution to its pension fund as early as the third quarter of 1996. In any event, as Mr. Weakley testified unrebutted, if the 1996 plan year contribution (if needed) actually occurs, such payments do not actually have to be made until March 15, 1998.^{24/} (OTS St. 4, p. 15. A payment due March 15, 1998, places the potential payment three years outside the future test year in this proceeding. Accordingly, under PP&L's assertion of potential payments, such payments does not satisfy the Commission's criteria set forth in West Penn 1994.

^{24/} If the Company request an extension for the filing of its Federal Taxes, the payment date will be September 1998.

Furthermore, the Company argues that it anticipates making required future annual contributions to its pension plan. PP&L Main Brief, p. 88. In support of its argument, the Company has not produce a certified actuarial study that unequivocally shows a requirement that such payments must be made in the future.

Also, while the Company is suggesting that SFAS 87 must be give recognition in this proceeding because of potential future payments, in the rate case expense section of its Main Brief, the Company is arguing that it may file another base rate case in less than two years. PP&L Main Brief, p. 112. Clearly there is an inconsistency in the Company's respective arguments. Consequently, PP&L's claim for SFAS 87 should be denied.

2. SFAS 106

On pages 91 through 96 of its Main Brief, the Company presented arguments in support of its claim for Post-Retirement Benefits ("SFAS 106"), in the annual amount of \$1,797,000. The differences between OTS and PP&L rests solely on different interpretations of Popowsky v. Pennsylvania Public Utility Commission, 164 Pa. Commonwealth 338, 642 A.2d 648 (1994) ("PP&L") and Popowsky v. Pennsylvania Public Utility Commission, 164 Pa. Commonwealth 600, 643 A.2d 1146 (1994) ("PAWC").

In PP&L, the Commission had approved PP&L's petition requesting a declaratory order to defer for accounting purposes and recover in future rates, after its next base rate case, the current incremental costs, which is the difference between the pay-as-you-go costs and the accrual costs. The Commission granted PP&L specific permission to record as a regulatory asset the incremental costs incurred between the date of the adoption of SFAS 106 and the date of the new rates reflecting the costs of compliance with SFAS 106. Note that these costs included the amortization of the transition obligation in PP&L as well. However, the Commission's treatment of the transition obligation was not appealed to Commonwealth Court.

On appeal to Commonwealth Court, the Commission and PP&L argued that recovery of these costs are not retroactive because under the pay-as-you-go method, these costs would have been eventually been recovered at the time they were paid out. In addition, PP&L argued that although the rule against retroactive ratemaking applies to the recovery of costs relating to prior periods, these costs would be allowed under the exception to the rule for extraordinary expenses.^{25/}

^{25/} Similarly, in the instant proceeding, PP&L has argued that the record evidence amply demonstrates that PP&L's claimed SFAS 106 costs are extraordinary and non-recurring. PP&L Initial Brief, p. 93.

However, Commonwealth Court dismissed these arguments on the premise that the incremental costs were anticipated at an earlier time and could have been recovered in an earlier proceeding:

Because the incremental costs were, in fact, anticipated before the request for declaratory order was filed [f.n. deleted] and because the costs are recurring and could otherwise be recoverable in rates, the exception for "extraordinary" expenses does not apply. Therefore, incremental costs would be prohibited by the rule against retroactive ratemaking and the PUC's order improperly assures future recovery. Accordingly, the order of the Pennsylvania Public Utility Commission is reversed. (Emphasis added)

PP&L, pp. 653-654.

In the instant proceeding, PP&L has made a request for incremental costs. Based upon the Commonwealth Court ruling, these incremental costs were, in fact anticipated and recurring, and not an exception for extraordinary expenses. See, footnote number 40, OTS M.B., p. 96.

As previously noted, PP&L both in the instant proceeding and the PP&L case sought to recovery costs associated with its incremental costs for deferred expenses associated with SFAS 106. Despite the fact that in PP&L, the Commission's treatment of the transition obligation was not appealed to Commonwealth Court, PP&L in its Main Brief has attempted to rely upon both PP&L and PAWC, even though PP&L dealt with incremental costs and PAWC dealt with transitional costs. Notably, in PAWC, the

Commonwealth Court determined that the Commission's adoption of accrual accounting concerning the transition obligation of Pennsylvania-American Water Company's ("PAWC") SFAS 106 claim did not constitute retroactive ratemaking because PAWC was merely requesting a timing change and not attempting to correct an incorrect projection.

OTS submits that PAWC does not shield PP&L in the instant proceeding because the Commonwealth Court in PAWC found that the Company was entitled to collect the transition obligation because it attempted to collect the costs at the first opportunity. In contrast, PP&L did not seek to recover its costs at the first opportunity, but rather filed a declaratory petition regarding the costs with the Commission. Another factor distinguishing PAWC and the instant proceeding is the fact that the amount in question in PAWC was the "transition obligation" as opposed to the "incremental" portion which is at issue in the instant proceeding.^{26/} As a result, PP&L cannot claim that its costs represent an extraordinary and non-recurring one time event as required by the Commonwealth Court in PAWC.

Finally, it is obvious that the cases relied upon by the Company in its Main Brief does not support the arguments articulated by the Company. Simply put, the Company has misconstrued the cases for the ALJ and the

^{26/} Note that in PP&L, the Commission's treatment of the transition obligation was not appealed to Commonwealth Court.

Commission. Most important, is the fact that the Company failed to distinguish between the issue in PAWC being the "transitional obligation" of SFAS 106 and the issue in PP&L being the "incremental" portion of SFAS 106. The Company's failure to recognize that PAWC and PP&L dealt with different portions of the costs associated with the deferred expenses of SFAS 106 is a fatal flaw in its argument.

Consequently, the Company's argument relative to its SFAS 106 claim lacks merit, and should be rejected. Accordingly, OTS's recommendation to reduce PP&L O&M expenses by \$1,561,000 on a Pennsylvania jurisdictional basis should be adopted.

F. PP&L's Arguments Regarding SSES 1 And 2 Fails To Recognize That Commonwealth Court Has Reversed the Commission's Orders.

On pages 98 through 103 of its Main Brief, the Company articulated its argument that PP&L's claim for Susquehanna Unit I and Susquehanna Unit 2 ("SSES 1 and 2") is timely and thus should be allowed. In presenting its argument, the Company has principally relied upon the

Commission Opinions and Orders.^{27/} It is un rebutted that Commonwealth Court can reverse the Opinions and Orders of the Commission.

The Commonwealth Court by its rulings in Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 149 Pa. Commonwealth Ct. 247, 613 A.2d 74 (1992), affirmed, ____ Pa. ____, 636 A.2d 627 (1994) and Irwin A. Popowsky, Consumer Advocate v. Pennsylvania Public Utility Commission, 642 A.2d 648 (1994) changed the manner in which the Commission must view deferred claims by utility companies in Pennsylvania. The adjustments made by OTS and the OCA in this regard, recognizes the changes dictated by the Commonwealth Court decisions. On the other hand, PP&L by virtue of its arguments and reliance on Commission Opinions and Orders from the 1980s, suggests a resistance to the change manner of determining these issues as dictated by recent Commonwealth Court decisions.

Consistent with the Commonwealth Court decisions, OTS submits that these early window claims should be disallowed, because the Company failed to claim any recovery of the expenses at the first opportunity

^{27/} Petition of Pennsylvania Power & Light Co., Docket No. P-820367, 1982 Pa. PUC LEXIS 75, *17-18 (Order entered July 29, 1982), Petition of Pennsylvania Power & Light Co., Docket No. P-830461, (Order entered November 9, 1983) and Pennsylvania Public Utility Commission v. Philadelphia Electric Co., Docket No. R-891364 (May 16, 1990).

and the recovery constitutes impermissible retroactive ratemaking. For example, with respect to SSES Unit 1, the Company had the opportunity to make a claim to recover the associated early window costs in its 1984 base rate case, but failed to do so.^{28/} see, Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 149 Pa. Commonwealth Ct. 247, 613 A.2d 74 (1992), affirmed, _____ Pa. ____, 636 A.2d 627 (1994).

With respect to Unit 2, OTS submits that the Company could have filed at an earlier date and not waited ten-years to seek recovery of these costs. The fact that PP&L waited ten years to recover the deferred expenses, violates the principle of retroactive ratemaking. Furthermore, the nature of the claim does not come within the genre of expense that is unusual and unforeseeable and therefore cannot be claimed as an exception to the general rule against retroactive activity.

Consequently, the ALJ should recommend and the Commission should adopt the recommendation of OTS in denying the deferred expense recovery of Susquehanna Units 1 and 2, respectively.

^{28/} An attempt to "minimize the requested increase and its impact on customers" is not an exception to retroactive ratemaking.

G. PP&L's Uncollectible Accounts Expense Claim
Should Be Adjusted By The Commission.

OTS in this proceeding has proposed \$1,234,000 reduction to normal uncollectibles due to a correct analysis that PP&L's claim should reflect its projected write-offs for 1995 rather than an amount to maintain its uncollectible accounts provision balance at \$30,719,000. In arguing against OTS's adjustment, the Company suggests that it is more appropriate to use the provision for uncollectibles of \$16,932,000 because it is utilized by PP&L to determine pro forma present rate revenues. PP&L M.B., p. 108.

In response, OTS would refer the ALJ and the Commission to OTS Cross-Examination No. 9. In reviewing OTS Cross-Examination No. 9, which is the Company's response to an interrogatory, is the supporting calculations for the Company's claim for the uncollectible accounts expense of \$16,932,000. Attachment 1 of OTS Cross-Examination No. 9 has two columns, identified as "Estimated % to be written" and "Uncollectible Provision Requirements", respectively. In column identified as "Estimated % to be Written Off", the Company has a provision balance of \$29,485,000 as of October 1, 1994, and a 1995 Estimated Net Writeoffs of \$15,566,000. Second, the Company subtracts its 1995 Estimated Net Writeoffs of \$15,566,000 from the Provision Balance as of October 1, 1994 of \$29,485,000, which equals "\$13,919,000". The "\$13,919,000" is then

listed under the column titled "Uncollectible Provision Requirements", also included under this heading, is \$30,719,000, which represents the Company's projected uncollectible provision requirements as of September 30, 1995. Third, the Company arbitrarily determines that it needs to have a provision account of \$30,719,000, which can only be accomplished by claiming an uncollectible accounts expense of \$16,800,000, which represents the "\$13,919,000" subtracted from \$30,719,000. Then the Company uses the \$16,800,000 to support its overall claim for uncollectible expense of \$16,932,000. See, OTS Cross-Examination Ex. 9.

The larger issue is whether the Company has provided support for arbitrarily determining that its provision account need \$30,719,000 for ratemaking purposes. In that regard, the Company has provided absolutely no evidence to demonstrate that \$30,719,000 for its provision account is needed for ratemaking purposes. The Company uses the \$16,800,000 amount for the sole purpose of maintaining a provision account of \$30,719,000.

Consequently, the Company's primarily argument that its proposal of \$16,800,000 affords a better matching of revenues and expenses, is nonsensical. The fact of the matter, the Company should have used its

actual write-offs as of September 30, 1995, which is \$15,566,000, instead of artificially creating its claim of \$16,800,000.^{29/}

An additional argument presented by the Company in its Main Brief, is the assertion that Mr. Weakley failed to used a three-year average of actual write-offs to better reflect the Company's experienced costs. PP&L M.B. p. 109. In support of its argument, the Company in footnote 39 listed several cases in which OTS used a three-year average of actual write-offs. Notably, in listing the cases, the Company failed to provide the justifications for OTS using a three-year average of actual write-offs in respective cases. If the Company had carefully reviewed the cases, it would have concluded that OTS used the three-year average of actual write-offs in cases where there are significant difference year to year with respect to a utility's uncollectible accounts. On the other hand, in the instant case, a three-year average was not used because PP&L shows a decreasing trend in actual write-offs of its uncollectible accounts expense. The significant aspect of the instant case, is the fact that PP&L has refused to reflect this decreasing trend in its funding reserve, which the Company has arbitrarily set at \$30,719,000. Simply put, there is no merit to the Company's argument, and accordingly, the arguments should be rejected.

^{29/} Note that the ending for the future test year is September 30, 1995.

With respect to OTS's recommendation that PP&L has overstated the uncollectible accounts expense element of its OnTrack Payment Program ("OTPP") because it failed to reflect potential funding from the Low Income Energy Assistance Program ("LIHEAP"), the Company's arguments are based on speculation. PP&L M.B., pp. 109-111. Namely, that OTS's "adjustment fails to give any weight to the fact that Federal funding for LIHEAP has been substantially reduced in the past and probably is going to be reduced further or eliminated in the current round of Federal budgeting tightening. PP&L M.B., p. 110. In essence, the Company is articulating a position that OTS and the Commission should give recognition to "potential" post-future test year events that may affect LIHEAP funding.

In response, OTS would note that the Commission has consistently and appropriately emphasized the principle that ratemaking claims be based on known and measurable costs that will occur, not on highly speculative estimates. See, Pennsylvania Public Utility Commission v. West Penn Power Company, 73 Pa. PUC 454, 199 PUR 4th 110, 134 (1990); Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corporation, 55 Pa. PUC 665 (1982). Accordingly, OTS can only make recommendations, as it specifically relate to OTPP on the present and/or known funding of LIHEAP, not on whether LIHEAP may be

substantial reduced or eliminated in the current round of Federal budgeting tightening.

Finally, PP&L articulated that "the Commission has recognized this concern in recent orders involving interim reductions in purchased gas cost recovery rates by gas utilities." PP&L M.B., p. 110. OTS submits that the issue is not whether the Commission has express a concern in recent orders, but rather, has the Commission actually based its final orders on this expressed concern. A review of the recent orders involving gas utilities, suggests that the Commission has not actually based in final orders on what may or may not occur with LIHEAP at the federal level, but rather provided concerns that "future" projections in Section 1307(f) gas proceedings must be viewed with closer scrutiny. Accordingly, in PP&L's "next base rate" case, this issue may have to be viewed with closer scrutiny, but that time is not now.

Consequently, OTS submits that PP&L's argument is seeking recognition of the speculative future of LIHEAP, which goes beyond the future test year. Accordingly, PP&L's arguments should be rejected.

H. PP&L's Request For \$2.5 Million For Social Programs Should Be Denied.

On pages 113 through 120 of its Main Brief, PP&L attempted to present arguments as to why its request for \$2.5 million for Build-A-

Neighborhood Program, Affordable Housing Program and Small Business Program ("social programs") should be adopted by the Commission. It is clear from the Company's Main Brief that an attempt has been made to link the social programs with other approved programs such as conservation, load management and economic development.^{30/} PP&L Main Brief, p. 116. OTS submits that this attempt at linkage is merely a disguise as to the true nature of the three programs.

Noticeably absent from the Company's Main Brief is any discussion and/or summary of the details of the programs in question. An objective discussion of the details of the programs would provide a clear message that these proposed programs are beyond the other approved programs such as conservation, load management and economic development. In fact the Company indirectly makes such an admission on page 116 of its Main Brief, by asserting that "these programs are simply an expansion of existing Commission-approved programs." The problem is that the Company failed to realize that the proposed programs are far beyond and

^{30/} The Company already has Commission approved conservation programs, such as Weatherization available for its customers.

seeking to achieve a different solution than any programs previously approved by the Commission.^{31/}

The Policy Statements and cases relied upon by the Company dealt specifically with rate structure related issues in solving a utility's and/or customer's problem. For example, in the cases relied upon by the Company were attempts to solve certain problems by restructuring the rate structure of the utility; however, in most instances, the restructuring did not affect the recovery of the customer's fixed cost, and the restructuring merely concern the margins available to the utility and in most cases, the "flex rate" was for a certain time period. See, Appendix A.^{32/} In most of the cases relied upon by the Company was an attempt by the Commission and the utility to resolve the loss of a major customer and/or the potential loss of a major customer. In addressing that concern, the Commission generally recognized that if a major customer left the system then the associated fixed costs to serve that customer would have to borne by the other customers. Accordingly, the Commission allowed the utility to provide some flexibility

^{31/} The ratepayers' share and stockholders' share for the proposed programs are linked without an accounting mechanism for distinguishing the two share nor any escrow mechanism.

^{32/} Appendix A is copies of the cases relied upon by the Company in support of its argument. For ease of reference, OTS has provided the ALJ with copies.

in its rate structure. Simply put, none of the cases support a utility's attempt to solve the socio-economic problems of a certain segment of its customers and service territory outside of the rate structure element of the utility's services. In the instant proceeding, there is no evidence that these programs will benefit all other ratepayers from a ratemaking standpoint. In fact there is a strong possibility that these programs may add new customers, who may be unable to pay their bills in a timely fashion, thus adding to the Company's uncollectible accounts.

The Company's own words from its Main Brief, best describes why these programs should be rejected. Namely, the Company in its Main Brief asserted in pertinent part as follows:

PP&L's proposed customer and community needs programs are designed to benefit PP&L and its customers by attempting to address, in a modest way, the social issues facing PP&L's customer. These programs will position PP&L favorably with all segments of its customers, including lower income customers located in urban communities.

PP&L Main Brief, p. 120.

It is clear from the above statement from the Main Brief of PP&L that one of the objectives of the programs is place PP&L in a favorably position with its customer, which PP&L has the ability to do without assistance from ratepayers. Second, the above statement suggests that the Company is

attempting solve social programs unrelated to customers ability to pay their bill. In other words, PP&L is attempting place itself in the position of government or other entities, who have traditionally attempted to solve these types of social issues with varied degrees of success (e.g., neighborhood improvement, affordable housing, assisting small businesses), which is unrelated to providing electric service and the payment for such service.

Finally, PP&L argues that "the Commission should not ignore the social benefits that can accrue to PP&L's customers and the communities in which they live and work as a result of PP&L's programs." PP&L Main Brief, p. 118. In response, OTS submits that there is no dispute that PP&L's customers and communities would greatly benefit if all of its neighbors and neighborhood consisted of great, beautiful neighborhoods, affordable housing and numerous small businesses, more or less a utopia society; however, whether PP&L's customers and communities will benefit from the programs is not the primary issue, but rather, should the payment for these programs be accomplish through the ratemaking process. If the only way to achieve the objectives of these programs is through the ratemaking process, then the programs should not be created, as the ratemaking process is not the proper forum for such socio-economic programs.

Consequently, the Build-A-Neighborhood program, Affordable Housing program, and Small Business program should not be afforded ratemaking treatment, and should be rejected.

IV. RATE OF RETURN

A. Interest Rates

In its brief, PP&L urges the ALJ and the Commission to ignore the decline in interest rates which occurred at or near the close of the record in this proceeding. PP&L asserts that any mention of this interest rate decline by the OTS or other party constitutes a "smokescreen". PP&L also urges that the Commission "not be unduly influenced by temporary short-term variations in interest rates". PP&L Main Brief, p. 214. Additionally, PP&L's witness, Mr. Paul Moul, testified that this interest rate decline does not require a reduction in his recommended cost of equity. PP&L St. 12-R, p. 2.

This assertion is inconsistent with Mr. Moul's past testimony before the Commission. In the most recent Philadelphia Suburban Water Company rate case (R-00932868), Mr. Moul encountered a similar situation. Thirty-year Treasury bond yields increased 110 basis points. This resulted in a 75 basis point increase in the Risk Premium cost rates, a 106 basis point increase in the CAPM cost rates, and a 19 basis point increase in the DCF cost rates. Mr. Moul found it appropriate to increase his recommended cost of equity because of the significant increase in interest rates. OTS ST. SR-1, pp. 1-2. The selective recognition of interest rate fluctuation does not eliminate the real world effect that interest rates have on equity costs.

It is noteworthy that while Mr. Moul criticizes the accuracy of OTS' equity cost computations, he also selectively ignores economic factors which affect the very accuracy he purportedly seeks.

B. Alternative Methods

PP&L also criticized OTS' exclusive reliance on the DCF method to determine the cost of common equity. The company asserts that it is improper for one to rely upon a single cost of equity model and refers to a NARUC study to bolster this claim. PP&L Main Brief, p. 225.

The OTS witness, Kevan Deardorff, is skeptical of the results of this survey. Tr. 1481. An excerpt of this study states that the Pennsylvania Public Utility Commission currently uses the DCF method, the Comparable Earnings method, and the Earnings/Price Ratio method. PP&L Ex. PRM-2, Sched. 3, p. 3. Mr. Deardorff is unsure whether the NARUC figures reflect incorrect or merely outdated information. Tr. 1481. In any case, the accuracy of this study is questionable and it should not be used to impugn the DCF method.

PP&L also claims that the "central problem" with the DCF method is that the underlying assumptions of the method are not realistic. In addition, PP&L asserts that there is no evidence that these assumptions actually prevail in the equity market. PP&L Main Brief, pp. 225-226.

The DCF method assumes two general market conditions. The first assumption is that the payout ratio will remain reasonably constant so that the rate of dividend growth will closely follow the growth rate of earnings per share. The second assumption is that the price/earning ratio will be the same for the prospective period. Mr. Deardorff tested these underlying assumptions in his calculations and found that the primary DCF results are reliable given current general market conditions. OTS St. 1, pp. 25-27, OTS Ex. 1, Sched. 4, pp. 4-5. The DCF results could not be reliable if the underlying assumptions were unrealistic.

To support its argument for the use of other methods, the company cites utility case decisions from other states. PP&L quotes a case in which the Iowa Utilities Board stated "[T]he DCF model may understate the return on equity in some circumstances. This is particularly true when the market is volatile and the company in question has a market-to-book ratio in excess of one." PP&L Main Brief, p. 227. In the instant proceeding, no evidence was presented to show that the market is volatile. To the contrary, the market is relatively stable at this point in time.

Finally, Mr. Moul attempts to use a simple internal growth rate calculation to show that Mr. Deardorff's results are inadequate. PP&L Main Brief pp. 229-230. However, Mr. Moul originally testified that this methodology does not produce results reflective of investor growth. PP&L

St. 12, p. 15. It is disingenuous for Mr. Moul to choose this method for the sole purpose of discrediting Mr. Deardorff's recommended return on equity.

The OTS recommended return on equity for PP&L is fair, and should be adopted by the ALJ and Commission.

V. RATE STRUCTURE

A. Rate Design & Cost Of Service

The OTS recommended revenue requirement increase is approximately \$20,455,000. See, Appendix A, Table I (attached to OTS's Main Brief). If PP&L is granted an increase in this proceeding which is consistent with the adjustments proposed by OTS, OTS witness Paul M. Yarolin has recommended that the minimum monthly charge for residential customers (Rate Schedule RS) be increased by \$14,076,018 and that Residential Service-Thermal Storage (Rate Schedule RTS) be increased by \$3,438,666. OTS St. 3, p. 10.

If the Company were to be granted a revenue requirement in excess of that recommended by OTS, Mr. Yarolin has testified that it should be allocated in the following manner: (1) the minimum charge for Rate Schedule RS should be set at \$5.90 per month; (2) the rates under Rate Schedule RTS should be set at the level proposed by the Company; (3) the rates under Rate Schedule SE should not receive an increase; and, (4) the remaining balance of the revenue requirement should be distributed among all rate schedules, except Rate Schedules RTS and SE, in the same relationship as that proposed by the Company.

OTS witness Mr. Yarolin has testified in support of the following issues: (1) PP&L's Residential Minimum Monthly Charge should

be increased by no more than \$1.10; (2) Residential Service-Thermal Storage (Rate Schedule RTS) should be increased in accordance with PP&L's proposal; (3) the Commission should institute an investigation of Rate Schedule RTS; (4) Rate Schedule SE should be considered an Off-Peak rate for Municipalities and Governmental Agencies (and not receive an increase in this proceeding). OTS will respond to specific allegations concerning these issues made by the Company in its Main Brief.

1. PP&L's Residential Minimum Monthly Charge Should Be Increased By No More Than \$1.10.

OTS discusses this issue in a comprehensive manner at pp. 135-139 of its Main Brief. In its Main Brief, PP&L merely states that it opposes OTS's position on the Minimum Monthly Charge because it focuses on this charge and not on how the PP&L proposed increase of \$2.40 will effect the customer's total bill^{33/}. According to PP&L, "small usage residential

^{33/} The Office of Consumer Advocate ("OCA") also opposed OTS's proposed increase to the residential Minimum Monthly Charge, presumably because it supports a zero increase for this charge and because OTS has adopted the Company proposed 12 Coincident Peak ("12 CP") cost of service methodology. OCA Main Brief, pp.308-309. However, OTS fully supports the Company's 12 CP cost of service study because it best represents the costs incurred by the various services provided by PP&L. Moreover, the OCA's proposal of a zero increase to the customer charge is not "realistic" in light of the level of customer charges for other Pennsylvania electric companies. See, OTS Ex. 3, Sched. 1.

customers will see an actual increase of far less than 50%, even if PP&L's total increase were approved." PP&L Main Brief, p. 252.

In response, OTS submits that the impact of PP&L's proposed increase in the monthly charge on the small usage residential customer is greater simply because it is an element of the customer's bill that cannot be controlled by the customer. Thus, the small usage customer pays a great deal of attention to the Minimum Monthly Charge portion of the bill. Even if, as PP&L alleges, the Minimum Monthly Charge increase to the small usage residential customer will be less than 50% under PP&L's proposal, that increase will still be significant to that customer because the small usage customer's total bill is much lower than the average residential customer.

In any event, OTS believes that Mr. Yarolin's recommended increase to the Minimum Monthly Charge of no more than \$1.10, is reasonable and falls within the range of other Pennsylvania electric utilities^{34/}. See, OTS Main Brief, pp. 136-139.

^{34/} The minimum monthly charges for other Pennsylvania utilities are presented at OTS Ex. 3, Sched. 1.

2. Residential Service - Thermal Storage
(Rate Schedule RTS) Should Be Increased
In Accordance With PP&L's Proposal.

The need for the increase to Rate Schedule RTS is discussed in a comprehensive manner at pp. 139-140 of OTS's Main Brief. Apparently no party has indicated opposition to this recommendation.

3. The Commission Should Initiate An
Investigation Of Rate Schedule RTS.

A comprehensive discussion of this issue is provided at pp. 140-143 of OTS's Main Brief. In summary, OTS witness Mr. Yarolin has testified that an investigation of the RTS Class is needed because several questions remain to be answered: (1) What, if any, promises were made to these customers?; (2) Under what conditions were any such promises made?; (3) Whether any savings were promised over a specific time period? and, (4) Whether representations were made as to how long it would take to recover the investment required to obtain RTS service? OTS St. 3, p. 12. OTS responds herein to arguments made by PP&L in its Main Brief.

PP&L first alleges that an investigation is unnecessary because rates are not contractual, thus the Company "did not and indeed could not guarantee that rates would not be changed over time." PP&L Main Brief, p. 259. OTS submits that rate case practitioners are certainly aware of the fact that rates are not "contractual." However, ratepayers may not fully

comprehend the fact that rates are not normally^{35/} guaranteed for a certain period of time. OTS witness Mr. Yarolin has merely recognized the fact that there is a great deal of confusion among the RTS class regarding their right to lower rates than the RS class. See, Public Input Tr. 115. These concerns have not been addressed in the letters sent out to RTS customers in April, which were designed to clear up the misconception provided in the March 27, 1995 letter sent to RTS customers by PP&L's Sales & Accounts Department. See, PP&L Ex. OGK-9.

PP&L next argues that Mr. Yarolin's implicit factual assumption (that the RTS customers may fail to recover their investment) is purely hypothetical and only a remote possibility. PP&L Main Brief, p. 260. However, PP&L witness Mr. Kasper has testified that although he believes the pay-back period on the thermal storage system is five (5) years (Tr. 2166), he acknowledges that the systems vary in type, size and cost. Tr. 2166-2168. He has also acknowledged that since the thermal storage systems vary in cost and the usage pattern of the household, the pay-back period would vary as well. Tr. 2167. Moreover, the OCA has alleged in its Main Brief that the pay-back period on these systems could be as long as

^{35/} Certainly pursuant to a settlement which includes a "stay-out" period for the company, customers might be reasonably assured of the fact that they will experience no rate increase for a certain period of time.

twenty (20) years. OCA Main Brief, p. 302. Clearly questions remain as to the true pay-back period on these systems.

Accordingly, OTS submits that it has demonstrated a need for further inquiry by the Commission into the circumstances under which customers obtained service under the Rate Schedule RTS.

4. Rate Schedule SE Should Be Considered An Off-Peak Rate For Municipalities And Governmental Agencies.

Rate Schedule SE is an unmetered energy only street lighting service that currently serves 58 customers. A comprehensive discussion of this issue is provided at pp. 143-147 of OTS's Main Brief. In summary, OTS witness Mr. Yarolin has recommended that Rate Schedule SE be considered an off-peak service primarily because the service is not used during peak hours for seven (7) of the twelve (12) months of the year^{36/}. OTS St. 3, pp. 14-15. In addition, the service should not get an increase in this proceeding.

^{36/} Mr. Yarolin has recommended that the Company file a rate with higher on-peak (winter) month rates and lower off-peak (summer) month rates. OTS St. SR-3, p. 12.

PP&L first^{37/} alleges that OTS's proposal would not accomplish what it intends because the higher rates in the winter months would cancel out any savings obtained during the summer months. PP&L Main Brief, p. 282. However, PP&L fails to consider that Mr. Yarolin has proposed that Rate Schedule SE receive no increase in this proceeding. OTS St. 3, p. 15. The lack of an increase in this proceeding will relieve some of the budget pressure being experienced by many of the cities and municipalities in PP&L's service area. See, Public Input Tr. 376, 405, 413, 465 & 629.

PP&L next argues that Rate schedule SE cannot shift load off-peak in response to off-peak pricing; thus, SE customers would not benefit from an off-peak rate. PP&L Main Brief, p. 282. However, OTS witness Mr. Yarolin has testified that the ability to shift load is not the only criterion in determining whether a service is on-peak or off-peak. In this regard,

^{37/} By way of introduction, PP&L alleges that "Rate Schedule SE has consistently contributed to monthly system peaks since the rate was first established in 1982. OTS has shown no change in circumstances to support a change in rate design here." PP&L Main Brief, p. 282. In fact, Mr. Yarolin has demonstrated that the .2% of demand on the total system is attributed to all Street and Area Lighting services and not strictly Rate Schedule SE. OTS St. SR-3, p. 10. Moreover, for seven (7) months out of twelve (12) months, the peak period occurred during daylight hours in which 62 KW demand was assigned to Street and Area Lighting for traffic lighting purposes. See, OTS Ex. 3, Sched. 3, p. 2.

"period of usage" is equally important. The record indicates that street lighting occurs primarily during off-peak periods of the year. See, OTS Ex. 3, Sched. 3, p. 2.

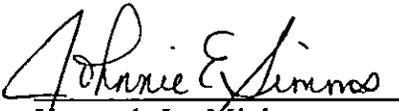
Finally, PP&L argues that Mr. Yarolin "failed to support his claim that no significant peak costs are incurred due to street lighting." PP&L Main Brief, p. 282. PP&L is in error. OTS Ex. 3, Sched. 3, p. 2 demonstrates that Street and Area Lighting in total contributed only .001% of the system total demand for the months of April to and including October (a total of seven months). For the winter monthly peaks of November to and including March (a total of five months) the total peak demand for all Street and Area Lighting was only .4%. Moreover, Rate Schedule SE represents only 8% of the total Street and Area Lighting usage (PP&L Ex. OGK-2, Tabulation of Revenue Effects, p. 1), which does not represent a significant contribution to the winter monthly peaks.

Accordingly, the record indicates that Rate Schedule SE is, in fact, an off-peak rate and should be so designated by the Commission. The change can be accomplished by ordering PP&L to file a tariff filing which provides an on-peak rate for the five (5) winter months (November through March) and a (lower) off-peak rate for the remaining seven (7) summer months (April through October). Moreover, Rate Schedule SE should not get any increase in rates in this proceeding.

VI. CONCLUSION

For the reasons set forth herein and in its Main Brief, the Office of Trial submits that the ALJ and the Commission should adopt its recommendations, which results in directing Pennsylvania Power & Light Company to file appropriate designed tariffs which will recover no more than \$20,455,000 in additional base rate revenues.

Respectfully submitted,



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Dated: June 27, 1995

APPENDIX A

69 Pa. PUC 379 printed in FULL format.

Pennsylvania Public Utility Commission v. National Fuel Gas
Distribution Corporation

R-881163

PENNSYLVANIA PUBLIC UTILITY COMMISSION

1989 Pa. PUC LEXIS 70; 69 Pa. PUC 379

April 13, 1989

PANEL:
[*1]

Commissioners Present: Bill Shane, Chairman; William H. Smith, Vice-Chairman;
Joseph Rhodes, Jr.; Frank Fischl

OPINION:
OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration is Supplement No. 23 to Tariff Gas Pa. P.U.C. No. 7 ("Supplement No. 23"), filed November 28, 1988 by the National Fuel Gas Distribution Corporation ("Distribution" or "Company"). For the reasons enunciated hereinbelow, we are of the opinion, and find, that Supplement No. 23 should not be allowed to become effective as filed and that the Company be given the opportunity to file a tariff supplement that reflects specific changes delineated in this Opinion and Order.

BACKGROUND

On November 28, 1988, Distribution filed Supplement No. 23 which proposes to establish four new voluntary Load Balancing Technology Service ("LBTS") rates for customers served under existing Rates SVIS (Small Volume Industrial Service), LVIS (Large Volume Industrial Service, LIS (Large Industrial Service) and Commercial and Public Authority Customers ("basic service rates"). These proposed rates will be applicable to customers who will use natural gas for any of the five following purposes: cogeneration, electric generation, [*2] cooling/dehumidification, heat pumps or vehicles. Other provisions of Supplement No. 23 will be reviewed in the following Discussion.

By Order entered February 9, 1989, we suspended Supplement No. 23 for a period of sixty (60) days.

On February 14, 1989, Distribution filed Supplement No. 32 which extended the effective date of Supplement No. 23 to April 11, 1989.

DISCUSSION

In contrast to Distribution's existing basic commercial/industrial rates, where monthly bills are calculated solely on a commodity (per cubic foot) basis, plus a customer charge, LBTS rates consist of a demand charge based on the customer's highest consumption during any one of the Company's four peak winter months (December through March) and a commodity charge based on actual

consumption for each month. Since LBTS customers will also have to take service under an existing rate, a second customer charge was not imposed.

As part of the Information required by Section 53.52 of our Regulations, 52 Pa. Code @ 53.52 ("Filing Information"), the Company explains that the proposed commodity charges consist of the commodity component of its Purchased Gas Costs ("PGC") n1 and twenty-five percent (25%) of the [*3] "non-purchased gas costs". These "non-purchased gas costs" are the difference between the total rates charged in the corresponding basic service tariffs (e.g. Rate SVIS) and the PGC rate for that rate schedule. The non-purchased gas costs were calculated as a single average rate based on the revenue estimates contained in the Company's Compliance Filing submitted at the conclusion of its last general rate investigation at Docket No. R-870719, excluding Customer Charge revenue. Customers taking LBTS transportation service will not pay the any PGC related costs.

n1 Purchased Gas Costs are filed, investigated and approved in accordance with Section 1307(f) of the Public Utility Code (66 Pa. C.S. 1307 (f)). The various Purchased Gas Cost rates are delineated in Rider A of the Company's tariff.

The proposed demand charges consist of the demand component of the PGC and seventy-five percent (75%) of the "non-purchased gas costs". Again, rates for LBTS transportation service will not include PGC demand costs.

Since the existing basic service rates do not impose demand charges, and since these various rate schedules were derived based on the average load factor for all customers [*4] in each rate class, if a LBTS customer has a better than average load factor during the four peak months, it will probably experience lower rates than it would if it received service under a basic service rate. If an LBTS customer receives all of its service during the eight off-peak months it would not incur any demand costs. Under this scenario, for example, an LVI-LBTS customer would pay a total of \$2.9870 per Mcf for gas plus any other applicable surcharges, (e.g. State Tax Adjustment Surcharge) compared to the tail block of Rate LVIS at \$3.9109 per Mcf, plus surcharges (Filing Information, Appendix A and Supplement No. 21 to Gas-Pa. P.U.C. No. 7, Eighth Revised Page No. 31).

As part of its Filing Information, the Company states that "[t]he LBTS rate proposals were developed as a means for Distribution to create customer, ratepayer, and Company benefits through the encouragement of gas fired technologies." Distribution explains that these benefits will result from the additional incremental throughput that these new technologies will require, especially to the extent that this additional throughput occurs during off-peak periods. The Company avers that "[t]he most obvious ratepayer [*5] benefit from this type of load growth is the lower unit gas costs which results from Distribution's fixed costs being spread over a large consumption base." Distribution submits that the technologies of cogeneration, electric generation, gas fired cooling, gas heat pumps, and natural gas vehicles are representative of the major new markets available to the gas industry and that the constant seasonal and off-peak throughput from these technologies will enable Distribution to more fully utilize its investment in its plant and equipment. (Information Filing, p. 2).

The Company also avers that the large first cost investment of these technologies must be offset by significant operation cost savings in order to assure a "justifiable return" for the customer. Distribution explains that a major factor influencing the operating cost savings is the price of natural gas. (Id., pp. 2-3).

Conceptually, we endorse Distribution's proposal since it endeavors to add incremental off-peak load to its system by offering rates that isolate participating customers from demand related costs to the extent they do not contribute to the Company's peak load requirements. However, we do have some concerns [*6] regarding the restricted availability of the LBTS rates as well as some of the other provisions of the tariff.

As stated supra, Distribution projects that its proposed off-peak rate incentive may be an important factor toward inducing customers to make the large first-cost investment in cogeneration, gas cooling, etc. Considering: 1) that Distribution's monthly throughput in its peak month may be as much as six times its throughput in the slowest month, 2) that cost-based off-peak rates may be just as influential in inducing other industrial activities in the service area as it will be in attracting the five technologies delineated in the LBTS rates, and 3) that increased incremental off-peak demand will enhance Distribution's ability to spread its fixed costs over a larger revenue base, it appears that Supplement No. 23 should not be restricted to the five specific end uses proposed by the Company.

In its response to an Information Request submitted to Distribution by our Staff ("Response"), the Company argues that expanding the applicability of Supplement No. 23 would result in a revenue shortfall to the Company and "no counterbalancing benefit to the Company or most of [*7] its customers." The Company explains that the current commercial, public and industrial rates were derived based on the overall average load factor for each rate class. The Company states that existing customers with an above average load factor would migrate to demand-commodity rates because their monthly bills would probably be lower than the existing commodity-only rates. Distribution projects that the migration of higher load factor customer to a demand-commodity rate would leave customers with poorer load factors in the commodity-only rates. The Company warns that this migration would result in higher rates for low load factor customers. (Response No. 1, pp. 2-4).

While Distribution's scenario may prove valid if LBTS rates were available to all existing loads, restricting availability of LBTS rates to incremental loads, should not result in customer migration or have a negative effect on the Company or its ratepayers. Conversely, expanding the scope of incremental off-peak loads should only enhance the benefits of both spreading fixed costs over a larger revenue base and load balancing anticipated by distribution for its proposed LBTS rates. If expanded LBTS [*8] rates are successful in inducing incremental industrial loads, then the corresponding increased economic activity will provide secondary economic benefits for the service area as well as potential increases in residential and commercial gas demand. Restricting the applicability of Supplement No. 23 to incremental loads is consistent with several other economic incentive rates that we have approved.

In addition to the five end uses already delineated in Supplement No. 23, the Company may elect to restrict the application of LBTS rates to customers whose operations fall into the same Standard Industrial Classifications (i.e. groups

20-39, 50, 51, 60-63, 67) that it proposed for its Supplement No. 26, Business Development Service Riders. n2 We agree with the Company's conclusion presented as part of Supplement No. 26 that these types of businesses "will have a greater probability of creating jobs and increasing the economic activity in the area".

n2 In response to our Opinion and Order entered April 9, 1989 at Docket No. R-891197, Distribution filed Supplement No. 34 amending Supplement No. 26. Supplement No. 34 has been approved to become effective April 6, 1989.

In its Response, [*9] the Company states that the twenty-five percent (25%) commodity/seventy-five percent (75%) demand allocation of "non-purchased gas costs" was not derived from any of the cost allocations approved in Distributions' last general rate proceeding. The Company explains that in formulating this allocation, "the Company used its judgement to balance the incentive for deployment of new technologies with assurance of significant recovery of cost of service from LBTS customers." (Response No. 2. p. 2). Since the response to LBTS rates cannot be reasonably projected at this time, we find this initial allocation to be reasonable. Over time, as the Company is able to measure actual customer response to this rate design, we would expect the Company to make appropriate modifications to this demand/commodity allocation. To this end, we direct Distribution to submit, as part of future general rate filings submitted pursuant to 66 Pa. C.S. @ 1308(d), a description of customer participation and the resulting impact on both the Company's pipeline and internal demand related costs, as well as on its incremental pipeline commodity costs. Distribution shall also explain what modifications it has or [*10] will make as a result of its actual experience in administering these LBTS rates.

The four proposed LBTS tariffs all contain provisions which require that "[t]he customer's gas facility shall be constructed in a manner satisfactory to the Company so that the Company will be able to meter the volume of gas used by the customer in the qualifying facilities separately from gas used by the customer in other facilities."

We are concerned that the design of the LBTS rates coupled with the absence of a demand charge mechanism in existing rates provides an incentive for customers to avoid demand charges under LBTS rates by taking service under the four existing rates during the four peak months, and returning to LBTS service during the eight off-peak months.

This concern was addressed by our Staff in its information request to the Company. In its Response, the Company only addressed the unlikely scenario where a customer would switch to a regular rate after recording some demand during one of the four peak months as an LBTS customer (Response No. 6, p. 1).

Since there is a strong incentive for a customer to divert qualified loads between existing and LBTS rates and since such load switching [*11] could mitigate the benefits of these incentive rates, we find that language should be added to the proposed tariffs which states that qualified LBTS loads must be serviced by a discrete gas service supply system beyond the Company's meter, subject to inspection by the Company.

CONCLUSION

In consideration of the foregoing, we conclude that Distribution should be given the opportunity of filing a tariff supplement on or before thirty days after the date of entry of this Opinion and Order, effective on ten (10) days notice to the Commission which: (a) cancels and supersedes Supplement No. 23, (b) extends the applicability of the LBTS rates to incremental loads regardless of end-use, or limits participation to those end-uses delineated in Distribution's Business Development Service Riders filed as Supplement No. 34 as well as the four end-uses proposed in Supplement No. 23, and (c) requires that qualified LBTS loads must be served by a discrete gas service supply system beyond the Company's meter, subject to inspection by the Company. Distribution shall also submit information in future general rate filings as delineated by this Opinion and Order.

If Distribution does not elect [*12] to file such a tariff supplement on or before thirty (30) days after the date of entry of this Opinion and Order, than an investigation will be instituted without further action by the Commission, and the matter will be assigned to an Administrative Law Judge for a recommended decision; THEREFORE:

IT IS ORDERED:

1. That Supplement No. 23 to Tariff Gas-Pa. P.U.C. No. 7 be, and hereby is, suspended for a period not to exceed four (4) months from April 11, 1989.

2. That if, within thirty (30) days after the date of entry of this Opinion and Order, National Fuel Gas Distribution Corporation files a tariff supplement, effective on ten days notice to the Commission, which cancels and supersedes Supplement No. 23 to Tariff Gas-Pa. P.U.C. No. 7 and which contains the changes delineated in this Opinion and Order, the tariff supplement containing these changes shall be permitted to become effective.

3. That if National Fuel Gas Distribution Corporation files a tariff supplement consistent with Ordering Paragraph No. 2 supra, it shall thereafter file, as part of future general rate filings submitted pursuant to 66 Pa. C.S. @ 1308(d), the information delineated in this Opinion and [*13] Order.

4. That if the National Fuel Gas Distribution Corporation has not filed a tariff supplement consistent with Ordering Paragraph No. 2, supra, within thirty (30) days of the date of entry of this Opinion and Order, or has been granted additional time to do so by Order of the Commission:

(a) an investigation on Commission motion shall hereby be instituted, without further order of the Commission, to determine the lawfulness, and reasonableness of the rates, rules and regulations proposed in Supplement No. 23 to Tariff Gas-Pa. P.U.C. No. 7;

(b) the Office of Administrative Law Judge shall assign this matter to an Administrative Law Judge for Recommended Decision and shall schedule such hearings as may be necessary;

(c) the Office of Trial Staff shall participate in any proceedings before the Administrative Law Judge.

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Harrisburg, Pennsylvania 17105-3265

Public Meeting held December 1, 1994

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice Chairman
John M. Quain
Lisa Crutchfield
John Hanger

Pennsylvania Public Utility Commission
v.
Pennsylvania Power Company

R-943238

OPINION AND ORDER

BY THE COMMISSION:

On November 1, 1994, Pennsylvania Power Company (Penn Power or Company) filed Supplement No. 123 to Tariff Electric Pa. P.U.C. No. 33. This Supplement changes the contract signing and implementation dates of Penn Power's existing General Service, Economic Development Rider I (EDR I). The existing rider requires signed contracts by December 31, 1994, and the Supplement seeks to extend this signing date to December 31, 1999. Penn Power needs this change in dates to enable the Company's marketing and economic development personnel to provide assurance to potential economic development rider customers that this rider will be in place until at least December 31, 2000.

Summary of Penn Power's Tariff Changes

On Tariff Sheet 39, Penn Power is requesting that the contract signing and implementation dates on the EDR I be changed to effectively extend the rider through December 31, 2000. EDR I is designed to provide a capacity charge reduction for new and existing customers adding new load.

On Tariff Sheet 40, the company, under the EDR section, is requesting that the language related to new industrial customers assuming the operation of previous industrial customers be modified. Under the current provisions, if the prior customer has shut down for less than 18 months, the new customer must use the prior customer's billing history as a base amount in determining the portion of the billing load which receives the capacity charge reduction. The proposed language would simply allow the Company, under special circumstances, to waive the 18-month restriction. The company has experienced cases where a legitimate new customer was interested in starting operations at a prior customer's location but because of the 18-month restriction the customer was effectively prevented from receiving the benefits of the EDR I. By allowing the Company more discretion in applying this provision, it can maintain the existing integrity of the rider and also open it up to additional economic development opportunities.

On Tariff Sheet 41, under the Definition of Terms section of the EDR I, the definition of item (9), New Service Location, has been modified. The proposed language change is to provide consistency with the proposed change in language on Tariff Sheet 40. It is no longer necessary to spell out the conditions and provisions related to the 18-month period.

Economic Background of Penn Power's Service Area

Penn Power has lost a substantial portion of its industrial load over the past decade. The Company and local economies desperately need these rate incentives for new and existing industrial customers. As a result of the Commission's willingness to experiment with and approve implementation of this type of innovative ratemaking technique, many jobs have been added or preserved in the Commonwealth. Additionally, all benefits associated with an area's growth in industrial base can be experienced by the other customer classes. Several of Penn Power's industrial customers have indicated their willingness to proceed with expansion plans when economic factors merit their implementation. Penn Power's Economic Development Rates have helped to undertake such expansions.

The extension of this economic development provision is even more critical to Penn Power now than in the past. EDR I has always been a viable tool in attracting new businesses into Penn Power's service territory. This, in turn, has led to job creation, capital investment, and increased energy sales for Penn Power. However, with the closing of Sharon Steel, Penn Power has lost 38 percent of its total industrial Kwh sales. Therefore, recovering those lost Kwh sales through economic development rate provisions is even more essential. Moreover, the revenue generated from increased Kwh sales helps defray the sudden decrease in contribution to fixed costs that Penn Power's lost industrial customers are no longer making. This helps offset the potential of spreading those fixed costs over the balance of the Company's existing customers.

Many factors influence the decision by industries to locate or expand. These factors include the market, the transportation corridor, and the level of competition. The Economic Development Rider is a catalyst that many times encourages industries to expand in times of

uncertain market conditions. We believe that it is imperative that the Economic Development Rider be extended in order to continue encouraging expansion of industry in Western Pennsylvania.

Results of Penn Power's EDR

The number of Penn Power's EDR I customers continues to grow. In 1993, eleven new customers have signed up for the program. When the Company's economic development rate was first introduced in 1984, only three customers elected to participate. In ten years, a total of 87 customers have joined the program.

Penn Power's EDR I customers have had a positive impact on the local economy. Since 1984, these customers have provided jobs for a total of 2,550 employees - averaging 255 additional employees each year. Moreover, these 87 customers have generated \$127.1 million in capital investment since 1984 - averaging \$12.7 million yearly. In 1984, capital investment amounted to slightly over \$1.8 million. Since 1990, energy usage for EDR I customers has increased by 654,952 Mwh, but their total bills have been reduced \$5.6 million over the same time period. Total savings from the EDR I rates amount to \$8.4 million for the 10 year period.

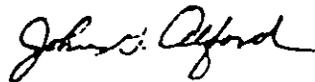
After investigation and analysis of this special contract filing and supporting data, it does not appear that the proposed Supplement is unlawful, unjust, unreasonable and/or contrary to the public interest. This does not constitute a determination of the lawful, just and reasonable rates to be charged by Pennsylvania Power Company. Rather this is a determination that suspension or further investigation of this Supplement is not warranted at this time;

THEREFORE;

IT IS ORDERED:

1. That the proposed Supplement No. 123 to Tariff Electric - Pa. P.U.C. No. 33 of Pennsylvania Power Company is hereby permitted to become effective on Jan. 1, 1995 as filed;
2. That this Opinion and Order is without prejudice to any formal complaints timely filed against Pennsylvania Power Company's Supplement;
3. That a copy of the Opinion and Order shall be served upon Pennsylvania Power Company and any formal complainants; and
4. That any complainants desiring to continue their complaint notify the Commission's Secretary, in writing, within ten (10) days of the date of entry of this Order.

BY THE COMMISSION



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: December 1, 1994

ORDER ENTERED: DEC 2 1994

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting: held May 22, 1987

Commissioners Present:

Bill Shane, Chairman
Linda C. Taliaferro
Frank Fischl

David M. Barasch
Consumer Advocate

Pennsylvania Power & Light Company

DOCKETED

JUL 10 1987

R-850251C001

OPINION AND ORDER

BY THE COMMISSION:

DOCUMENT
FOLDER

On November 1, 1985, Pennsylvania Power and Light Company (hereinafter "PP&L" or "Respondent") filed its Supplement No. 1 to Electric Pa. P.U.C. Tariff No. 200 containing rates and rules constituting the utility's Economic Development Initiatives - Phase II (hereinafter "EDI-II"). EDI-II evolved from PP&L's 1983 time-of-day options, reduced off-peak billing demand components and offered several interruptible rate options. The instant filing encompasses the following rate structure features:

General Service Rate Schedules

- Elimination of off-peak demand charges.
- Billing demand credits for customers agreeing to curtail service at PP&L's request due to an emergency.

Rate Schedule LP-5

- An experimental demand free day option for customers with demands in excess of 10,000 kilowatts.
- A billing demand credit allowance with an accompanying one hour demand

interval for customers served at
230,000 volts.

Rate Schedule IS-2

- A reduction in the billing demand minimum from 15,000 kilowatts to 7,500 kilowatts.
- A customer option for non-interruption when an interruption is based upon system economics.
- Off-peak designation for Saturdays, Sundays and holidays.

Rate Schedule RTS

- Inclusion of 2 kilowatts of demand in the net monthly rate minimum.

The Respondent also proposed three tariff rule changes but these are not at issue in this proceeding.

PP&L states that the EDI-II program resulted from a realization in 1985 that its service area continued to suffer from serious economic problems. In the utility's estimation, industrial sales had not reflected any meaningful recovery, the rate of unemployment in some counties had remained as high as 10% and major industries had discharged significant numbers of employees or simply gone out of business. As Respondent stated in its Exhibit RR-1 at page 1:

The goal of this program is to contribute an economic environment that attracts and retains customers in PP&L's service area.

The utility acknowledges that EDI-II is not a program of broad application but is carefully structured to respond to the requirements of certain large industrial customers and to enhance their competitiveness.

On November 29, 1985, the Office of Consumer Advocacy (hereinafter "OCA") filed a formal Complaint against PP&L's EDI-

II proposal. In our Order entered December 9, 1985, we stated "that the proposed tariff supplement appears to be just and reasonable" and directed that it be "approved without further order" provided Respondent agreed to certain reporting requirements. A Petition to Intervene was filed on December 11, 1985, by the Lehigh Valley Power Committee (hereinafter "LVPC"), a group of PP&L commercial and industrial customers. On December 16, 1985, PP&L filed its timely acceptance of the reporting requirement contained in our December 9, 1985 order. Thereafter, on January 2, 1986, PP&L filed tariffs complying with the aforesaid Order, placing EDI-II into effect. The OCA, by letter dated February 13, 1986, notified the Commission and Respondent of its intent to pursue its formal Complaint.

A prehearing conference was held on March 7, 1986, at which time the petition of LVPC to intervene was granted. Additionally, the motion of Bethlehem Steel Corporation (hereinafter "Bethlehem"), a major PP&L industrial customer, requesting permission to intervene in the proceedings, was granted. Memoranda of law were requested from the OCA and the Respondent regarding the issue of the burden of proof applicable to this case. A second prehearing/settlement conference, continuing into hearing, was held April 14, 1986. After consideration of the parties' memoranda of law and oral arguments, the Administrative Law Judge ("ALJ") determined that the burden of proof was upon the OCA as the proponent of the issue of the justness and reasonableness of the EDI-II rates. Evidentiary hearings were held on May 13 and June 5, 1986. Briefs and Reply Briefs were submitted by the OCA, PP&L and Bethlehem.

The OCA proposed that the EDI-II, if allowed to remain in effect, be limited in duration to a five-year period. The ALJ found merit in the proposal and stated in his conclusion, as follows:

V. CONCLUSION

OCA has failed to establish, by substantial record evidence, that EDI-II is unjust and unreasonable and therefore unlawful. Inasmuch as the underlying conditions which warranted the approval of EDI-II, namely excess capacity and economic problems within the utility's service territory, are subject to change over the near term, a five-year time limit on the effectiveness of an economic development rate scheme is amply justified.

Therefore, the following order is recommended:

1. That the Order of the Pennsylvania Public Utility Commission adopted December 5, 1985 and entered December 9, 1985 to Docket No. R-850251 be amended by revising the first ordering paragraph thereof to read as follows:

1. That if on or before January 1, 1986 the respondent evidences in writing to this Commission, its agreement to adhere to the reporting requirements set forth on Appendix A, attached hereto and made a part hereof, then Supplement No. 1 to Tariff Electric-Pa. P.U.C. No. 200 shall be approved without further order of the Commission, such approval to be for a five year period expiring December 31, 1990.

2. That the complaint filed by David M. Barash, Consumer Advocate, docketed to R-850251C001, be granted to the extent consistent with this Recommended Decision.

Recommended Decision, p. 22.

The OCA and the Respondent have both excepted. Replicas were filed by the Respondent, the OCA and Bethlehem.

The OCA's first Exception is that "the ALJ erred by assigning the burden of proof to the OCA in this proceeding". As was demonstrated above, the OCA filed its Complaint in their proceeding some 28 days subsequent to the Company filing (on November 29, 1985), well within the 60 notice provision of 66 Pa. C.S. §1308(a). By Commission Order entered December 9, 1985, we permitted the Company's EDI proposal to go into effect without investigation, if the Company agreed to certain reporting requirements. The Company agreed and the EDI rates became effective January 1, 1986. In its prehearing memorandum, the OCA stated that the Company had the burden of proof in this proceeding. As a result of controversy over the matter, the ALJ called for memoranda from the OCA and the Company on this issue.

In his Recommended Decision the ALJ concluded that 66 Pa. C.S. §315(a) does not apply, since this proceeding is not on our own motion, and does not involve a rate increase. We agree.

Having concluded that the applicable statutory provision was 66 Pa. C.S. §332(a), the ALJ rejected the authorities cited by the OCA,^{1/} all of which concluded that the utility had the burden of proof, on the basis that the proceedings involved rate increase proceedings, or were otherwise inapposite.

In our view, although the Center Square proceeding did involve a rate increase application, the conclusion that the Company bore the burden of proof did not turn on that fact, rather, the Commission concluded that since the Complaint was filed within the 60 day notice period required by 66 Pa. C.S. §1308(a)

^{1/} Brockberry Glass Co. v. Pa. P.U.C., 63 Pa. Commonwealth Ct. 238, 437A2d1067 (1981), Zucker v. Pa. P.U.C., 43 Pa. Commonwealth Ct. 207, 401A2d1377 (1979), Center Square Civic Assn. et al. v. Center Square Water Co., 53 Pa. P.U.C. 583 (1979).

the utility had the burden of proof. Pertinently, it was said there that:

Respondent alleged that since we approved the rates, the burden of proof rests with the complainant. Complainant, Center Square Civic Association, on the other hand, filed its complaint on December 30, 1977, and contended that since the initial 60-day period had not elapsed before its complaint was filed, the burden of proof rests upon the utility even though we had approved the rates. The legislature, by virtue of §308 of the Public Utility Code, 66 Pa. CSA §1308, has assured the public a 60-day period within which to question or challenge the rates as filed. We have on numerous occasions ruled upon this issue and have held that a utility cannot be relieved of its burden of proof because we rendered an approval prior to the expiration of the 60-day period, provided however that the complaint was filed within that time period. Consequently, we believe the position of complainant is proper and, therefore, the burden of proof in this proceeding remains with respondent. (Emphasis added).

Id at p. 585.

We find the Court's language in Brockway Glass v. Pa. P.U.C., 63 Pa. Commonwealth Ct. 238, 437 A2d1067 (1981) very clear in distinguishing between a complaint against a proposed rate and an existing rate. The Court said there that:

Public utility rates, of course, are required to be just and reasonable, 66 Pa. C.S. §1301, and, where a customer is heard to complain concerning a proposed change in rate, the burden of proof is upon the public utility to show that the proposed rate is just and

reasonable. Where the complaint involves an existing rate, however, the burden then falls upon the customer to prove that the charge is no longer reasonable.
(Emphasis in original)

Id at p. 1070.

In sum, we conclude and will state that the burden of proof under the provisions of 66 Pa. C.S. §332(a) is as follows:

1. That as to an existing rate, the burden is upon the Complainant.

2. That as to a proposed rate, the burden is upon the utility.

3. That as to a proposed rate, the burden is upon the utility until the expiration of 60 day notice provision prescribed by 66 Pa. C.S. §1308(a), and Commission approval of a proposed change prior to the expiration of the 60 day statutory notice period does not operate to place the burden upon the Complainant, in those instances in which the complaint is filed within the 60 day statutory period.

Since in this instance the OCA's Complaint was filed within the statutory period, the burden at the time of filing was placed upon the utility to establish the justness and reasonableness of its rate proposal. The Commission's Order of December 9, 1985, permitting the proposed rates to go into effect, did not shift the burden of proof to the OCA. The burden of proof, at least for the purpose of this proceeding, was fixed at the time the OCA's Complaint was filed, against the then proposed rates. Accordingly, we shall grant the OCA's exception.

The OCA's second exception is that "the ALJ erred by failing to give adequate consideration to the question of whether the proposed rates are cost based". While the OCA expressed

concern that the ALJ did not give sufficient consideration to cost of service considerations, it does not suggest that adequate consideration would or should have resulted in some different recommendation by the ALJ. It seems that what the OCA actually seeks is our adoption of a quasi policy statement, regarding the standards to be utilized in evaluating future applications for economic development rates by PP&L and other utilities.

We decline the OCA's suggestion. We do not believe it appropriate to make a policy pronouncement regarding the standards or criteria by which future economic development rate proposals are to be judged, even though we might agree, in general, with some of the OCA's comments or suggestions. Accordingly, we deny this exception.

The OCA's remaining exceptions are in a way, conditional, that is, if the rates ultimately approved in this proceeding are not limited to a trial period of five years, the OCA states that certain aspects of the proposed rates should be "eliminated or modified", as follows:

1. The Company's proposal to totally eliminate the off-peak demand charges in a number of its EDI-II rates should be modified to provide for an off-peak demand charge.

2. The customer voluntary load curtailment program should be limited in duration.

3. The billing demand credit and one hour billing demand level for customer served at 203 KV should be rejected or limited to five years.

4. Expansion of interruptible rate and non-interruption option should be limited in duration or rejected.

5. Residential thermal storage rate should be limited to five years.

It appears that the OCA's lack of objection to the Company's EDI rate provisions, if limited to a five year period, is based upon the fact that the rates have been in effect since December 1985 and PP&L has publicly announced that it will not file a base rate case for the balance of the decade, and thus, any adverse consequences of the EDI rates could not impact other customers in the interim.

While the OCA has no problem with the EDI rates if limited to a five year period, the Company has excepted to the ALJ's recommendation that they be so limited. The Company urges first that such limitation or a pre-established termination date is unnecessary, in that the Commission can closely monitor the program's impacts through the reporting requirements established in the December 9, 1985, Order. The Company urges, second, that an automatic termination date would be "inappropriate and counterproductive", in that the rate should not be terminated until clearly no longer need, and an early or arbitrary termination date would have a chilling effect upon customers contemplating capital investment.

While we are not entirely satisfied that an automatic termination date for the EDI rates would in fact deter customers from making capital investments, in order to avail themselves of the rates, the theoretical possibility exists. However, the operative consideration is whether an automatic termination date is necessary or would serve any useful purpose. In this regard, we note that our December 9, 1985 Order established certain reporting requirements, which provide the means for continuing oversight over the impact and operation of the EDI rates. Additionally, in the event of a base rate proceeding, these rates as well as all others would be subject to scrutiny and review. We see little benefit to be derived from providing for automatic

termination of the rates at the end of five years, beyond forcing an automatic review of the rates if the Company wishes to continue them. Although, it appears that the OCA would be more comfortable with an "automatic termination - apply for renewal" procedure, we are satisfied that "a continuing oversight - rate case review" procedure is adequate, to protect the interests of other ratepayers. Accordingly, we shall grant the Company's exception and deny those of the OCA; THEREFORE,

IT IS ORDERED:

1. That the Exceptions of the Office of Consumer Advocate are granted in part and denied in part, consistent with the discussion in the body of this Opinion and Order.

2. That the Exception of the Pennsylvania Power & Light Company be, and hereby is, granted.

3. That we adopt the Recommended Decision of Administrative Law Judge Morris J. Solomon, dated March 20, 1987, except as modified herein.

4. That the Complaint of the Office of Consumer Advocate be, and hereby is, denied.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: May 22, 1987

ORDER ENTERED: JUL 08 1987

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held September 17, 1987

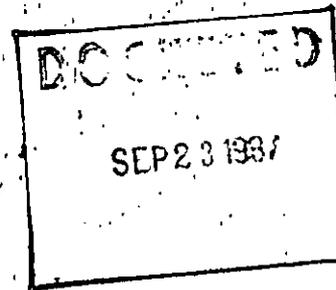
Commissioners Present:

Bill Shane, Chairman
Linda C. Taliaferro
Frank Fischl
William H. Smith

David M. Barasch, Consumer Advocate

R-870600C001

Pennsylvania Power & Light Company
(Economic Development Initiatives)



ORDER

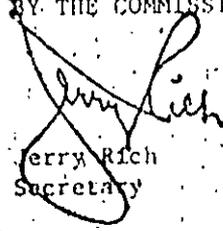
BY THE COMMISSION:

We adopt as our action the Recommended Decision of Administrative Law Judge Edward R. Casey dated August 25, 1987; THEREFORE,

IT IS ORDERED:

That the Commission review the "Joint Petition for Settlement of All Issues", as executed and filed by all parties of record to this proceeding, in a manner consistent with the foregoing recommendations and, if satisfied, that the Commission adopt a final order which approves and incorporates Paragraphs 7 through 9 of the said Joint Petition into its order, whereupon the docket pertaining to the above-captioned complaint proceeding can be terminated and marked closed.

BY THE COMMISSION,


Jerry Rich
Secretary



(SEAL)

ORDER ADOPTED: September 17, 1987

ORDER ENTERED: September 21, 1987

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120



Public Meeting held July 23, 1992

Commissioners Present:

David Rolka, Chairman (Statement attached)
Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner

Pennsylvania Public Utility Commission

v.

R-00922363

Pennsylvania Power and Light Company

OPINION AND ORDER

DOCKETED
AUG 12 1992

BY THE COMMISSION:

On June 1, 1992, Pennsylvania Power and Light Company (PP&L) filed Supplement No. 134 to Tariff Electric--Pa. P No. 200, and the required supporting data pursuant to 52 Pa. Code 953.52, to be effective July 31, 1992. Supplement No. 134 constitutes the fourth phase of PP&L's Economic Development Initiative (EDI) program first instituted in 1987, and is referred to as PP&L's EDI-IV filing. The overall goal of the ongoing EDI program is to contribute to an economic environment that attracts and retains business in PP&L's service area.

PP&L is proposing EDI-IV in response to increasingly competitive economic conditions which have continued since the Commission approved PP&L's EDI-III filing in 1987. These conditions require that PP&L continue a pricing structure that encourages economic development. Moreover, because of rates for the new Industrial Development Initiatives Ride, which is available only for incremental load, covering its incremental cost, and only for a stated period of time, PP&L believes that the proposed filing will have an incremental positive rate impact upon non-ridden areas.

customers. In addition, to the extent that the proposals in this filing attract new industry to central-eastern Pennsylvania, all of PP&L's ratepayers should benefit from an improved economic climate. Finally, the Company believes existing ratepayers will benefit by enhanced competitiveness of existing industries located in the service territory.

After investigation and analysis of the tariff filing and supporting data, it does not appear that the proposed supplement and the related rate service agreements are unlawful, unjust, unreasonable, or contrary to the public interest. This does not constitute a determination of the lawful, just and reasonable rates to be charged by Respondent. Rather, this is a determination that suspensions or further investigation of the tariff filing is not warranted at this time;

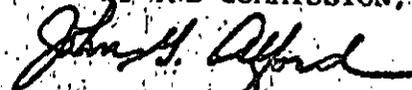
THEREFORE,

IT IS ORDERED:

1. That the proposed Supplement No. 34 to Tariff Electric -- Pa. P.U.C. No. 200 and the related agreements are permitted to become effective July 31, 1992;
2. That this Opinion and Order is without prejudice to any formal complaints timely filed against Respondent's proposed supplement;
3. That a copy of this Opinion and Order shall be served upon the Respondent and any formal complainants; and,

4. That any complainant desiring to continue its complaint notify the Commission's Secretary, in writing, within ten (10) days of the date of entry of this.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: July 23, 1992

ORDER ENTERED: JUL 23 1992

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held February 17, 1984

Commissioners Present:

Linda C. Taliaferro
Michael Johnson, opinion attached
James H. Cawley

Pennsylvania Public Utility Commission
v.
Pennsylvania Power & Light Company

Docket No.
R-832542

ORDER

BY THE COMMISSION:

On December 1, 1983, Pennsylvania Power and Light Company ("PP&L" or "respondent") filed Supplement No. 9 to Tariff Electric-Pa. P.U.C. No. 199, to become effective February 1, 1984. The supplement proposed to change the on-peak hours used for billing purposes for service supplied to all commercial and industrial customers served under the General Service rate schedules and would permit customer selection of one of three on-peak periods. PP&L also proposed tariff changes regarding line and service connections, and wording changes to Rule 4. By order entered January 30, 1984 we ordered the tariff suspended for investigation.

After investigation and analysis of the tariff filing and supporting data, it does not appear that the proposed changes in rates, rules and regulations are unlawful, unjust, unreasonable or contrary to the public interest. This does not constitute a determination of the lawful, just and reasonable rates to be charged by respondent. Rather, this is a determination that suspension or further investigation of the tariff filing is not warranted at this time.

We note that an economic development rider has been instituted by the Philadelphia Electric Company; the tariff supplement filed by PP&L, while designed to accomplish the same goal of economic development initiative as PECO's, uses a different mechanism. We feel that it would be appropriate for PP&L to report to us periodically on the actual operation of its Economic Development Rider; as well as a description of what impact would have occurred had the PECO rider been used instead;
THEREFORE,

IT IS ORDERED:

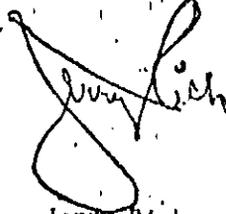
1. That the proposed rates, rules and regulations contained in Supplement No. 9 to Tariff Electric-Pa. P.U.C. No. 199 are hereby permitted to become effective on March 1, 1984.

2. That quarterly reports on the operation of Supplement No. 9 as described above will be submitted by respondent to the Bureau of Conservation, Economics and Energy Planning.

3. That a copy of this order shall be served upon respondent.

4. That the Commission investigation docket shall be closed.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: February 17, 1984

ORDER ENTERED: February 29, 1984

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing document(s), either personally, by facsimile, by first class and/or overnight/express mail, upon the persons addressed below:

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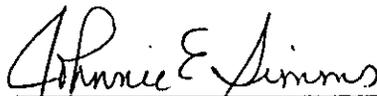
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Honorable Robert A. Christianson
Administrative Law Judge
Pa. Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

A handwritten signature in cursive script that reads "Johnnie E. Simms". The signature is written in dark ink and is positioned above a horizontal line.

Johnnie E. Simms, Senior Prosecutor
Office of Trial Staff

Dated: June 27, 1995

R-00943271