MORGAN, LEWIS & BOCKIUS
COUNSELORS AT LAW
2000 ONE LOGAN SQUARE
PHILADELPHIA, PENNSYLVANIA 19103-6993
TELEPHONE: (215) 963-5000
FAX: (215) 963-5299

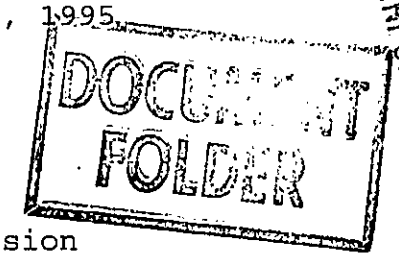
PHILADELPHIA
NEW YORK
MIAMI
PRINCETON
BRUSSELS

WASHINGTON
LOS ANGELES
HARRISBURG
LONDON
FRANKFURT
TOKYO

DAVID B. MACGREGOR
DIAL DIRECT (215) 963-5448

KJF

August 21, 1995



RECEIVED
95 AUG 21 PM 3:58
P.A. P.U.C.
INFO. CONTROL DIV.

BY HAND DELIVERY

John G. Alford, Secretary
Pennsylvania Public Utility Commission
New Filing Section
Room B-20, North Office Building
Commonwealth & North Streets
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
Pennsylvania Power & Light Company
Docket No. R-00943271

Dear Secretary Alford:

Enclosed for filing in the above-captioned proceeding are an original and nine copies of the Replies of Respondent Pennsylvania Power & Light Company to Exceptions. Also enclosed is an additional copy of the Company's Replies which we request that you date stamp and return to us as evidence of filing.

As indicated on the attached Certificate of Service, copies of the Replies have been served on Administrative Law Judge Robert A. Christianson and all active parties of record.

Sincerely,

David B. MacGregor
Counsel for Pennsylvania
Power & Light Company

DBM\jta
Enclosures
cc: Honorable Robert A. Christianson
Certificate of Service

ORIGINAL

KJR

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL.	:	
v.	:	Docket No. R-00943271 (1994)
PENNSYLVANIA POWER & LIGHT COMPANY	:	

RECEIVED
95 AUG 21 PM 3:58
PA. P.U.C.
INFO. CONTROL DIV.

DOCKETED
AUG 22 1995

REPLIES OF RESPONDENT PENNSYLVANIA POWER & LIGHT COMPANY TO EXCEPTIONS

To The Recommended Decision Of
Administrative Law Judge Robert A. Christianson

DOCUMENT FOLDER

Thomas P. Gadsden
David B. MacGregor
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Paul E. Russell
Pennsylvania Power & Light Company
Two North Ninth Street
Allentown, PA 18101

Counsel for Pennsylvania Power & Light Company

OF COUNSEL:

MORGAN, LEWIS & BOCKIUS
2000 One Logan Square
Philadelphia, PA 19103
(215) 963-5234

DATE: August 21, 1995

ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITY

I. INTRODUCTION

On August 14, 1995, Pennsylvania Power & Light Company ("PP&L" or the "Company") filed with the Pennsylvania Public Utility Commission (the "Commission") its Exceptions ("PP&L Exceptions") to the Recommended Decision ("R.D.") of Acting Chief Administrative Law Judge Robert A. Christianson (the "ALJ"), issued July 31, 1995. The Company herewith replies to the Exceptions filed by the Office of Trial Staff (the "OTS"), the Office of Consumer Advocate (the "OCA"), the Office of Small Business Advocate (the "OSBA"), the PP&L Industrial Customer Alliance ("PPLICA"), the Central Eastern Pennsylvania Fuel Oil Dealers ("CEPFOD"), Bethlehem Steel Corporation ("Bethlehem"), the University/College Coalition ("UCC"), the Commission on Economic Opportunity ("CEO") and the Sierra Club.

The 40-page limit imposed on Replies to Exceptions precludes PP&L from responding to each and every objection raised by the opposing parties. Consequently, the Company will focus these Replies on what it perceives to be the more significant issues. For additional background information and analysis, PP&L urges the Commission also to carefully review its Initial and Reply Briefs before the ALJ ("PP&L Initial Brief" and "PP&L Reply Brief"), filed on June 16, 1995 and June 27, 1995, respectively. The Commission will find that the arguments advanced in the opposing parties' Exceptions lack legal or factual support and, therefore, were properly rejected by the ALJ.

II. ARGUMENT

A. Rate Base

1. Alleged "Excess" Generating Capacity (OCA Exc. 1)

The ALJ recommended adoption of the OTS' proposal to deny the Company a return on a 564 Mw "slice" of alleged "physical" excess capacity (R.D., p. 30). The Company has excepted to that finding because no excess capacity adjustment is justified in this case (PP&L Exc., pp. 8-12). The OCA, in turn, has excepted to the rejection of its proposed "economic" excess capacity adjustment which would result in a staggering $62 million disallowance. Additionally, the OCA has taken a nominal "exception" to offer an alternative rationale for the "physical" excess capacity disallowance adopted by the ALJ. For the reasons set forth below, the OCA's Exceptions lack merit and should be rejected.

a. "Economic" Excess Capacity (OCA Exc. 1.C)

The ALJ concluded that "economic" excess capacity is not an issue in this proceeding because PP&L was not seeking to recover the cost of any new generating units (R.D., pp. 26-27). The OCA disagrees with this determination and, in its Exceptions, reiterates its contentions that: (1) Section 1323(a) of the Public Utility Code (66 Pa. C.S. §1323(a)) applies to this case and (2) the economics of Susquehanna Steam Electric Station Unit 2 ("SSES 2") should be measured against the hypothetical market price of power in a future deregulated environment. As fully explained in the Company's Initial (pp. 46-59) and Reply (pp. 12-15) Briefs, and as summarized below, the OCA's understanding of the purpose and reach of Section 1323(a) is misguided, and the economic test it seeks to apply is unprecedented, unsupported, inappropriate, and unconstitutional.

(1) Inapplicability Of Section 1323(a)

Despite the unambiguous language of Section 1323, the OCA persists in arguing that PP&L must satisfy a two-part "physical" and "economic" excess capacity test. More specifically, the OCA contends that because the Company was denied an equity return on SSES 2 in its last base rate case (Pa. P.U.C. v. Pennsylvania Power & Light Co., 59 Pa. P.U.C. 332 (1985)) (the "Unit 2 Case"), it should be viewed now as claiming those costs "for the first time" (OCA Exc., pp. 3-6). Significantly, the Unit 2 Case pre-dated the enactment of Section 1323 by over a year.

In support of its position, the OCA relies extensively on prior Commission Orders involving West Penn Power Company, Pennsylvania Power Company and Duquesne Light Company (OCA Exc., pp. 4-5). In each of those proceedings, however, the "new" generating unit in question was not completed by the conclusion of the case in which its costs were claimed "for the first time." That is a far cry from the situation presented here, where SSES 2 has been in service and the vast majority of its costs reflected in rates for over ten years.

Moreover, the Company's interpretation of the scope of Section 1323 would not produce an "absurd result," as alleged by the OCA. Rather, a finding that Section 1323 did not apply would simply eliminate the "rebuttable presumption" that a utility would otherwise have to overcome in the event that it could not establish the need for and economics of the new base load unit. Indeed, the OCA itself argues extensively that the same principles should guide the Commission even if Section 1323 were determined not to apply (OCA Exc., pp. 7-8).

In certain respects, it is the OCA's interpretation and application of Section 1323 that could lead to an "absurd result." For example, it is conceivable that a utility could pass the two-part test, but not claim all of the new unit's costs because a portion of its output was being sold off-system. Alternatively, the new facility could pass the economic test but a small part of its capacity (e.g., 10%) could be found to result in a temporary physical excess. In each instance, the utility, according to the OCA, would have to reestablish the economics of the unit in its next base rate case, regardless of when that occurred, and do so in reference to the "market" cost of power at that time. PP&L respectfully submits that this "absurd result" cannot be what the Legislature intended.

(2) The OCA's Flawed "Economic Benefits" Test

Regardless of whether Section 1323(a) is found to apply, the OCA's proposed "economic benefits" test must be rejected. In effect, the OCA is saying that a generating unit that was planned in the 1970s and completed in the mid-1980s, should, in 1995, be measured against a hypothetical future cost of "deregulated" power as projected for the early 2000s. Needless to say, this approach is unprecedented in Pennsylvania and, to the best of the Company's knowledge (and apparently the OCA's), has not been adopted in any other jurisdiction. This is not surprising, given the numerous conceptual and factual errors contained in the OCA's analysis.

Inconsistent View Of Future Market Conditions. The first and most obvious problem with the market-based test developed by OCA witness Kahal is that it assumes a set of conditions which is flatly inconsistent with his own analysis of PP&L's reliability requirements. On one hand, Mr. Kahal argued that the hypothetical market clearing price of generation that might exist in a fully competitive market is the appropriate test for

determining economic excess capacity. On the other hand, he contended that changes likely to occur in a more competitive market should not be considered in assessing whether PP&L has physical excess capacity. It is totally inappropriate to use an assumed "market" price for power in a future "deregulated" market to determine the appropriate ratemaking treatment for a single generating unit in calculating current, regulated revenue requirements (PP&L Initial Brief, pp. 49-50).

Selective Application Of The Market-Based Test. Mr. Kahal's analysis is also flawed by his selective application of a market-based test. If the generation function were deregulated at some point in the future, all of PP&L's generation, and not simply SSES 2, would be subject to market forces. In such a deregulated environment, however, certain production facilities will be economic "winners" (relative to the then-existing cost of service) and others will be economic "losers." Mr. Kahal would inappropriately isolate PP&L's newest generating unit for market treatment without considering whether other facilities may presently be undervalued (PP&L Initial Brief, p. 50).

The same could be said of PP&L's other assets. As the evidence in this case shows, if a comparable valuation test were applied to the Company's transmission and distribution facilities, it would indicate a market value that is more than $1.3 billion above historical costs (PP&L St. 16-R, p. 48). The symmetrical application of Mr. Kahal's methodology would therefore require a sizeable upward adjustment to PP&L's current rate request to reflect those assets with market values above costs. Indeed, the failure to do so would result in precisely the type of "mixing" of rate methodologies that the U.S. Supreme Court suggested would violate a utility's due process rights. Duquesne Light Co. v. Barasch, 488 U.S. 299, 315, 109 S. Ct. 609, 619 (1989) ("[A] State's decision to arbitrarily switch

back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.").

Improperly Anticipating A "Stranded Costs" Remedy. Mr. Kahal's economic benefits test should also be rejected because it calls upon the Commission to truncate the ongoing debate over the recovery of "stranded costs". In his direct testimony (OCA St. 2, p. 6), Mr. Kahal stated that his proposed excess capacity adjustment "effects roughly a 50/50 sharing between ratepayers and shareholders of the surplus of cost over market." As explained by PP&L's witness, Dr. William H. Hieronymus (Tr. 2388-2389), the "surplus of cost over market" is the very definition of stranded cost. This issue is far too complex and important to attempt to resolve in this proceeding.[1/]

No New Large Base Load Unit Could Meet Mr. Kahal's Test. In addition to its other shortcomings, Mr. Kahal's "economic benefits" test, coupled with his view that the "fact" of excess capacity is determinative, cannot be reconciled with the "rebuttable presumption" feature of Section 1323(a). In Pa. P.U.C. v. West Penn Power Co., 63 Pa. P.U.C. 295, 302-303 (1987), the Commission, in reviewing this language, reasoned that the Legislature "must have intended to accord the utility some meaningful opportunity to again come forward to meet its burden [to rebut the presumption]." However, it is extremely doubtful that any large base load plants constructed in the past twenty years could beat the market prices assumed by Mr. Kahal in his analysis. In fact, as explained by PP&L's witness,

---

1/ Furthermore, given the uncertainties regarding future competitive markets, there can be no justification for saddling PP&L with stranded costs now (PP&L St. 16-R, p. 44).

Mr. John Sipics, the application of Mr. Kahal's approach would likely result in the rate base exclusion of "a substantial portion of all generation assets nation-wide" (PP&L St. 9-R, pp. 15-16).[2/]

The "Market" Price Projections Mr. Kahal Used Are Not A Proper Measure Of "Economic Benefits." Even if there were conceptual support for Mr. Kahal's approach, his market price assumptions, which were derived, in part, from a PP&L study entitled Market Clearing Price of Generation ("MCPG"), must be accepted for what they are. As Mr. Sipics explained (PP&L St. 9-R, pp. 16-17):

> The MCPG Study offers only one hypothetical view of the future. The analysis provided a very preliminary estimate of the market price of generation in a fully competitive electricity market (i.e., with both wholesale and retail wheeling). The analysis assumes one scenario of the future of the electric utility industry. Many other scenarios are also plausible. In addition, the MCPG Study employed generally conservative assumptions and methods, which most likely understate the competitive market prices of electricity. The information in the MCPG Study was designed for broad strategy discussions and to set aggressive targets for PP&L to attempt to attain. The study cannot be considered a definitive or complete analysis of the factors that determine economic value.[3/]

2/ Further evidence that Mr. Kahal's test does not comport with the Legislature's intent may be found in his concession that "the concept of a wholly competitive generation market really wasn't very well developed" during the 1980s (Tr. 1622). It was during that period, of course, when Section 1323(a) was enacted.

3/ Both Mr. Sipics and Dr. Hieronymus identified some of the limitations of the MCPG Study: (1) "uneconomic" units, which, in all likelihood, would be shut down, were assumed to continue to operate; (2) QFs were treated as "must-run" units; and (3) conservative assumptions were made with respect to the cost of environmental compliance at fossil-fired units (PP&L St. 9-R, p. 17; PP&L St. 16-R, p. 51). Each of these assumptions, while entirely acceptable given the limited purpose for which the Study was performed, served to understate the future market price of electricity.

Mr. Kahal's use of a "market" price as low as 3¢ per kWh is also undercut by comparison to the cost of power from a new gas-fired combined-cycle unit, which he believes would mirror the current market value of electricity (OCA St. 2A, p. 30). Only three years ago, in a proceeding to determine Pennsylvania Electric Company's "avoided cost," Mr. Kahal testified that a gas-fired combined-cycle unit would be the most economic choice for a new capacity addition and that the cost of such a unit approximated 8.5¢ per kWh on a levelized basis over a thirty-year period (Tr. 2375-2377). More importantly, Mr. Kahal calculated the first year (1997) avoided cost to be 5.75¢ per kWh, which escalated to over 8.0¢ per kWh by the year 2006, i.e., the same time horizon he used in analyzing the economics of SSES 2 (PP&L Cross-Exam. Ex. 1). Those figures are considerably higher than the costs Mr. Kahal projected for SSES 2 (OCA Exc., p. 10).

Mr. Kahal Has Created An Inappropriate "Moving Target." In the final analysis, Mr. Kahal's "economic benefits" test creates a moving target which, depending upon input assumptions, changes in fuel prices and technological advances, can produce widely disparate results from year to year. Mr. Kahal's presentation in the Pennelec case suggests that, if PP&L had filed a base rate case three years ago, he would have found SSES 2 "economic" under the market-based test. This further underscores the arbitrary and time-sensitive nature of his approach.

(3) Dr. Hieronymus' Alternative Plant Analysis

Rather than rely on highly uncertain estimates of future market-based prices, Dr. Hieronymus evaluated the economics of SSES 2 in light of the conditions PP&L would have faced in a world in which SSES 2 did not exist. Under these circumstances, the Company would not have simply waited to see what capacity might be available and at what

price. Indeed, its statutory obligation to serve would have precluded such complacency. Rather, the Company would have had no choice but to proceed with a logical baseload alternative (PP&L Initial Brief, p. 55).

As noted by Dr. Hieronymus (PP&L St. 16-R, p. 53), coal generation was the most economic technology for providing baseload capacity in the mid-1980s. The only other possible option would have been for PP&L to install combined-cycle gas turbine units. However, such units were viewed, at the time, as a much less attractive alternative because of expected performance problems and the historic and anticipated volatility of gas prices. Consequently, for purposes of his analysis, Dr. Hieronymus assumed that the Company would have embarked on the construction of a new coal plant, consisting of two units with a combined capacity of 990 Mw (PP&L Initial Brief, p. 56).

Dr. Hieronymus' coal-proxy analysis is fully consistent with the manner in which the Commission has applied the "economic benefits" test of Section 1323(a) in the past. See, e.g., Pa. P.U.C. v. Pennsylvania Power Co., 67 Pa. P.U.C. 91 (1988); Pa. P.U.C. v. Philadelphia Electric Co., 74 Pa. P.U.C. 1 (1990). This is not to say that PP&L believes Section 1323(a) applies in this case as it did in those prior proceedings. However, if an evaluation of the economics of SSES 2 is to be meaningful, it must take into account the realistic alternatives that would have been available to PP&L.

Unlike Mr. Kahal's market-based approach, Dr. Hieronymus' analysis is not dependent upon speculation regarding the possible deregulation of the electric utility industry. To the contrary, his calculations are straight-forward and verifiable. Perhaps for this reason, Mr. Kahal did not contest any of Dr. Hieronymus' input assumptions and, accordingly, his

findings were not seriously challenged. The results of Dr. Hieronymus' base case analysis shows that SSES 2 provides annual net economic benefits to PP&L ratepayers in the test year and in virtually all years thereafter. The analysis also shows that, under the most conservative assumptions, PP&L's rates are $4 million to $93 million lower per year with SSES 2 than with the alternative coal plant (PP&L St. 16-R, p. 58; PP&L Ex. WHH-4).[4/]

Although Mr. Kahal did not challenge the accuracy of Dr. Hieronymus' calculations, the OCA disputes the validity of the "coal proxy" because, based on what is known today, a coal plant might not be the "least cost" resource (OCA Exc., p. 11). While this may be true, utilities do not plan, design, construct and integrate new capacity additions on an instantaneous basis. Rather, as even Mr. Kahal acknowledged (Tr. 2373), utilities must plan in advance and, in doing so, may properly be expected to rely on the best information available at the time.

b. "Physical" Excess Capacity (OCA Exc. 1.B)

The OCA's use of the exception process to offer an "alternative" basis for the ALJ's recommended adjustment is, to say the least, unorthodox. An extended discussion of the

---

4/ In his base case analysis, Dr. Hieronymus assumed that 50% of all capital additions to SSES in 1989 and thereafter were attributable to SSES 2. This is a very conservative assumption in light of a previous study commissioned by PP&L which indicated that only 27% of SSES's original common plant costs were truly incremental to SSES 2. Dr. Hieronymus therefore reran his initial calculations using the 27% common plant ratio, which indicated annual net benefits from SSES 2 over the coal plant of $20 to $121 million (PP&L St. 16-R, p. 59). Dr. Hieronymus performed a second sensitivity analysis to determine how his findings would change if SSES had been depreciated on a straight-line basis in the past, rather than on the modified sinking fund method, which was only adopted to minimize PP&L's requested rate increase in the Unit 2 Case. Under that scenario, the benefits of SSES 2 during the 1995-1998 period relative to the coal plant would have been approximately $50 million to $60 million higher than his base case results (PP&L St. 16-R, p. 59).

OCA's contentions, however, is not required. As explained in detail in PP&L's Exceptions (pp. 12-17), the 16% reserve margin adopted by the ALJ seriously understates PP&L's reliability needs and lacks evidentiary support. Accordingly, the even lower 12% to 15% range advocated by the OCA is even more clearly inadequate. Furthermore, the OCA includes QF output in its excess capacity determination, which is also improper for the reasons previously discussed (PP&L Exc., pp. 9 and 17-23).

2. Accrued Pension Liability (OCA Exc. 2)

The OCA has excepted to the rejection of its proposal to reduce the Company's rate base by $74 million to reflect PP&L's accrued pension liability at September 30, 1995. As explained in the Company's Initial (pp. 71-75) and Reply (pp. 21-22) Briefs, the OCA's proposed adjustment makes no sense for several reasons:

- It erroneously assumes that a mere change in pension accounting rules brought about by Statement of Financial Accounting Standards No. 87 ("SFAS 87") -- without an accompanying increase in rates -- could generate additional "customer-supplied" funds.

- It overlooks the fact that the "accrued pension liability" represents the amount by which the Company's pension plan is underfunded on a actuarial basis, not overfunded as the OCA suggests (OCA Exc., pp. 14-15). Thus, the OCA is proposing a rate base deduction because the Company, in effect, owes $74 million to the pension trust.

- The OCA's attempt to "true-up" the difference between PP&L's pension expense allowance in the Unit 2 Case and actual pension expense incurred during the period those rates were in effect (OCA St. 6A, pp. 4-5) is improper as a matter of law. See, e.g., Philadelphia Electric Co. v. Pa. P.U.C., 93 Pa. Cmwlth. 410, 422, 502 A.2d 722, 727-28 (1985).

- The OCA improperly focused on pensions to the exclusion of other expenses. During the period that pension contributions were declining, other categories of employee benefit expense were running far above the levels included in PP&L's existing rates. In particular, annual medical costs increased from $14 million to $49 million, and total

benefits increased from $52 million to $93 million per year (PP&L St. 2-R, p. 15).

3. Cash Working Capital (OCA Exc. 3)

Following a long line of Commission and Commonwealth Court precedent, the ALJ rejected the OCA's proposed negative cash working capital allowance in this proceeding (R.D., pp. 32-35). In its Exceptions (p. 16), the OCA first argues that a negative cash working capital allowance was approved in Pa. P.U.C. v. ALLTELL, 59 Pa. P.U.C. 447, 457-58 (1985). The OCA fails to mention, however, that the issue was not litigated, or even raised, in that case. The OCA further contends that the failure to adopt a negative cash working capital allowance ignores the Commission's accepted practice of recognizing the lag in payment of debt interest and preferred stock dividends as a reduction in cash working capital (OCA Exc., pp. 16-17). On the contrary, the Commission has repeatedly held that the debt interest and preferred dividend adjustment is an "offset" to cash working capital requirements and should not be used to drive working capital requirements below zero (PP&L Initial Brief, p. 17).[5/]

B. Expenses

1. Susquehanna Depreciation (OTS Exc. 5; OCA Exc. 13; PPLICA Exc. 5)

PP&L proposed "levelizing" the Modified Sinking Fund ("MSF") depreciation[6/]

5/ The lack of merit in the individual OCA cash working capital adjustments is addressed in PP&L's Initial Brief (pp. 65-69).

6/ MSF depreciation was approved by the Commission in PP&L's last two rate proceedings as a means of moderating the rate increases associated with including SSES 1 and 2 in rate base. Under the MSF method, the annual depreciation expense began well below the straight-line amount and increases each year until December 31,

(continued...)

expense, related to pre-1989 vintage SSES property, that will accrue between September 30, 1995 (the effective date of rates in this case) and December 31, 1998, when SSES depreciation will switch from MSF to straight-line. The Company's proposal modifies only the timing, not the amount, of the depreciation to be charged during that approximate three-year period and provides a fairer and more gradual transition from MSF to the straight-line method.[7/] The ALJ agreed with the Company's assessment and, over the objections of the OTS, OCA and PPLICA, recommended approval of its proposal (R.D., pp. 114-115). Each of those parties has taken exception to the ALJ's recommendation.

The substance of the OTS' position (OTS Exc., pp. 18-20) is that MSF should continue in its present form because it provides a lower revenue requirement in this case. The fact that MSF will result in annual depreciation expense well above the levelized amount by 1998, before abruptly falling to the straight-line level on January 1, 1999, was simply not addressed by the OTS.

In its Exceptions (pp. 37-39), the OCA reasserts the contention that levelizing MSF would result in "inconsistent treatment" of depreciation expense and rate base, which will

---

6/(...continued)
1998, when: (1) annual MSF depreciation expense would substantially exceed the straight-line amount; and (2) total accrued depreciation on pre-1989 investment will equal the amount that would have accrued under the straight-line method.

7/ As explained in PP&L's Initial Brief (pp. 160-161), the Company's proposal will provide a more equitable distribution of depreciation expense during the remaining period that the MSF method is in effect because depreciation expense will be charged in equal annual installments. This equal distribution of expense replicates the straight-line method, which is universally accepted as a fair and reasonable method of capital recovery. The Company's proposal also will smooth the transition from MSF to straight-line depreciation. Without levelization, annual accruals would increase to $194 million on a total Company basis in 1998, before dropping to approximately $102 million in 1999 -- a one-year change of $92 million (PP&L Ex. DSH-4).

cause PP&L to "over recover" its revenue requirement. However, as explained in PP&L's Initial (pp. 164-165) and Reply (p. 74) Briefs, the OCA implicitly assumes that PP&L's utility plant in service will remain static over the next 39 months. If, instead, a reasonable level of growth in PP&L's plant balances were used in the OCA's analysis, the exact opposite conclusion would be reached, i.e., there would be no "over-recovery". More importantly, unless PP&L filed a rate case annually between September 30, 1995 and December 31, 1998, it would run the risk of a substantial underrecovery.

PPLICA contends that levelizing MSF depreciation is an "attempt to reach beyond the test year" (PPLICA Exc., pp. 28-29). This argument ignores the fact that levelizing MSF depreciation replicates the straight-line method, because the remaining amount of MSF depreciation will be recovered in equal annual installments. Since PP&L uses the straight-line method to depreciate the rest of its plant-in-service, the proposal to levelize MSF depreciation can hardly be regarded as an improper departure from standard depreciation practice (PP&L Initial Brief, pp. 165-167).

2. Susquehanna 2 Early Window Costs (OCA Exc. 8)

Following well-established Commission precedent, the Recommended Decision (p. 62) approved the Company's claim to amortize SSES 2 early window costs over a ten-year period and rejected the OCA's argument that recovery of these costs would constitute retroactive ratemaking. Recognizing the controlling Commission precedent on this issue, the OCA engages in an extensive effort to distinguish these well-founded decisions. First, the OCA asserts that the declaratory orders in question do not guarantee recovery of early window costs (OCA Exc., pp. 26-27). This is true, but irrelevant given that the Commission

in several base rate orders has approved recovery of early window costs for other utilities (PP&L Initial Brief, p. 102; PP&L Reply Brief, p. 39).

Second, the OCA notes that the Company did not file a claim for these costs until several years after they were deferred (OCA Exc., pp. 25-31). Again, the OCA's observation is correct but irrelevant. As explained in its Initial Brief (pp. 214-216), the Company has engaged in a number of aggressive and extraordinary measures to control costs, increase sales and maintain its earnings without raising base rates. The Company should be rewarded for these efforts, not penalized by having valid cost claims rejected.

Finally, the OCA contends that the Company's $39.2 million claim is not "significant" in amount (OCA Exc., pp. 30-31). The OCA argues that in other cases, the write-off of deferred costs would have reduced the utility's earnings by 50%, while the effect on PP&L would only be approximately 20%. What the OCA fails to mention, of course, is that neither of the orders it cites established 50% as a minimum standard. The OCA argument that almost $40 million in costs, representing approximately 20% of the Company's earnings, is not "significant" should be rejected out of hand.

3. Nuclear Decommissioning

a. Non-Radiological Structures (OCA Exc. 11)

The OCA was the only party that contested the Company's claim for dismantling and removing non-radiological structures. The ALJ rejected the OCA's proposed disallowance of these costs (R.D., p. 98), and the OCA has excepted. While acknowledging that precedent strongly supports pre-funding the expense of removing non-radiological structures, the OCA contends that the Commission should reexamine its position in light of a recent decision

involving Commonwealth Edison Company. Re Commonwealth Edison, 158 PUR4th 458, 499 (1995). In that case, Commonwealth Edison assumed that the sites of all thirteen of its nuclear units would be returned to "greenfield" status and none of the non-radiological structures would be re-used. The Illinois Commerce Commission found that assumption to be unreasonable.

In contrast to Commonwealth Edison, the site-specific study for SSES did not include any decommissioning costs for non-radiological structures that are reasonably subject to future re-use (Tr. 2065) (PP&L Reply Brief, p. 58). Consequently, PP&L's decommissioning study does not contain the defect that caused the Illinois Commission to reject Commonwealth Edison's claim. It is equally clear that the OCA is demonstratively incorrect in contending that the SSES study failed to consider possible re-use of non-radiological structures (PP&L Initial Brief, pp. 128-129).

Finally, the OCA has suggested that non-radiological structures do not pose the same level of health and safety risks as radioactively contaminated facilities and, therefore, sufficient justification does not exist to carve out an exception from Penn Sheraton Hotel Co. v. Pa. P.U.C., 198 Pa. Super. 618, 184 A.2d 324 (1962) (OCA Exc., p. 34). Not only does the evidence of record contradict the OCA's position (PP&L Initial Brief, pp. 126-127), but these same arguments were rejected by the Commission in earlier cases where recovery of non-radiological decommissioning costs was approved. See, e.g., Pa. P.U.C. v. Pennsylvania Power Co., 67 Pa. P.U.C. 91, 140 (1988).

b. Trust Fund Earnings Rate (OCA Exc. 12; PPLICA Exc. 6)

The OCA and PPLICA contended that the trust fund earnings rate used in PP&L's annuity calculation should be higher, primarily to reflect a higher return on the projected equity component of the decommissioning trust fund. The ALJ disagreed and recommended that their proposed adjustments be rejected. The OCA and PPLICA have each taken exception to that recommendation and have reasserted arguments made to the ALJ. As discussed in detail in the Company's Initial (pp. 137-142) and Reply (pp. 62-63) Briefs, the opposing parties' position is not sustainable for several reasons.

First, it is inappropriate to equate the earnings rate on trust fund equity investments with the Company's claimed return on equity, as PPLICA suggests (PPLICA Exc., pp. 30-31). The former is a long-term figure designed to reflect achieved after-tax investment returns over the approximately 30-year remaining life of SSES. The latter is a short-term figure designed to reflect investors' expected returns for the future test year and the initial period new rates will be in effect.

Second, the opposing parties ignore the inter-relationship between the inflation and earnings rates used in the annuity calculation. The Company was conservative in both its inflation (4%) and earnings rate (5.5%) assumption. If a more aggressive earnings rate is to be assumed, then the opposing parties should recognize that higher earnings will likely be accompanied by higher inflation. Significantly, even a modest increase in inflation above the Company's 4% estimate would wipe out all of the impact of the higher earnings rates proposed by the OCA and PPLICA (PP&L Initial Brief, pp. 138-139).

c. Amortization In Lieu Of Annuity (OTS Exc. 4)

The OTS was the only party to disagree with the use of the annuity method to calculate PP&L's nuclear decommissioning expense. The OTS has proposed the use of a simple amortization on the grounds that such a method was approved in PP&L's last rate case and avoids the need to make projections of future inflation[8/] and trust fund earnings rates. The ALJ rejected the OTS' proposal (R.D., pp. 96 and 99) and the OTS has excepted.

As to the Order in the Unit 2 Case, it is significant that the Commission therein approved an amortization method substantially different from the one the OTS proposed in this proceeding. Specifically, the Commission permitted PP&L to recover deficiencies in prior accruals over a one-year period. If a one-year deficiency amortization were adopted in connection with the simple accrual method, PP&L's claim in this case would be substantially higher. The OTS responded to this point by suggesting that a one-year amortization had been employed in PP&L's last case because that was as long as SSES 1 had been in operation at the time and, therefore, represented the period over which the deficiency had occurred. However, even if the same rationale were applied in this case, the current deficiency would be amortized over an approximate 10-year period, not 30 years as the OTS method provides.

8/ Contrary to the OTS' contention (OTS Exc., p. 16), the Commission did not "determine that it is inappropriate to recognize inflation" in Pa. P.U.C. v. Pennsylvania Power Co., 64 Pa. P.U.C. 308, 351 (1987). Rather, in that case, Penn Power did not request an allowance for future inflation.

The OTS' method does not require projections of future inflation[9/] or trust fund earnings rates, because it implicitly assumes that trust fund earnings will always equal the future escalation in the cost of decommissioning. That assumption is unrealistic, however, as experience has shown. As a result, and as noted by the ALJ (R.D., pp. 96 and 98) the accrual method will "back-end load" expense recovery and, thereby, unfairly burden customers in the future with ever-increasing revenue requirement.

4. Susquehanna Refueling Outage Expense (OCA Exc. 9)

The OCA challenged the Company's claim for Susquehanna refueling outage expense because it was based, in part, on expenses incurred during SSES 2 Reload 6. The OCA alleges that the costs of this outage were abnormally high and proposes to set refueling outage costs based on the "most recent" outage for each unit (OCA Exc., pp. 31-32). As fully explained in the Company's Reply Brief (pp. 46-47), the OCA, despite its repeated insistence to the contrary, did not utilize data for the "most recent" Susquehanna refueling outages to develop its claim. For example, the OCA proposes to utilize the cost of Reload 7 at SSES 2, even though this outage has not even begun and will not be completed until several months after the end of the future test year. Moreover, the OCA's contention that the cost of Reload 6 for Unit 2 was abnormally high is wrong. The OCA cites various "problems" which occurred during this outage, but does not present any evidence to tie these alleged "problems" to higher operating and maintenance expenses. Most of the increases in

---

9/ The simple accrual method does, however, require recognition of prior period inflation not reflected in the decommissioning estimate. The Company's nuclear decommissioning cost estimate is stated in 1993 dollars. The trust fund balance used by the OTS' witness is stated as of September 30, 1995 (OTS Ex. 2, Sch. 2, p. 2). Consequently, at a minimum, the 1993 cost estimate should be escalated to September 1995 and thereby increased by approximately 8%.

cost which occurred during this outage were capital costs, not operating and maintenance expenses. The Company presented extensive evidence that the operating and maintenance expenses incurred for this outage were not abnormal (PP&L Initial Brief, pp. 104-105). Indeed, these costs were virtually the same as other outage costs, which the OCA accepted without objection. The ALJ properly rejected the OCA's inconsistent and unfounded adjustment and his recommendation should be affirmed.

5. Post-Retirement Benefits (SFAS 106) (OTS Exc. 3; OCA Exc. 5; PPLICA Exc. 8)

The Recommended Decision approved the Company's claim to recover deferred SFAS 106 costs. OTS, OCA and PPLICA except, relying on Popowsky v. Pa. P.U.C., 164 Pa. Cmwlth. 338, 642 A.2d 648 (1994) ("PP&L"), to argue that the recovery of these costs constitutes retroactive ratemaking.

The Company's claimed costs do not fall within the scope of the rule against retroactive ratemaking. As explained in PP&L's Initial Brief (pp. 92-93), public utilities generally are prohibited from retroactively recovering surpluses or refunding deficits created by inaccuracies in prior rate authorizations. Pike County Light & Power Co. v. Pa. P.U.C., 87 Pa. Cmwlth. 451, 487 A.2d 118 (1985). The amount claimed by PP&L for costs accrued under SFAS 106 is identical over time to the amount that would be paid under a cash-based accounting method. Thus, the switch to SFAS 106 merely modified the timing of PP&L's recovery of OPEBs, not the total amount of such costs (PP&L St. 3-R, pp. 7-8).

Even if the rule against retroactive ratemaking were to apply, PP&L's claim falls within the well-established exception for extraordinary and non-recurring costs. Recognizing this result, the Commission has approved recovery of deferred SFAS 106 costs in a number

of recent cases. Pa. P.U.C. v. Pennsylvania-American Water Co., 79 Pa. P.U.C. 25, 42-51 (1993), aff'd, Popowsky v. Pa. P.U.C., 164 Pa. Cmwlth. 600, 643 A.2d 1146 (1994) ("PAWC"); Pa. P.U.C. v. National Fuel Gas Distribution Corp., Docket No. R-00942991, p. 129 (December 6, 1994).

As explained in PP&L's Initial Brief (pp. 92-96), the parties' reliance on PP&L is completely misplaced. This error becomes clear when PP&L is examined in connection with the same Court's decision in PAWC.[10/] In PP&L, the Court reversed a Commission Order issued between base rate cases which permitted PP&L to defer and recover past SFAS 106 costs in its next base rate proceeding. The Court held that the Commission's Order violated the general rule against retroactive ratemaking, stating that "PP&L could have recovered [SFAS 106] costs had it filed a rate case rather than a request for declaratory order." PP&L, 642 A.2d at 652. Thus, the Court's decision rested on its conclusion that the Commission's Order improperly guaranteed recovery of past costs outside of a base rate case.

A review of PAWC supports this conclusion and clarifies the Court's holding in PP&L. As in PP&L, PAWC involved a claim for SFAS 106 transition costs. However, in PAWC the utility requested and received Commission permission to recover its past SFAS 106 expenses in the context of a base rate proceeding. The Court affirmed the Commission's Order, rejecting arguments that such Order violated the general rule against retroactive ratemaking. PAWC, 164 Pa. Cmwlth. at 608, 643 A.2d at 1150. The Court explained that the utility's SFAS 106 transition cost claim "arises from an extraordinary and non-recurring

---

10/ Petitions for Allowance of Appeal to the Pennsylvania Supreme Court were filed by the Commission and the Company at No. 294 M.D. Allocatur Docket 1994. Those Petitions are still pending. The Court's decision in PAWC therefore remains in full force and effect at this time.

one time event -- the change from cash to accrual accounting -- and the allowance of the recovery of that obligation amortized over a period of twenty years is not retroactive ratemaking" (Id.).

Based on PP&L and PAWC, therefore, it is clear that PP&L's claim for deferred SFAS 106 costs does not violate the general rule against retroactive ratemaking. As in PAWC, PP&L is requesting recovery of past SFAS 106 costs in a base rate proceeding. These costs are extraordinary and non-recurring, and thus fall within the exception to the general rule against retroactive ratemaking.

The OCA further attempts to support its proposed adjustment by relying on Pa. P.U.C. v. West Penn Power Co., Docket No. R-00942986, 1994 Pa. PUC LEXIS 144 (Order entered December 29, 1994) ("West Penn 1994") (OCA Exc., p. 22). West Penn 1994 involved a claim for SFAS 106 costs "that were not captured in the expenses allowed in [the utility's] previous rate case." West Penn 1994, slip op., p. 30. The utility simply failed to claim its SFAS 106 costs in the first rate case following their incurrence. The utility's claim therefore constituted a "classic" violation of the rule against retroactive ratemaking because it sought to recover deficiencies resulting from prior Commission-approved rates. In contrast, PP&L is claiming its deferred SFAS 106 costs in the first base rate case following the Company's adoption of SFAS 106. West Penn 1994, therefore, simply does not apply.

6. Pension Expense (OTS Exc. 2)

PP&L's claim for pension expense is based on SFAS 87. As explained in the Company's Initial Brief (pp. 85-89), this approach is appropriate because it is consistent with the accrual basis upon which all other major expense claims are established, avoids the

arbitrary variability of annual cash contributions and is wholly consistent with relevant Commission precedent. The ALJ agreed and approved the Company's claim. The OTS excepts, relying primarily on West Penn 1994.

The Company believes that its claim is wholly consistent with Commission precedent, including West Penn 1994, where the Commission employed SFAS 87 as a basis for establishing pension expense. The OTS asserts that West Penn 1994 is distinguishable because in that case the company was scheduled to make a cash contribution to its pension plan during the future test year in that proceeding. The Company submits that this is not a reasonable distinction. The Company has demonstrated that it will make substantial cash contributions to its pension plan in each of the next three years, and that these cash contributions will exceed its SFAS 87 accrual claim (PP&L Initial Brief, pp. 87-89). Thus, the adoption of the Company's claim should result in a lower rates to customers over time.[11/] The Company submits that the rationale of West Penn 1994 is equally applicable to the facts of this case, and its claim should be approved because it will establish a normalized level of pension expense and will result in lower charges to customers over time.

7. Discount Rate For Pensions And SFAS 106 Costs (OCA Exc. 6)

The Recommended Decision (p. 54) accepted the Company's proposed use of a 7.5% discount rate to calculate SFAS 106 expense and pension expense. The OCA excepts and proposes an 8.5% rate. This rate should be rejected. The Company's submitted substantial evidence supporting its proposed 7.5% rate, including the testimony of its actuary that

---

11/ OTS further asserts that the Company may not make a contribution to pension plans until 1998. The basis for this argument was considered by the Commission and previously rejected in Pa. P.U.C v. Pennsylvania-American Water Co., Docket No. R-00932670 (July 26, 1994) (Order, pp. 53-56).

PP&L's pension obligations could be settled at a rate of 25 to 50 basis points below long-term government bonds, which were then trading at 7.9% (PP&L Initial Brief, p. 90; PP&L Reply Brief, p. 32). The OCA ignores this evidence and argues that the Company's discount rate should be increased because other utilities have employed higher discount rates. The circumstances affecting the choice of discount rates can vary from company to company and the fact that other companies at other points in time, selected higher discount rates does not support any adjustment to the Company's claim.

8. SFAS 112 (OCA Exc. 7)

The Recommended Decision properly rejected the OCA's SFAS 112 adjustment for the reasons set forth in the Company's Initial Brief (pp. 96-98).

9. Voluntary Early Retirement Program Savings (OCA Exc. 4; PPLICA Exc. 7)

The OCA and PPLICA except to the ALJ's rejection of their proposal to credit additional savings from the Company's Voluntary Early Retirement Program ("VERP"). As the ALJ recognized, the Company's filing already incorporates a full year of annualized savings (PP&L Initial Brief, p. 83). The OCA and PPLICA seek an additional adjustment for savings during the future test year, but conveniently fail to mention that these alleged savings did not materialize (PP&L Initial Brief, p. 82). Since the cost savings at issue have not occurred, there is simply no factual basis for the OCA/PPLICA adjustment (R.D., pp. 41-45).

PPLICA also excepts to the ALJ's adoption of the Company's proposal to amortize the VERP savings over five years, rather than ten years (PPLICA Exc., p. 34). The five-year amortization proposed by the Company is consistent with Commission practice,

particularly since PP&L did not claim any return on the unamortized portion of the adjustment (PP&L Initial Brief, pp. 83-84; PP&L Reply Brief, pp. 28-29). PPLICA's assertion that a ten-year amortization matches the payout of the costs is wrong. Most of the costs will be incurred over the next five years. The ALJ properly rejected PPLICA's claim.

10. Consolidated Tax Savings (OCA Exc. 14)

The Recommended Decision correctly rejected the OCA's proposed consolidated tax savings adjustment for three reasons. First, as the ALJ recognized, the bulk of the OCA's adjustment (86%) relates to losses from the discontinued operation of certain mining companies. The Commission has repeatedly held, and the OCA itself has agreed in other cases, that discontinued operations will not generate ongoing tax losses and therefore should not be included in the calculation of a consolidated tax savings adjustment (PP&L Initial Brief, pp. 188-190). Second, the mining companies at issue were never intended to operate at a profit or loss. Indeed, any small profit or loss in a particular year is due solely to temporary book/tax timing differences (PP&L Initial Brief, pp. 190-191).

Third, customers have already received the full benefit of any temporary tax losses through lower fuel costs (PP&L Initial Brief, p. 191). Surprisingly, the OCA asserts that the Company presented no evidence to support this position. This is false. The Company presented unrebutted expert testimony on this issue (PP&L St. 3-R, pp. 16-17). The OCA failed to cross-examine PP&L's witness on this issue and did not file any responsive testimony.

11. Customer And Community Needs Programs (OTS Exc. 1; OCA Exc. 10; CEO Exc. 1; Sierra Club Exc. 4)

The OTS objects to alleged "forced" customer funding of various customer and community needs programs proposed by the Company in this proceeding. As explained in PP&L's Reply Brief (pp. 51-52), the OTS simply refuses to acknowledge that the Company has carefully separated its claim into customer-funded and shareholder-funded programs. All customer-funded programs will promote conservation, load management and economic development and have been specifically encouraged by the Legislature and/or the Commission (PP&L Initial Brief, pp. 116-117). The purely "social" aspects of the Company's programs will be funded entirely by shareholders. The legal issue raised by the OTS therefore need not be addressed in this case.

The OCA submits that the Company should be required to submit a final implementation plan and cost estimates with its compliance filing in this proceeding (OCA Exc., p. 33). The original OCA proposal was that the Company present an implementation plan and cost schedules. The Company fully complied with this request in its rebuttal testimony and further agreed to submit quarterly reports on the implementation status and expenditures of these programs (PP&L Initial Brief, pp. 120-121). The OCA raised no further objection and presumably was satisfied with the Company's response. It is improper for the OCA to raise a new request at this stage of the proceeding.

CEO and the Sierra Club assert that the Company should spend more on social programs. The Company appreciates the concerns of these parties, but believes that it has proposed an aggressive and creative program. PP&L cannot justify further expenditures at this time.

12. Demand Side Management (CEO Exc. 2; Sierra Club Exc. 1, 7, 8)

CEO proposes a substantial increase in PP&L's DSM programs and a heavier focus on existing load and non-space heating customers (CEO Exc., p. 2). As fully explained in its Initial (pp. 288-289) and Reply (pp. 131-133) Briefs, PP&L already spends more money on DSM programs than any other Pennsylvania utility and has properly focussed its attention on those areas which will produce the greatest benefit for all customers. CEO's criticisms are based upon broad national data that does not apply to the specifics of PP&L's system and were properly rejected by the ALJ.

The Sierra Club excepts to the ALJ's earlier ruling (April 27, 1995) to exclude the bulk of Sierra Club's DSM testimony from this proceeding. As the ALJ correctly recognized (Tr. 1432-1435), the Sierra Club improperly sought to completely relitigate the Commission's generic DSM proceeding in the context of PP&L's rate case. This was not only impracticable but would have been fundamentally unfair to the other participants in the generic DSM proceeding, which is now on appeal to the Pennsylvania Supreme Court.[12/] The Sierra Club discusses DSM certification and a systems benefits proposal. The

---

12/ The Sierra Club also proposes an expedited procedure for entering the stricken testimony into the record. PP&L is categorically opposed to this proposal. The Sierra Club's delay in bringing this issue to the Commission is inexcusable and should not be sanctioned. The Sierra Club should have raised this issue in a timely fashion by pursuing an interlocutory appeal with the Commission. Indeed, on several occasions, the Sierra Club indicated that it was pursuing such an appeal, yet inexplicably failed to do so. The Sierra Club should not be permitted to use its own delay to prejudice the rights of other parties to this proceeding. The stricken testimony is irrelevant to this case and was properly excluded by the ALJ.

Company's position on these issues is fully set forth in its Initial (p. 287) and Reply (pp. 129-130) Briefs.

C. Capital Structure

1. Issuance Of New Common Equity (OCA Exc. 15; PPLICA Exc. 4)

The OCA and PPLICA oppose recognition of a proposed new issuance of common equity capital in the Company's capital structure unless it is actually issued before the Commission's Final Order is entered in this proceeding.[13/] The ALJ properly rejected this adjustment for several reasons (R.D., p. 159).

The unrebutted record evidence demonstrates that the new issuance of common equity is necessary and appropriate. The ALJ properly rejected the OCA/PPLICA attempt to establish a rigid and artificial deadline for reflection of new common equity in the Company's capital structure. All other elements of the ratemaking formula are based on best available estimates in the record. The common equity ratio should be no different.[14/]

13/ PPLICA goes even further and proposes to completely ignore future test year data and to establish PP&L's capital structure based on historic test year end data. To the best of the Company's knowledge, such an adjustment is completely unprecedented and would create a fundamental mismatch with the other elements of the ratemaking formula in this proceeding, all of which are established on a future test year basis (PP&L Initial Brief, pp. 201-02).

14/ As explained in PP&L's Reply Brief (pp. 86-87), PPLICA relied upon the Commission's Order in Pa. P.U.C. v. National Fuel Gas Distribution Corp., 73 Pa. P.U.C. 552 (1990) ("NFG") to support is position. In NFG, the Commission excluded a proposed common equity issuance from its approved capital structure ratios. However, contrary to PPLICA's assertion, the utility's claimed capital structure was not rejected as being "too speculative" (PPLICA Main Brief, pp. 27-28). Rather the problem in the NFG case was that the equity issuance in question was not identified until the rebuttal phase of the case. The OTS protested the timing of the revision and the ALJ agreed. The factors that which troubled the parties in NFG are clearly not present here.

2. Reacquisition Premiums (OCA Exc. 16)

The Recommended Decision (p. 160) correctly rejected the OCA's deferred tax adjustment associated with premiums paid to reacquire high cost debt and preferred stock. PP&L's aggressive refinancing efforts have dramatically lowered the Company's cost of capital. The Commission has repeatedly recognized that such refinancing efforts are in the public interest and has held that utilities should be allowed to fully recover all costs associated with such reacquisitions (PP&L Initial Brief, pp. 204-209).

In order to reacquire high cost debt and preferred stock, the Company, in most instances, had to pay a premium to existing investors. This premium was paid in full by stockholders at the time of the reacquisition and was tax deductible at that time. For ratemaking purposes the Company will recover the premium from customers over the life of the new bonds issued to pay the premium. Under the Company's proposal, the associated tax savings will be flowed through to customers as they pay the associated premiums. The OCA's adjustment would give customers all of the tax savings now, even though they will not pay the associated costs until many years in the future (PP&L Initial Brief, pp. 208-209). The Company submits that this is unfair and inequitable and would discourage utilities from taking aggressive measures to reacquire high cost debt. The OCA fails to cite a single case in which an adjustment of this type has been adopted. The OCA's unprecedented and inequitable adjustment should be rejected.

D. Rate Structure

The ALJ adopted, with some minor changes, the cost of service study and rate design proposed by the Company. Opposing parties take issue with many of those findings, typically arguing for results that would dramatically favor the rate class that they represent

and impose substantial additional costs on other parties. As the ALJ recognized, the Company's proposals steer a reasonable, middle course among these competing interests. The findings discussed below should be adopted both on their merits and as reasonable and balanced resolutions of these contentious, inter-class disputes.

1. Cost Of Service Study

a. Generation And Transmission Plant Costs (UCC Exc. I; OCA Exc. 17.A)

The ALJ's decision to retain the 12 CP method of allocating generation and transmission plant costs (R.D., pp. 204-205) is fully supported by extensive record evidence and is consistent with long-standing precedent. The 1 CP method proposed by UCC and the peak and average method proposed by the OCA are totally inappropriate for PP&L's system, are otherwise fundamentally flawed and were properly rejected by the ALJ.

b. Interruptible Credit (PPLICA Exc. 2; Bethlehem Exc. A)

PPLICA and Bethlehem oppose the ALJ's decision to accept the Company's treatment of interruptible load as equivalent in value to combustion turbine peaking units (R.D., p. 206). The principal criticism is the claim that a "mismatch" exists between this value, which is $300/kw, and the $6-8/kw tariff rate discount used by the Company in its rate design proposal.[15/] For a variety of reasons, principally economic development and gradualism, the Company has proposed an interruptible credit above the level reflected in its

---

15/ Bethlehem proposes that interruptible service customers should be assigned zero generation costs. This claim lacks any merit, and the ALJ properly rejected it (PP&L Initial Brief, pp. 240-242, PP&L Reply Brief, pp. 103-104). The record demonstrates that these customers do place demands on the system; years have passed with no interruptions; and the Company may only request, but not require, interruptible service customers to suspend their usage.

cost of service study. This does not create any "mismatch." It simply reflects a rate design that considers factors other than cost of service.[16/]

c. Distribution Plant Costs - Minimum System Study (OCA Exc. 17.B; CEPFOD Exc. 1)

The OCA and CEPFOD challenge the Company's minimum system study. The ALJ correctly adopted the Company's "straightforward approach" and rejected the flawed "variances" proposed by the two intervenors (PP&L Initial Brief, pp. 242-245). Most importantly, neither the OCA nor CEPFOD presented a reasonable alternative to the Company's proposal. CEPFOD presented none, and the OCA's "adjustments" to the Company's study produced illogical results: negative customer components and greater than 100 percent demand components for most cost categories (PP&L Initial Brief, p. 245).

d. Separate Interruptible Service Class (PPLICA Exc. 1; Bethlehem Exc. D)

The ALJ supported the Company's treatment of interruptible service customers as part of the LP-4/LP-5 large users rate class with an extra service option, rather than as a separate rate class: "I view the interruptible customers as simply customers within the general class and not as a separate class. They take service like all other industrial customers and, to some degree, allow interruption . . ." (R.D., p. 251). Although PPLICA and Bethlehem except, the record amply supports the ALJ's finding (PP&L Initial Brief, pp. 247-248; PP&L Reply Brief, pp. 106-107). The segregation proposal promotes no valid ratemaking purpose and is simply designed to use the Company's 150% guideline for rate increases as a

---

16/ Bethlehem resurrects its claim that the $300/kw figure is incomplete, yet fails to quantify the "true" figure and ignores the fact that the Company's figure already overstates the value of interruptible load.

barrier to its downward adjustment to the interruptible discount. This tactic should not distort the rationale for establishing rate classes.

2. Rate Design

a. Allocation Of The Rate Increase (PPLICA Exc. 1)

PPLICA attacks the Recommended Decision for allegedly singling out industrial interruptible service customers for a disproportionate increase relative to other classes, in defiance of gradualism and the need to keep industrial prices competitive (PPLICA Exc., pp. 3-16. In fact, the ALJ's proposal fully recognizes these two principles.

First, Rate Schedule LP-5 customer rates must be reviewed in context -- as the ALJ recognized (R.D., pp. 249-250).[17/] Between 1991 and 1994, large interruptible service customers received substantial discounts through a new interruptible rate program. After it became apparent that the program was not creating the expected benefits, but instead threatening significant inefficiencies, the Commission approved the program's termination (PP&L Initial Brief, pp. 277-279). PPLICA's preferred rate design would have perpetuated the very same undesirable regulatory results that the Commission sought to end by closing the interruptible service option. The "unreasonable" rate increase criticized by PPLICA vanishes when viewed in its proper historical context (PP&L Initial Brief, pp. 277-281). Indeed, relative to 1984 base rates -- the same standard by which other customers' rates were evaluated -- interruptible service customers would receive a 5% rate reduction under the Company's proposal (PP&L Initial Brief, p. 277).

17/ See also, R.D. at 251 ("These customers [interruptible customers] are asking what PP&L has done for the customer lately. PP&L is looking to 10 years of experience in the past and in the immediate future.").

Second, the Company's rates do respond to competition. This result is achieved by reliance on the Company's Competitive Rate Rider ("CRR"), which allows targeted discounts to customers which demonstrate that competition requires a rate reduction to save load. PPLICA completely ignores the CRR, the fundamental basis for the Recommended Decision. Instead, PPLICA urges a steep, blanket discount to all interruptible service customers, regardless of their widely-varying circumstances and competitive options.[18/]

In the end, PPLICA's arguments are not simply wrong, they are illogical. The Company has no interest in permitting plants, jobs or new business opportunities to leave Pennsylvania for other states -- and thereby erode the health and long-term load prospects for its service territory. Unlike PPLICA, however, the Company seeks to retain and/or attract that load in a manner that recognizes the interests of other customers.

b. Other Allocation Proposals (OSBA Exc. 1; UCC Exc. II)

The OSBA's weighted scaleback method and UCC's complex and novel recalculation of class "subsidies" were fully addressed by the Company on brief and properly rejected by the ALJ.

18/ As shown by PPLICA's own witnesses, the factual circumstances of the industrials are simply inconsistent with the claim that their competitive needs will be met by a single discount (PP&L Initial Brief, p. 273). Moreover, the Company has other customer-specific tools, including the CRR, real-time pricing, demand free days and EDI/IDI credits.

3. Rate RTS

a. CEPFOD's Request To Eliminate The Rate Schedule (CEPFOD Exc. 1)

CEPFOD claims that the ALJ should have acknowledged "undisputed facts" about Rate RTS and adopted its proposal to eliminate this rate schedule (CEPFOD Exc., pp. 7-10). In truth, all of the alleged "facts" are either wrong or misleadingly presented. The record, instead, strongly supports the ALJ's ultimate conclusion to adopt the Company's proposal. Rate RTS was developed as, and succeeded modestly as, a load management tool that was appropriately based on the technology available at the time it was developed. The Company's actions were consistent with the projected system benefits of Rate RTS and the current negative return for this class occurred only recently, as a result of system peak load shifts. Despite the negative return, Rate RTS both recovers marginal energy costs and contributes to fixed costs and the Company is undertaking to investigate improving the return through new and existing technology (PP&L Initial Brief, pp. 254-257, 261-267; PP&L Reply Brief, pp. 112-117).[19/] The ALJ correctly rejected CEPFOD's claims in their entirety.

b. OTS' Request For Investigation (OTS Exc. 6)

The OTS criticizes the ALJ for failing to recommend a Commission investigation of Rate RTS. The ALJ considered the OTS' proposal and properly declined to adopt it. There

---

19/ CEPFOD relied almost exclusively on a few misleading and misrepresented internal documents for its entire case (PP&L Reply Brief, pp. 113-116). In fact, CEPFOD presented no evidence that its members suffered any harm from Rate RTS (PP&L Initial Brief, pp. 262-263.)

is simply no need for an expensive and wasteful investigation of this rate schedule, which has been fully examined in this case.[20/]

4. Rate RS

a. The Customer Charge (OCA Exc. 19.A; CEPFOD Exc. 1; Sierra Club Exc. 6)

The OCA, CEPFOD and Sierra Club oppose the ALJ's decision to support the Company's customer charge of $7.20/month as scaled back to an increase of 35%. As the Recommended Decision found, the full $7.20 charge would be "supported by cost studies and as reasonable, at least in theory" (R.D., p. 230). The ALJ's proposed 35% limitation more than adequately protects residential ratepayer interests, particularly given that the Company's calculations support a customer charge of either $10.71 (billing and metering costs only) or $17.51 (total). The objections of CEPFOD and the OCA principally rehash their earlier attacks on the validity of the minimum system calculation. The Sierra Club's proposal, which would require the Commission to adopt an inclining block theory, was not supported by any evidence submitted during the course of this proceeding.

20/ A number of public commenters expressed dissatisfaction with the proposed increase to Rate RTS largely because of a confusing Company letter (since corrected), which led customers to miscalculate the level of the proposed rate increase. The two specific concerns raised by the OTS do not support its request for an investigation. First, there is absolutely no evidence to support a finding that Rate RTS customers would never receive any rate increase. Such a position is inconsistent with Commission policy. Second, the concern over recovery of investment by thermal storage system customers is misplaced. The Company demonstrated that nearly all these customers will have recovered their investments in full by 1999 (PP&L Initial Brief, pp. 259-260). OTS surmises that customers purchasing larger than average thermal storage heating units would not fully recoup their investment by 1999. The fact is that larger units are purchased to heat larger houses, which offset the higher capital costs through proportionally larger benefits from the RTS/RS rate differential (Tr. 2218).

b. Third Billing Block (OCA Exc. 19.B; CEPFOD Exc. 1)

The ALJ supported PP&L's proposed third billing block, based on the record established by the Company (PP&L Initial Brief, pp. 253-254; PP&L Reply Brief, pp. 110-111). The OCA worries about a possible burden on low usage customers, and mischaracterizes the Company's position as relying only on the need to recover customer costs in the early blocks (OCA Exc., pp. 52-53). The record clearly shows that, without a third block, customers using more than 600 kWh/month would pay a disproportionate share of fixed costs (PP&L Reply Brief, p. 111).

CEPFOD concocts a new evidentiary presentation on exceptions, manipulating the data to advance a new two-block rate proposal, with shifted block boundaries (CEPFOD Exc., p. 6). This new proposal was never presented on the record and should be rejected for that reason alone. In any case, the calculations presented by CEPFOD erroneously assume that the only purpose of the first two blocks is to recover customer costs. Higher initial blocks also are designed to recover demand costs as well. CEPFOD's incomplete example, in fact, fully supports the need for a third billing block in Rate RS.

5. Rate ISA (OCA Exc. 20; PPLICA Exc. 1)

The ALJ approved the proposed Rate ISA treatment which honors the terms of the underlying contract with a particular end-user. The OCA and PPLICA except to this result. The Recommended Decision is fully supported by the record on this point, and should be affirmed (PP&L Initial Brief, pp. 283-284).

6. Rate SE (OTS Exc. 7)

The OTS criticizes the ALJ's treatment of Rate SE (R.D., pp. 252-254). As the ALJ found, there is simply "no good basis in theory for the OTS proposal" (R.D., p. 253). Off-peak treatment for street lighting is inconsistent with off-peak ratemaking theory, and might well result in no net change in the customers' annual bills anyway (PP&L Initial Brief, pp. 281-283; PP&L Reply Brief, p. 121). Therefore, the OTS' reliance on exception (p. 25) on municipal fiscal distress cannot justify its requested relief.

7. Allocation Of The EDI/IDI Credit (OCA Exc. 21)

The ALJ, after carefully reviewing the evidence and arguments, rejected the OCA's proposal to force the Company to "share" the costs of the EDI/IDI programs (R.D., p. 260). The OCA's exceptions on this point should be denied (OCA Exc., pp. 55-56). The Company submitted evidence, essentially unchallenged by the OCA, that more than adequately shows that the programs provided net system benefits (PP&L Initial Brief, pp. 284-286; PP&L Reply Brief, pp. 123-126). The two specific attacks by OCA were fully rebutted by the Company without any response from OCA (PP&L Initial Brief, p. 285). There is simply no factual basis, not even a disputed factual basis, to support OCA's request for partial disallowance. OCA also relies on cases from other jurisdictions, based on facts differing from the programs at issue. None of these precedents support its request (PP&L Reply Brief, pp. 126-128). For example, the New York policy cited applied only to programs undertaken after adoption of the "sharing" policy, unlike the retroactive disallowance sought here.

E. Energy Cost Rate (OCA Exc. 22; PPLICA Exc. 3; Sierra Club Exc. 3)

The OCA and PPLICA assert that if the Company's primary ECR proposal is rejected, the amount of the rate increase should be recalculated to reflect approximately $20 million of off-system capacity-related sales revenues included in the ECR. The Company believes that its innovative and creative proposal for handling the returning capacity from expiring off-system bulk power agreements should be approved. Assuming, however, that the Company's primary proposal is rejected, the Company is not opposed to the transfer of these revenues into base rates.

The OCA also excepts to the ALJ's adoption of the Company's alternative proposal to exclude from the ECR both the capacity costs and energy savings associated with the returning capacity (OCA Exc., p. 59). The Company's approach is fair, reasonable and appropriate and provides for consistent treatment of capacity costs and energy savings. The OCA argues that the Company's proposal is premature and inappropriately seeks "blanket" approval, which will somehow allow the Company discretion to maximize its profits. In fact, the Company does not seek any "blanket" approval. It simply seeks establishment of consistent ratemaking treatment of the capacity costs and energy cost savings associated with the returning capacity (PP&L Reply Brief, pp. 135-136). Moreover, approval now will not provide the Company with any additional discretion or opportunity to increase its profits.

The Sierra Club proposes to eliminate PP&L's ECR, but presented no evidence to support its proposal. The many benefits of the ECR are addressed in PP&L's Initial Brief (pp. 290-291) and fully support its continuation.

III. CONCLUSION

For the foregoing reasons, the Commission should reject the Exceptions filed by the OTS, OCA, OSBA, PPLICA, CEPFOD, Bethlehem, UCC, CEO and the Sierra Club and, instead, grant the Company's Exceptions and adopt the Recommended Decision with the modifications described therein.

Thomas P. Gadsden
David B. MacGregor
Anthony C. DeCusatis
Alan K. Maesaka

Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103
(215) 963-5234

Paul E. Russell
Pennsylvania Power & Light Company
Two North Ninth Street
Allentown, PA 18101

Counsel for Pennsylvania Power
& Light Company

OF COUNSEL:

MORGAN, LEWIS & BOCKIUS
2000 One Logan Square
Philadelphia, PA 19103

DATED: August 21, 1995

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL.	:	
v.	:	DOCKET NO. R-00943271
PENNSYLVANIA POWER & LIGHT COMPANY	:	

RECEIVED
95 AUG 21 P1:58
PA. P.U.C.
INFO. CONTROL DIV.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served two copies of the foregoing document upon the participants listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

BY HAND DELIVERY

Tanya J. McCloskey, Esq.
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Johnnie E. Simms, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
Pitnick Bldg. - 3rd Floor
901 N. 7th Street - Rear
Harrisburg, PA 17102

Karen Oill Moury, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

David M. Kleppinger, Esq.
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Kenneth Zielonis, Esq.
Stevens & Lee
208 North 3rd Street, Suite 310
Harrisburg, PA 17101

Cheryl Walker Davis
Pennsylvania Public Utility Commission
Office of Special Assistants
North Office Building, Room 210
Commonwealth & North Streets
Harrisburg, PA 17120
(Copy Provided on Disk)

James P. Melia, Esq.
Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, PA 17101

Wayne M. Thomas, Esq.
Kohn, Nast & Graff, P.C.
1101 Market Street, 24th Floor
Philadelphia, PA 19107

Joan O. Brandeis, Esq.
Schnader, Harrison, Segal & Lewis
Suite 3600
1600 Market Street
Philadelphia, PA 19103-4252

Robert P. Haynes, III, Esq.
Mette, Evans & Woodside
3401 N. Front Street
Harrisburg, PA 17110-0950

Alan J. Barak, Esq.
Mid Atlantic Energy Project
Energy Law Clinic
3700 Vartan Way
Harrisburg, PA 17110

Eric J. Epstein
2308 Brandywine Drive
Harrisburg, PA 17110

BY FEDERAL EXPRESS

Stephen J. Selden, Esq.
Assistant General Counsel
Bethlehem Steel Corporation
Eighth & Eaton Avenues
Bethlehem, PA 18016

David A. McCormick, Esq.
General Attorney
Office of the Judge Advocate General
901 North Stuart Street
Arlington, VA 22203-1837

Craig Kuennen
Commission on Economic Opportunity
211 S. Main Street
Wilkes-Barre, PA 18701-1596

D. Jane Drennan, Esq.
Drennan & Associates
1216 16th Street, N.W.
Washington, D.C. 20036

Dated: August 21, 1995

David B. MacGregor
Counsel for Pennsylvania Power & Light Company

LAW OFFICES OF
STEVENS & LEE
A PROFESSIONAL CORPORATION

PLEASE RESPOND TO HARRISBURG

KJR

RECEIVED
95 AUG 21 PM 12:31
PA. P.U.C.
INFO. CONTROL DIV.

August 21, 1995

DOCUMENT
FOLDER

John G. Alford
Secretary
PA Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. Pennsylvania Power and Light Company, Docket No. R-00943271

Dear Secretary Alford:

Please find enclosed an original and nine (9) copies of the Reply Exceptions for filing on behalf of Crown American Realty Trust in regard to the above captioned proceeding. As indicated by the attached certificate of service, all parties of record have been served a copy hereof.

Should you have any questions or comments, please do not hesitate to contact my office.

Sincerely,

STEVENS & LEE

Kenneth Zielonis

Kenneth Zielonis

KZ/aku

ORIGINAL

208 North Third Street, Suite 310, P.O. Box 12090, Harrisburg, PA 17108-2090 • 717-234-1250 Fax 717-234-1939
740 Hamilton Mall, P.O. Box 8838, Allentown, PA 18105-8838 • 610-439-4195 Fax 610-439-8415
One Penn Square, P.O. Box 1594, Lancaster, PA 17608-1594 • 717-291-1031 Fax 717-394-7726
Two Penn Center Plaza, Suite 200, Philadelphia, PA 19102 • 215-854-6370 Fax 215-569-0216
111 North Sixth Street, P.O. Box 679, Reading, PA 19603-0679 • 610-478-2000 Fax 610-376-5610
1275 Drummers Lane, One Glenhardie Corporate Center, P.O. Box 236, Wayne, PA 19087-0236 • 610-964-1480 Fax 610-687-1384
289 North Main Street, Wilkes-Barre, PA 18702-4409 • 717-823-6116 Fax 717-823-1149

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	*	
	*	DOCKET NO. R-00943271
v.	*	
PENNSYLVANIA POWER AND LIGHT COMPANY	*	

RECEIVED
95 AUG 21 PM 12:32
PA. P.U.C.
INFO. CONTROL DIV.

REPLY EXCEPTIONS
OF CROWN AMERICAN REALTY TRUST

DOCUMENT FOLDER

DOCKETED
AUG 22 1995

Kenneth Zielonis, Esquire
STEVENS & LEE
208 N. 3rd St., Suite 310
P.O. Box 12090
Harrisburg, PA 17108-2090

DATED: August 21, 1995

ATTORNEYS FOR CROWN AMERICAN REALTY TRUST

I. STATEMENT OF THE CASE

On July 31, 1995, the Pennsylvania Public Utility Commission, ("Commission"), issued the Recommended Decision of Administrative Law Judge Robert A. Christianson, ("ALJ"), in the above captioned proceeding. Exceptions were filed by several parties in the proceeding. Reply Exceptions must be filed on or before August 21, 1995. Crown American Realty Trust, ("Crown American"), files these Reply Exceptions to the Exceptions filed by Pennsylvania Power and Light Company, ("PP&L") and the Office of Consumer Advocate, ("OCA").

II. REPLY EXCEPTIONS

A. The ALJ Correctly Held That EDI/IDI Credits Should Be Allocated Among All Customer Classes.

In their Exceptions, both PP&L and the OCA argue that the ALJ erred in allocating the "cost" of EDI/IDI credits to all customer classes rather than those customer classes that directly receive the rate discounts resulting from these programs. The ALJ's recommendation on this allocation issue rests upon the correct conclusion that all PP&L customers benefit from these programs. R.D. at 209-210.

In its Exception PP&L offers several conflicting arguments in support of its request that the Commission reject the ALJ's conclusion on this issue. On the one hand, PP&L readily admits that all customers benefit from these programs. PP&L Exceptions at 56. Despite the fact that all customers benefit, PP&L recommends that the "cost" of these benefits be spread only to the class of customers receiving the rate discounts. PP&L's inconsistency alone justifies rejection of this Exceptions. There are other reasons, however, for rejection of PP&L's Exception on this issue.

The ALJ correctly concluded that since all customers benefit from the programs, as they assist PP&L in maintaining current load (thereby spreading fixed costs over greater units of usage), all customers must and should pay for the "costs" of those benefits.

The ALJ's conclusion must be upheld by the Commission.[1]

It is unfair to require only a limited class of customers to pay for a program that provides benefits to all customers. The retention of large customers on PP&L's system is in the public interest and the benefits must be allocated in a nondiscriminatory manner. Under PP&L's theory, all members of the LP-4 and LP-5 customer class would pay the "cost" of the EDI/IDI programs despite the fact that only certain members of those classes receive rate discounts. PP&L provides no justification why only the members of those rate classes pay for the program. Again, PP&L is inconsistent in its rationale.

B. The ALJ Correctly Rejected The OCA's Use Of A Peak And Average Cost Allocation Methodology For Cost-Of-Service Purposes.

In his Recommended Decision the ALJ proposed rejection of the OCA's desired cost-of-service study, a modified version of the peak and average cost allocation methodology. Instead, the ALJ recommended use of PP&L's 12 CP method as further modified by the recommendations of the PP&L Industrial Customer Alliance. Crown American advocated the recommendation reached by the ALJ and supports its use by the Commission. In rejecting the OCA's contentions, the ALJ simply did not agree that an energy method of allocating a capacity investment is appropriate from a cost-of-service basis. R.D. at 205. Furthermore, as the ALJ indicated in his Recommended Decision, the peak and average method advocated by

[1]The OCA raises a similar argument in its Exceptions. For the above reasons the OCA's Exceptions also should be rejected.

OCA is simplistic.

The ALJ correctly noted that the Commission has rejected the OCA's peak and average cost allocation methodology in PP&L's last base rate case proceeding. See Crown American Reply Brief at 3. Further, the peak and average cost allocation methodology does not recognize the importance of customer load at the time of each monthly peak. Id. Such load is important in determining the amount and type of generating capacity that must be installed by PP&L to provide safe and reliable service to its customers. Id.

Furthermore, the cost-of-service study advanced by the OCA fails to recognize that generation and transmission facilities are fixed capacity supply resources. Id. at 4. Such fixed costs do not vary with energy usage. Id. The cost of these fixed capital supply resources are related directly to the utility's peak demand. Id. Such resources are needed to meet instantaneously the entire system demand in a reliable fashion.

In addition, the OCA's peak and average cost-of-service study will increase substantially cost responsibility of large high load factor customers. Id. Perversely, it would increase the cost of those customer classes who, to the benefit of the system, increase their load factors by more efficient use of PP&L's system. This perverse policy should not be encouraged by the Commission.

For the above reasons, the OCA's Exception should be denied. Crown American provides a more detailed analysis in its Reply Brief in regard to the OCA's argument in support of its modified peak and average cost allocation methodology. Crown American urges the

Commission to examine that Reply Brief in support of Crown American's request for dismissal of the OCA's Exception.

III. CONCLUSION

WHEREFORE, for the above reasons, Crown American Realty Trust requests the Commission to adopt each and every Reply Exception contained herein.

Respectfully submitted,

Kenneth Zielonis

Kenneth Zielonis, Esquire
STEVENS & LEE
208 N. 3rd St., Suite 310
P.O. Box 12090
Harrisburg, PA 17108-2090

DATED: August 21, 1995

ATTORNEYS FOR CROWN AMERICAN REALTY TRUST

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	*	
v.	*	DOCKET NO. R-00943271
PENNSYLVANIA POWER & LIGHT COMPANY	*	

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of August, 1995, served a copy of the attached Reply Exceptions upon the participants listed below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code Section 1.54:

Cheryl Walker Davis
Director
Office of Special Assistant
North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

David E. MacGregor, Esquire
Thomas Gadsden, Esquire
Morgan, Lewis and Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

Paul E. Russell, Esquire
Pennsylvania Power & Light
2 North Ninth Street
Allentown, PA 18101

David M. Kleppinger, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Mary C. Kenney Esquire
Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Karen Oill Moury, Esquire
Small Business Advocate
Office of Small Bus. Advocate
Suite 1102, Commerce Bldg.
300 North Second Street
Harrisburg, PA 17101

Johnnie E. Simms, Esquire
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

D. Jane Drennan, Esquire
Sarah E. Tomalty, Esquire
Drennan & Associates
1216 16th Street, N.W.
Washington, D.C. 20036

David A. McCormick, Esquire
Department of the Army
Office of the Judge Advocate General
901 North Stuart Street
Arlington, VA 22203-1837

Robert P. Haynes, Esquire
Mette, Evans & Woodside
3401 North Front Street
Harrisburg, PA 17110

Daniel P. Delaney, Esquire
James P. Melia, Esquire
Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, PA 17101

Joan O. Brandeis, Esquire
Schnader, Harrison, Segal & Lewis
Suite 3600
1600 Market Street
Philadelphia, PA 19103-4252

Eric Epstein
2308 Brandywine Drive
Harrisburg, PA 17110

Alan J. Barak, Esquire
Mid Atlantic Energy Project
Energy Law Clinic
3700 Vartan Way
Harrisburg, PA 17110

Kenneth Zielonis

Kenneth Zielonis
STEVENS & LEE
208 North 3rd Street, Suite 310
P.O. Box 12090
Harrisburg, PA 17108-2090

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

KJR

IN REPLY PLEASE
REFER TO OUR FILE

August 21, 1995

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

RECEIVED
95 AUG 21 PM 3:55
PA. P.U.C.
INFO. CONTROL DIV.

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

Dear Secretary Alford:

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

Very truly yours,

J. E. Simms

Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

JES:sjh

Enclosures

cc: Honorable Robert A. Christianson
Parties of Record

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Chief Administrative Law Judge
Robert Christianson, Presiding

DOCUMENT FOLDER

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	**Docket No. R-943271**
	:	
PENNSYLVANIA POWER & LIGHT COMPANY	:	

DOCKETED
AUG22 1995

RECEIVED
95 AUG 21 PM 3:55
PA. P.U.C.
INFO. CONTROL DIV.

REPLY EXCEPTIONS OF THE OFFICE OF TRIAL STAFF

Kenneth L. Mickens
Johnnie E. Simms
Senior Prosecutors

The Office Of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: August 21, 1995

TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

TABLE OF CITATIONS

Page

CASES:

TABLE OF CITATIONS (Continued)

Page

RULES, REGULATIONS & STATUTES:

I. INTRODUCTION

AND NOW, comes the Office of Trial Staff ("OTS") by its Senior Prosecutors and, pursuant to 52 Pa. Code §5.535 files the following Reply Exceptions to the Exceptions filed by other parties to this proceeding on August 14, 1995.

II. REPLY EXCEPTIONS

1. The ALJ Correctly Ruled That PP&L Has Excess Generating Capacity.

OTS Main Brief, pp. 26-35.
Recommended Decision, pp. 11-30.

On pages 8 through 25 of its Exceptions, PP&L has excepted to the ALJ's conclusion based on the physical excess capacity analysis that the Company has excess generating capacity. In its Exceptions regarding excess capacity, the Company has presented (5) arguments that deserve a response, accordingly OTS will address each of the arguments in their enumerated order. Prior to providing OTS's reply to PP&L's Exceptions on this issue, it is necessary to address the assertions by PP&L in its introduction section regarding excess generating capacity.

On page 8 of its Exceptions, PP&L made certain averments that are public policy in nature, which centers on whether PJM is able to meet its peak day requirements. In response, OTS submits that the Commission must evaluate the undisputed facts in this proceeding. Some of the undisputed facts in this proceeding, among others, are as follows:

- PP&L is a winter peaking electric utility.
- With the exception of PP&L, the other members of PJM are summer peaking electric utilities.
- PJM requires PP&L to have a reserve margin of excess capacity of 12 percent.

- OTS in this proceeding has recommended that PP&L have a reserve margin of excess capacity of 16 percent.

PP&L's assertion that OTS's recommendation is harmful to PJM and the overall public policy considerations of electric utilities is without foundation and contrary to the undisputed facts in this proceeding. As OTS's recommendation is 4 percent above PJM's required reserved margin for PP&L.

a. OTS's Excess Capacity Adjustment And The ALJ's ECR Recommendation.

On pages 10 through 12 of its Exceptions, PP&L described the nexus between OTS's excess capacity adjustment and the concomitant ECR proposal of PP&L. In articulating its argument, PP&L attempted to summarize the recommendation of OTS in this proceeding. An explanation as to how OTS's excess capacity adjustment relates to PP&L's ECR recommendation is best presented as follows:

> The net capacity resources used to calculate OTS's excess capacity adjustment, in which the ALJ recommended, includes the addition of 189 megawatt increments of capacity in each of the five years 1996 through 2000 as the JCP&L agreement is phased out.

Consequently, PP&L's argument has merit in that there is a nexus between OTS's excess capacity adjustment and PP&L's ECR proposal in this

proceeding. In essence, OTS submits that it would be entirely inappropriate to base an excess capacity adjustment on capacity that has not been paid by Pennsylvania jurisdictional customers. Simply put, if Pennsylvania jurisdiction customers do not pay for the capacity, then obviously there is no excess capacity adjustment.

A careful review of the record evidence and the recommendations of the respective parties, clearly suggests that OTS is the most consistent in its recommendations for excess capacity. In the previous paragraph, OTS presented its view that there is a nexus between PP&L's ECR proposal and the phasing out of the JCP&L agreement, thus creating an excess capacity. The ALJ may have become confused by the inconsistent manner in which PP&L has presented recommendations relative to its ECR proposal and the phasing out of the JCP&L agreement.[1/] In this proceeding, PP&L has proposed a method of recognizing the return of the JCP&L capacity through its ECR; however, the Commission must take notice that the JCP&L capacity represents excess capacity for PP&L previously determined by the Commission in an earlier proceeding. Based upon a physical excess capacity analysis, OTS determined that 564 megawatts of the returning JCP&L

1/ In the rebuttal phase of this proceeding, PP&L proposed an alternative to its original ECR proposal, which was adopted by the ALJ.

capacity continues to be excess capacity determined by the Commission in a previous proceeding.[2/]

If the Commission accepts PP&L's Exceptions regarding treatment of costs associated with terminating off-system sales agreements, PP&L will credit its ECR with 100 percent of the Pennsylvania jurisdictional portion of capacity related off system revenues, received from PJM installed capacity credit, out-put reservation and transmission entitlement sales, net of associated PJM installed capacity credit, out-put reservation and transmission entitlement. See, PP&L Exception J, pp. 52-53.

OTS is supportive of PP&L's ECR proposal because (1) it established stability of rates, and (2) it minimizes base rate case filings. Accordingly, if the Commission determines that PP&L has excess generating capacity as recommended by the ALJ, then, the Commission must also approve PP&L's ECR proposal. Conversely, if the Commission determines that PP&L does not have excess generating capacity, then the Commission does not need to adopt PP&L's ECR proposal.

[2/] Note that 945 megawatts was determined to be excess capacity in what is now the JCP&L agreement.

b. The Recommended 16 Percent Reserve Margin Is Adequate For The Only Winter Peaking Member Of The PJM System.

On page 12 of its Exceptions, PP&L argued that the recommended 16 percent reserve margin is inadequate. OTS submits that PP&L's argument omitted several pertinent and undisputed facts in its argument. Namely, as previously noted, PP&L is the only winter peaking electric utility that is a member of the PJM System. As a member of the PJM System, PP&L is only required by PJM to maintain a 12 percent reserve margin. Accordingly, a recommended reserve margin of 16 percent is reasonable and adequate for PP&L in comparison to PJM's requirement of 12 percent.

By way of further information, OTS's recommended reserve margin of 16 percent was calculated by adding the PJM reserve requirement of 12 percent plus a forced outage factor of 4 percent. Moreover, the recommended 16 percent reserve margin is also one half of the reserve margin range that PP&L has proposed in the instant proceeding. Consequently, OTS's recommended reserve margin range would be from 12 percent to 16 percent.

Finally, on page 17 of its Exceptions, PP&L referenced the reserve margins of a number of other Pennsylvania electric utilities. In relying upon other electric utilities, PP&L failed to discuss the undisputed fact that each of the referenced electric utilities is a summer peaking utility, which is a

distinguishing characteristic from PP&L. The Company refuses to give any recognition that PP&L is a winter peaking utility, which permits the Company to take advantage of the excess winter capacity available from PJM because the other PJM members are summer peaking electric utilities.

c. The ALJ Properly Included QF Output In The Excess Capacity Determination.

The Company has excepted to the ALJ's inclusion of QF output in the excess capacity determination. PP&L Exceptions, pp. 17-23. In presenting its argument, the Company has referred to Section 1323(c) of the Code, 66 Pa. C.S. §1323(c), which created an eight-year window during which the Commission could not include QF output in determining whether a utility has excess capacity. In responding PP&L's argument, OTS submits that the eight-year window for QF has passed, and appears that the Legislature intended for the Commission to address this issue after the passing of eight years. Accordingly, OTS is presenting to the Commission, the issue of whether NUG power (QFs) should be included in calculating PP&L's available capacity resources.

The Company is correct in its Exception, that the eight-year window for QFs has expired. Pursuant to Section 1323(c) of the Code, OTS believes the time is ripe for the Commission to determine whether to include QFs in determining whether a utility has excess capacity. OTS submits that the

following reasons support the position that NUG power (QFs) should be included in PP&L's capacity calculations:

- QFs should be included in PP&L's capacity calculations because Federal Law requires electric utilities to purchase power from QFs.

- QFs is as reliable as PP&L's own generation as shown in OTS Cross-Examination Exhibit No. 3.

- There is an inherent risk with bringing large nuclear plants on line; whether PP&L had bad timing and luck with the development of Susquehanna 1 and 2, or whether PP&L had poor planning and vision toward the development of QF generation, the result of PP&L's action and/or inaction lies solely with PP&L and its shareholders.

- QF power is used by PP&L to meet its daily demand and, therefore, should be counted as a resource at the time of peak.

- QF power is recognized by PJM as a resource for installed capacity for accounting purposes.

See, OTS St. 5, pp. 16-17.

Consequently, based upon PP&L and PJM relying upon QF capacity as a resource at the time of peak, among other considerations, it is logical to include QF power in PP&L's capacity calculations.

d. The Nine-Year Averaging Approach Is Reasonable.

On page 23 of its Exceptions, PP&L argued that OTS's nine-year averaging approach was inappropriate. In response, OTS submits that the nine-year averaging is a reasonable representation of a level of excess generation that PP&L will incur given the Company's projected demand levels and total available resources. OTS St. 5, pp. 21-22. Additionally, the nine-year averaging will permit PP&L to plan for future firm capacity sales to other utilities and plan for future generating capacity additions. Id., pp. 21-22.

Consequently, in view of the advantages that PP&L will have with the nine-year averaging approach, PP&L's Exception should be rejected by the Commission.

e. PP&L's "Postscript" Is Totally Inappropriate At This Stage Of The Proceeding.

On page 25 of its Exceptions and Appendix A, PP&L discussed articles from the Philadelphia Inquirer (attaching the article as Appendix A to its Exceptions) and Public Utilities Fortnightly. OTS submits that this section of PP&L's Exceptions should be stricken by the Commission pursuant to 52 Pa. Code §5.431, with the appropriate sanctions. The Commission's regulations at 52 Pa. Code §5.431 provides that once the

record is closed (the record in the instant proceeding closed May 26, (1995), no additional evidence may be introduced or relied upon by a participant unless allowed for good cause by the Commission or presiding officer upon motion of a participant.

There can be no dispute that PP&L is endeavoring to use hearsay material as substantive evidence in its Exceptions filed with the Commission. The Commission has previously upheld the striking of hearsay material which was attempted to be entered into evidence. In Pennsylvania Public Utility Commission v. Lemont Water Company, Docket No. R-00932673, Order entered February 3, 1994, the ALJ had granted Respondent's motion to strike with respect to newspaper articles attached to proffered testimony. The ALJ reasoned that the newspaper articles constituted hearsay, and, as the authors of the articles were not witnesses in the proceeding and subject to cross-examination, respondent's due process rights would have been violated if the articles were to be admitted. The Commission found the ALJ's ruling to be appropriate and reasonable, and therefore adopted it.

In the instant proceeding, PP&L is also endeavoring to treat newspaper and magazine articles as substantive evidence. This total disregard for the Commission's Rules and Regulations should not be tolerated or condoned by the Commission. If PP&L believed that its newspaper and magazine articles were worthy of consideration by the Commission, a

Petition To Reopen should have been filed, at least the parties could have answered the Petition. A failure by the Commission to address this inappropriate procedure by PP&L will not only violate the due process rights of the other parties in this proceeding, but will subject other Commission proceedings to such actions.

This attempt to circumvent the Commission's Rules and Regulations in this instant proceeding places OTS in a precarious situation, while OTS believes that PP&L's action is totally inappropriate, we are compelled to respond to the merits of the articles, in the event the Commission determines that PP&L's action is appropriate. In responding to the merits of the articles, OTS directs the Commission's attention to an article which appeared in the August 15, 1995 edition of the USA Today (a copy of the article has been attached hereto as Appendix "A"). The article provided, in pertinent part, as follows:

> In much of PP&L territory, which includes the Pocono Mountains, demand is highest in winter. For most utilities in mid-Atlantic states, demand peaks in summer, leaving unused capacity the rest of the year. Together, the companies would have excess capacity year-round, which they could sell in bulk to big customers or other utilities (emphasis added).

In comparison, it is clear that OTS is relying upon an article that specifically addresses the capacity of PP&L, while PP&L, in its Exceptions, is relying

upon articles that either addresses PJM or electric utilities generically. The fact that PP&L's demand is highest in winter, and the other members of PJM is highest in the summer, is a fact that PP&L refuses to acknowledge in this proceeding, or be guided in its planning for additional generating capacity.

Finally, in the event the Commission concludes that PP&L references to newspaper and magazine articles for the first time in Exceptions is inappropriate, then OTS unilaterally withdraws its article (attached as Appendix "A") and any references to the article from its Reply Exceptions. OTS believes that it is more important to maintain the integrity of the Commission's Rules and Regulations than to win an issue(s) in total disregard of the Administrative Process.

2. The ALJ Determined The Proper Cost Of Common Equity.

OTS Main Brief, pp. 107-132.
OTS Reply Brief, pp. 58-61.
Recommended Decision, pp. 142-179.

PP&L, in its Exceptions at pages 26 through 32, raised several arguments against the ALJ's recommended equity allowance of 10.9%. In presenting its argument, PP&L relied upon recent Commission cost of capital findings. Aside from the fact that the Commission, on numerous occasions, has chastised parties for comparing the Commission's cost of capital findings in other proceedings, OTS submits that the following is additional evidence

as to why the Commission's cost of capital finding in other proceedings is not applicable to the circumstances surrounding PP&L:

> The information provided in OTS Surrebuttal Exhibit 1, Schedule No. 1, indicates that the 30-year Treasury bond yield peaked during the week ending November 11, 1994 at about 8.16. The 30-year Treasury bond yield when PP&L filed its rebuttal testimony was 7.02 percent. Therefore, the 30-year Treasury bond yield has declined by 114 basis points.

Consequently, the 30-year Treasury bond yield has declined by at least 114 basis points since the Commission's cost of capital finding in the cases cited by PP&L in its Exceptions.

Clearly, if the Commission has been reluctant to compare cost of capital finding in its own cases, there is even more reluctance in comparing other jurisdictions cost of capital findings. Notably absence from PP&L's comparison list of cost of capital findings from other jurisdictions was Re Potomac Edison Company, Docket No. 94-0027-E-42T, March 17, 1995, where the West Virginia Public Service Commission allowed a cost of capital of 10.85% for Monongahela Power Company.

Finally, on page 29 of its Exceptions, PP&L criticized the ALJ's averaging of results. OTS would note that the ALJ has acted reasonably by only considering reasonable numbers, which is not a blind averaging of numbers.

Accordingly, OTS would recommend that the Commission reject PP&L's Exception as it relates to the ALJ's recommended cost of capital finding.

3. The ALJ's Recommendation To Reject PP&L's Request To Shorten The Depreciable Life Spans Of Its Fossil Fuel Generating Units Should Be Adopted By The Commission.

OTS Main Brief, pp. 55-62.
OTS Reply Brief, pp. 22-29.
Recommended Decision, pp. 115-126.

In his Recommended Decision at pp. 115-126, the ALJ recommended that the Commission reject PP&L's request to shorten the depreciable life spans of the Martins Creek (Units 1 & 2), Sunbury and Holtwood facilities. PP&L has filed an exception to this ruling. PP&L Exceptions, pp. 32-39. A comprehensive discussion of this issue is provided in OTS's Main and Reply Briefs as cited above. OTS responds herein only to certain of the allegations in PP&L's Exceptions.

PP&L relates, in its Exceptions, that in 1988 revisions outside of a base rate proceeding, the Commission approved PP&L's proposed extension of the depreciable lives of its fossil fuel units to reflect deactivation dates of 2009 for Holtwood, 2015 for Martins Creek and 2010 for Sunbury. PP&L Exceptions, p. 33. However, PP&L further states that at that time it could not foresee the substantial costs that would be incurred to comply with the

Clean Air Act Amendments ("CAAA"). In this regard, the Company believes 2003 becomes a "watershed" year because it is at that point that PP&L will need to either spend the money to comply with CAAA or decide to deactivate the fossil fuel units. PP&L Exceptions, pp. 33-34.

Actually the record indicates that PP&L has already determined that it will keep the fossil fuel units in operation beyond the year 2003. In this regard, PP&L witnesses have consistently testified that PP&L has no plans to retire any generating unit within the next 20 years. Tr. 110. Specifically, PP&L witness Douglas A. 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 on 2003." Tr. 188.

PP&L is essentially arguing that the current depreciation charge should be coordinated with future events. However, the ALJ has correctly responded that the record in this proceeding might support PP&L's claim if it were seeking an "extension" as opposed to a "shortening" of the life spans:

> PP&L is correct, in principle, but I feel it is wrong in this particular circumstance. If we were dealing with an extension of their lifetime, PP&L will be in a better position to present its argument. Then the argument would be that 2003 should remain the expected lifetime until the investment is made which is necessary to extend the life to these

> plants. This would, perhaps, be a proper coordination of capital investment and depreciation. However, the lifetimes are now set to be longer. These longer lifetimes may depend on further investment but, in any case, longer lifetimes are the status quo. PP&L is seeking to change that status quo. Moreover, PP&L does have some fundamental burden of proof beyond the burdens associated with the other parties. In addition, we cannot now know the exact investment required for these plants, if their lives are to be extended beyond 2003.

Recommended Decision, p. 124.

At pp. 34-35 of its Exceptions, PP&L states that the revised deactivation dates are appropriate due to the advancing age of the units, economic analyses performed by the Company and, possible changes in the environmental regulations applicable to the Company. In addition, PP&L argues that the relatively small size of the fossil fuel units place them at a disadvantage in economic comparisons with the larger units.

In fact, the factors discussed above are in some respects inaccurate and in other respects greatly exaggerated in order to appear more threatening. For example, OTS believes that PP&L has offered the most "draconian" requirements that could possibly be implemented under Titles I and II of the CAAA in an attempt to demonstrate that its compliance costs could be very high. However, PP&L witnesses have acknowledged 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 as follows with regard to the cost to comply with CAAA air toxics:

> A. ... they address hazardous emissions from fossil fuel power plants. The study results have been evolving, so we have been aware since that time, or the passage of the Act, November 15, 1990, that there was an exposure. We have learned a little bit more about that exposure as time has gone on.
>
> Q. But are there any specific requirements at this time?
>
> A. No, there aren't.
>
> Q. And what is the basis for your cost estimate related to this?
>
> A. For air toxics?
>
> Q. Yes.
>
> A. We're guessing that we might have to install some sort of ultra-high efficiency particulate collection or possibly specialized flue gas scrubbing to go after some specific toxin that might be identified. (Emphasis supplied).

Tr. 169-170.

PP&L witness Mr. Krall has also testified that the Company is exploring alternatives to the possible retirement of these units in 2003. For example, he has stated 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. Mr. Krall has further testified that PP&L will also have allowances available to it that would serve to minimize the cost of CAAA compliance. Tr. 1901. He has also 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.

In short, the record demonstrates not only that the Company has no actual intention to retire these fossil fuel units in the year 2003, but that its claims of huge compliance costs if they continue to employ the units after 2003, are extremely speculative at best. The ALJ undoubtedly was referring to the evidence discussed above when he states "[m]y guess is that the lives of these plants will be extended beyond 2003 and that there will be investments made to work these extensions. Unfortunately for PP&L, we should not recognize these capital investments now." Recommended Decision, p. 125.

The ALJ refused to accept PP&L's proposed life spans largely because it was not "certain" that the fossil fuel units would be deactivated in the year 2003. Recommended Decision, p. 125. PP&L argues that rather than working against its claim, the "uncertainty" identified by OTS and the ALJ

should have worked in support of its claim. In this regard, PP&L argues that "[w]ell-accepted depreciation practices dictate that all potential causes of retirement should be reflected in life span analysis." PP&L Exceptions, p. 36. (Emphasis in original).

In response, OTS submits that PP&L's "uncertainty" argument should be rejected for two reasons. First, PP&L's claim that well accepted depreciation practices support its claim, is in error. PP&L witness Mr. Krall has admitted under cross examination that the NARUC Manual on Depreciation Accounting Practices provides that depreciation accounting is directly tied to the retirement of the plant. In this regard, he read into the record a passage from the manual which states that "it is inherent that the cost of the plant itself will remain on the books of the company until the plant is retired." Tr. 1910-1912. Thus, this well-regarded manual on depreciation practices directly contradicts PP&L's claim, which in essence requests recovery for the cost of the deactivation of the fossil fuel plants before the plants are actually deactivated.

Second, OTS would 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, 409 A.2d 505, 507 (1980). Accordingly, PP&L should be aware that, to the extent the opposing parties have found inconsistencies or identified "uncertainty" with regard to its depreciation claim, it must provide additional evidence in order to further substantiate the claim. While PP&L's view of the impact of the element of "uncertainty" is novel, OTS submits that practically speaking, the Company has simply failed to substantiate its claim. The ALJ clearly agrees with OTS. See, Recommended Decision, p. 124.

Finally, PP&L argues that several cases in other jurisdictions and the Commission's Order in Pennsylvania Public Utility Commission v. York Water Company, 78 Pa. P.U.C. 87, 109-110 (1993), support the argument that the use of longer depreciable lives should be coordinated with the investments necessary to achieve them. PP&L Exceptions, pp. 37-39. However, these cases provide no comfort for PP&L. In these cases, the company was arguing against moving from the "status quo" to a longer life span without recognizing the investment made. However, here, as recognized by the ALJ, PP&L is arguing to move from the "status quo" to a shorter life span. The argument does not work in reverse. PP&L's

argument might have some validity if it were arguing to keep the life span at 2003 until the investment is made. See, Recommended Decision, p. 124.

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 submits that PP&L's exception to the ALJ's recommendation should be denied by the Commission.

4. PP&L's Exception To The ALJ's Rejection Of Its Nuclear Decommissioning Contingency Factor Should Be Rejected By The Commission.

OTS Main Brief, pp. 48-50.
OTS Reply Brief, pp. 15-18.
Recommended Decision, pp. 98-99.

The Company's claim for nuclear decommissioning costs was based on a study performed by PP&L witness Thomas S. LaGuardia. PP&L's claim for nuclear decommissioning costs includes a contingency factor which averages about 17%. PP&L Exceptions, p. 40. The ALJ has recommended the disallowance of the contingency based upon the following:

> ...a reasonable provision for money is, right now, all that is necessary. The contingency factor is somewhat speculative ... I would rather not build in what appears to be a "overkill" factor. In any event, I emphasize that we are uncertain about

> what will actually be the cost when decommissioning occurs.

Recommended Decision, p. 99.

PP&L has filed an exception to the ALJ's recommendation.[3/] PP&L Exceptions, pp. 39-41. OTS submits that PP&L's exception is without merit and should be rejected. A comprehensive discussion of this issue is provided in OTS's Main and Reply Briefs as cited above. OTS responds here only to certain arguments made by PP&L and the Sierra Club in their exceptions.

PP&L first alleges that the ALJ has erred because he identifies the contingency as simply a "safety factor," when in fact it "plays an integral role in the estimation process and is not a mere after-the-fact "adder." PP&L Exceptions, p. 40. PP&L states further that the inclusion of a

---

3/ The Sierra Club also excepted to the ALJ's rejection of the contingency factor. Sierra Club Exceptions, pp. 25-30. The Sierra Club's exception is based upon its belief that PP&L witness Mr. LaGuardia's nuclear decommissioning cost estimate is too conservative. Sierra Club Exceptions, p. 26. However, the ALJ properly found that Mr. LaGuardia's estimate is more than sufficient and states "...I recommend that the contingency factor be eliminated. To some degree, this factor is like the safety factor for a bridge, to make sure that there is not catastrophic failure associated with this undertaking." Recommended Decision, pp. 98-99. (Emphasis in original). Although the Sierra Club takes issue with the ALJ's reasoning, it has produced no expert witness in this proceeding in support of its contention that PP&L's nuclear decommissioning expense claim is already too conservative and should not be further reduced by eliminating the contingency. Accordingly, OTS submits that the Sierra Club's exception should be denied.

contingency factor is well accepted by engineering associations and other state public utility commissions.[4/] PP&L Exceptions, pp. 40-41.

OTS submits that the ALJ's rejection of the contingency is not merely based on his belief that it is an "adder," but is also based on his belief that it is "speculative." See, Recommended Decision, p. 99. The ALJ's ruling is consistent with Commission orders in two previous base rate cases involving PP&L in which 25% contingency factors were denied as being too "speculative." See, Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company, 59 Pa. P.U.C. 332 (1985); Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company, 57 Pa. P.U.C. 559, 606-607 (1982). In both of these cases the Commission specifically ruled upon the reasonableness of the contingency factor and

---

[4/] PP&L has argued that contingency factors have 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 Exceptions, pp. 40-41. 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.

determined that the factor was too speculative because it was just as "likely to fluctuate downward as upward."[5/] 59 Pa. P.U.C. at p. 384.

PP&L further argues that the Commission's 1985 PP&L order is not controlling because at that point the issue of contingencies had been addressed in only a few jurisdictions and this Commission relied upon a single decision from Massachusetts.[6/] PP&L Exceptions, p. 41, f.n. 10. In fact, the Commission identified the Massachusetts case as an example of a

---

5/ In an attempt to distinguish these cases, PP&L has argued that it employed a "generic" decommissioning study and contingency factor in the Unit 2 case, while in this proceeding PP&L witness Mr. LaGuardia used a "site specific" study and contingency factor. PP&L Exceptions, p. 41, f.n. 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 based upon a "site-specific" decommissioning study. Tr. 2079-2080.

6/ PP&L also alleges that this Commission has approved decommissioning claims that included a 25% contingency in two Pennsylvania Power Company 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). PP&L Exceptions, p. 41. 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. OTS submits that little or no weight should be given to this result since the issue of the reasonableness of the contingency was not considered by the Commission. Moreover, 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. If a contingency was included in the latter case it apparently was not identified to the parties in the case and the Commission. Clearly in this instance no precedent has been set.

claim which is primarily based upon conjecture. The Commission's rejection of contingencies in previous PP&L cases apparently relate to the fact that the contingencies are based upon estimates of the cost of problems that may occur. This creates the situation where PP&L has added to an estimate (the cost of decommissioning) another estimate (the cost of unforeseen events which may or may not occur).

Instead of providing an estimate of the problems that may (or may 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 allow updates to that estimate with adjustments based upon events that have actually occurred. The true weakness of PP&L's contingency factor is that it inflates the cost estimate based upon mere speculation as to what may occur. Since PP&L has already indicated that it will update its nuclear decommissioning claim at regular intervals[7/], the ALJ has properly refused

---

7/ PP&L witness George T. Jones has stated that "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 appears to be the process the Commission desires. For example, 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).

to allow the claim to be inflated now, based upon unforeseen events which may never occur.

Accordingly, the record in this proceeding clearly demonstrates that the ALJ properly rejected PP&L's inclusion of a contingency factor in its nuclear decommissioning claim because it tends to inflate the claim based upon mere speculation. Consequently, OTS submits that the ALJ's recommendation should be adopted by this Commission.

5. PP&L's Exception To The ALJ's Rejection Of Its Fossil Fuel Decommissioning Expense Claim Should Be Denied.

OTS Main Brief, pp. 37-46.
OTS Reply Brief, pp. 4-14.
Recommended Decision, pp. 100-107.

PP&L has proposed in this proceeding to establish an annuity, like the one used to fund nuclear decommissioning expense, to recover the cost of dismantling and demolishing its fossil fuel generating plants after their retirement from service. PP&L Exceptions, p. 44. Under the procedure currently in effect, fossil fuel decommissioning costs would be deferred until after the plants are retired, at which time the costs would be recovered as a component of net negative salvage.

The ALJ rejected PP&L's claim primarily because of 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") and the Commission's recent decision in Pennsylvania Public Utility Commission v. West Penn Power Company, Docket No. R-00942986 (entered December 29, 1994) ("West Penn"). The ALJ reluctantly rejected the claim based upon legal precedent but urges the Commission to reconsider its policy based upon Penn Sheraton. Recommended Decision, p. 107. PP&L, endorsing the sentiment expressed by the ALJ, has excepted to this ruling. OTS submits that the record in this proceeding strongly demonstrates that the ALJ's ruling is sound, even though it was arrived at somewhat reluctantly. PP&L's exception should be rejected. A comprehensive discussion of this matter is provided in OTS's Main and Reply Briefs as cited above. OTS responds here only to certain arguments made by PP&L in its Exceptions.

PP&L first states that the ALJ's belief that PP&L's claim should be adopted because it would allow current PP&L customers to pay for the decommissioning costs of plants from which they are currently receiving service (as opposed to future customers who allegedly would pay under net negative salvage), demonstrates the merit of its claim. PP&L Exceptions, p. 45.

However, the record in this proceeding indicates that the "inter-generational equity" argument does not hold up under close scrutiny. OTS

has demonstrated that the allowance of net negative salvage does not unfairly burden future PP&L 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."[8/] OTS St. 2, pp. 16-17. In this regard, 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

---

[8/] Moreover, PP&L has failed to demonstrate that the level of decommissioning costs for its fossil fuel plants would create a significant burden for existing customers at the time these costs are recovered under the Commission's policy of net negative salvage. In this regard, OTS witness Mr. Sivulich has estimated that if PP&L's total Sunbury SES decommissioning cost estimate were divided by four (representing four generating units) and then divided by PP&L witness 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 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 supports OTS's position that the level of decommissioning expense, when examined separately, is not significant enough to depart from the Commission's practice of treating net negative salvage on a current basis.

acknowledged that "current" PP&L customers will indeed become "future" PP&L customers. Tr. 1883. This demonstrates that PP&L's attempt to strictly separate its customers into "current" and "future", 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 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 next argues that its claim should be approved because just like the nuclear exception to the net negative salvage policy, it would respond to the public health and safety risks presented by the dismantling of the fossil fuel plants. PP&L Exceptions, pp. 45-46. However, PP&L witness Mr. LaGuardia has testified that the presence of certain safety or health hazards within the older PP&L fossil fuel plants (primarily the presence of asbestos), does not create "special" circumstances which would distinguish these plants from other fossil fuel plants of similar age and vintage and require the Commission to allow prospective net negative salvage. Tr. 963-964.

Finally, OTS believes that a realistic review of the legal precedent that the ALJ felt so constrained by, will demonstrate that his reluctance to reject

PP&L's claim was misplaced. In Penn Sheraton the Superior Court determined that the Commission was prohibited from charging current ratepayers for the prospective removal of steam mains in the City of Pittsburgh. The decision had nothing to do with the notion of "current" versus "future" customers, but instead was based on the fact that the claim was too "speculative" to be recovered from ratepayers:

> 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. (Emphasis supplied).

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 the Commonwealth and is not merely a product of the reasoning in the orders of the 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.[9/]

The Commission recently had the opportunity to reiterate its commitment to the Penn Sheraton doctrine in the West Penn order. Here the Commission stated that in order to obtain prospective net negative salvage for a non-nuclear plant (and, in effect, remove the speculation), a company must show that the claim is reasonable, cost effective and needs to be incurred in this case:

9/ 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. In this regard, see, Pennsylvania Public Utility Commission v. Philadelphia Electric Company, Docket No. R-811626 (entered June 30, 1982).

> ... 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 fuel units on an after-the-fact basis without creating unusually high costs for its customers. Tr. 1686. Most importantly, PP&L has also failed to satisfy the other factor identified by the Commission in West Penn, that these costs need to be incurred in this case. For the reason discussed in the previous sentence, the answer is no.

Thus, OTS submits that if the Commission responds to the ALJ's request and gives the Penn Sheraton doctrine a "hard look," the result will be that PP&L's claim for prospective net negative salvage for its fossil fuel plants will be denied. Accordingly, the ALJ's recommendation should be adopted by the Commission.

6. The ALJ Properly Adopted OTS's Proposal To Normalize PP&L's Claim Rate Case Expense Over A Four-Year Period.

OTS Main Brief, pp. 67-71.
OTS Reply Brief, pp. 35-37
Recommended Decision, pp. 70-72.

On page 54 of its Exceptions, PP&L excepted to the ALJ's adoption of OTS's proposal to normalize PP&L's claim rate case expense over a four-year period. PP&L, in its Exceptions, suggests that the ALJ's recommendation is flawed because he failed to exclude a ten-year filing period from his analysis. As explained in OTS's Main (pp. 67-71) and Reply (35-37) Briefs, the fact that PP&L would propose the elimination of the ten-year filing interval demonstrates a lack of understanding that the Company's history regarding the frequency of rate case filings is an essential element in determining the normalized level of rate case expense for ratemaking purposes. Hypothetically, the ten-year filing interval may be an aberration in PP&L's frequency or rate case filings, likewise, PP&L's 15 and 16 month filing intervals may be aberrations due to the construction of Susquehanna Units 1 and 2. PP&L failed to recognize that the purpose of averaging historical filing intervals is to mitigate the aberrations of long and short periods that may have occurred during the historical period. Another reason for normalizing rate case expense based on a historical average is that no one (including PP&L) knows when PP&L will file its next base rate case.

In its Exceptions, PP&L declared that its "two-year proposal, therefore, is clearly reasonable." PP&L Exceptions, p. 54. In response, OTS would submit that the only explanation for requesting a two-year normalization of its rate case expense was presented by PP&L witness Bernini on cross-examination, in pertinent part, as follows:

> A. . . .The reason I used two years is, to be perfectly honest with you, I had no better choice (emphasis added).
>
> I know that in the last case, we used two years, so I decided to use two years in this case (emphasis added).
>
> Q. So you used it because you used it before?
>
> A. That's correct.

Tr. 536.

As OTS noted in its Main Brief, it is admirable that PP&L witness Bernini offered a "perfectly honest" admission that a proposed two-year normalization of PP&L's rate case expense was only selected because "he had no better choice", such an admission does not diminish the fact that the Company had provided no analysis to support its proposal for a two-year normalization.

Consequently, PP&L's Exception should be rejected by the Commission.

7. The ALJ Correctly Reduced PP&L's Environmental Costs By $326,000.

OTS Main Brief, pp. 84-86.
OTS Reply Brief, pp. 32-35.
Recommended Decision, pp. 64-65.

Both PP&L and the Sierra Club excepted to the ALJ's recommendations that PP&L's claim for environmental remediation expense be reduced by $326,000. In response, OTS would refer the Commission's attention to PP&L Ex. MJB-9, which provides in pertinent part as follows:

> . . .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 (emphasis added).

PP&L Ex. MJB-9.

The Company was given ample opportunity to provide evidence as to whether PP&L Ex. MJB-9 did not accurately reflect the Agreement between PP&L and DER. Notably, on cross-examination, PP&L witness Berish acknowledged that PP&L Ex. MJB-9 did not differ in any respect from the Agreement between PP&L and DER. Tr. 2012.[10/] In the absence of a contrary answer by the Company, the parties and the Commission must assume that the Agreement obligates the Company to pay at least $5 million

---

10/ There was no redirect by the Company's counsel on this specific answer by Mr. Berish to this cross-examination question and answer.

for "Environmental Remediation Expenses". It is axiomatic from simple contract law, that if PP&L was obligated to $5.4 million, the language of the Agreement would have provided that the Company has agreed to pay more than $5 million, instead the Agreement indicates that the Company has "agreed 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 Expenses".

Consequently, the Exceptions of PP&L and the Sierra Club should be rejected.

8. The ALJ Properly Denied The Claim For Susquehanna Early Window Amortization.

OTS Main Brief, pp. 103-105.
OTS Reply Brief, pp. 45-47.
Recommended Decision, pp. 56-62.

PP&L excepted to the ALJ's rejection of early window amortization for Susquehanna Unit No. 1. PP&L Exceptions, p. 46. By way of background, Susquehanna Unit No. 1 went into service on June 8, 1983 and was recognized in rates effective August 22, 1983, pursuant to the Commission's Order entered on August 22, 1983, at Docket No. R-822169. OTS witness Weakley defined "Early Window" deferrals as follows:

> Early window deferrals, with respect to electric utilities, are accounting mechanisms which allow for the timing differences between the date of commercial operation and base rate recognition of a generating facility. Simply, the early windows allowed PP&L to accumulate these costs in a deferred account.

OTS St. 4, p. 15.

The Company's adjustment amortizes the early window deferral applicable to Susquehanna Unit 1 over a ten year period. The early window deferral of Susquehanna Unit 1 was authorized by the Commission in its Order at Docket No. P-820367, for accounting purposes only.

As the ALJ explained in his Recommended Decision, it is the position of OTS that the early window claim for Susquehanna Unit 1 be disallowed, because the Company failed to claim any recovery of the expense at the first opportunity and to allow recovery now constitutes impermissible retroactive ratemaking. PP&L had the opportunity to make a claim to recover the associated early window costs associated with Susquehanna Unit 1 in its 1984 base rate case, but failed to do so. In the rebuttal phase of this proceeding, the Company asserted that it did not make a claim in its 1984 base rate case, because of a desire "to minimize the amount be requested."[11/] PP&L St. 3-R, pp. 11-12. OTS submits that the failure to file for recovery of these

---

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

costs at the earliest opportunity (1984 base rate case) is fatal to PP&L's claim. In this regard, 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).

In its Exceptions, the Company has principally relied upon the Commission's Opinions and Orders. It is undisputed that Commonwealth Court can reverse the Opinions and Order of the Commission. In that regard, 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 adjustment made by OTS with respect to Susquehanna Unit 1 recognizes the changes dictated by the Commonwealth Court decisions.

Consequently, consistent with the Commonwealth Court decisions, OTS submits the early window claim for Susquehanna Unit 1 should be disallowed. Accordingly, the Exception of PP&L should be rejected.

9. PP&L's Exception To The ALJ's Recommended Scale Back Of The Rate Increase Should Be Denied.

OTS Main Brief, pp. 135-139.
OTS Reply Brief, pp. 63-65.
Recommended Decision, pp. 230-231.

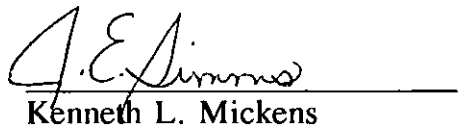
PP&L proposed a Rate RS customer charge of $7.20 per month, reflecting an increase of 50% over the existing customer charge of $4.80 per month. PP&L Exceptions, p. 57. OTS had proposed an increase to $5.90 for the customer charge or an increase of 23%. OTS Main Brief, p. 135. The ALJ has recommended a maximum increase of 35% and further proposed that the customer charge increase "be scaled back with lesser increases." Recommended Decision, p. 230.

PP&L has not excepted to the recommended 35% increase, however, the Company has excepted to the ALJ's recommendation of a scale back of the increase. PP&L Exceptions, pp. 57-58. One of the reasons PP&L gives in support of its exception is that the ALJ's call for a scale back is "unprecedented" as applied to the design of individual rates. PP&L Exceptions, p. 58. In response, OTS would merely state that similar scale backs have been approved by this Commission in other proceedings. Thus, the ALJ's recommendation is not "unprecedented." OTS believes that the scale back recommended by the ALJ is appropriate if it is accomplished in a manner that is fair and equitable. Accordingly, OTS submits that PP&L's exception should be denied.

III. CONCLUSION

For the reasons stated herein, in OTS's Main and Reply Briefs and in OTS's Exceptions, OTS submits that its recommendations should be adopted by this Commission.

Respectfully submitted,



Kenneth L. Mickens
Johnnie E. Simms
Senior Prosecutors
Office of Trial Staff

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: August 21, 1995

APPENDIX "A"

Urge to merge gives utilities a surge

By Patrick McGeehan
USA TODAY

LOS ANGELES — The utility industry, long seen as a sleepy backwater of the stock market, is getting a jolt from takeover activity. And, for a switch, some of it is hostile.

In a rare unsolicited bid, Philadelphia-based **Peco Energy** Monday offered to acquire **PP&L Resources** for about $3.8 billion in stock. Peco's management threatened a hostile takeover if PP&L's board rejects the offer.

The combination would create the USA's No. 4 investor-owned electric and gas company, Peco says. It would have $6.6 billion in annual revenue and 3 million customers.

"This was rather startling news but it was not totally unexpected," says Dave Schanzer, stock analyst with Janney Montgomery Scott.

Peco structured its offer as a tax-free stock swap, giving 0.865 shares for each share of PP&L. News of the offer pushed PP&L up 2⅝ to $21½. Peco fell 1 to $26¾.

PP&L, parent of Pennsylvania Power & Light, serves an area of northeastern Pennsylvania that borders Peco's. Peco and other neighboring utilities have coveted PP&L for its counter-cyclical business.

In much of PP&L's territory, which includes the Pocono Mountains, demand is highest in winter. For most utilities in mid-Atlantic states, demand peaks in summer, leaving unused capacity the rest of the year. Together, the companies would have excess capacity year-round, which they could sell in bulk to big customers or other utilities.

Peco estimates additional bulk sales could boost revenues of the combined companies by $400 million a year, Schanzer says. All told, Peco projects the acquisition could yield $2 billion in benefits over 10 years. Most would come from cost savings, such as lower fuel costs and cutting 1,100 jobs.

Linda Byus, analyst with Duff & Phelps, is skeptical about the projections. But, she says, "If they can get anywhere close to the savings they're talking about, this would be a good investment long-term."

But analysts advise against speculating in takeovers of utilities. The wild card in any such deal: regulatory approval. State regulators have the final say on how much of the merger-related savings utilities can pay out in dividends and how much they must return to ratepayers. To appease regulators, Peco says it will reduce rates $860 million over 10 years.

"This is a different breed of cat," says PaineWebber's Bert Kramer.

Regulatory approvals can drag out utility mergers for more than a year. Hostile utility deals are risky for investors, says Mark Davis, co-head of mergers and acquisitions at Salomon Bros., Peco's investment adviser. But that won't prevent them, he says. "I think every major CEO in this business is looking at his neighbors," Davis says. "The industry is becoming more competitive and there's not a lot companies can do to cut costs," he says. "The answer in most cases is you combine with your next-door neighbor."

In a smaller but friendlier deal Monday, **Union Electric** of St. Louis said it would buy Illinois-based **Cipsco**, parent of Central Illinois Public Service, for $1.2 billion.

INDUSTRY SPOTLIGHT

A DAILY LOOK AT A COMPANY, INDUSTRY OR MARKET TREND

Sleepy industry awakens

Peco Energy	PP&L Resources
Hq.: Philadelphia	Hq.: Allentown, Pa.
CEO: C.A. McNeil	CEO: William Hecht
'94 revenue: $4.0 billion	'94 revenue: $2.7 billion
'94 net income: $435 million	'94 net income: $244 million
Mon. price: $26¾, –1	Mon. price: $21½, +2⅝

Source: Bloomberg Business News

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:

David B. MacGregor, Esquire
Thomas Gadsden, Esquire
Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Paul E. Russell, Esquire
Pennsylvania Power & Light Company
2 North Ninth Street
Allentown, PA 18101-1179

Tanya McCloskey, Esquire
Mary C. Kenney, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Karen Oill Moury, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Dale Bridenbaugh
MHB Technical Associates
1723 Hamilton Avenue - Suite K
San Jose, CA 95125

Thomas S. Catlin
Matthew I. Kahal
Dr. Charles Johnson
Exeter Associates, Inc.
12510 Prosperity Drive, Suite 350
Silver Spring, MD 20904

RECEIVED
95 AUG 21 PM 3:55
PA. P.U.C.
INFO. CONTROL DIV.

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140

Mr. Stephen J. Baron
J. Kennedy & Associates, Inc.
35 Glenlake Parkway, Suite 475
Atlanta, GA 30328

D. Jane Drennan, Esquire
Drennan & Associates
1216 16th Street, N.W.
Washington, DC 20036

Maurice Brubaker
Drazen-Brubaker & Associates, Inc.
7730 Forsyth Blvd., Suite 200
St. Louis, MO 63105-0840

Joan O. Brandeis, Esquire
Schnader, Harris, Segal & Lewis
Suite 3600
1600 Market Street
Philadelphia, PA 19103

Alan J. Barak, Esquire
Mid-Atlantic Energy Project
3700 Vartan Way
Harrisburg, PA 17110

David M. Kleppinger, Esquire
McNees, Wallace & Nurick
P. O. Box 1166
100 Pine Street
Harrisburg, PA 17108

David A. McCormick, Esquire
Department of the Army
Office of the Judge Advocate General
901 North Stuart Street
Arlington, VA 22203-1836

Mr. Jeffrey J. Pyros
Pyros Financial Group
One South Main Street
Wilkes-Barre, PA 17801

James Melia, Esquire
Kirkpatrick & Lockhart
The Payne Shoemaker Building
240 North Third Street
Harrisburg, PA 17101-1507

Christopher J. Barr, Esquire
Morgan, Lewis & Bockius
1800 M Street, NW
Washington, DC 20026-5869

Mr. Craig R. Kuennen
Energy Services Manager
Commission on Economic Opportunity
211 South Main Street
Wilkes-Barre, PA 18701-1596

Kenneth Zielonis, Esquire
Stevens & Lee
208 North Third Street
Harrisburg, PA 17101

Kenneth Eisdorfer
Cook, Eisdorfer & Associates
2258 Schuetz Road, Suite 205
St. Louis, MO 63146

Robert P. Haynes, Esquire
Mette, Evans & Woodside
3401 North Front Street
Harrisburg, PA 17110-0950

Eric J. Epstein
2308 Brandywine Drive
Harrisburg, PA 17110

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

J. E. Simms

Johnnie E. Simms, Senior Prosecutor
Office of Trial Staff

Dated: August 21, 1995

R-00943271

50

HISTORICAL DOCUMENTS

- ☐ Administrative Order
- ☐ Annual Report
- ☐ Application
- ☐ Bench Decisions
- ☐ Certificate of Public Convenience
- ☒ Document Folder
- ☐ Exhibits
- ☐ Initial Decision
- ☐ Orders
- ☐ Oversized Documents
- ☐ Permit
- ☐ Rate Filing
- ☐ Recommended Decision
- ☐ Report Folder
- ☐ Secretarial Letter
- ☐ Tariff
- ☐ Tentative Decision
- ☐ Transcript (Testimony)

KJR

SCHNADER, HARRISON, SEGAL & LEWIS
ATTORNEYS AT LAW
SUITE 3600
1600 MARKET STREET
PHILADELPHIA, PENNSYLVANIA 19103-4252
215-751-2000
FAX: 215-751-2205

DOCUMENT FOLDER

DIRECT DIAL NUMBER

(215) 751-2278

August 18, 1995

RECEIVED
AUG 18 1995
SECRETARY'S OFFICE
Public Utility Commission

VIA UPS NEXT DAY AIR

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company: Docket No. R-00943271

Dear Secretary Alford:

Enclosed for filing with the Commission are an original and nine (9) copies of the Reply Exceptions submitted on behalf of Bethlehem Steel Corporation concerning the above-captioned proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding have been duly served. Please date stamp a copy of this transmittal letter and kindly return for our filing purposes.

Very truly yours,

Joan O. Brandeis

Joan O. Brandeis
For SCHNADER, HARRISON, SEGAL & LEWIS
Attorneys for Bethlehem Steel Corporation

Enclosures
cc: All Parties of Record
The Honorable Robert A. Christianson
Office of Special Assistants (via UPS Next Day Air)

ORIGINAL

28507 v1
08/16/95 02:07 pm

RECEIVED
AUG 18 1995
SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	DOCKET NO. R-00943271
PENNSYLVANIA POWER & LIGHT COMPANY	:	

DOCUMENT FOLDER

REPLY EXCEPTIONS
OF
BETHLEHEM STEEL CORPORATION

DOCKETED
AUG22 1995

Joan O. Brandeis, Esquire
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103
215-751-2278

Attorneys for Bethlehem Steel Corporation

Dated: August 21, 1995

ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. INTRODUCTION

Bethlehem Steel Corporation ("Bethlehem") submits the following Reply Exceptions to specific Exceptions to the Recommended Decision of Administrative Judge Christianson raised by the Office of the Consumer Advocate ("OCA").

In large part, the Exceptions raised by Pennsylvania Power & Light to ALJ's recommendations regarding treatment of the EDI and IDI credits in the cost of service study and by the OCA to the cost of service study methodology are merely a reiteration of the positions taken and arguments made in their Main Briefs and Reply Briefs and have been previously anticipated and addressed by Bethlehem in its Main Brief and Reply Brief, the relevant portions of which are incorporated herein by reference. Moreover, some of the issues raised by the Exceptions of OCA and PP&L have been addressed and correctly disposed of by ALJ Christianson in the Recommended Decision.

These Reply Exceptions will be confined primarily to addressing and rebutting the Exception of the OCA that the terms of the currently effective, PUC-approved contract (the "ISA Contract") for service under Rate Schedule Interruptible Service by Agreement be modified or abrogated in this proceeding.

Before addressing the Exceptions of the OCA and PP&L, Bethlehem would like to address and correct for the record a serious factual misstatement made by PP&L Industrial Customer Alliance ("PPLICA") in its Exceptions to the ALJ's Recommended Decision.

In its Exception to the ALJ's approval of PP&L's proposed rate design for interruptible customers, PPLICA makes the following statement:

> "The ALJ's recommendation is particularly offensive to PPLICA given that the ALJ accepted PP&L's "theory of meeting competition and retaining load" in approving PP&L's special contract with Bethlehem Steel (that contract assuring that Bethlehem Steel receives essentially no rate increase in this proceeding),...." (PPLICA Exceptions at p. 15, emphasis added).

PPLICA's statement about the rate increase that will be imposed on Bethlehem Steel in this case is ~~flat out~~ untrue and if not corrected could present a distorted and prejudicial view of the impact of this proceeding on Bethlehem.

As PPLICA and its counsel are fully aware, if the ALJ's recommendation with respect to LP-5 and LP-6 interruptible rate design is accepted by the Commission, Bethlehem will be subject to an increase in its rates at its Bethlehem plant of from 22% to 28%. Bethlehem strenuously opposed PP&L's LP-5 and LP-6 rate design proposals in the testimony of its witness Maurice Brubaker and in its Main and Reply Briefs. Moreover, it has filed Exceptions with respect to the ALJ's recommendations in which it continues to strongly oppose approval of this unjust and unreasonable rate design. Bethlehem, like the members of PPLICA who take interruptible service under Rates Schedule LP-5 and proposed LP-6, will receive, to use the words of Bethlehem's witness, a draconian increase in rates at its Bethlehem plant if PP&L's proposal is adopted.

II. REPLY EXCEPTIONS

A. The OCA's Exception No. 20 to the ALJ's Approval of the ISA Rate Must be Rejected.

1. Background.

Under its existing tariff, PP&L is authorized by the Pennsylvania Public Utility Commission ("Commission") to provide service to certain customers under the terms of special contracts entered into pursuant to Rate Schedule Interruptible Service By Agreement ("Rate Schedule ISA"). PP&L Rate Schedule ISA together with the ISA Contract between the Company and Bethlehem, with the Commission for approval in 1988. Copies of the rate schedule, the two contracts and all other required data included in the filing were served on the OCA, the Office of the Trial Staff and the Office of Small Business Advocate. After investigation and analysis of the tariff filing and supporting data, the Commission, in an Opinion and Order issued January 26, 1989, permitted the tariff supplement and the related agreements to become effective on February 6, 1989. No complaint regarding Rate Schedule ISA or the ISA Contract was received at the time of the original filing or has been received by the Commission since the issuance of that Opinion and Order.

In its allocation of the revenue increase requested in this case, PP&L properly proposed to increase the rates of Rate Schedule ISA in accordance with the terms of the contract between it and Bethlehem. PP&L witness Kasper explained that the ISA Contract provides for rates for firm service to be increased or decreased by an amount equal to the

overall system average increase or decrease approved by the Commission. PP&L calculated its proposed increase to Rate Schedule ISA in this case on the basis of these contract terms.

The OCA has argued in its Exceptions that a larger rate increase is warranted for Rate Schedule ISA than the increase proposed by PP&L in this case and approved by the ALJ in his Recommended Decision. Bethlehem submits that any increase in rates to Rate Schedule ISA over that proposed by PP&L would drastically modify or totally abrogate the currently effective contract between the Company and Bethlehem, and that there is simply no basis in the evidentiary record of this proceeding to support the findings required by Section 508 of the Pennsylvania Public Utility Code for such action. To do so without an adequate record and the required findings would violate fundamental due process rights of the parties. The existing ISA Contract must be given effect and PP&L's allocation of revenue to Rate Schedule ISA in accordance with the terms of that contract must be accepted.

2. The OCA's Reliance on the ISA Rate of Return is Misplaced.

The OCA initially argues, as a basis for justifying a greater increase than provided under the PUC-approved ISA Contract, that the rate of return of the ISA Class is below the system average rate of return. This argument is misplaced for several reasons. First, under a properly adjusted cost of service study, such as the one recommended by Bethlehem witness Brubaker (See Bethlehem Exhibit MEB-3, Schedule 2), and by the University College Coalition, the rate of return for the ISA Class is well above system average. More importantly however, the ISA class rate of return is not germane to the issue

of whether the ISA Contract can be modified in this proceeding, and accordingly the OCA's arguments relating to the rate of return should be rejected.

3. No Substantial Evidence Has been Introduced into the Record which Questioned or Disputed PP&L's Proposed Treatment of the ISA Contract.

In its Exception, the OCA attempts to suggest that there is no evidence in this proceeding to support the rates proposed for Rate Schedule ISA. Bethlehem maintains, to the contrary, that in fact there in no evidence in the record to support abrogating the ISA Contract. Neither the OCA nor any other party (other than PP&L) presented any evidence regarding the terms of the ISA Contract in this proceeding. During the course of the hearings in this case, the OCA did not attempt to examine this agreement or to establish that its terms are unjust or unreasonable. The only reference made by the OCA to Rate Schedule ISA or the ISA Contract during the evidentiary hearings in this case was a statement by its witness Dr. Johnson that it was his "understanding" that the Commission can increase the charges under the contract. (See OCA Statement No. 3, p.20). In short the ISA Contract was not put directly at issue by the OCA or by any other party in this case. PP&L's evidence that Rate Schedule ISA is a competitive response to the end-use environment and demonstrated customer needs for lower rates was not disputed or challenged.

4. The OCA has Provided No Legal Basis for Abrogating the ISA Contract.

The OCA has not directly referred to or invoked the Commission's powers under Section 508 of the Public Utility Code in support of its proposal to increase the rates under the ISA Contract, but rather has put forth an argument that, notwithstanding the rate set forth in the ISA Contract, "it is within the Commission's discretion" to set a different rate in this case. OCA Main Brief at p. 293, OCA Exceptions at p. 54. The only authority cited by the OCA for this remarkable proposition is the Roaring Creek case, discussed at length below, which provides no support for the OCA view whatsoever. Indeed, the ALJ in his Recommended Decision concurs that Roaring Creek, the legal precedent cited by the OCA as support for its contract abrogation proposal is not applicable to this case. RD at. p. 255.

B. The Requirements of Section 508 Have Not Been Met in this Proceeding.

In order for the Commission to approve the OCA proposal to increase rates to the ISA Class, it would have to exercise its powers under Section 508 of the Public Utility Code to vary the terms of the existing ISA Contract. Bethlehem submits that there is no evidentiary basis in the record of this proceeding which would support the abrogation or modification of the ISA Contract. Accordingly, the OCA and the PPLICA proposals regarding the revenue allocation to Rate Schedule ISA must be rejected.

Section 508 of the Public Utility Code, 66 Pa. C.S. §508, grants to the PUC the power and authority to vary, reform or revise the terms of a contract entered into between

a public utility and a corporation "which embrace or concern a public right, benefit, privilege, duty or franchise. . .or are otherwise affected or concerned with the public interest."

> "Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the Commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms and conditions of such contract."

66 Pa.C.S. § 508.

As discussed in detail above, it is clear that the justness and reasonableness of the terms of the ISA Contract have not been put at issue in this proceeding. This is self-evident from the fact the that the ISA Contract itself has not been introduced into the evidentiary record of this case.

Moreover, the fact that under PP&L's proposed allocation Rate Schedule ISA would receive a lower percentage of the increase than some other rate classes cannot, by itself, substantiate a finding that there is undue discrimination or that the rates charged under the ISA Contract are unjust and unreasonable. It is black letter law in Pennsylvania that mere variations in rates among classes of customers does not violate the Public Utility Code. Building Owners and Managers Association v. Pennsylvania Public Utility Commission, 470 A.2d 1029, 79 Pa. Commonwealth 598 (1984).

There has simply been no evidence presented in this case to warrant a finding that the rates now charged or to be charged under the ISA Contract are unjust or unreasonable in violation of Section 1301 of the Public Utility Code, 66 Pa. C.S. 1301 or are unduly discriminatory in violation of Section 1304 of the Public Utility Code, 66 Pa. C.S. 1304. Such findings are required for the Commission to exercise its Section 508 powers. The record in this proceeding provides no basis for the Commission to find either that the terms of the ISA Contract are unjust or unreasonable or to prescribe alternative terms.

C. The Roaring Creek Case Requires That the Terms of the ISA Contract be Honored in This Proceeding.

The OCA cites Pennsylvania Public Utility Commission v. Roaring Creek Water Company, 73 Pa. PUC 373 (1990) in support of the proposition that the PUC has discretion to consider appropriate revenue allocations for Rate Schedule ISA in this case. In fact, examination of the Roaring Creek case compels the conclusion that the ISA Contract cannot be modified or abrogated in this proceeding, and that its terms must be honored.

In Roaring Creek, the utility served its largest customer under a contract as opposed to a tariffed rate. Unlike the ISA Contract between PP&L and Bethlehem, the contract between Roaring Creek and its customer had never been submitted to or approved by the Commission. Roaring Creek, supra at 432. During the course of a rate proceeding in

which Roaring Creek Water Company sought an increase in its rates, the Administrative Law Judge recommended that the contract between the utility and the customer be abrogated under its Section 508 power and ordered the utility to file a compliance tariff which provided for a rate "consistent with that set forth in the present contract. The record in the instant case simply affords no basis for a different treatment. Thus there will be no immediate adverse consequences to [the customer] but rate considerations relating to it will necessarily be dealt with in future rate cases." Pennsylvania Public Utility Commission v. Roaring Creek Water Company, 73 Pa. P.U.C. 373, 431. (1990) Emphasis added.

In its Opinion and Order, the Commission agreed that there was not a sufficient basis in the record evidence on which to modify the contract rate and ordered Roaring Creek to file a compliance tariff providing for a rate for its customer consistent with that set forth in the existing contract. Thus, while nominally the Commission "abrogated" the customer contract, in reality it preserved its terms in their entirety in Roaring Creek's tariff.

It is clear that both the ALJ and the Commission in Roaring Creek recognized, without discussion, that to modify the existing customer contract without adequate notice and a fully developed record with respect to all of the terms and conditions of the contract would be violative of the requirements of Section 508. The action recommended by the ALJ and adopted by the Commission in Roaring Creek in fact upheld the terms of the existing contract.

The case of Lackawaxen Water & Sewer Co. v. Pennsylvania Public Utility Commission, 85 Pa. Commw. 377, 481 A.2d 1386 (1984) cited by the OCA in support of the

proposition that discretion of the Commission cannot be divested by a contract between the parties, is inapposite, and the language relied upon by the OCA is mere dicta.. Moreover, there is no attempt by PP&L or Bethlehem here to divest the Commission of its power to regulate rates. Indeed, the parties recognized that power when the ISA Contract was submitted for approval. In this case, however, as in Roaring Creek, there is no evidentiary basis on which the Commission can find the terms of the ISA Contract to be unjust and unreasonable.

III. CONCLUSION

The Exceptions of the OCA to the ALJ's approval of the ISA Contract rate and its concomitant proposal to increase the allocation of any revenue increase to the ISA class must be rejected. The terms of the ISA Contract must be given effect in this proceeding and PP&L's revenue allocation proposal which is in accordance with the existing, PUC approved contract must be adopted.

Respectfully submitted,

Joan O. Brandeis
SCHNADER, HARRISON, SEGAL & LEWIS
Counsel for
BETHLEHEM STEEL CORPORATION

Dated: August 21, 1995

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	:	
	:	**DOCKET NO: R-00943271**
v.	:	
	:	
PENNSYLVANIA POWER & LIGHT COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the attached Reply Exceptions to the ALJ's Recommended Decision by First Class Mail upon the persons listed below:

Paul E. Russell, Esquire
Pennsylvania Power & Light
2 North 9th Street
Allentown, PA 19101-1179
Phone: 610-774-4254
Fax: 610-774-6726

Thomas P. Gadsden, Esquire
Anthony C. DeCusatis, Esquire
David B. MacGregor, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103
Phone: 215-963-5234
Fax: 215-963-5299

Johnnie Simms, Esquire
Kenneth Mickens, Esquire
PA PUC - Office of Trial Staff
Pitnick Building - 3rd Floor
901 North 7th Street
Harrisburg, PA 17102
Phone: 717-787-1976
Fax: 717-772-2677

Tanya J. McCloskey
Mary C. Kenney, Asst. Consumer Advocate
Office of the Consumer Advocates
1425 Strawberry Square
Harrisburg, PA 17120
Phone: 717-783-5048
Fax: 717-783-7152

Karen Oill Moury, Esquire
Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101
Phone: 717-783-1515
Fax: 717-783-2831

David M. Kleppinger, Esquire
McNees, Wallace and Nurick
100 Pine Street, Box 1166
Harrisburg, PA 17108-1166
Phone: 717-237-5214
Fax: 717-236-2665

David A. McCormick, Esquire
Department of the Army
Office of the Judge Advocate General
901 North Stuart Street
Arlington, Virginia 22203-1837
Fax: 703-696-2960

Kenneth Zielonis, Esquire
Stevens & Lee
208 North 3rd Street, Suite 310
Harrisburg, PA 17108-2040
Fax: 717-234-1939

Alan J. Barak, Esquire
Mid-Atlantic Energy Project
Widener University Energy Law Clinic
3700 Vartan Way
Harrisburg, Pennsylvania 17110
Phone: 717-541-1967
Fax: 717-541-19707

D. Jane Drennan, Esquire
Sarah E. Tomalty, Esquire
Drennan & Associates
1216 16th Street, N.W.
Washington, PA 20036
Fax No.: 202-835-0452

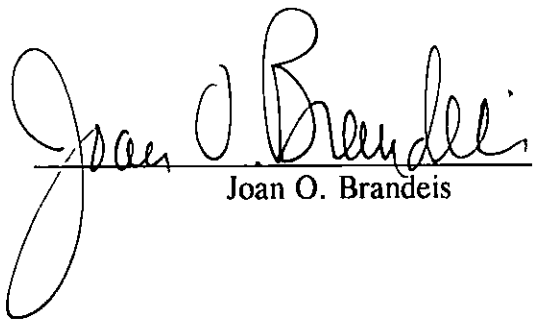
Eugene M. Brady
Craig R. Kuennen
Commission on Economic Opportunity
211 South Main Street
Wilkes-Barre, PA 18701-1596

Daniel P. Delaney
James P. Melia
Kirkpatrick & Lockhart
204 North Third Street
Harrisburg, PA 17101-1507
Phone: 717-231-4500
Fax: 717-231-4501

Wayne M. Thomas
Kohn, Nast & Graf, P.C.
1101 Market Street, 24th Floor
Philadelphia, PA 19107
215-238-1700

Mr. Eric Epstein
2308 Brandywine Drive
Harrisburg, PA 17110 Fax:

Robert P. Haynes, III, Esquire
3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950
Phone: 717-232-5000
Fax: 717-236-1816



Joan O. Brandeis

Dated this 18th day of
August, 1995

COMMONWEALTH OF PENNSYLVANIA

KJR

OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

Bernard A. Ryan, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831(FAX)

August 21, 1995

RECEIVED
95 AUG 21 PM 3:39
PA. P.U.C.
INFO. CONTROL DIV.

John G. Alford, Secretary
Pa. Public Utility Commission
Room B-18, North Office Building
P. O. Box 3265
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company Docket No. R-943271

Dear Secretary Alford:

Enclosed for filing are the original and nine (9) copies of the Reply Exceptions of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Karen Oill Moury

Karen Oill Moury
Assistant Small Business Advocate

Enclosures
cc: Cheryl W. Davis, Director
Office of Special Assistants
(2 copies with disk)

Hon. Robert A. Christianson
Administrative Law Judge

Parties of Record

DOCUMENT FOLDER

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	Docket No. R-943271
PENNSYLVANIA POWER & LIGHT COMPANY	:	

RECEIVED
95 AUG 21 PM 3:39
P.A. P.U.C.
INFO. CONTROL DIV.

REPLY EXCEPTIONS
OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

DOCKETED
AUG 23 1995

DOCUMENT FOLDER

Karen Oill Moury
Assistant Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525

Dated: August 21, 1995

ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION

On July 31, 1995, the Office of Administrative Law Judge issued the Recommended Decision of Administrative Law Judge ("ALJ") Robert A. Christianson, providing for a resolution of the rate proceeding initiated by Pennsylvania Power & Light Company ("PP&L" or "Company"). Pursuant to the cover letter of Acting Chief ALJ Christianson, Exceptions of the parties were due on August 14, 1995, with Replies due on August 21, 1995. In accordance with that directive, various parties including the Office of Small Business Advocate ("OSBA") filed Exceptions to ALJ Christianson's Recommended Decision ("R.D."). The OSBA now submits these Reply Exceptions in response to Exceptions 17 and 18 filed by the Office of Consumer Advocate ("OCA").

Although the OSBA will specifically respond to OCA's Exceptions 17 and 18, we do not intend to reiterate all of our arguments on these issues. Rather, we will include references to our Main Brief ("M.B.") and Reply Brief ("R.B.") as appropriate.

II. REPLY EXCEPTIONS

A. Cost of Service Study

1. Twelve Coincident Peak Method

By Exception 17, the OCA challenges the ALJ's recommended adherence to the twelve coincident peak ("12 CP") method for the allocation of generation demand costs. The OCA would have the Commission adopt its proposed peak and average method in this proceeding. OCA Exc. at 44.

OCA Exception 17 should be rejected. The ALJ appropriately recommended reliance upon the Company's 12 CP study. The 12 CP cost allocation method is consistent with that utilized by PP&L in its last base rate proceeding. OSBA M.B. at 4. Further, this method accurately reflects the way in which production and transmission costs are incurred on PP&L's system. Moreover, no compelling reason has been offered by the OCA or any other party for departing from this methodology. OSBA M.B. at 5-6; OSBA R.B. at 2. Indeed, in opting for adherence to PP&L's 12 CP study, the ALJ recognized the flaws inherent in OCA's peak and average methodology. R.D. at 204-205. See OSBA M.B. at 7-8. Additionally, OCA's application of the peak and average methodology in this proceeding was faulty, precluding any reliance upon its results. OSBA M.B. at 8-10.

In support of its peak and average methodology, the OCA refers to three prior Commission decisions. OCA Exc. at 45. A review of those cases, however, reveals that none of them involve a situation where the Commission adopted a peak and average methodology in lieu

of a utility-sponsored 12 CP study. OSBA R.B. at 3-5. In fact, of those three decisions, the Commission actually used the results of OCA's peak and average method only in Pa. P.U.C. v. West Penn Power Co., 73 Pa. PUC 454 (1990).

Despite the Commission's use of the peak and average method in the 1990 West Penn Power case, that decision provides no basis for adoption of OCA's peak and average method in this proceeding. Initially, we note that in the 1990 West Penn Power case, no party had advanced the 12 CP method. Moreover, the Commission explicitly stated that West Penn Power "should not be required to perform its cost of service studies in future rate proceedings in accord with the OCA's recommendations in the instant proceeding. These issues must be addressed on a case by case basis." 73 Pa. PUC at 518. In fact, in West Penn Power's very next general rate increase proceeding, the Commission rejected the OCA's peak and average method and found the Company's average and excess study in that case "to be the most reasonable upon which to rely for revenue allocation and rate design decisions." Pa. Public Utility Commission v. West Penn Power Company, 79 Pa. PUC 122, 210 (1993). Finally, in view of the differences between the version of the peak and average method advanced by OCA's witness in this case and that utilized by the same witness in the 1994 West Penn Power case (Docket No. R-00942986), we have no way of knowing how the present peak and average method compares to the peak and average method discussed by the Commission in the 1990 West Penn Power proceeding. OSBA M.B. at 9.

In each of the Commission cases cited by the OCA in its Exceptions, the Commission clearly focused upon determining the most reasonable cost allocation method of those that were presented, as applied to the system planning criteria of the particular utility. Since the widely-accepted 12 CP study more accurately reflects the way that PP&L's system is planned and the manner in which production and transmission costs are incurred than any other method submitted in this case, it is appropriate for the Commission to rely upon the results of that study in deciding upon a fair and reasonable allocation of a revenue increase or decrease among PP&L's customer classes.

2. Minimum System

Also, by Exception 17, the OCA objects to the ALJ's recommended adoption of the Company's minimum system approach for classifying distribution costs between demand-related and customer-related components, contending that the Company's method overstates the customer-related costs. The OCA proposes a modification to the Company's minimum system method. OCA Exc. at 46-48.

The OCA's proposed adjustment should be rejected for several reasons. First, the minimum system method used by PP&L appropriately splits certain distribution plant and associated O&M costs between the demand-related and customer-related classifications, as outlined in the NARUC Cost Allocation Manual. Further, the Company's minimum system method is complete and is the most reasonable approach posited in this proceeding. OSBA M.B. at 11-12. Additionally, the OCA's proposed adjustment would

effectively result in a negative customer weight for all secondary distribution cost components except service drops, which is contrary to the Commission's past support for use of a customer component in the allocation of distribution plant costs. See Pa. Public Utility Commission v. Metropolitan Edison Company, 60 Pa. PUC 349, 416 (Order entered on October 25, 1985); OSBA M.B. at 12-13.

B. Revenue Distribution

1. Overall Revenue Allocation

By Exception 18, the OCA contests the ALJ's recommended adoption of PP&L's overall revenue distribution proposal. The OCA would have the Commission adopt its proposed revenue distribution, which provides for a system average increase to the residential class, with higher increases than proposed by the Company for several other classes, including Rates GS-1 and GS-3. OCA Exc. 48-49.

PP&L's proposed revenue distribution should be adopted by the Commission. Importantly, it recognizes that the Company's small business customers in Rates GS-1 and GS-3 are paying substantially higher electric rates than their costs warrant. As a review of the results of PP&L's cost of service study demonstrates, both classes presently exhibit rates of return that are significantly higher than the system average return. In particular, the GS-1 class provides a return that is nearly twice the system average return and is the highest of any of the major rate classes. The return provided by the GS-3 class is roughly 1.36 times the system average

return and is the second highest of any of the major classes. See OSBA M.B. at 13-14. The inequities inherent in the Company's existing rate structure were emphasized in the November 1994 report prepared by PP&L's Social Initiatives Task Force, which concluded that:

> The small business customer (e.g., mom-and-pop stores) is the forgotten customer at PP&L. There are nearly 120,000 small general service customers, and as a group, they pay the highest electric rates. In addition, they receive the least amount of customer service and support from the company. These customers often play a role in maintaining the viability of the neighborhoods where they are located.

OTS Cross Examination Exhibit No. 16, Attachment 1, page 10.

In an effort which begins to rectify the historical problem of small businesses paying much higher rates than their costs warrant, PP&L's proposed revenue distribution provides for below system average increases for the GS-1 and GS-3 classes. Implementation of that revenue allocation proposal, as recommended by ALJ Christianson, will allow for an improvement in the relative rates of return for both classes.

On the contrary, the OCA's proposed revenue distribution would result in a significant shifting of revenue responsibility from the residential class to the Company's small business classes. In view of the facts that PP&L's small businesses are already providing substantial subsidies to the residential customers and have been recently identified by the Company's internal task force as the "forgotten customer at PP&L," such a shift would unreasonably and unfairly perpetuate the existing imbalances in PP&L's rate structure. OSBA M.B. at 17-19. Moreover, since the OCA's revenue

allocation proposal is entirely based upon its defective cost of service study, it should be afforded no consideration. Indeed, rejection of any one of OCA's suggested changes to PP&L's cost allocation study invalidates the OCA's proposal for allocating an increase among the customer classes. OSBA M.B. at 17-18; OSBA R.B. at 6-7.

2. Scaleback Method

With respect to the OSBA's weighted scaleback approach for allocating a reduced revenue deficiency, OCA's Exception 18 submits that the effects of the OSBA's proposal are "too uncertain to be adopted in this proceeding." OCA Exc. at 49. Briefly, the OSBA's weighted scaleback approach includes a consideration of the class increases that would result from both a proportional scaleback and a constant differential scaleback, and then produces increases that reflect a weighted average of these two methods. See OSBA Exc. at 4-5. The purpose of the weighted scaleback approach is to retain more of the progress toward cost-based rates that was inherent in the approved revenue allocation scheme than would occur under a proportional scaleback method. OSBA Stmt. No. 1 at 9.

All that is uncertain about the OSBA's proposal is the precise consequences of the weighted scaleback approach at every possible level of rate relief. That limitation, however, need not preclude the Commission from adopting the weighted scaleback approach. Like the proportional scaleback method, the weighted scaleback technique is a strictly arithmetic adjustment to an approved revenue allocation scheme.

By providing the results of the weighted scaleback method at varying levels of rate relief, as compared to the impact of a proportional scaleback, the OSBA has demonstrated the reasonableness of its alternative approach. See OSBA Exc. at 4-5; OSBA Stmt. No. 1 at 11-12 and OSBA Exhibit 4; OSBA Stmt. No. R1 at 30-32. In particular, the OSBA's Exceptions set forth the actual effects of the weighted scaleback approach on the various customer classes at the ALJ's recommended revenue deficiency of $61.744 million. OSBA Exc. at 5, Appendix A.

The OCA also alleges that OSBA's scaleback method requires the application of judgment after the rate relief is known. OCA Exc. at 49. That is simply not the case. Although judgment played a role during the OSBA's development of the appropriate weightings to be applied to the constant differential method and the proportional scaleback method (OSBA Stmt. No. 1 at 11), the formulae and mechanics have been set forth in the OSBA's testimony and exhibits and now may be applied to whatever level of rate relief is ultimately allowed by the Commission and to any approved revenue allocation scheme. See OSBA Stmt. No. 1 at 11-12 and OSBA Exhibit 4; OSBA Smt. No. R1 at 30-32.

No party in this proceeding has disputed the OSBA's assertion that if a proportional scaleback is employed to allocate a reduced revenue deficiency, the rate classes would achieve less progress toward cost-based rates than was originally proposed by the Company. OSBA Stmt. No. 1 at 8; OSBA M.B. at 19-22; Tr. 742-743. In order to preserve some of the progress toward cost-based rates

that was inherent in the Company's original revenue allocation proposal that has been adopted by the ALJ, an alternative to the proportional scaleback is necessary. The weighted scaleback approach formulated by the OSBA accomplishes that goal, while also recognizing other principles such as gradualism and the avoidance, to the extent possible, of rate reductions for any customer class. See OSBA Stmt. No. 1 at 7-12; OSBA Stmt. No. R1 at 28-36: OSBA M.B. at 20-28. We urge the Commission to refer to the OSBA's Exceptions, as well as the supporting documentation in the testimony and briefs, in making a determination about the proper scaleback approach to be employed. See OSBA M.B. at 19-28; OSBA Stmt. No. 1 at 11-12 and OSBA Exhibit 4; OSBA Stmt. No. R1 at 28-33.

III. CONCLUSION

The Office of Small Business Advocate respectfully requests that the Commission deny Exceptions 17 and 18 filed by the Office of Consumer Advocate, and further that the Commission direct that Pennsylvania Power & Light Company implement its revenue allocation proposal, using the weighted scaleback approach that is explained here and more fully described in the OSBA's Direct and Rebuttal Testimony, Main and Reply Briefs, and Exceptions to allocate any revenue increase approved in this case.

Respectfully submitted,

Karen Oill Moury

Karen Oill Moury
Assistant Small Business Advocate

Dated: August 21, 1995

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	Docket No. R-943271
PENNSYLVANIA POWER & LIGHT COMPANY	:	

CERTIFICATE OF SERVICE

I certify that I am today serving copies of the reply exceptions on behalf of the Office of Small Business Advocate by first class mail (unless otherwise indicated) upon the persons addressed below:

Cheryl W. Davis, Director
Office of Special Assistants
Pa. Public Utility Commission
Room 210, North Office Building
P. O. Box 3265
Harrisburg, PA 17105
(hand delivered)

Hon. Robert A. Christianson
Administrative Law Judge
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120
(hand delivered)

Paul E. Russell, Esquire
Associate General Counsel
Pennsylvania Power & Light Company
Two North Ninth Street
Allentown, PA 18101-1179

Thomas P. Gadsden, Esquire
Anthony C. DeCusatis, Esquire
David B. MacGregor, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Christopher J. Barr, Esquire
Morgan, Lewis & Bockius
1800 M Street N.W.
Washington, D.C. 20026-5869

Tanya McCloskey, Esquire
Mary C. Kenney, Esquire
Gicine P. Brignola, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

David M. Kleppinger, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Joan O. Brandeis, Esquire
Schnader, Harrison, Segal and Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103-4252

Stephen J. Selden, Esquire
Bethlehem Steel Corporation
Eighth and Eaton Avenues
Bethlehem, PA 18016

David A. McCormick, Esquire
Regulatory Law Office (U-3848)
Department of the Army
901 North Stuart St. Room 400
Arlington, VA 22203-1837

Robert P. Haynes, III, Esquire
Mette, Evans & Woodside
3401 North Front Street
P. O. Box 5950
Harrisburg, PA 17110-0950

Johnnie E. Simms, Esquire
Kenneth L. Mickens, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

Wayne M. Thomas, Esquire
1101 Market Street, 24th Floor
Philadelphia, PA 19107

Alan J. Barak, Esquire
Mid-Atlantic Energy Project
Widener Energy Law Clinic
3700 Vartan Way
Harrisburg, PA 17110-9450

James P. Melia, Esquire
Daniel P. Delaney, Esquire
Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, PA 17101-1503

D. Jane Drennan, Esquire
Drennan & Associates
1216 16th Street, N.W.
Washington, D.C. 20036

Mr. Craig Kuennen
Comm. on Economic Opportunity
211 S. Main Street
Wilkes Barre, PA 18701-1596

Christopher S. Underhill, Esq.
Hartman Underhill & Brubaker
221 East Chestnut Street
Lancaster, PA 17602

Mr. Eric Epstein
2308 Brandywine Drive
Harrisburg, PA 17110

Kenneth Zielonis, Esquire
Stevens & Lee
Suite 310, 208 N. Third Street
P. O. Box 12090
Harrisburg, PA 17108

Karen Oill Moury
Assistant Small Business Advocate

Date: August 21, 1995

COMMONWEALTH OF PENNSYLVANIA

KJR

RECEIVED
95 AUG 21 PM 3:42
P.A. P.U.C.
INFO. CONTROL DIV.

OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

IRWIN A. POPOWSKY
Consumer Advocate

(717) 783-5048

August 21, 1995

John G. Alford, Secretary
PA Public Utility Commission
Room G-23, North Office Bldg.
Harrisburg, PA 17105-3265

Re: PA Public Utility Commission
v. Pennsylvania Power & Light
Company, Docket No. R-00943271

Dear Secretary Alford:

Enclosed please find for filing an original and nine copies of the Office of Consumer Advocate's Reply Exceptions in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Mary C. Kenney

Mary C. Kenney
Assistant Consumer Advocate

Enclosures
cc: All parties of record
Hon. Robert A. Christianson, ALJ
Cheryl Walker Davis, Esq. (OSA)

30966

DOCUMENT FOLDER

ORIGINAL

RECEIVED
95 AUG 21 PM 3:42
PA. P. U. C.
INFO. CONTROL DIV.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	Docket No. R-00943271
PENNSYLVANIA POWER & LIGHT COMPANY	:	

REPLY EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE

DOCKETED
AUG 23 1995

Tanya J. McCloskey
Mary C. Kenney
Gicine P. Brignola
Assistant Consumer Advocates

For:
Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

Dated: August 14, 1995

ORIGINAL

DOCUMENT FOLDER

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

ADMINISTRATIVE DECISIONS:

STATUTES AND REGULATIONS:

MISCELLANEOUS:

I. INTRODUCTION

The Office of Consumer Advocate (OCA) files this Reply to the Exceptions of Pennsylvania Power & Light Company, as well as other parties in this proceeding. The OCA urges the Commission to adopt the positions of the OCA, as set forth herein, and in its Exceptions to the Recommended Decision.

II. REPLY EXCEPTIONS

REPLY EXCEPTION 1: Excess Capacity

A. Introduction

The Company has excepted to the ALJ's finding of physical excess capacity. In support of its position, PP&L argues, among other things, that the ALJ's decision erred in the selection of its reserve margin and in its inclusion of PP&L's NUG resources in the physical excess capacity decision. Additionally, the Company contends that the ALJ's decision sends the "wrong message" to electric utilities. PP&L Exc. at 8-10.[1] The OCA submits that the Company's arguments are unfounded and based on a misunderstanding of the "used and useful" principle.

B. The Policy Behind The Used And Useful Principle Serves To Protect Ratepayers.

Initially, the OCA submits that the Company's argument that the ALJ's decision sends the "wrong message" to electric utilities misunderstands the nature of the "used and useful" principle as it has developed in regulation throughout the decades. As the OCA noted in its

[1] The Company has also excepted to the ALJ's reliance upon OTS witness Metro's nine year average approach, and noted that the ALJ's determination regarding PP&L's ECR proposal is inconsistent with Mr. Metro's approach. The OCA, in its Exceptions, set forth an alternative method of analysis of physical excess capacity that is consistent with the ALJ's recommendation regarding PP&L's ECR proposal. Even under the OCA's alternative analysis, the OCA submits that the Company has 400 MW to 800 MW of physical excess capacity.

Main Brief, Judge Starr, in a concurring opinion in Jersey Central Power & Light Co. v. FERC, 810 F.2d 1168 (D.C. Circuit 1987) provided an instructive analysis of the "used and useful" principle. Judge Starr noted:

> Prudence is, of course, relevant to the process of striking a reasonable balance in rate-setting for public utilities. Requiring an investment to be prudent when made is one safeguard imposed by regulatory authorities upon the regulated business for the benefit of ratepayers. As I see it, the "used and useful" rule looks toward a later time. The two principles are designed to assure that the ratepayers whose property might otherwise be "taken" by regulatory authorities, will not necessarily be saddled with the results of management's defalcations or mistakes, or as a matter of simple justice, be required to pay for that which provides ratepayers with no discernible benefit.

Jersey Central, 810 F.2d at 1190 (footnote omitted). Judge Starr further noted that:

> the obvious danger in not examining both ends of the continuum--both the prudence of the investment and whether the end result of the investment was used and useful--is to build in pressures for building excess generating capacity. The "used and useful" rule operates as a restraining principle, reminding utility managers of economic forces working against an investment which is prudent at the time it is made.

Jersey Central, Id. at 1190, n.1.

Thus, the OCA submits that the ALJ was not sending the "wrong message" to electric utilities. He was properly recognizing that the used and useful principle must be applied to assure that rates are just and reasonable.

C. The Company's Extra-Record Evidence Improperly Focuses On The PJM Power Pool Rather Than PP&L's Capacity Situation.

The Company has also included extra record evidence with its Exceptions regarding the extreme summer weather conditions that have occurred in the last few weeks. PP&L Exc. at 25. Despite being extra record evidence, the Company's argument based on this information is flawed.

The article attached by the Company to its Exceptions discusses the capacity situation of PJM Power Pool during the recent heat wave.[2] What PP&L does not point out, however, is that PP&L is a winter peaking utility in this summer peaking power pool. In fact, according to Electric Utility Week of August 7, 1995, PP&L's recent peak was 6,153 MW, or approximately 450 MW below its winter 94/95 peak of 6,605 MW and about 575 MW below its projected 95/96 winter peak of 6,725 MW--the two peaks (the test year and the year following) on which the OCA'S adjustment in this case is based. See, PP&L St. 9, Exh. JFS-1.

Furthermore, the Company has never analyzed whether the additional reliability it claims for PJM is cost justified for PP&L's ratepayers. As OCA witness Kahal explained, the majority of the benefit from such reserves are realized at the PJM power pool level. Mr. Kahal testified:

> If PP&L were to maintain reserves at the required 12 percent level but due to unexpected forced outages it experiences a capacity shortage, it has the right to draw upon available capacity reserves to meet its need. If the PJM as a whole experiences a capacity shortage, PP&L is obligated to participate in the emergency procedures established under the PJM Agreement even though PP&L has adequate reserves for its own customers. For example, if the PJM is capacity short, PP&L is obligated to participate in voltage reductions, incurring the costs of operating its units at emergency levels or customer curtailments regardless of its practice of maintaining surplus capacity above its PJM obligation.

OCA St. 2 at 15. Thus, the OCA submits that PP&L has not demonstrated any PP&L ratepayer benefit from maintaining a reserve margin far in excess of its PJM obligation.

Finally, the OCA submits that PP&L's focus in its Exceptions on the PJM capacity situation rather than an evaluation of its own capacity situation is a red herring. The logical extension of PP&L's argument is that PP&L could never be found to have excess capacity so

---

[2] The Company is also relying on information that has not been weather-normalized. The OCA submits that a proper analysis of excess capacity would review weather-normalized data, as all parties did in this case.

long as anyone in the PJM pool is short of capacity. In other words, if PP&L had a 100% reserve margin, its ratepayers would still have to pay for this capacity if the PJM pool fell short under PP&L's analysis. The OCA submits that this is an absurd result that cannot be supported.

D. A Reasonable Reserve Margin Is In The Range Of 12% To 15%.

The Company also argues that the reserve margin for ratemaking purposes should be significantly above the 16% reserve margin utilized by the ALJ in his analysis. PP&L Exc. at 12-17. The OCA has thoroughly discussed the reasonable reserve margin for ratemaking purposes in its Main Brief at 31 to 40, its Reply Brief at 20 to 22, and its Exceptions at 2 to 3, where it addressed each of the Company's arguments. The OCA will not repeat those discussions here. The OCA would note, however, that the OCA's recommended reserve margin range of 12% to 15% adequately accounts for the planning uncertainties discussed by PP&L in its Exceptions as a basis for increasing its reserve margin above its assigned PJM obligation.[3] The OCA's recommendation provides a 200 MW cushion to account for these uncertainties. The OCA submits that the Company has not demonstrated that this cushion is inadequate.

Moreover, the Company has provided no evidence in this record that it is cost beneficial to PP&L or its ratepayers to maintain reserves substantially in excess of its PJM obligation of 12%. PP&L has not shown that it even plans to maintain reserves in excess of its PJM obligations. PP&L merely cites to cases where the Commission has approved different reserve margins for different utilities. As the Commission is aware, the determination of a reserve

[3] Many of the factors relied upon by the Company as a basis for increasing the reserve margin above the PJM obligation are already included in the PJM determination of reliability that is used to establish the PJM reserve margin. Tr. 269-273. The other items identified by the Company are accounted for in the Company's own planning, which utilizes reserve margins in the range of 11.5% to 12.5%. OCA St. 2A at 13-15.

margin is a fact-based question that will vary from utility to utility and may change over time. A comparison to other utilities, particularly in light of the fact that PP&L is a winter peaking utility in a summer peaking pool, is simply not meaningful.[4]

As such, the OCA submits that its reserve margin recommendation is reasonable, and should be adopted for use by the Commission in this proceeding.

E. NUG Resources Should Be Included In The Physical Excess Capacity Analysis.

In its Exceptions, PP&L argues that its non-utility generation resources (NUGs) should not be included in the physical excess capacity analysis. The OCA submits, however, that the 504 MW of NUG capacity is properly included in the determination of excess capacity in this proceeding. Importantly, ratepayers are paying the full costs of these purchases through the ECR.

The Company, in its Exceptions, repeats its policy arguments against the inclusion of NUG capacity. The OCA submits, however, that the majority of the Company's arguments have already been resolved by the General Assembly when it enacted Section 1323(c) of the Public Utility Code specifically addressing the treatment of NUG capacity in excess capacity determinations. 66 Pa.C.S. § 1323(c). As set forth fully in the OCA's Main Brief, Section 1323(c) reveals that the General Assembly did not intend to exempt QF capacity from consideration in an excess capacity determination forever. Instead, the General Assembly

[4] PP&L also references the Commission's Order in the last PP&L base rate case. As the OCA set forth in its Briefs, no witness to this proceeding has argued for the continuation of the reserve margin utilized by the Commission in PP&L's last case. Moreover, as PP&L witness Kahal noted, in PP&L's last case, even at a 22% reserve margin, all of Susquehanna 2 was found to be excess capacity. OCA St. 2A at 23-24.

established an eight year "window" during which the NUG capacity cannot be considered in an excess capacity determination.[5]

As the legislative history of Section 1323(c) confirms, the General Assembly specifically considered PP&L's situation in regard to its cogeneration projects in enacting the Section. In discussing what the bill would accomplish, Representative Laughlin stated:

> Mr. Speaker, the last thing that this particular legislation does that was not previously there is that it gives a window for a cogeneration project of culm banks in the PP&L (Pennsylvania Power & Light Company) area of northeastern and central Pennsylvania.

Legislative Journal of Pennsylvania House of Representatives, Report to the General Assembly on June 25, 1986, at 1554 (Vol. II, 1986).

The OCA submits that to exempt the capacity forever from an excess capacity determination would "send the wrong message" to utilities regarding appropriate system planning and would unfairly burden ratepayers who pay all of the costs associated with this capacity in the ECR.[6]

---

[5] In light of this statutory authority, the Company's reliance on a 1987 Policy Statement that was never finalized (and issued after PP&L had entered into many of these contracts) is misplaced. Moreover, PP&L's reliance on the Commission's Order in Petition of West Penn Power Co., 1987 Pa. PUC LEXIS 153 (1987), which was overturned by the Commonwealth Court, is misplaced.

[6] The Company also relies on the Commonwealth Court's discussion of this issue in Pennsylvania Electric Co. v. Pa. P.U.C., 119 Pa. Commw. 413, 648 A.2d 63 (1994). As set forth in the OCA's Reply Brief at 19, in that case, the Court was considering a Commission Order directing a utility to enter into long term contracts with two QFs despite the utility's argument that the capacity was unneeded and overpriced. As the Court correctly noted in dicta, due to the direct pass through of costs to ratepayers, the risk of this transaction was shifted to the ratepayers. Thus, it was crucial for the Commission to resolve the issue of need and avoided cost since the Commission would not be able to resolve these issues at the time the QF entered service. The Court was not ruling on whether the Commission may, at some point in the future,
(continued...)

Additionally, the Company's argument that Section 1323(c) is inconsistent with Section 523 of the Public Utility Code is misplaced. A simple reading of Section 523 reveals that its purpose is to consider a utility's actions in procuring NUG capacity in accordance with the utility's need. 66 Pa.C.S. § 523. Nothing in Section 523 encourages a utility to procure NUG capacity that is excess, and nothing in Section 523 limits the Commission's authority to make an excess capacity adjustment. If anything, Section 1323(c) complements the incentive in Section 523 by providing favorable treatment to NUG capacity in the excess capacity determination for up to eight years, where no such protection is provided to a utility's own resources.

The OCA submits that the Company's arguments again misunderstand the nature of the excess capacity adjustment which deals with the fact that excess capacity exists on the utility's system, regardless of the exact cause or source. As OCA witness Kahal noted, excess capacity could just as easily have resulted from a loss of load due to an economic downturn, or other events arguably beyond the utility's control. OCA St. 2 at 12. The OCA submits that the cause of the excess capacity is not relevant to the factual determination of excess capacity.

Finally, the Company's arguments ignore the fact that in this case, the Company has sought a return on equity associated with its investment in Susquehanna 2, which the Commission has previously found to be excess capacity. It is the Company which has sought to reverse the Commission's previous determination as to Susquehanna 2 in this case, and this is the issue that must be addressed in this case.

---

[6](...continued)
include QF capacity in a determination of whether a utility's own capacity represents physical excess capacity.

F. Conclusion

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief at 30 to 45 and the OCA's Reply Brief at 13 to 22, the OCA submits that the Company's Exceptions should be denied. The record in this case clearly establishes that the Company has physical excess capacity.

REPLY EXCEPTION 2: Common Equity Cost Rate

PP&L takes issue with the ALJ's recommendation of a common equity cost rate based on the Discounted Cash Flow (DCF) methodology. PP&L Exc. at 26-32. The Company's exception is without merit. The OCA submits that the ALJ's reliance upon the DCF methodology and conclusions regarding the infirmities of alternative methodologies (R.D. at 175-179) is amply supported by record evidence developed in this proceeding and by Commission precedent, as discussed at pages 231-265 of OCA's Main Brief and at pages 104-115 of OCA's Reply Brief. The OCA submits that the DCF analyses adopted by the ALJ conform with the standards adopted by the Commission.

The DCF method is the most widely used approach to determine return on equity in public utility rate cases and has been used by the Pennsylvania PUC, many other state commissions, and the Federal Energy Regulatory Commission (FERC) for many years. This Commission has placed primary reliance on the results of validly conducted DCF studies in determining the appropriate cost of common equity in numerous proceedings in recent years. See, e.g., Pa. P.U.C. v. Roaring Creek Water Company, 150 PUR 4th 449, 483-487 (1994); Pa. P.U.C. v. West Penn Power Company, 79 Pa. PUC 122, 273-274 (1993)("West Penn 1992"); Pa. P.U.C. v. York Water Co., 75 Pa. PUC 134, 153-167 (1991); Pa. P.U.C. v.

Equitable Gas Co., 73 Pa. PUC 345-346 (1990); Pa. P.U.C. v. Philadelphia Suburban Water Co., 71 Pa. PUC 593, 623-632 (1989). In a recent Order, the PUC specifically upheld the use of the DCF methodology stating:

> We have, in recent years, relied primarily on the DCF methodology in arriving at our authorized return on common equity. As correctly observed by the ALJ, we rejected the use of the risk premium and CAPM methods in the Company's last rate case at Roaring Creek 1994, supra, as well as in Pennsylvania Power Company, supra. There is no evidence of record in the proceeding before us which convinces us that such methodologies should be used in this proceeding. Accordingly, we will continue to rely primarily on the DCF methodology and informed judgment. Pa. P.U.C. v. West Penn Power Company, 73 Pa. PUC 454, at 502-503 (1990).

Pa. P.U.C. v. Roaring Creek Water Company, Docket No. R-00943177, slip op. at 46 (May 31, 1995). See also, Pa. P.U.C. v. Pennsylvania American Water Co., Docket No. R-00943231, slip op. at 60 (July 24, 1995). As discussed in the OCA Briefs, the evidence of record supports the continued use of the DCF method in the determination of PP&L's cost of common equity. OCA M.B. at 250-262; OCA R.B at 110-115.

The Company criticizes the ALJ's return on equity recommendation as being "woefully inadequate" and compares it to recent return on equity determinations made by this Commission and Commission's in other jurisdictions. PP&L Exc. at 26. However, as OCA witness Kahal testified:

> I would note that a recent Edison Electric Institute (EEI) survey finds that electric utility ROE awards for 1994 averaged about 11.5 percent. (See Electric Utility Week, page 11, March 20, 1995.) While this is slightly higher than my present recommendation, capital costs have declined considerably from 1994, particularly compared to late 1994 levels.

OCA St. 1A at 9. The OCA submits that any comparison to other Commission decisions, including those in other jurisdictions, must also consider the changes in the capital market.[7]

PP&L also argues that the ALJ's recommendation is flawed because his analysis utilized the averaging of results. PP&L Exc. at 29-32. First, PP&L contends that the ALJ's exclusion of the dividend yield data and growth rate supplied by PP&L witness Moul was in error. However, as set forth in the OCA's Briefs, the exclusion of the Moul data because of "quarterly compounding and the ex-dividend adjustment" was appropriate. R.D. at 171; OCA M.B. at 251-254. In addition, the ALJ's finding that PP&L's 4.0% growth rate was overstated "by at least 50 basis points" is also supported by the evidence. R.D. at 171; OCA R.B. at 111.

Second, PP&L argues that the data relied upon by the ALJ was biased because it utilized both barometer group and PP&L specific data. PP&L Exc. at 30-31. The OCA submits, however, that PP&L stock is not the only source of data for a DCF analysis. As OCA witness Kahal testified:

> In conducting a single company DCF analysis, there is always the risk that the historical and market data for that firm may be atypical of what investors could reasonably expect in the future. Employing a group of firms has the advantage of averaging out the unusually high and low observations.

OCA St. 1 at 24. Although Mr. Kahal also performed a PP&L stand alone DCF analysis, Mr. Kahal explained:

> I believe that proxy groups--if correctly selected--should produce more reliable, stable estimates than single company DCF studies. In addition, it should be noted that PP&L is in the process of reorganizing in order to facilitate investments in

---

[7] PP&L, in citing Pa. P.U.C. v. West Penn Power Company, Docket No. R-00942968, 1994 Pa. Puc Lexis 144 (December 28, 1994) fails to note that the Commission's return on equity recommendation for West Penn was 11.25% with 0.25% added to recognize management efficiency.

non-utility ventures. While this activity is nominal at present, it could become significant in the future.

OCA St. 1 at 35. Thus, as discussed in the OCA's Main and Reply Briefs, the OCA submits that the ALJ's reliance on the DCF analyses of the proxy groups, as well as for PP&L, produced a reliable DCF result. OCA M.B. at 234-244; OCA R.B. at 110-111.

Finally, the OCA submits that the ALJ's finding that PP&L has not met its burden of proof regarding its claim for an equity bonus for management performance must be upheld. R.D. at 176. As discussed in the OCA's Reply Brief, the record in this proceeding does not support a finding of a 13% cost of common equity for PP&L, and it does not support a bonus to PP&L's shareholders. OCA R.B. at 108-110.

Although PP&L does not ask for a specific "equity bonus," the Company does seek a higher return on equity in recognition of efficient management. PP&L Exc. at 177. The OCA submits that the ALJ's recommendation to reject an "equity bonus" is well supported by the evidence of record and case law. See generally, Pa. P.U.C. v. Metropolitan Edison Company, 141 PUR 4th 336, 406 (1993) (Performance adjustment denied, no evidence that Company's performance had been exemplary); Pa. P.U.C. v. National Fuel Gas Distribution Corp., 73 Pa. PUC 552, 611-612, 121 PUR4th 434 (1990) (Performance award unwarranted, NFGD is obligated to provide adequate, efficient and reasonable service).

As the ALJ recognized, PP&L had not, prior to its Main Brief, asked for an adjustment related to management performance. The OCA submits that for the reasons discussed above, PP&L is not entitled to receive a "reward" of a 13.00% return on equity for quality of service.

REPLY EXCEPTION 3: Depreciation of Fossil-Fired Generating Units

The ALJ, based on the clear weight of the evidence, adopted the OTS and OCA adjustments rejecting PP&L's proposal to accelerate depreciation for several of its generating units, thus increasing the Company's depreciation expense by approximately $15 million on a Pennsylvania jurisdictional basis. PP&L has excepted to this recommendation by the ALJ using the same arguments that the ALJ properly rejected.

The OCA submits that there is no evidence that the Company actually intends to retire these units in the year 2003, the year used for accelerated depreciation. PP&L witness Krall testified that the Company has no current plan to retire the plants in question in 2003. See, Tr. 188-189; OCA M.B. at 133. He stated that the Company just wanted to "reflect the possibility that they would be retired earlier in the depreciation schedule." Id. at 132. PP&L witness Krall further testified that the only place in which the Company memorialized its decision to advance the deactivation dates of these units was his testimony. Id. at 134. Thus, no study was prepared documenting the Company's conclusion. The OCA submits that the Company should not be permitted to advance the deactivation dates for ratemaking depreciation purposes.

In its exception, PP&L asserted that the "projected" costs for compliance with the Clean Air Act Amendments ("CAAA") "has dramatically altered the economics" of these plants remaining operative, (PP&L Exc. at 33) and that it has "prepared detailed analyses of the economic feasibility" of these units related to compliance with CAAA (PP&L Exc. at 35). However, as PP&L witness Krall testified upon cross examination, PP&L's requirements for compliance with CAAA are not yet known. See, OCA M.B. at 137. The ALJ aptly recognized this when he stated that "we cannot now know the exact investment required for these plants.

. . ." (R.D. at 124) and it was this "uncertainty" that caused him to reject the Company's argument. R.D. at 124-125. The OCA submits that the ALJ was correct in his decision.

In addition, as is discussed in the OCA's Main Brief, the Company has failed to provide any engineering or economic analysis as support for its decision to accelerate the depreciation of these units. See, OCA M.B. at 134-139. The only analysis for this proposed change PP&L offered, what PP&L asserts as "detailed analyses," was one and a quarter pages of text given in response to an interrogatory that requested all studies relied upon to revise the deactivation dates. Id. In contrast, both the Company's 1994 Five Year Coal Upgrade Plan and its 1995 Annual Resource Planning Report favor continued operation of these units well beyond 2003. Tr. 163-164, 1896.

As further support for its argument, the Company asserts, as it did in its Initial Brief (PP&L M.B. at 174), that its situation is like that in a York Water case and several cases from other states. PP&L Exc. at 37-38. The OCA submits that these cases are inapposite and that the ALJ correctly found that this line of argument was inapplicable. The ALJ noted that, if another party were seeking to extend the depreciable lives of these units and PP&L were making the argument that the Company should not change the expected deactivation dates until investment was made which would extend the life of the plants, then perhaps PP&L's argument would be proper. R.D. at 124. However, under the present circumstances where PP&L is proposing to shorten the depreciable lives of these units, the ALJ found that "we should not anticipate the [CAAA] investment" and that he was "constrained to recommend that the PP&L revisions be denied." R.D. at 125.

For the reasons set forth above, in the OCA Main Brief at 129-139, and in the OCA Reply Brief at 57-60, the OCA submits that the ALJ properly reviewed the record evidence and that his recommendation is in accord with it.

REPLY EXCEPTION 4: Nuclear Decommissioning Costs: Contingencies

The ALJ recommended that PP&L should not be allowed to recover costs related to contingencies in its claim for nuclear decommissioning expense. R.D. at 98-99. In rejecting the contingency claim, the ALJ noted that the contingency factor was "somewhat speculative." Id. PP&L excepted to the ALJ's recommendation, arguing that the contingency factor plays an integral role in the estimation process. PP&L Exc. at 39-41.

As discussed in the OCA Main and Reply Briefs, PP&L's decommissioning cost estimate includes a range of contingencies for the different tasks ranging from 15% to 75%, which results in a total contingency of approximately 18% based on the overall estimate. The radiological portion of the estimate includes an overall contingency of approximately 19%, or $106,569,000 for contingencies. In addition, the Company included a contingency of $16.235 million in its non-radiological cost estimate. OCA St. 4 at 31.[8] OCA M.B. at 189-195; OCA R.B. at 81-84.

PP&L argues that the "contingency component" of its decommissioning cost estimate represents costs "that have a high probability of occurrence." PP&L Exc. at 40. However, as the ALJ correctly recognized, although the decommissioning fund must include "a reasonable provision for money," PP&L's cost estimates are already uncertain and to include contingencies

[8] The OCA has excepted to the ALJ's recommendation to allow PP&L to recover the costs associated with non-radiological decommissioning. OCA Exc. at 34-36. However, if the Commission allows PP&L to recover non-radiological decommissioning costs, the OCA submits that, consistent with the ALJ's recommendation, both radiological and non-radiological contingency costs should be removed from PP&L's claim.

would be an "overkill factor." R.D. at 99. Moreover, as OCA witness Bridenbaugh testified, the NRC requires that cost estimates be periodically updated and thus, new versions should be able to capture much of the technical and economic uncertainties contained in PP&L's claim.[9] OCA M.B. at 192.

PP&L argues that the Commission has in the past approved decommissioning claims that included a 25% contingency, citing Pa. P.U.C. v. Pennsylvania Power Company, 64 Pa. PUC 308, 85 Pa. PUR4th 323 (1987) and Pa. P.U.C. v. Pennsylvania Power Company, 67 Pa. PUC 91 (1988). PP&L Exc. at 41. However, the OCA notes that in reviewing both the Recommended Decisions and the Commission Orders in those cases, the issue of contingencies is not addressed by the Commission. OCA R.B. at 83-89.

The Company also acknowledges that the Commission has in the past rejected the use of contingency factors in decommissioning cost estimates, but contends that contingencies were disallowed because the decommissioning costs were based on a generic study rather than a site specific study. PP&L Exc. at 41. The OCA submits that the Commission has in the past, removed contingency costs from decommissioning cost estimates for the same reasons relied upon by the ALJ in this proceeding. That is, because the contingencies were too speculative to be included in rates. Pa. P.U.C. v. Pennsylvania Power & Light Company, 57 Pa PUC 559, 606-607 (1983); Pa. P.U.C. v. Pennsylvania Power & Light Company, 59 Pa PUC 332, 384 (1985). In PP&L 1983, the Commission disallowed the 25% contingency factor stating:

> The Company has failed, in this case, to demonstrate that the 25% is anything but conjecture on its part. We cannot permit ratepayers to be subject to a

[9] PP&L has indicated that it plans to internally update its cost estimate every two years.

contingency factor and which is as likely to fluctuate downwards as upwards as the state of the art develops.

Id. 57 Pa. PUC at 607. The OCA submits that the concerns the Commission expressed in 1983 regarding the speculative nature of PP&L's contingency factors are still relevant today. OCA M.B. at 190-193.

In addition, PP&L's contention that precedent supports the disallowance of a contingency factor only for generic studies fails to consider that the Illinois Commerce Commission recently rejected a 25% contingency factor because the use of a site specific study in fact "reduces the need for inclusion of a contingency factor". See, Re Commonwealth Edison, 158 PUR4th 458, 505 (Illinois Commerce Commission 1995). The OCA submits that this Commission's concern over the speculative and fluctuating nature of contingencies should continue to apply to the study presented in this proceeding.

For the reasons set forth above, and in the OCA's Main Brief and Reply Briefs, the ALJ's recommendation to remove the contingency costs from PP&L's radiological and non-radiological decommissioning claim should be adopted.

REPLY EXCEPTION 5: Post-Shutdown Earnings on Decommissioning Funds

The ALJ recommended the adoption of the OCA's adjustment to PP&L's decommissioning claim to include the interest earned during the post-shutdown decommissioning period. R.D. at 100. PP&L excepted to this recommendation. PP&L Exc. at 42-44. Despite acknowledging that post-shutdown earnings will accrue, PP&L argues that the NRC requires that the decommissioning fund be sufficient to pay decommissioning costs at the time when the plant is shut down. Thus, argues PP&L, any consideration of post-shutdown earnings violates the NRC rules. Id. at 42-43.

As discussed in the OCA's Main and Reply Briefs, the OCA submits that the ALJ's recommendation recognized that the NRC regulations do not preclude inclusion of the post-shutdown interest component in the decommissioning trust fund. As PP&L witness LaGuardia acknowledged, the NRC has made exceptions to this requirement on a case by case basis. OCA M.B. at 167-168; OCA R.B. at 86-88. In fact, the NRC has accepted the funding plans of the other utilities which recognize fund earnings subsequent to the planned termination of operations of their plants in calculating the required funding contribution. Id.; OCA St. 6A at 15. This adjustment has been accepted by the Federal Energy Regulatory Commission and other regulatory Commissions. Id. Therefore, the OCA submits that PP&L's argument that the NRC regulations preclude adoption of this adjustment is contradicted.

The OCA submits that it would be wholly unreasonable for the Commission to not account for the interest earned on the total decommissioning trust fund in its determination of the appropriate level of decommissioning expense chargeable to ratepayers in this proceeding. Accordingly, the ALJ's recommendation should be adopted.

REPLY EXCEPTION 6: Fossil Decommissioning Expense

The ALJ, in accordance with controlling precedent, recommended that PP&L's fossil decommissioning expense claim be denied. PP&L excepts to this recommendation arguing that a denial of its claim will promote inter-generational inequity and risk public health and safety. PP&L Exc. at 45. Although the ALJ stated that he "sympathized" with PP&L's position, he properly made his recommendation because he was "concerned about the speculative nature of the PP&L approach." R.D. at 106. Moreover, as the OCA set forth in its Brief, the Company's claim is prohibited under both appellate and PUC caselaw.

The OCA supports the ALJ's conformance with precedent. The OCA submits that it is the "speculative nature" involved with all prospective net salvage claims that makes them problematic. In Penn Sheraton Hotel et al. v. Pa. P.U.C., the Superior Court, in discussing prospective net salvage, stated: "[I]t is a cost which has not yet been incurred; [and] it is uncertain when and if it will be incurred. . . ." 198 Pa.Super. 618, 623-627, 184 A.2d 324, 327-329 (1962)("Penn Sheraton").

Similarly, in Pa. P.U.C. v. West Penn Power Company, the Commission denied the Company's second attempt to make a prospective net negative salvage claim and stated that the Company's approach, "would substitute an uncertain and speculative claim in place of the current cost approach." Docket No. R-942986 at 62, 64 (December 28, 1994). As in Penn Sheraton and the West Penn cases, PP&L's claim is one for prospective net salvage which may be incurred when the plant is taken out of service at some future point.

As OCA witness Catlin explained, and as is discussed in the OCA Main Brief, it is common for electric utilities to undertake plant life extensions. OCA St. 6 at 25-26; OCA M.B. at 100. Moreover, PP&L witness LaGuardia acknowledged in his rebuttal testimony that it is possible that PP&L's fossil units will be life-extended and/or the sites and structures reused. Id. Thus, the OCA submits that the ALJ was correct in showing concern about the "various factual details of the PP&L proposal and about departure from precedent generally." R.D. at 107.

The Company argues that the hazardous nature of the work required to dismantle fossil-fueled plants, justifies extending the "health and safety" exception permitted for nuclear facilities to fossil plant decommissioning. PP&L Exc. at 46. The OCA notes, however, that the

Commission has decided twice before that the unique "health and safety problems" associated with nuclear decommissioning are not present in fossil fuel decommissioning. Pa. P.U.C. v. West Penn Power Co., 54 Pa. PUC 602, 630 (1981); Pa. P.U.C. v. West Penn Power Co., Docket No. R-942986 (December 28, 1994).

Thus, the OCA submits that PP&L has not presented any new reasons for the Commission to abandon precedent. For these reasons, and those stated in the OCA's Main Brief at 97-103 and Reply Brief at 45-47, the OCA submits that the ALJ properly rejected the Company's claim.

REPLY EXCEPTION 7: SSES 1 Early Window Costs

The ALJ rejected PP&L's claim for its early window costs associated with Susquehanna Unit 1, finding it untimely. R.D. at 56-62. These costs were incurred by PP&L in 1983 and the Company did not claim them in its subsequent base rate case in 1984. PP&L has excepted to the ALJ's recommendation arguing that a denial of its claim would be inequitable to the Company. PP&L Exc. at 46-48.

Initially, the OCA notes that the rule against retroactive ratemaking prohibits the inclusion of a utility's past costs in future rates. See, OCA M.B. at 104-107. Thus, the OCA submits that the Company's claim is barred as a matter of law. To the extent that "early window" claims are legal at all, they must meet the three pronged test established by the Commission in prior cases for limited exceptions to the rule. The OCA also notes that the Commission has made clear that the recovery of deferred early window costs is not to become part of routine regulatory practice. Re Pennsylvania Power Co., 59 Pa. PUC 541, 545, 68

PUR4th 357, 360 (1985). As Commissioner Rolka articulated in PECO 1990, there is no "green light for all other utilities' 'window' claims." 74 Pa. PUC at 235.

In cases considering the issue, the Commission has established a three pronged test that requires the utilities to show the following:

(1) The request is timely;

(2) The costs are both extraordinary and nonrecurring; and

(3) The denial of recovery would have a substantial negative financial impact on the utility.

PECO 1990, 74 Pa. PUC at 111, PG&W 1993, 79 Pa. PUC at 369, and PAWC 1994, Docket No. R-932670, slip op. at 71 (July 26, 1994). See, OCA M.B. at 107-110. The OCA submits that the ALJ correctly found that PP&L's claim for recovery of Susquehanna 1 "early window" costs could not meet the standards set forth by the Commission that would justify recovery.

Notably, the Company has waited 11.5 years to file for recovery of its Susquehanna Unit 1 costs. PP&L could have sought this recovery in 1984 through its last base rate case, when Susquehanna Unit 2 was added to rate base. PP&L voluntarily elected not to seek recovery at that time. PP&L argues that it did not claim the SSES 1 "early window" costs in its Unit 2 Case "because it sought to minimize the requested rate increase and its impact on customers." PP&L Exc. at 48. However, as the ALJ correctly noted, the claim would not have had a significant impact on PP&L's overall request in that case. R.D. at 62.

The Company also argues that because the Commission did not explicitly include a time limit in the Declaratory Order allowing PP&L to defer the costs in question, the Company is justified in claiming the costs now. PP&L Exc. at 47. The OCA submits that to allow recovery

of PP&L's claim, which the Company is presenting more than ten years after its first opportunity, and over eleven years after its incurrence, would improperly reach back in time and would erode the test year concept, which the rule against retroactive ratemaking stands to protect.

Moreover, the OCA submits that the Company has failed to demonstrate that the denial of its claim would have a substantial negative impact on the utility. See, OCA M.B. at 113-114. The Company presented no evidence as to what kind of a write-off a denial of just the SSES Unit 1 costs would be to the Company. The OCA notes, however, that as is set forth in OCA's Main Brief at 114-116, even the denial of the claims for both SSES units does not produce the level of loss that the Commission has judged to justify an exception to the rule against retroactive ratemaking. Commissioner Rolka stated in his concurring opinion in PECO 1990, that it is important to examine "whether the lack of recovery of those costs had a deleterious effect on the utility. . . ." 74 Pa. PUC at 235. The Company simply has not made this showing.

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief at 103-117, and Reply Brief at 48-52, the OCA submits that the ALJ properly rejected PP&L's SSES 1 "early window" claim.

REPLY EXCEPTION 8: Additions To Taxable Income

PP&L excepted to the ALJ's recommendation adopting the OCA's adjustment to PP&L's future test year income tax claim. PP&L Exc. at 49-50; R.D. at 137. As discussed in the OCA's Main and Reply Briefs, OCA witness Catlin eliminated three items: additions to taxable income for ECR/FAC overrecoveries, refueling outage costs, and bad debt accruals. The

Company incorrectly included each of these items as additions to taxable income for purposes of calculating future test year income tax expense. OCA M.B. at 203-207; OCA R.B. at 92-94.

PP&L does not dispute the accuracy of the OCA's adjustment but contends that the adjustment is "cherry picking". PP&L Exc. at 49. The OCA submits that the ALJ correctly recognized that these adjustments were supported by the evidence of record. As discussed in the OCA's Main Brief, and as noted by the Company, OCA witness Catlin recognized that items included in the additions to the Company's taxable income will fluctuate up and down, and thus, properly eliminated all inappropriate items, including the adjustment suggested by PP&L's witness.[10] OCA M.B. at 205-206; OCA R.B. at 92-94.

PP&L's arguments do not overcome the fact that the OCA's adjustment appropriately eliminates items from the Company's claim for income tax expense. The OCA submits that the ALJ's recommendation adopting the OCA's adjustment to eliminate certain additions to taxable income is well supported by the evidence of record and should be approved.

REPLY EXCEPTION 9: Gross Receipts Tax

In this proceeding, the OCA adjusted PP&L's gross receipts taxes to recognize that revenues which are not received (i.e., uncollectibles) are not subject to the tax. OCA M.B. at 196-198; OCA R.B. at 91-92. The ALJ adopted the OCA's adjustment, agreeing that: "[I]f there is no revenue, then there should be no tax ...". R.D. at 131. PP&L excepts to the ALJ's

[10] The OCA acknowledges that PP&L correctly noted that should the Commission adopt the OTS adjustment for uncollectibles accounts expense, the OCA's adjustment for bad debt accruals ($1,959,000) would be eliminated. PP&L Exc. at 50; OCA St. 6A, Sch. TSC-23. The remaining two adjustments for ECR/FAC overrecovery ($9,690,000) and Refueling Outage Costs ($2,138,000) remain.

recommendation arguing that "even if theoretically correct, it is factually in error."[11] PP&L Exc. at 51-52.

As discussed in the OCA's Briefs, PP&L's argument totally ignores the fact that as a result of non-payment or uncollectibles, it will not receive all of the revenues that it has claimed. As a result, PP&L will not have to pay gross receipts tax on all of the revenues that it has claimed. The OCA's adjustment recognizes that in this proceeding, PP&L is already seeking to recover any deficiency in its revenues due to uncollectibles from ratepayers in its uncollectible claim. Gross receipts taxes do not apply to uncollectible revenues. OCA St. 6 at 33.OCA M.B. at 197; OCA R.B. at 91-92.

PP&L's contention that although it did not claim any additional uncollectibles expense, if it had claimed these costs it would have offset Mr. Catlin's adjustment, is without support. The OCA submits that the PP&L's failure to present a request for future test year uncollectible costs cannot be used as an excuse to deny an adjustment to the PP&L's claim as filed. The OCA based its adjustment on the uncollectibles claimed by PP&L in this proceeding.

The OCA submits that the ALJ's recommendation is both factually and theoretically correct. Moreover, it is consistent with Commission precedent. See Pa. P.U.C. v. West Penn Power Company, Docket No. R-00942986, slip op. at 80 (December 28, 1994). The OCA

---

[11] PP&L also excepted because the ALJ's recommendation raised a new issue relating to "double recovery," claiming that this issue was not in the record. PP&L argues that it is "penalized" by the ALJ's raising this issue. PP&L Exc. at 51. The OCA submits that the ALJ simply raised several questions regarding PP&L's claim for uncollectibles and invited PP&L to address this issue further in exceptions. R.D. at 131-132. As discussed above, the ALJ adopted the OCA's argument as set forth in its Briefs in making this adjustment. R.D. at 131.

submits that for the reasons set forth above and in the OCA's Briefs, the ALJ's recommendation adjusting PP&L's gross receipts tax claim to remove uncollectibles should be adopted.

REPLY EXCEPTION 10: Customer Charge

At pages 57-59 of its Exceptions, PP&L excepts to the ALJ's recommended scaleback of the ALJ's proposed 35% increase in the residential customer charge. The Company argues that there is no evidence to support such a scaleback, and it argues that it had fully supported its proposed customer charge.

The OCA submits that the Company's arguments are in error. As set forth fully in the OCA's Main Brief at 305 to 308; Reply Brief at 130 to 131; and Exceptions at 50 to 52; the Company has not provided a determination of its "basic customer costs" that is in accordance with the Commission's definition of these costs. When PP&L's basic customer costs are determined in accordance with Commission precedent, it is found that its existing customer charges for both the RS and RTS class are above its actual "basic customer cost." As such, the OCA submits that no increase in the customer charge has been justified on this record.

Moreover, the OCA submits that the ALJ's determination to scale back a customer charge increase, if one is granted, is reasonable and appropriate. The OCA submits that it would be unfair and unreasonable to residential customers to allow such a significant increase in the fixed customer charge, when the Company is granted a much smaller increase overall. Such a proposal would disproportionately affect the low usage customer, while allowing the Company to recover a significant portion of its increase through a fixed charge that is not cost-justified.

REPLY EXCEPTION 11: RTS Rate

CEPFOD excepts to the ALJ's recommendation regarding the RTS rate. The ALJ adopted, to a large degree, the OCA proposal that, among other things, the rate be closed to new customers, and that the price differential between the RS and RTS class be maintained. See, OCA M.B. at 301. CEPFOD urges that the rate be abolished for existing customers as well, and that existing customers be provided a $50/month credit on their monthly bill for a period not to exceed five years. CEPFOD Exc. at 9-10.

The OCA submits that the ALJ's resolution of this difficult issue was reasonable based on the facts of this case. As the OCA set forth in its Main Brief at 296 to 305 and Reply Brief at 127-129, the CEPFOD proposal might unfairly burden existing RTS customers. As CEPFOD witness Anderson acknowledged on cross-examination, he has conducted no analysis to determine whether this proposal compensates the RTS customers for the large capital investments, or their expectations of energy savings for the life of the thermal storage system. Tr. 1311. As noted in Dr. Anderson's testimony, and by the witnesses at the public input hearings, thermal storage systems use more energy than conventional heating systems. CEPFOD St. 1 at 8; Tr. 1310; Allentown Public Input Tr. 785. Thus, moving these customers to the RS rate, as CEPFOD proposes, may result in higher average bills than the conventional heating customers on the RS rate for the life of the thermal storage system.

The OCA submits that the ALJ's resolution of this issue is reasonable, and does not unduly burden the RTS customers. For these reasons, the OCA submits that the ALJ's recommendation should be adopted.

REPLY EXCEPTION 12: OSBA Scaleback Proposal

OSBA, in its Exceptions, discusses its proposal for a scaleback if the Company is granted a smaller increase or a rate reduction. The OCA submits that a review of Appendix A to the OSBA's Exceptions, which presents an example of its scaleback methods based on the ALJ's revenue increase recommendation, demonstrates that the proposal distorts relationships to the system average increase that may have been used in implementing the rate increase recommendations.[12]

Notably, in developing revenue distribution recommendations from the cost of service study, the expert applies numerous principles, such as rate continuity, gradualism, and movement of classes toward the system average rate of return. These principles are applied by use of expert judgment in the overall recommendation.

The OSBA argues that its scaleback proposals will create greater movement to the system average rate of return for certain classes when there is a "small" increase. The OCA submits, however, that the OSBA's methodology may result in greater movement of the classes toward unity with the system average rate of return, but it does so at the cost of other rate design principles, such as rate continuity and gradualism, that may have been adopted for the classes in the development of the revenue distribution.

---

[12] For example, the Company had proposed that the RS class be capped to effect the principle of gradualism. As shown on OSBA Appendix A, the RS class would have received an increase 1.3x the system average under the Company's original proposal. Looking at Appendix A, however, one can see that under the constant differential method, the RS class receives an increase that is 2.34x the system average increase, while under the weighted method, the increase is 1.57x. On the other hand, under both of the OSBA's methods, the GS-1 class receives a rate reduction while the residential classes receive significant rate increases.

The OCA submits that it is simply unfair to sacrifice these principles for greater movement towards the system average rate of return because of a subjective determination that a rate increase is "small." As the public input testimony in this proceeding made clear, any increase in utility bills is a burden to many customers, and it is unreasonable to unfairly burden certain classes of customers through the selection of a scaleback method.

REPLY EXCEPTION 13: Cost-Of-Service Methodology

The University/College Coalition (UCC) excepts to the ALJ's recommendation to adopt PP&L's 12 CP methodology for cost of service study purposes. UCC argues that the 1 CP method presented by UCC witness Eisdorfer, and his resulting recommendations, should be adopted. The OCA submits that the 1 CP method advanced by UCC is flawed and should not be used for cost of service study purposes.

The OCA submits that the coincident peak methodology, particularly the 1 CP methodology, fails to appropriately reflect system planning principles. The coincident peak methodologies fail to recognize that the cost of generating plant in service is partly determined by the amount of energy that a plant is expected to provide. OCA St. 3 at 5. As such, the energy consumption of the classes is ignored in the coincident peak methodologies resulting in an improper allocation of cost responsibility. Additionally, the OCA submits that UCC witness Eisdorfer's recommendations, based on his use of this flawed methodology, should not be adopted.

For the reasons set forth above, and in the OCA's M.B. at 266-277, and R.B. at 116-123, the OCA submits that UCC's Exception should be denied.

REPLY EXCEPTION 14: PP&L's ECR Proposal

At page 52 to 53 of its Exceptions, PP&L objects to the ALJ's recommendation to reject PP&L's proposed automatic recovery of capacity costs associated with expiring off-system capacity sales through the ECR. The Company again argues that its proposal will provide substantial benefits to ratepayers, primarily by eliminating the need for more frequent base rate filings.

The OCA submits that the ALJ properly recognized that PP&L's proposal lacks sufficient checks and balances to assure that ratepayers are paying rates that are just and reasonable. R.D. at 275. Although the Company identifies one of the primary benefits of its proposal as being the avoidance of base rate filings, the ALJ properly finds that "base rate proceedings are a proper tool for managing utilities and setting appropriate rates." R.D. at 274-275. The OCA submits that this is particularly true in light of the fact that by including these costs in rates automatically, PP&L effectively seeks authority to increase its rates an additional $177 million by 1999. OCA St. 2 at 3. Additionally, these costs have not been included in Pennsylvania jurisdictional rates for over ten years.

Moreover, as set forth in the OCA's Main Brief and Reply Brief, the Company's proposal creates perverse incentives for the Company in marketing this capacity off-system. As OCA witness Kahal explained:

> PP&L, under its own proposal, faces one of two possibilities: (1) it may fail to market the returning capacity and therefore would receive automatic full cost recovery for the capacity through the ECR; or (2) it may successfully market the capacity and thereby accept whatever revenue the market provides. If, however, PP&L can only market the capacity at revenue levels below its full cost of service that would automatically be included in the ECR, PP&L has little incentive to market this surplus capacity. Rather, its most attractive option is to accept ECR recovery for these capacity costs from its Pennsylvania ratepayers.

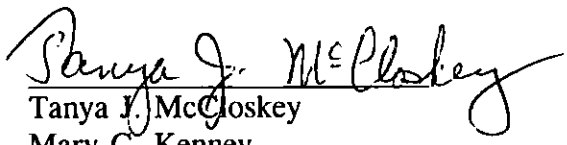
OCA St. 2 at 29. As can be seen, under the Company's ECR proposal, PP&L could maximize its profits by failing to market this returning capacity. The OCA submits that the Company's proposal provides a perverse and unacceptable incentive to the Company.

For the reasons set forth above, and for the reasons set forth in the OCA's M.B. at 313-320, and R.B. at 133-135, the OCA submits that the ALJ correctly rejected the Company's proposal.

III. CONCLUSION

For the reasons set forth above, and in the Office of Consumer Advocate's Main Brief and Reply Brief, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions discussed above, and adopt the position of the Office of Consumer Advocate.

Respectfully submitted,



Tanya J. McCloskey
Mary C. Kenney
Gicine P. Brignola
Assistant Consumer Advocates

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

Dated: August 21, 1995

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission
v.
Pennsylvania Power and Light Company
Docket No. R-00943271

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of August, 1995.

SERVICE IN PERSON

DOCUMENT FOLDER

Johnnie E. Simms, Esq.
Kenneth L. Mickens, Esq.
Stephen Gorka, Esq.
PA PUC - Office of Trial Staff
Pitnick Bldg. - 3rd. Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Kenneth Zielonis, Esq.
Stevens & Lee
Crown American Realty Trust
208 North 3rd St., Suite 310
Harrisburg, PA 17101

David M. Kleppinger, Esq.
McNees Wallace and Nurick
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166

Karen Oill Moury, Esq.
Office of Small Business Adv.
Suite 1102 Commerce Bldg.
300 N. 2nd Street
Harrisburg, PA 17101

Robert P. Haynes, III, Esq.
Mette, Evans & Woodside
3401 N. Front Street
Harrisburg, PA 17110-0950

Daniel P. Delaney, Esq.
James P. Melia, Esq.
Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, PA 17101-1507

Paul E. Russell, Esq.
Pennsylvania Power &
Light Company
2 North Ninth Street
Allentown, PA 18101-1179

ORIGINAL

David B. MacGregor, Esq.
Thomas P. Gadsden, Esq.
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

David A. McCormick, Esq.
General Attorney
Office of the Judge
Advocate General
901 N. Stuart Street
Arlington, VA 22203-1837

Alan J. Barak, Esq.
Mid Atlantic Energy Project
Energy Law Clinic
3700 Vartan Way
Harrisburg, PA 17110

Eric Epstein
2308 Brandywine Dr.
Harrisburg, PA 17110

Joan O. Brandeis, Esq.
Suite 3600
1600 Market Street
Philadelphia, PA 19103-4252
D. Jane Drennan, Esq.
1216 16th Street, N.W.
Washington, DC 20036

Wayne M. Thomas, Esq.
1101 Market St., 24th Floor
Philadelphia, PA 19107

Craig Kuennen
Commission on Economic
Opportunity
211 S. Main Street
Wilkes Barre, PA 18701-1596

Stephen J. Selden, Esq.
Bethlehem Steel Corporation
Bethlehem, PA 18016

Tanya J. McCloskey
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

19071

KJR

McNEES, WALLACE & NURICK

ATTORNEYS AT LAW

100 PINE STREET

P. O. BOX 1166

HARRISBURG, PA 17108-1166

TELEPHONE (717) 232-8000

FAX (717) 237-5300

OF COUNSEL
ROBERT H. GRISWOLD
SAMUEL A. SCHRECKENGAUST, JR.

BRUCE D. BAGLEY
ALAN R. BOYNTON, JR.
ERIC L. BROSSMAN
ROBERT M. CHERRY
WILLIAM A. CHESNUTT
DAVID B. DISNEY
MICHAEL A. DOCTROW
ELIZABETH A. DOUGHERTY
HARVEY FREEDENBERG
JAMES L. FRITZ
FRANCIS B. HAAS, JR.
W. JEFFRY JAMOUNEAU
MICHAEL G. JARMAN
DAVID M. KLEPPINGER
BERNARD A. LABUSKES, JR.
DELANO M. LANTZ
RICHARD R. LEFEVER
DAVID E. LEHMAN
CLYDE W. McINTYRE
FRANKLIN A. MILES, JR.
ROBERT A. MILLS
STEPHEN A. MOORE
HERBERT R. NURICK
JOHN S. OYLER
TIMOTHY J. PFISTER
GARY A. RITTER
EDWARD W. ROTHMAN
DANA STEVENS SCADUTO
ROBERT D. STETS
RICHARD W. STEVENSON
DIANE M. TOKARSKY
DAVID M. WATTS, JR.

STEVEN J. WEINGARTEN
NEAL S. WEST
NORMAN I. WHITE
LAWRENCE R. WIEDER
GARY F. YENKOWSKI
WILLIAM M. YOUNG, JR.

ERIC N. ATHEY
DAVID M. BAKER
JONATHAN C. BERRY
BRETT D. DAVIS
JAMES P. DeANGELO
JAMES P. DOUGHERTY
KATHLEEN A. DUNST
ROBERT J. GODUTO
SCOTT A. GOULD
P. NICHOLAS GUARNESCHELLI
ROBERT G. HAAS
BRIAN F. JACKSON
DONALD B. KAUFMAN
MICHAEL R. KELLEY
PETER F. KRIETE
JAMES W. KUTZ
CAMILLE C. MARION
PATRICK J. MURPHY
SHARON R. PAXTON
CHUONG H. PHAM
JONATHAN H. RUDD
BRUCE R. SPICER
CAROL A. STEINOUR
CATHERINE E. WALTERS
DERRICK P. WILLIAMSON

August 21, 1995

RECEIVED
95 AUG 21 PM 2:17
PA. P.U.C.
INFO. CONTROL DIV.

John G. Alford, Secretary
Pennsylvania Public Utility Commission
B-20, North Office Building
P.O. Box 3265
Harrisburg, PA 171230

VIA HAND DELIVERY

In re: Pennsylvania Public Utility Commission, et al., v. Pennsylvania Power & Light Company; Docket No. R-00943271

Dear Secretary Alford:

Enclosed please find the original and nine (9) copies of the Reply Exceptions of the PP&L Industrial Customer Alliance. All parties of record have been duly served as evidenced by the attached Certificate of Service.

Please date stamp the enclosed copy of this transmittal letter and kindly return for our filing purposes.

DOCUMENT FOLDER

Very truly yours,

McNEES, WALLACE & NURICK

By
Derrick P. Williamson

DPW/mts
Enclosures

c: Certificate of Service

ORIGINAL

RECEIVED
95 AUG 21 PM 2:17
P.A.P.U.C.
INFO. CONTROL DIV.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL.,	:	
v.	:	DOCKET NO. R-00943271
PENNSYLVANIA POWER & LIGHT COMPANY	:	

REPLY EXCEPTIONS OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE

Air Products and Chemicals, Inc.
Alumax Mill Products, Inc.
Appleton Papers Inc.
Armstrong World Industries
BOC Gases
CertainTeed Corporation
Chamberlain Manufacturing Corporation
Cressona Aluminum Company
ESSROC Materials, Inc.
Grinnell Corporation
Hercules Cement Company
Hershey Foods Corporation
International Paper Company
Lafarge Whitehall Cement
Liquid Carbonic Industries
Magee Carpet Company
M&M/Mars, Inc.
Praxair, Inc.
R. R. Donnelley & Sons
The Stroh Brewery Company
Thomson Cons. Electronics, Inc.
Victaulic Co. of America

DOCKETED
AUG 23 1995

David M. Kleppinger
Derrick P. Williamson
McNEES, WALLACE & NURICK
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 237-5214

Counsel for PP&L Industrial
Customer Alliance

Dated: August 21, 1995

DOCUMENT FOLDER

ORIGINAL

TABLE OF CONTENTS

TABLE OF CITATIONS

I. INTRODUCTION

Administrative Law Judge ("ALJ") Robert A. Christianson issued a Recommended Decision ("R.D.") in this proceeding on July 31, 1995. The PP&L Industrial Customer Alliance ("PPLICA"), an active party during the evidentiary phase of the proceeding before ALJ Christianson, received "Exceptions" to the ALJ's decision from the following parties: the Office of Trial Staff ("OTS"), the University/College Coalition, Bethlehem Steel Corporation, Eric Joseph Epstein, the Central Eastern Pennsylvania Fuel Oil Dealers, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Sierra Club, and the Pennsylvania Power & Light Company ("PP&L" or "Company"). PPLICA also filed Exceptions to the ALJ's Decision.

PPLICA hereby replies to Exceptions taken by PP&L, the Sierra Club, the OCA and the OSBA. In replying to specific Exceptions, PPLICA incorporates by reference applicable portions of its Main Brief and Reply Brief, and provides additional argument as per 52 Pa. Code § 5.535.

II. REPLIES TO EXCEPTIONS

1. The ALJ Properly Applied and Relied Upon the DCF Analysis in Recommending a Rate of Return on Common Equity for PP&L of 10.90%.

PP&L excepts to the ALJ's recommendation of a rate of return on common equity for PP&L of 10.90% primarily because the ALJ relied upon the discounted cash flow ("DCF") method of analysis and, in the alternative, PP&L argues that the ALJ misapplied the DCF methodology. PP&L Exceptions, pp. 26-32. In support of this Exception, PP&L provides meandering criticisms of the ALJ's Decision, such criticisms consisting of essentially four arguments.

First, PP&L argues that the ALJ's proposed 10.9% equity allowance is simply too low in comparison to recent Commission determinations regarding two water utilities and another large electric utility. PP&L also cites cost of common equity decisions from various other jurisdictions. Id. at 26-27.

The problem with PP&L's argument is that the cases to which it cites actually confirm the reasonableness of the ALJ's proposed 10.9% equity allowance in this proceeding. For example, in the first case PP&L cites, Pa. P.U.C. v. Pennsylvania-American Water Company, Docket No. R-00943231 (July 24, 1995) ("PAWC"), the Commission identified a cost of common equity of 11.25% (a mere 35 basis points above the ALJ's finding in this proceeding). It is also noteworthy that consistent with ALJ Christianson's analysis in this proceeding, the Commission in PAWC rejected both the risk

premium and the CAPM methodologies and relied upon the DCF methodology. In the other case cited to by PP&L, Pa. P.U.C. v. Roaring Creek Water Company, Docket No. R-00943177 (May 5, 1995) ("Roaring Creek"), the Commission adopted a cost of common equity of 11.0%, a mere ten (10) basis points above the ALJ's recommendation in this proceeding. In the other jurisdictional case cited to by PP&L (Pa. P.U.C. v. West Penn Power Company, Docket No. R-00942986 (December 29, 1994)), the PUC approved a cost of common equity of 11.5%, but that rate was inflated by the PUC's decision to include an adjustment for good performance; without that adjustment, West Penn's approved rate of return is comparable to that recommended by the ALJ for PP&L. See West Penn Power Co., R-00942986, slip op. at 99. In short, the cases to which PP&L cites in support of its assertion that the ALJ's finding in this proceeding regarding an equity allowance was too low, actually confirm that the ALJ achieved a reasonable figure through the proper application of the DCF analysis.

PP&L's other references to findings in various other jurisdictions (PP&L Exceptions, pp. 26-27) are virtually irrelevant for the purpose of analysis in this Commonwealth. Those references should be given little or no weight.

Second, PP&L argues that the ALJ erred in relying exclusively upon the DCF method. PP&L Exceptions, pp.27-29. Contrary to the PP&L argument, Commission precedent supports the ALJ's primary reliance upon the DCF methodology. Indeed, in the two recent cases cited by PP&L, PAWC and Roaring Creek, the Commission expressly

concluded that primary reliance upon the DCF analysis was appropriate and that risk premium and CAPM analyses were to be rejected. As the PUC stated in PAWC: "While the DCF method is not without flaws, nevertheless, it provides the most accurate measure of the cost of common equity . . . . Accordingly, it was proper for the ALJ to reject the [risk premium and CAPM] methodologies and rely primarily on the DCF method." PAWC, slip op. at 60-61. The PUC reached the same result in Roaring Creek. Roaring Creek, slip op. at 46. Even in the most recent West Penn base rate case cited by PP&L, the PUC relied primarily upon the DCF method in identifying a rate of return on common equity. West Penn Power Co., R-00942986, slip op. at 94-95. As such, the ALJ was correct to rely upon the DCF method in this proceeding, consistent with Commission precedent.

Third, PP&L argues that the ALJ's proposed 10.9% equity allowance must be rejected principally because his analysis rested on the "averaging of results." PP&L Exceptions, p. 29. PP&L has mischaracterized the ALJ's analysis. PP&L specifically argues that the ALJ erred because he "averaged" the findings of the OTS, OCA and PPLICA, but ignored the evidence submitted by the Company, resulting in witness bias. PP&L Exceptions, p. 30. This omission by the ALJ was, of course, not in error; as the ALJ expressly noted, PP&L's DCF dividend proposal was inappropriate because it included a quarterly compounding and ex-dividend adjustment. R.D., p. 171. Thus, the ALJ's recommendation is biased only to the extent that PP&L's alternative DCF proposal was too flawed to incorporate into the ALJ's analysis.

Toward that end, PP&L's attempts to incorporate its dividend yield proposal into the ALJ's analysis (PP&L Exceptions, p. 31) is clearly misplaced; the ALJ rejected PP&L's DCF proposals because of the flaws in the PP&L DCF analysis. R.D., p. 171. PP&L cannot now incorporate its proposal into the ALJ's analysis, thus the unadjusted dividend yield figure of 7.91% provided by PP&L (PP&L Exceptions, p. 31), should be summarily rejected. In any event, if one does undertake to utilize the PP&L analysis (at page 31 of its Exceptions), and properly excludes the PP&L data, a dividend yield of 7.43% is identified. This figure is fully consistent with the ALJ's recommendation of 7.63% dividend yield.

Fourth, PP&L argues that the ALJ's recommended cost of common equity is faulty because the ALJ did not provide PP&L with an "equity bonus." PP&L Exceptions, p. 32. PP&L notes that the Commission is directed to "consider evidence regarding the efficiency, effectiveness and adequacy of service" and make appropriate rate adjustments in response thereto (as per 66 Pa. C.S. § 523), but what PP&L fails to note is dispositive: the evidence presented by PP&L (PP&L Statement 1, pp. 4-6) simply does not support an "equity bonus." Moreover, PP&L failed to seek a specific "equity bonus" in any event. As such, the ALJ expressly recognized that PP&L failed to meet its burden of proof.[1] R.D., p. 176. The argument in PP&L's Exception does not cure this fundamental flaw.

---

[1]The "evidence" presented by PP&L falls far short of that submitted by West Penn Power Company in its most recent base rate case, which included a specific proposal by West Penn for a performance adder (and where a performance adder was approved by the PUC). West Penn Power Co., Docket No. R-00942986, slip op. at 99.

2. The ALJ Properly Rejected the PP&L Proposal to Shorten the Depreciable Lifespans of Its Fossil Fuel Generating Plants.

PP&L excepts to the ALJ's recommendation to reject the PP&L proposal to shorten the depreciable lifespans of certain fossil fuel fired generating units. PP&L Exceptions, pp. 32-39. PP&L's lengthy argument hinges in part upon the ALJ's opinion that PP&L may have been correct "in principle," that PP&L's selection of a particular deactivation date "might be right," and his opinion that his ultimate decision (to reject the PP&L proposal) was "a difficult call." Id. at 32-33. PP&L argues that these "caveats and qualifications" "underscore" the substantiality of the evidence PP&L presented. Id. at 33.

The portion of the ALJ's decision which PP&L omits tells the real story. The ALJ stated:

> PP&L is correct, in principle, but I feel it is wrong in this particular circumstance. If we were dealing with an extension of their lifetime, PP&L will be in a better position to present its argument. This would . . . be a proper coordination of capital investment and depreciation. However, the lifetimes are now set to be longer. These longer lifetimes may depend on further investment but, in any case, longer lifetimes are the status quo. PP&L is seeking to change that status quo. Moreover, PP&L does have some fundamental burden of proof beyond the burdens associated with the other parties.
>
> * * *
>
> . . . If I were certain, or relatively certain, about 2003, I might agree with PP&L. However, uncertainty concerning the various factors works against PP&L.

* * *

> . . . I reach my result largely because I am not sufficiently convinced that PP&L is right. In this instance, uncertainty works against PP&L and I feel that this is proper.

R.D., pp. 124-25. Based upon a reading of the ALJ's entire discussion with respect to this issue, it is clear that the ALJ was unconvinced that PP&L had met its burden of proof. The ALJ rejected the PP&L proposal specifically because the evidence PP&L presented lacked necessary "substantiality," contrary to the assertion of PP&L.

Furthermore, to the extent that PP&L reiterates in its Exceptions arguments that it presented in its Initial and Reply Briefs (PP&L Exceptions, pp. 33-39), PP&L cannot overcome the ultimate fact of record that PP&L has not committed to the earlier deactivation. As PPLICA noted in its Main Brief, PP&L did not express an intent to commit to retire the fossil-fired plants at issue consistent with its proposal; indeed, PP&L witness Krall stated that the factors necessitating PP&L's proposal for the shorter depreciation lives merely indicate that "the continued operation of these units beyond [the originally projected] timeframe [is] less certain than it was thought to be in 1988 when the current deactivation dates were established." PP&L Statement No. 5-R, p. 3. Toward this end, PP&L's Resource Planning Report dated May, 1994, indicates that PP&L has no plan to retire any steam electric system during the next twenty (20) years (i.e., before the year 2014) (OTS Cross-Examination Exhibit No. 2), and, moreover, the Company's Five Year Coal Upgrade Plan filed with the Commission on May 2, 1994, confirms the Company's intent to continue

to invest in the pertinent fossil-fired units through the year 2013 (See Tr. at 110, 188-89). PPLICA Main Brief, pp. 38-39. This substantial record evidence clearly indicates that PP&L has no current commitment to deactivate consistent with its proposal to shorten the depreciation lives for its fossil-fired plants. Thus, the ALJ's recommendation is the product of a proper interpretation of the record evidence and is consistent with Commission precedent. See Pennsylvania Public Utility Commission v. West Penn Power Company, 54 PaPUC 602, 613-15 (1981) (Commission rejects proposal to decrease useful life of plant as not supported by sufficient evidence). It is PP&L, through its APR and Five Year Coal Upgrade Plan, that has provided evidence that the "status quo" should be maintained. The ALJ properly recommended rejection of the PP&L proposal to alter that "status quo."[2]

[2]PPLICA notes with interest that PECO Energy Company, consistent with its proposed merger with PP&L, has stated a belief that the merger would produce a rate reduction, offsetting most (if not all) of the ALJ's revenue requirement increase. In short, PECO is willing to use "merger savings" to accelerate depreciation on generating assets, while PP&L desires to increase current rates to finance accelerated depreciation on fossil fuel units (and SSES units). Moreover, PECO is apparently willing to commit to a five-year base rate freeze after the merger - a commitment which PP&L is apparently unwilling to make (even if it were to receive all of its request for an inflated $261 million base rate increase). Letter from Mr. Paquette (PECO) to Chairman Quain, August 14, 1995.

3. The ALJ Properly Rejected PP&L's Proposal to Establish a Decommissioning Annuity for Its Fossil-Fuel Fired Plants.

PP&L excepts to the ALJ's recommendation to reject the PP&L proposal to prospectively recover the cost of dismantling its fossil-fuel fired generating plants. PP&L Exceptions, pp. 44-46. PP&L's Exceptions essentially amount to identifying snippets of dicta from the ALJ's decision indicating that the ALJ believed that the PP&L proposal has some merit. Id. at 45-46. PP&L also continues to argue that annuitizing fossil-fuel plant decommissioning costs would promote intergenerational equity and would assure that public health and safety risks are adequately addressed upon the retirement of fossil-fuel fired generating plants. PP&L also makes the claim that the Penn Sheraton (Penn Sheraton Hotel Company v. PaPUC, 198 Pa. Super. 618, 184 A.2d 324 (1962)) is not a legal bar to its proposal. Id. at 46.

PP&L's arguments must be rejected. The ALJ did indicate sympathy for the PP&L proposal, and he also indicated some disenchantment with the Penn Sheraton precedent (R.D., p. 106); however, the ALJ rejected the PP&L proposal, not because of its failure to adhere to Penn Sheraton, but because the ALJ was not convinced of the general propriety of PP&L's proposal. As he stated: "I am concerned about the speculative nature of the PP&L approach (especially for these plants) and feel constrained to recommend denial of the claim." Id. Thus, though the ALJ did note some concerns about departing from precedent generally, the true basis for his decision was the fact that he was "concerned about various

factual details of the PP&L proposal." R.D., p. 107 (emphasis added). PP&L's exception fails to address this aspect of the ALJ's decision; PP&L failed to bear its burden with respect to certain factual details regarding its proposal.

In addition, despite the ALJ having opined about the propriety of the Penn Sheraton precedent, that precedent is directly applicable to the instant PP&L proposal. This Commission has been unwavering in recognizing that attempts to prospectively recover the future costs of dismantling fossil-fuel plants violate Penn Sheraton. The only exception to this rule exists with regard to the prospective recovery of costs associated with the radioactive and non-radioactive portions of a nuclear plant. See Pa. P.U.C. v. Pennsylvania Power Company, 67 PaPUC 91, 140 (1988); Pa. P.U.C. v. Philadelphia Electric Company, 74 PaPUC 1, 161 (1991). The Commission has expressly rejected the argument raised by PP&L in its Exceptions that no distinction should be drawn between prospective negative net salvage as it applies to nuclear plants and non-nuclear plants. Pa. P.U.C. v. West Penn Power Company, 54 PaPUC 602, 629-30 (1981); Pa. P.U.C. v. West Penn Power Company, Docket No. R-00942986, slip op. at 63 (December 29, 1994). As the Commission noted in that latter case, "we reject the Company's claim because of its uncertain and speculative nature and because this claim is patently counter to existing precedent." Id. Consequently, both with regard to the uncertainty and speculation associated with prospective claims and with regard to adherence to precedent, the PP&L proposal was

properly rejected by the ALJ. See PPLICA Main Brief, pp. 34-38; PPLICA Reply Brief, pp. 36-38.

Moreover, any efforts by PP&L to establish that the need to comply with health and safety standards justifies a movement away from Commission precedent is obviated by the fact that the Company is already obliged under the current precedent to comply with the appropriate public health and safety standards in insuring proper retirement of its fossil-fuel generating facilities. The Company must assure that the public health and safety risks are adequately addressed upon retirement of its fossil-fuel plants regardless of whether it is provided prospective recovery of costs. PPLICA Reply Brief, p. 37.

4. The ALJ Properly Rejected PP&L's Proposal to Include Within Its Energy Cost Rate the Cost of Lost Capacity Sales.

PP&L excepts to the ALJ's recommendation to reject the PP&L request to include in its Energy Cost Rate ("ECR") the cost of lost capacity sales resulting from the termination of its long-term sales agreement with Jersey Central Power & Light Company ("JCP&L"). PP&L Exceptions, pp. 52-53. PP&L essentially argues that its proposal, to include in the ECR the cost of capacity that will become available to the Company over the next five years with the phased termination of its long-term sales agreement with JCP&L, will provide such substantial benefits that the ALJ was wrong for recommending rejection of the proposal. PP&L also attempts to dismiss the ALJ's concerns that the Company's proposal lacks sufficient checks and balances. Id.

Contrary to the assertions of PP&L, the PP&L proposal lacked the necessary checks and balances necessary to ensure a reasonable cost recovery because it "departs too far from traditional ratemaking," and because the complaint process outlined by PP&L as a "check or balance" is too "cumbersome and slow" to be deemed a reasonable check on this "innovative" but automatic proposal. See R.D., pp. 274-75.

As noted by PPLICA in its Main (pp. 32-34) and Reply (pp. 43-44) Briefs, the PP&L proposal is unreasonable in any event. Indeed, that proposal would amount to requiring that the Commission approve, prospectively, single issue rate increases without consideration given to any offsetting expenses, revenues, or other factors which may negate the necessity

for the increases proposed by PP&L in the future. PPLICA Main Brief, pp. 32-33. The revenue requirement associated with the generating capacity being sold should not be an issue in this base rate proceeding as those revenue requirements are allocated to PP&L's wholesale jurisdiction; PP&L should not be given the opportunity to automatically increase retail rates whenever a wholesale power contract is terminated. Id. PP&L's Exception on this issue should be denied.

5. The ALJ Properly Adopted PPLICA's Proposal to Assign the Costs of the EDI/IDI Credits to All Customer Classes for Cost of Service Study Purposes.

PP&L excepts to the ALJ's recommendation to adopt the PPLICA proposal to assign the costs of the EDI/IDI credits to all customer classes for cost of service study purposes. PP&L Exceptions, pp. 56-57. PP&L argues that although it believes that all customers benefit from these EDI/IDI programs, those benefits are not shared equally. It notes that participants receive much greater benefits than non-participants, thus the cost of these discounts should be allocated to the industrial classes within which customers receiving the discounts reside. Id.

The inconsistency of PP&L's "equity" argument was illustrated by PPLICA in its Main Brief. First, all customers do benefit from the EDI/IDI program; as PP&L noted in its original EDI/IDI filing, that rider would have a positive rate impact on non-participating customers and provide a hedge against future costs being incurred by nonparticipating customers. PPLICA Cross-Examination Exhibit No. 5, pp. 4-5. Indeed, during the evidentiary phase of this proceeding PP&L witness Farber agreed that the EDI/IDI programs benefit all customers currently as well. Tr. at 636; PPLICA Main Brief, pp. 52-53.

Second, the PP&L proposal lacks any logical foundation. PP&L maintains that equity requires that only rate classes containing participants be allocated the costs of these programs because non-participants (in other classes) do not receive equal benefits. PP&L disregards, however, that its proposal would require that non-participants who happen to be in rate

classes that contain participants would be allocated an even greater share of the costs associated with the EDI/IDI programs. Query the "equity" of requiring non-participants in one class to bear the cost of these programs, while other non-participants do not bear any costs simply because they are in a class that has no participants. The Company's assignment of the cost of these credits to all customers within a rate class, even though not all customers within the rate class receive the credits, is flatly inconsistent. PPLICA Main Brief, p. 53.

Further evidence of the illogic of the Company's proposal is found in analyzing its effect on Rate Schedule ISA. Under PP&L's proposal, the costs associated with this credit would be directly assigned to Rate Schedule ISA because that schedule contains a participating customer. However, the effect of the Company's absurd methodology would require recovery of the full amount of this credit directly from the customer receiving the credit because that customer is the only customer in the rate class, thereby negating the beneficial effect of the credit on the individual customer. Id.

Finally, PP&L's assertion that its treatment of the cost of the EDI/IDI credits is consistent with this Commission's treatment of costs associated with DSM programs is entirely misplaced. Indeed, if PP&L were truly to accept this argument at face value, then all programs to include various customer assistance programs, costs associated with interruptible rates, and economic discount programs, would be allocated on a class basis. The Company clearly does not intend this result. As such, its "DSM" argument must be rejected. As the

ALJ stated: "[N]o matter what the theory, I agree with the argument that [the] cost of this activity be spread over all customers." R.D., p. 209.

The most appropriate treatment of the cost of IDI/EDI credits is to allocate those costs to all customer classes. This is consistent with the recognition of both PP&L and the ALJ that those credits benefit all customers. Indeed, allocation across all customer classes is consistent with PP&L's allocation of the costs of other similar programs, to include residential customer assistance programs. PPLICA Main Brief, p. 54. PP&L's Exception should be denied.

6. The ALJ Properly Ignored Sierra Club's Untimely Request to Certify the Issue of Excluded Sierra Club Testimony.

The Sierra Club argues in its Exceptions that the ALJ should have denied a motion to strike certain Sierra Club testimony regarding demand side management ("DSM") lost revenue and incentive issues. Sierra Club Exceptions, pp. 14-18. Sierra Club provides various arguments, both procedural and substantive in support of its "exception" (actually a defective proxy for a Petition to Certify a Material Question). Id. Of course, the Sierra Club argument is procedurally defective and must be summarily rejected.

Sierra Club has the audacity to state that the exceptions process is "the appropriate place to seek the Commission's review of the DSM testimony exclusion." Sierra Club Exceptions, p. 1. The Commission's regulations are clear that "[d]uring the course of a proceeding, a participant may submit a timely petition to the Secretary requesting the Commission's review and answer to a material question which has arisen or is likely to arise." 52 Pa. Code § 5.302(a) (emphasis added). Sierra Club never submitted such a petition, despite having ample opportunity to do so.

As Sierra Club properly notes, it offered the expert testimony of one Bruce Biewald for the design of DSM incentives and lost revenue recovery. (Sierra Club Statement No. 1) Sierra Club Exceptions, p. 14. The Sierra Club attempted to move the admission of the Sierra Club Statement No. 1 in its entirety at hearing on April 27, 1995. PPLICA moved to strike certain portions of Sierra Club's Statement No. 1 to the extent that they addressed

DSM lost revenue recovery and DSM incentives (the legality of lost revenue recovery and DSM incentive recovery being the subject of an appeal by the Commission to the Supreme Court at Docket No. 0164 M.D. Allocatur 1995). After entertaining oral argument on the issue, the ALJ made a determination on the record to strike those portions of Sierra Club Statement No. 1 regarding DSM lost revenue and incentive issues. Tr. at 1408-34.

As aforementioned, Commission regulations provide a party with the opportunity to submit a timely petition to the Secretary to request that the Commission review and answer a material question which has arisen. 52 Pa. Code § 5.302. Almost one full month after the ALJ ruled on the Motion to Strike and on the last day of hearings, May 26, 1995, Sierra Club, through its counsel, requested that the ALJ consider certifying the issue as a material question to the Commission. Tr. at 2254-55. The ALJ unequivocally rejected the request (Tr. at 2255) and noted on the record that Sierra Club had waited until the last day of hearing to present the issue, rather than seeking a prompt review, and that in his opinion, the Sierra Club was "not timely as to interlocutory review" as required by 52 Pa. Code §5.302(a). Tr. at 2264. Sierra Club then professed an intention to file for interlocutory review with the Commission. Tr. at 2255.

Despite its professed intent, Sierra Club did not petition the Commission with respect to any material question regarding the striking of the Sierra Club testimony. As PPLICA noted in its Reply Brief, that should have been the end of the matter. PPLICA Reply Brief, p. 46.

However, Sierra Club sought to inject the issue by arguing the merits of its Petition for Commission Review in Answer to a Material Question at the briefing stage of this proceeding. Sierra Club Main Brief, pp. 13-16. PPLICA was forced to argue in its Reply Brief the fact that the Sierra Club effort constituted a gross violation of Commission procedure. The Sierra Club effort at the briefing stage to essentially argue the merits of a petition for review in answer to a material question violated virtually every aspect of 52 Pa. Code §§ 5.301 and 5.302. PPLICA Reply Brief, pp. 46-48. PPLICA also briefly addressed the merits of the Sierra Club "brief" and noted that the ALJ properly granted the Motion to strike testimony regarding DSM lost revenue and incentive recovery consistent with the Commission's appeal of those two issues from an Order of the Commonwealth Court entered January 9, 1995, at Docket Nos. 3104 C.D. 1993, 904 C.D. 1994, to the Supreme Court (Docket No. 0164 N.D. Allocatur 1995).[3]

Subsequently, ALJ Christianson noted in his Recommended Decision that consistent with the argument set forth by PPLICA in its reply brief, he would adhere to his original ruling to strike the irrelevant testimony and to deny certification. The ALJ specifically observed that "the Sierra Club did not bring the matter before the Commission itself, prior to the close of record or at any time before briefs were filed." R.D., p. 276.

---

[3]Indeed, the Commonwealth Court decision rejected the Commission's proposal for DSM incentive recovery and placed the legality of lost revenue recovery in doubt; consequently, even if the Commission had not appealed, the testimony provided by Sierra Club was arguably outside of the Commission's authority regarding the implementation and cost-recovery of DSM programs.

Despite this, Sierra Club has the further audacity to continue to flout the Commission's regulations and to assert that the exceptions stage of this proceeding is the appropriate place for it to argue that the ALJ's ruling to strike certain irrelevant testimony was in error. Although the merits of the issue of whether to strike lost revenue and DSM incentive recovery testimony militate unequivocally toward a rejection of Sierra Club's exception (see Tr. at 1408-34), procedural defectiveness mandates an equally swift denial of the Sierra Club exception. PPLICA Reply Brief, pp. 45-48. This Commission must not allow any party to exercise such obvious and unacceptable disdain for proper procedure. The Commission must reject Sierra Club's attempt to run roughshod over the PUC's regulations.

7. The ALJ Properly Rejected the Sierra Club Proposal for DSM Certification as a Condition for Securing "Economic Development Rates."

Sierra Club excepts to the ALJ's recommendation to reject the Sierra Club proposal to require that all customers seeking "economic development rates" undergo a DSM certification, such certification requiring proof that all cost effective energy efficient measures have been installed by the ratepayer. Sierra Club Exceptions, pp. 33-39. In opposing the ALJ's recommendation, Sierra Club notes that the ALJ agreed with PPLICA's Reply Brief (Sierra Club incorrectly cites to PPLICA Reply Brief, p. 83; the correct citation is to PPLICA Main Brief, p. 83 and PPLICA Reply Brief, pp. 49-50), and Sierra Club essentially reiterates arguments that it made to the ALJ during the briefing process, though Sierra Club does expend much time attempting to clarify the components of its muddled proposal. Sierra Club Exceptions, pp. 33-39.

It is pertinent to note that the ALJ addressed this issue with respect to PP&L's DSM program proposals. Indeed, although the ALJ stated that he gave the alternatives proposed by Sierra Club a great deal of consideration, he believed that the advocation of the current PP&L program was most appropriate. R.D., p. 265. This decision is consistent with the argument offered by PPLICA in its Brief and Reply Brief.

As PPLICA noted in its Main Brief, the Sierra Club proposal is faulty first because there is no rationale requiring energy audits for industrial customers while not requiring them

for any other customer.[4] PPLICA Main Brief, p. 83. PPLICA also noted in its Reply Brief that the Sierra Club proposal was poorly developed. Indeed, Sierra Club witness Biewald was unable to identify which rate schedules would fit within his definition of "discount rates" for PP&L (Tr. at 1438) and witness Biewald conceded that he would define as a "discount rate" one which produced a rate of return higher than the system average so long as it was a discount from the Commission approved tariff (Tr. at 1438-42). Sierra Club witness Biewald also conceded that he was unaware of the level of discounts, if any, that existed on the PP&L system today and that he didn't know "what the basis is for determining those discounts" (Tr. at 1450). PPLICA Reply Brief, pp. 49-50. Given the lack of foundation for the Sierra Club proposal, the ALJ properly recommended rejection of that proposal. Moreover, such a rejection is consistent with PPLICA's position that the Commission's ongoing investigation into electric utility DSM programs is the appropriate forum for the Sierra Club proposal to the extent that it has any meaningful basis. Id. at 50. The Sierra Club exception must be denied.

[4]Apparently, Sierra Club now proposes (in its Exceptions) that all customers be required to undergo the "certification" process (Sierra Club Exceptions, p. 35, n. 95), though no parties had an opportunity to address this new aspect of the Sierra Club proposal during the evidentiary phase of the proceeding.

8. The ALJ Properly Rejected OCA's Peak and Average Methodology for Cost of Service Study Purposes.

The OCA excepts to the ALJ's recommendation to approve PP&L's Twelve Coincident Peak Methodology for cost of service study purposes (as modified per the PPLICA recommendations). The ALJ expressly rejected the OCA's proposed peak and average methodology, and the OCA excepts to this recommendation. OCA Exceptions, pp. 44-46. In support of its exception, the OCA essentially reiterates arguments it presented in its Main Brief and Reply Brief. Id.

As PPLICA noted in its Main Brief, the OCA peak and average production demand allocation methodology effectively shifts away from demand responsibility by customer class and toward energy responsibility, therefore effecting a radical change from the Twelve CP methodology recommended by PP&L (and PPLICA) previously adopted by the Commission for the Company, and recommended by the ALJ for the Company in this proceeding. See Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company, 59 PaPUC 332, 394-98 (1985). PPLICA proceeded to outline a number of reasons requiring rejection of the OCA's radical, energy oriented peak and average methodology. PPLICA Main Brief, pp. 56-60. Additional criticisms of the OCA methodology can be found at PPLICA Reply Brief, pp. 17-19.

It is noteworthy, however, that the OCA in its Exceptions (consistent with its Main Brief) cites to a 1990 West Penn Power Company case as support for its peak and average

methodology. OCA Exceptions, pp. 45-46. However, in a footnote to its Main Brief, the OCA clarified for the Commission that in a subsequent West Penn base rate case, the Commission rejected the OCA's peak and average study. OCA Main Brief, p. 273, note 89. The OCA fails to make that clarification in its Exceptions. Regardless, the precedential value of the Commission's treatment of the West Penn Power Company is clear: the OCA peak and average methodology should be rejected. See Pennsylvania Public Utility Commission v. West Penn Power Company, 79 PaPUC 122, 210 (1993). PPLICA Reply Brief, p. 19. The OCA exception must be denied.

9. The ALJ Properly Recommended Rejection of the OCA Revenue Distribution Proposal.

The OCA apparently excepts to the ALJ's implicit recommendation to disregard the OCA revenue distribution proposal. OCA Exceptions, pp. 48-49.

Although PPLICA did not expressly oppose OCA's proposed revenue distribution proposal during the briefing stage of this proceeding, PPLICA notes that it affirmatively advocated its own revenue distribution proposal (which incorporated the effects of protecting the interruptible class with the 1.5 times system cap, and which affirmatively attempted to move rates toward the goal of achieving a 50% reduction in interclass subsidies). PPLICA Main Brief, pp. 61-64. Consequently, to the extent that the Commission does opt to adjust the revenue distribution proposal recommended by the ALJ in this proceeding, that adjustment should be consistent with the PPLICA proposal as detailed in its Main Brief (testimony and attached appendices) and Exceptions (PPLICA Exceptions, pp. 16, 19-21), and to the exclusion of the revenue distribution proposal offered by the OCA or any other party.

10. The ALJ Properly Recommended Adoption of a Traditional Scaleback Approach for Revenue Distribution Purposes in Allocating the Level of Relief Ultimately Awarded by the Commission.

The OSBA excepts to the ALJ's decision to the extent that the ALJ recommended approval of a traditional scaleback approach if the overall increase ultimately adopted by the Commission is less than the one sought by PP&L. OSBA Exceptions, pp. 3-7.

Again, although PPLICA did not exhaustively argue against the OSBA proposal for a weighted scaleback of any overall revenue increase ultimately approved by the Commission, PPLICA did argue affirmatively for a traditional type of scaleback which moves rates toward cost of service, attempts to minimize interclass subsidization, and is still in keeping with the principle of gradualism. PPLICA Main Brief, p. 63, Appendix D (PPLICA Statement No. 7, p. 58, Table 3 and Exhibit SJB-5). Consequently, PPLICA asserts that any scaleback ultimately approved by the PUC should be consistent with the PPLICA revenue distribution proposal (as per its Main Brief, pp. 61-64, and Exceptions, pp. 19-21), and the OSBA exception requesting the application of something other than the traditional scaleback approach for revenue distribution purposes should be denied.

III. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that this Commission deny the specific exceptions of PP&L, Sierra Club, the OCA and the OSBA, consistent with the replies contained herein.

Respectfully submitted,

McNEES, WALLACE & NURICK

By _____

David M. Kleppinger
Derrick P. Williamson
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 237-5214

Counsel for PP&L Industrial
Customer Alliance

Dated: August 21, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have served two copies of the foregoing document, the Reply Exceptions of the PP&L Industrial Customer Alliance, on all known parties of record to this proceeding, in the manner indicated below, properly addressed as follows:

Service Via Hand-Delivery:

OFFICE OF SPECIAL ASSISTANTS
PA Public Utility Commission
Room 210, North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

OFFICE OF CONSUMER ADVOCATE
Tanya J. McCloskey, Esquire
Mary C. Kenney, Esquire
Assistant Consumer Advocates
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

OFFICE OF SMALL BUSINESS ADVOCATE
Karen Oill Moury, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Service Via Facsimile, FedEx:

MID-ATLANTIC ENERGY PROJECT (SIERRA CLUB)
Alan J. Barak, Esquire
Mid-Atlantic Energy Project
Widener Energy Law Clinic
3700 Vartan Way
Harrisburg, PA 17110-9450

PENNSYLVANIA POWER & LIGHT COMPANY
Paul E. Russell, Esquire
Associate General Counsel
Pennsylvania Power & Light Co.
Two North Ninth Street
Allentown, PA 18101-1179

David B. MacGregor, Esquire
Thomas P. Gadsden, Esquire
Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Service Via First-Class Mail:

OFFICE OF ADMINISTRATIVE LAW JUDGES
Hon. Robert A. Christianson
Administrative Law Judge
PA Public Utility Commission
Room G-08A North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

UNIVERSITY/COLLEGE COALITION
Daniel P. Delaney, Esquire
James P. Melia, Equire
Kirkpatrick & Lockhart
204 North Third Street
Harrisburg, PA 17101-1507

DOCUMENT FOLDER

Service Via First-Class Mail: (cont'd)

CENTRAL EASTERN PENNSYLVANIA FUEL OIL DEALERS
Robert P. Haynes, Esquire
Mette, Evans & Woodside
3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950

OFFICE OF TRIAL STAFF
Kenneth L. Mickens, Equire
Johnnie E. Simms, Esquire
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

CROWN AMERICAN CORPORATION
Kenneth Zielonis, Equire
Stevens & Lee
208 North Third Street
Suite 310
P.O. Box 12090
Harrisburg, PA 17108-2090

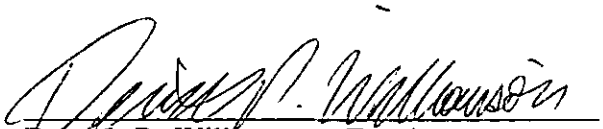
ERIC JOSEPH EPSTEIN
Mr. Eric Joseph Epstein
2308 Brandywine Drive
Harrisburg, PA 17110

COMMISSION ON ECONOMIC OPPORTUNITY
Mr. Craig Kuennen
Commission on Economic Opportunity
211 S. Main Street
Wilkes Barre, PA 18701-1596

DEPARTMENT OF DEFENSE
David A. McCormick, General Attorney
Regulatory Law office
Office of the Judge Advocate General
Department of the Army
DAJA-RL 3848
901 N. Stuart Street, Room 713
Arlington, VA 22203-1837

BETHLEHEM STEEL CORPORATION
Joan O. Brandeis, Esquire
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103

THE LANCASTER CHAMBER OF COMMERCE AND INDUSTRY
Christopher S. Underhill, Esquire
Hartman, Underhill & Brubaker
221 East Chesnut Street
Lancaster, PA 17602



Derrick P. Williamson, Esquire

Dated this 21st day of August, 1995, in Harrisburg, Pennsylvania.

SCHNADER, HARRISON, SEGAL & LEWIS
ATTORNEYS AT LAW
SUITE 3600
1600 MARKET STREET
PHILADELPHIA, PENNSYLVANIA 19103-4252
215-751-2000
FAX: 215-751-2205

DOCUMENT FOLDER

DIRECT DIAL NUMBER
(215) 751-2278

RECEIVED
AUG 23 1995
SECRETARY'S OFFICE
Public Utility Commission

August 22, 1995

Via UPS Next Day Air

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company: Docket No. R-00943271

Dear Secretary Alford:

On Friday, August 18th, 1995, this Firm mailed Reply Exceptions on behalf of Bethlehem Steel Corporation in the above-captioned proceeding. Due to clerical error, the document which was mailed was a draft instead of the final version of the Reply Exceptions. We are enclosing herewith for filing with the Commission an original and nine (9) copies of the correct version of the Reply Exceptions submitted on behalf of Bethlehem Steel Corporation.

We apologize to the Commission, its staff and to all parties for any inconvenience that this mishap may have caused.

All parties to this proceeding have been duly served with the corrected version.

Very truly yours,

Joan O. Brandeis
For SCHNADER, HARRISON, SEGAL & LEWIS
Attorneys for Bethlehem Steel Corporation

Enclosures

cc: All Parties of Record
The Honorable Robert A. Christianson
Office of Special Assistants

ORIGINAL

27990 v1
08/22/95 03:23 pm

DOCUMENT FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	DOCKET NO. R-00943271
PENNSYLVANIA POWER & LIGHT COMPANY	:	

DOCKETED
AUG 24 1995

REPLY EXCEPTIONS OF BETHLEHEM STEEL CORPORATION

Joan O. Brandeis, Esquire
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103
215-751-2278

Attorneys for Bethlehem Steel Corporation

Dated: August 21, 1995

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. INTRODUCTION

Bethlehem Steel Corporation ("Bethlehem") submits the following Reply Exceptions to specific Exceptions to the Recommended Decision of Administrative Judge Christianson (the "ALJ") raised by the Office of the Consumer Advocate ("OCA").

In large part, the Exceptions raised by Pennsylvania Power & Light to ALJ's recommendations regarding treatment of the EDI and IDI credits in the cost of service study and by the OCA to the cost of service study methodology are merely a reiteration of the positions taken and arguments made in their Main Briefs and Reply Briefs and have been previously anticipated and addressed by Bethlehem in its Main Brief and Reply Brief, the relevant portions of which are incorporated herein by reference. Moreover, some of the issues raised by the Exceptions of OCA and PP&L have been addressed and correctly disposed of by ALJ Christianson in the Recommended Decision.

These Reply Exceptions will be confined primarily to addressing and rebutting the Exception of the OCA, namely that the terms of the currently effective, PUC-approved contract (the "ISA Contract") for service under Rate Schedule Interruptible Service by Agreement be modified or abrogated in this proceeding.

Before addressing the Exceptions of the OCA and PP&L, Bethlehem would like to address and correct for the record a serious factual misstatement made by PP&L Industrial Customer Alliance ("PPLICA") in its Exceptions to the ALJ's Recommended Decision.

In its Exception to the ALJ's approval of PP&L's proposed rate design for interruptible customers, PPLICA makes the following statement:

> "The ALJ's recommendation is particularly offensive to PPLICA given that the ALJ accepted PP&L's "theory of meeting competition and retaining load" in approving PP&L's special contract with Bethlehem Steel (that contract assuring that Bethlehem Steel receives essentially no rate increase in this proceeding),..." (PPLICA Exceptions at p. 15, emphasis added).

PPLICA's statement about the rate increase that will be imposed on Bethlehem Steel in this case is patently untrue and if not corrected could present a distorted and egregiously prejudicial view of the impact of this proceeding on Bethlehem.

Despite its blatant attempt to distort the facts, PPLICA and its counsel are fully aware that if the ALJ's recommendation with respect to the LP-5 and LP-6 interruptible rate design is accepted by the Commission, Bethlehem will be subject to an increase in its rates at its Bethlehem plant of from 22% to 28%. Bethlehem strenuously opposed PP&L's LP-5 and LP-6 rate design proposals in the testimony of its witness Maurice Brubaker and in its Main and Reply Briefs. Moreover, it has filed Exceptions with respect to the ALJ's recommendations in which it continues to strongly oppose approval of this unjust and unreasonable rate design. Bethlehem, like the members of PPLICA who take interruptible service under Rates Schedule LP-5 and proposed LP-6, will receive, to use the words of Bethlehem's witness, a draconian increase in rates at its Bethlehem plant if PP&L's proposal is adopted.

II. REPLY EXCEPTIONS

A. The OCA's Exception No. 20 to the ALJ's Approval of the ISA Rate Must be Rejected.

1. Background.

Under its existing tariff, PP&L is authorized by the Pennsylvania Public Utility Commission ("Commission") to provide service to certain customers under the terms of special contracts entered into pursuant to Rate Schedule Interruptible Service By Agreement ("Rate Schedule ISA"). PP&L Rate Schedule ISA together with the ISA Contract between the Company and Bethlehem's Steelton Plant was filed with the Commission for approval in 1988. Copies of the rate schedule, the two contracts and all other required data included in the filing were served on the OCA, the Office of the Trial Staff and the Office of Small Business Advocate. After investigation and analysis of the tariff filing and supporting data, the Commission, in an Opinion and Order issued January 26, 1989, permitted the tariff supplement and the related agreements to become effective on February 6, 1989. No complaint regarding Rate Schedule ISA or the ISA Contract was received at the time of the original filing or has been received by the Commission since the issuance of that Opinion and Order.

In its allocation of the revenue increase requested in this case, PP&L properly proposed to increase the rates of Rate Schedule ISA in accordance with the terms of the

contract between it and Bethlehem. PP&L witness Kasper explained that the ISA Contract for Bethlehem's Steelton Plant provides for rates for firm service to be increased or decreased by an amount equal to the overall system average increase or decrease approved by the Commission. PP&L calculated its proposed increase to Rate Schedule ISA in this case on the basis of these contract terms.

The OCA has argued in its Exceptions that a larger rate increase is warranted for Rate Schedule ISA than the increase proposed by PP&L in this case and approved by the ALJ in his Recommended Decision. Bethlehem submits that any increase in rates to Rate Schedule ISA over that proposed by PP&L would drastically modify or totally abrogate the currently effective contract between the Company and Bethlehem, and that there is simply no basis in the evidentiary record of this proceeding to support the findings required by Section 508 of the Pennsylvania Public Utility Code for such action. To do so without an adequate record and the required findings would violate fundamental due process rights of the parties. The existing ISA Contract must be given effect and PP&L's allocation of revenue to Rate Schedule ISA in accordance with the terms of that contract must be accepted.

2. The OCA's Reliance on the ISA Rate of Return is Misplaced.

The OCA initially argues, as a basis for justifying a greater increase than provided under the PUC-approved ISA Contract, that the rate of return of the ISA Class is below the system average rate of return. This argument is misplaced for several reasons. First, under a properly adjusted cost of service study, such as the one recommended by

Bethlehem witness Brubaker (See Bethlehem Exhibit MEB-3, Schedule 2), and by the University College Coalition, the rate of return for the ISA Class is well above system average. More importantly however, the ISA class rate of return is not germane to the issue of whether the ISA Contract can be modified in this proceeding, and accordingly the OCA's arguments relating to the rate of return should be rejected.

3. No Substantial Evidence Has been Introduced into the Record which Questioned or Disputed PP&L's Proposed Treatment of the ISA Contract.

In its Exception, the OCA attempts to suggest that there is no evidence in this proceeding to support the rates proposed for Rate Schedule ISA. Bethlehem maintains, to the contrary, that in fact there in no evidence in the record to support abrogating the ISA Contract. Neither the OCA nor any other party (other than PP&L) presented any evidence regarding the terms of the ISA Contract in this proceeding. During the course of the hearings in this case, the OCA did not attempt to examine this agreement or to establish that its terms are unjust or unreasonable. The only reference made by the OCA to Rate Schedule ISA or the ISA Contract during the evidentiary hearings in this case was a statement by its witness Dr. Johnson that it was his "understanding" that the Commission can increase the charges under the contract. (See OCA Statement No. 3, p.20). In short the ISA Contract was not put directly at issue by the OCA or by any other party in this case. PP&L's evidence that Rate Schedule ISA is a competitive response to the end-use environment and demonstrated customer needs for lower rates was not disputed or challenged.

4. The OCA has Provided No Legal Basis for Abrogating the ISA Contract.

The OCA has not directly referred to or invoked the Commission's powers under Section 508 of the Public Utility Code in support of its proposal to increase the rates under the ISA Contract, but rather has put forth an argument that, notwithstanding the rate set forth in the ISA Contract, "it is within the Commission's discretion" to set a different rate in this case. OCA Main Brief at p. 293, OCA Exceptions at p. 54. The only authority cited by the OCA for this remarkable proposition is the Roaring Creek case, discussed at length below, which provides no support for the OCA view whatsoever. Indeed, the ALJ in his Recommended Decision concurs that Roaring Creek, the legal precedent cited by the OCA as support for its contract abrogation proposal is not applicable to this case. RD at. p. 255.

B. The Requirements of Section 508 Have Not Been Met in this Proceeding.

In order for the Commission to approve the OCA proposal to increase rates to the ISA Class, it would have to exercise its powers under Section 508 of the Public Utility Code to vary the terms of the existing ISA Contract. Bethlehem submits that there is no evidentiary basis in the record of this proceeding which would support the abrogation or modification of the ISA Contract. Accordingly, the OCA and the PPLICA proposals regarding the revenue allocation to Rate Schedule ISA must be rejected.

Section 508 of the Public Utility Code, 66 Pa. C.S. §508, grants to the PUC the power and authority to vary, reform or revise the terms of a contract entered into between a public utility and a corporation "which embrace or concern a public right, benefit, privilege, duty or franchise. . .or are otherwise affected or concerned with the public interest."

> "Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the Commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms and conditions of such contract."

66 Pa.C.S. § 508.

As discussed in detail above, it is clear that the justness and reasonableness of the terms of the ISA Contract have not been put at issue in this proceeding. This is self-evident from the fact the that the ISA Contract itself has not been introduced into the evidentiary record of this case.

Moreover, the fact that under PP&L's proposed allocation Rate Schedule ISA would receive a lower percentage of the increase than some other rate classes cannot, by itself, substantiate a finding that there is undue discrimination or that the rates charged under the ISA Contract are unjust and unreasonable. It is black letter law in Pennsylvania that mere variations in rates among classes of customers does not violate the Public Utility Code.

Building Owners and Managers Association v. Pennsylvania Public Utility Commission, 470 A.2d 1029, 79 Pa. Commonwealth 598 (1984).

There has simply been no evidence presented in this case to warrant a finding that the rates now charged or to be charged under the ISA Contract are unjust or unreasonable in violation of Section 1301 of the Public Utility Code, 66 Pa. C.S. 1301 or are unduly discriminatory in violation of Section 1304 of the Public Utility Code, 66 Pa. C.S. 1304. Such findings are required for the Commission to exercise its Section 508 powers. The record in this proceeding provides no basis for the Commission to find either that the terms of the ISA Contract are unjust or unreasonable or to prescribe alternative terms.

C. The Roaring Creek Case Requires That the Terms of the ISA Contract be Honored in This Proceeding.

The OCA cites Pennsylvania Public Utility Commission v. Roaring Creek Water Company, 73 Pa. PUC 373 (1990) in support of the proposition that the PUC has discretion to consider appropriate revenue allocations for Rate Schedule ISA in this case. In fact, examination of the Roaring Creek case compels the conclusion that the ISA Contract cannot be modified or abrogated in this proceeding, and that its terms must be honored.

In Roaring Creek, the utility served its largest customer under a contract as opposed to a tariffed rate. Unlike the ISA Contract between PP&L and Bethlehem, the contract between Roaring Creek and its customer had never been submitted to or approved by the Commission. Roaring Creek, supra at 432. During the course of a rate proceeding in

which Roaring Creek Water Company sought an increase in its rates, the Administrative Law Judge recommended that the contract between the utility and the customer be abrogated under its Section 508 power and ordered the utility to file a compliance tariff which provided for a rate "consistent with that set forth in the present contract. The record in the instant case simply affords no basis for a different treatment. Thus there will be no immediate adverse consequences to [the customer] but rate considerations relating to it will necessarily be dealt with in future rate cases." Pennsylvania Public Utility Commission v. Roaring Creek Water Company, 73 Pa. P.U.C. 373, 431. (1990) Emphasis added.

In its Opinion and Order, the Commission agreed that there was not a sufficient basis in the record evidence on which to modify the contract rate and ordered Roaring Creek to file a compliance tariff providing for a rate for its customer consistent with that set forth in the existing contract. Thus, while nominally the Commission "abrogated" the customer contract, in reality it preserved its terms in their entirety in Roaring Creek's tariff.

It is clear that both the ALJ and the Commission in Roaring Creek recognized, without discussion, that to modify the existing customer contract without adequate notice and a fully developed record with respect to all of the terms and conditions of the contract would be violative of the requirements of Section 508. The action recommended by the ALJ and adopted by the Commission in Roaring Creek in fact upheld the terms of the existing contract.

The case of Lackawaxen Water & Sewer Co. v. Pennsylvania Public Utility Commission, 85 Pa. Commw. 377, 481 A.2d 1386 (1984) cited by the OCA in support of the

proposition that discretion of the Commission cannot be divested by a contract between the parties, is inapposite, and the language relied upon by the OCA is mere dicta.. Moreover, there is no attempt by PP&L or Bethlehem here to divest the Commission of its power to regulate rates. Indeed, the parties recognized that power when the ISA Contract was submitted for approval. In this case, however, as in Roaring Creek, there is no evidentiary basis on which the Commission can find the terms of the ISA Contract to be unjust and unreasonable.

III. CONCLUSION

The Exceptions of the OCA to the ALJ's approval of the ISA Contract rate and its concomitant proposal to increase the allocation of any revenue increase to the ISA class must be rejected. The terms of the ISA Contract must be given effect in this proceeding and PP&L's revenue allocation proposal which is in accordance with the existing, PUC approved contract must be adopted.

Respectfully submitted,

Joan O. Brandeis
SCHNADER, HARRISON, SEGAL & LEWIS
Counsel for
BETHLEHEM STEEL CORPORATION

Dated: August 21, 1995

MORGAN, LEWIS & BOCKIUS
COUNSELORS AT LAW
2000 ONE LOGAN SQUARE
PHILADELPHIA, PENNSYLVANIA 19103-6993
TELEPHONE: (215) 963-5000
FAX: (215) 963-5299

PHILADELPHIA
NEW YORK
MIAMI
PRINCETON
BRUSSELS

WASHINGTON
LOS ANGELES
HARRISBURG
LONDON
FRANKFURT
TOKYO

ORIGINAL

DOCKETED
AUG 24 1995

BTL

August 23, 1995

John G. Alford, Secretary
Pennsylvania Public Utility Commission
North Office Building
New Filing Section, Room B-18
Commonwealth and North Streets
Harrisburg, PA 17120

DOCUMENT FOLDER

RECEIVED
95 AUG 23 PM 3:35
P.U.C.
PA. CONTROL DIV.
INFO.

Re: Pennsylvania Public Utility Commission
v.
Pennsylvania Power & Light Company
Docket No. R-00943271

Dear Secretary Alford:

This letter is submitted in response to the Exceptions filed by Mr. Eric J. Epstein to the Recommended Decision of Administrative Law Judge Robert A. Christianson ("ALJ") in the above-captioned matter. Mr. Epstein served his Exceptions by first class mail. The copy served upon Pennsylvania Power & Light Company ("PP&L") and its counsel was not properly addressed and, therefore, was not received until August 21, 1995, which was the same date Replies to Exceptions were due. Accordingly, PP&L respectfully requests that this letter be accepted for filing as a timely Reply to Mr. Epstein's Exceptions.

An extensive response to Mr. Epstein's Exceptions is not required. Exception Nos. I, II and IV repeat arguments Mr. Epstein advanced in his Initial Brief to the ALJ. For the reasons set forth in PP&L's Reply Brief (pp. 66-70), these arguments are untimely, improper, factually unsupported and contrary to Commission and Appellate Court precedent.

Exception No. III presents an argument that was not previously raised by Mr. Epstein and, therefore, is untimely and improper. In any event, as fully explained in PP&L's Initial (pp. 131-134) and Reply (pp. 61-62) Briefs, the reopening of the Barnwell, South Carolina low-level radioactive waste disposal site, to which Mr. Epstein refers, does not undercut the validity of PP&L's decommissioning study. To the contrary, the disposal fees proposed for the Barnwell site are higher than those

8/23

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL.	:	
v.	:	DOCKET NO. R-00943271
PENNSYLVANIA POWER & LIGHT COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served two copies of the foregoing document upon the participants listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

BY HAND DELIVERY

Cheryl Walker Davis
Pennsylvania Public Utility Commission
Office of Special Assistants
North Office Building, Room 210
Commonwealth & North Streets
Harrisburg, PA 17120

FIRST CLASS MAIL

Tanya J. McCloskey, Esq.
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Johnnie E. Simms, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
Pitnick Bldg. - 3rd Floor
901 N. 7th Street - Rear
Harrisburg, PA 17102

Karen Oill Moury, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

David M. Kleppinger, Esq.
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Kenneth Zielonis, Esq.
Stevens & Lee
208 North 3rd Street, Suite 310
Harrisburg, PA 17101

James P. Melia, Esq.
Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, PA 17101

Wayne M. Thomas, Esq.
Kohn, Nast & Graff, P.C.
1101 Market Street, 24th Floor
Philadelphia, PA 19107

Joan O. Brandeis, Esq.
Schnader, Harrison, Segal & Lewis
Suite 3600
1600 Market Street
Philadelphia, PA 19103-4252

Robert P. Haynes, III, Esq.
Mette, Evans & Woodside
3401 N. Front Street
Harrisburg, PA 17110-0950

Alan J. Barak, Esq.
Mid Atlantic Energy Project
Energy Law Clinic
3700 Vartan Way
Harrisburg, PA 17110

Eric J. Epstein
2308 Brandywine Drive
Harrisburg, PA 17110

BY FEDERAL EXPRESS

Stephen J. Selden, Esq.
Assistant General Counsel
Bethlehem Steel Corporation
Eighth & Eaton Avenues
Bethlehem, PA 18016

Craig Kuennen
Commission on Economic Opportunity
211 S. Main Street
Wilkes-Barre, PA 18701-1596

David A. McCormick, Esq.
General Attorney
Office of the Judge Advocate General
901 North Stuart Street
Arlington, VA 22203-1837

D. Jane Drennan, Esq.
Drennan & Associates
1216 16th Street, N.W.
Washington, D.C. 20036

Dated: August 23, 1995

David B. MacGregor
David B. MacGregor
Counsel for Pennsylvania Power & Light Company

ORIGINAL

RECEIVED

95 AUG 28 AM 11:43

PA. P. U. C.
INFO. CONTROL DIV.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY, COMMISSION, ET AL.	:	Docket No. R-00943271,
V.	:	R-00943271C001
PENNSYLVANIA POWER & LIGHT COMPANY	:	et seq.

KJR

REPLIES OF ERIC JOSEPH EPSTEIN, *PRO SE*, TO EXCEPTIONS

Mr. Eric Joseph Epstein respectfully files the following Replies to Exceptions of Pennsylvania Power & Light Company (PP&L) (hereinafter referred to as the "Company") in the above mentioned matter. Please be advised that Mr. Epstein served Exceptions to all parties, including PP&L, using a similar address format as in all previous filings.

Rather than belabor and burden the Court with continued discussion on the Company's stock objections, Mr. Epstein simply restates his position that Exceptions I, II, III, IV are and V are timely, proper, factually authenticated and consistent with *Commission and Appellate Court precedent.*

Additionally, Mr. Epstein will briefly correct several factual inaccuracies and surrealistic assumptions proffered by Company's counsel.

PP&L maintained "...the disposal fees proposed for the Barnwell site are higher that those estimated for purposes of PP&L's study, and therefore, underscore the conservatism of figures therein." (PP&L, August 23, 1995, Pages 1-2.) The operative and imprecise term in counsel's argument is "proposed fees." It is obvious that the cubic foot price posted for Barnwell was high and will decrease: "The cost [to dispose of low-level radioactive waste at Barnwell] is $325 per cubic foot but technology will drive down the price." Ed Helminski, radioactive waste analyst, Keynote Address, University of Tennessee, August 1, 1995. (The actual disposal cost is $321.22 per cubic foot which includes a $235 surcharge.) Additionally, Envirocare of

DOCUMENT FOLDER

DOCKETED
AUG 28 1995

Utah, Incorporated accepts Class A low-level radioactive waste at a fee of $35 per cubic foot. The Nevada Test Site (NTS) has recently obtained a RCRA permit and charges $17 per cubic foot for eligible generators. The Department of Energy is actively considering making the NTS a national, low-level radioactive waste repository. Market forces, together with the availability of Envirocare and increased opportunities at NTS and the Hanford Reservation clearly indicate that Barnwell's real fee will decrease significantly.

Contrary to the Company's denigration of the proposed Nuclear Regulatory Commission's decommissioning rule change (1), this development is a major benchmark in decommissioning standards for nuclear power plants. The NRC has worked on the rule change for seven years and the body and substance of the proposed rule is not likely to change unless the Commissioners engage in a radical policy reversal. Moreover, if the Company had conducted a detailed study, rather than a "cursory review" of the document, they would have noticed that the rule *is* applicable to nuclear plants that are permanently shut down. Furthermore, nuclear power plants can operate in a gray zone in so much as the proposed rule allows a company to acquire a Possession Only License *after cessation* of electrical generation but *prior to decommissioning*.

For all the reasons set forth above, Mr. Epstein's Exceptions should be accepted in totality.

---

1 "Decommissioning of Nuclear Reactors by the Nuclear Regulatory Commission," 10 CFR Parts 2, 50 and 51, RIN 3150-AE96, Federal Register, Volume 60, Number 139, 37374-37388, July 20, 1995. This proposed rule does not alter the fact that PP&L's expert witness, Thomas LaGuardia, relied on "General Requirements for Decommissioning Nuclear Facilities" June 27, 1988. (Thomas LaGuardia, Direct Testimony, Page 12, Lines 8-14 and Page 42, Lines 9-19.)

Respectfully submitted,

Eric Joseph Epstein, *Pro se*
2308 Brandywine Drive
Harrisburg, PA 17110

AUGUST 28, 1995

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
95 AUG 28 AM 11:44
PA. P.U.C.
INFO. CONTROL DIV.

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL.	:	
v.	:	Docket No. R-00943271
PENNSYLVANIA POWER and LIGHT COMPANY	:	

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals named below by US mail or hand delivery in accordance with the requirements of Section 1.54.

The Honorable Robert A. Christianson
Administrative Law Judge
Pennsylvania Public Utility Commission
Room G-8A, North Office Building
Harrisburg, PA 17105-3265

David M. Kleppinger, Esquire
James P. Dougherty
Derrick P. Williamson
McNees, Wallace & Nurick
100 Pine Street, PO Box 1166
Harrisburg, PA 17108-1166

David B. MacGregor and Paul E. Russell
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

Tanya J. McCloskey, Esquire
Mary C. Kenney
Office of Consumer Advocate
425 Strawberry Square
Harrisburg, PA 17120

Johnnie E. Simms, Esquire
Stephen Gorka
Kenneth L. Mickens
Pennsylvania PUC
Pitnick Bldg - 3rd Floor
901 N. 7th Street - Rear
Harrisburg, PA 17102

David A. McCormick, Esquire
General Attorney
Office of the Judge Advocate General
901 North Stuart Street
Arlington, VA 22203-1837

Alan J. Barak, Esquire
Mid Atlantic Energy Project
Energy Law Project
3700 Vartan Way
Harrisburg, PA 17110

Joan A. Brandies, Esquire
Schander, Harrison, Segal & Lewis
Suite 3600, 1600 Market St.
Philadelphia, PA 19103-4252

Robert P. Haynes
Mette, Evans & Woodside
3401 N. Front Street
Harrisburg, PA 17110-0950

James P. Melia, Esquire
Daniel P. Delaney
Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, PA 17101

Karen Oill Moury, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Bldg.
Harrisburg, PA 17101

Stephen J. Selden, Esquire
Assistant General Counsel
Bethlehem Steel Corporation
Eighth & Eaton Avenues
Bethlehem, PA 18106

D. Jane Drennan, Esquire
Sarah E. Tomalty
Drennan & Associates
1216 16th Street, N.W.
Washington, D.C. 20036

Craig Kuennen
Eugene M. Brady
Commission on Economic Opportunity
211 S. Main Street
Wilkes-Barre, PA 18701-1596

Kenneth Eisdorfer
Cook, Eisdorfer & Associates
2258 Schultz Road, Suite 205
St. Louis, MO 63146

Kenneth Zielonis, Esquire
Stevens & Lee
208 North 3rd Street, Suite 310
Harrisburg, PA 17101

Wayne M. Thomas, Esquire
Kohn, Nast & Graff, P.C.
1101 Market St., 24th Floor
Philadelphia, PA 19103-4252

Respectfully submitted,

Eric Joseph Epstein, *Pro se*
2308 Brandywine Drive
Harrisburg, PA 17110

DATE: AUGUST 28, 1995

CALLS REGISTERING OPPOSITION TO PP&L RATE INCREASE
R-943271

Thursday, August 24

Nancy O'Leary
Mt. Bethel, PA

Grace Voorhis
Sylvia Van Horn
Mt. Bethel, PA

Arlene Stefan
Easton, PA

Mildred Cerrito
Hazleton, PA

Doris Shanahan
Sugarloaf, PA

Mr. and Mrs. Higgins
Hazelton, PA

Frank VanAlthuis
Mt. Bethel, PA

Carolyn Knauss
Tamy, PA

Mrs. Heilman
Easton, PA

Frances A. Macri
Bethlehem, PA

Mary Sword
Easton, PA

Marjorie Heiberger
Bethlehem, PA

Judy Richard
Harrisburg, PA

Margaret Milburn
Bethlehem, PA

Mike Pontrelli
Bethlehem, PA

Kurt Wanfried
West Pennsboro Township

Sue Persons
1034 East Chestnut Street
Hazelton, PA 18201

James Delese
5025 Terrace Boulevard
Hazleton, PA 18201

R-943271

KJR

DOCKETED
SEP 06 1995

RECEIVED
SEP 06 1995
PUBLIC UTILITY COMMISSION
SECRETARYS BUREAU

DOCUMENT FOLDER

Angela Palumbo
922 Carson Street
Hazleton, PA 18201

Ruth Smith
85 Walnut Avenue
Conyngham, PA 18219

Thursday 5:23 pm

Anthony Nickolas, Sr.
717-455-4659 - Unfair - paying enough - poor people put up against a wall knocking themselves out trying to pay their utility bills.

Thursday 9:20 pm

Michelle McGeon
Hazleton, PA 717-454-2304

Friday, August 25, 1995

Albert Mikula
Hazleton, PA - Unfair rate increase. Look at contract and how much they are paying people to leave the company (early retirement) The deal is way out of line, then they are hiring sub contractors at a high rate. It is a disgrace.

Arlene Fuller
4 Dennis Drive
Reinholds, PA 17569

Bill Donnley
Pittston, PA

Mary Santi
Pittston, PA

George Mikula
Box 34, Main Street
Harleigh, PA 18225 - 30 years ago built an all electric house and had a special rate - that was taken away and it is becoming very costly.

Paul Merrill
Kingston, PA

Doris Merrill
Nanticoke, PA

Susan Frank
Wilkes Barre Twp, PA

Bernadine Boler
Wilkes Barre, PA

Grace Conners
Philadelphia Avenue
West Pittsbon, PA - completely overwhelmed with utility costs

Mark and Dona Misencik
518 Winans Court
Avoca, PA

Theresa Scyrba
DuPont, PA - four in household - 2 not working - 2 retired - can't pay increase

Mary Chilson
308 Oak Street
Duryea, PA

Joseph J. Margolis
67 E. Thomas Steet
Wilkes Barre, PA

Edward A. Schwar
4440 Fairway Drive
Easton, PA 18045-3016 - Wants to object by way of formal complaint.
Asked BCS to mail him a formal complaint form.

Anna Kalonick
46 Machle Street
Wilkes Barre, PA

Stan Fiedorczyk
Wilkes Barre, PA

Ted Yurek
Hazleton, PA

Mr. and Mrs. Robert Bauder
1035 N. New Street
Bethlehem, PA 18018

Mrs. Louise Luchetti
Northampton, PA

Frances Frantz
1031 N. New Street
Bethlehem, PA

Mrs. Fazakas
Bethlehem, PA

Anthony Fonzo
Pittston, PA

George Glaser
Wilkes Barre, PA

William Tulks
P. O. Box 110
Conyngham, PA

Rick O'Haire
Duryea, PA

Edward J. Kozel
Clark Summit, PA

Mrs. Eugene Cichy
Old Forge, PA

Audren Cowel
3616 Magnolia Drive
Easton, PA 18045

JoAnn Trefsger
Kultmont, PA

Joseph Roche
8 Chestnut Street
Pittston, PA 18640

Katherine Fenix
R.D.#1, Box 654
Shamokin, PA 17872

David Sheetz
201 East Main
Newmanstown, PA 17073

Barbara Barrett
2 West Penn, Apt. 110
Carlisle, PA 17013

Mrs. Marquies
Dunmore - can not afford rate increase and is not in favor of selling to PECO

Mrs. Reina Velnamore

Saturday 8/26/95

Lois Gline

Mrs. Frank DeLuth
Scranton

Monday 8/28/95

Judy Showers
Carlisle Radio & TV

Katherine S. Bailetz
Northumberland, PA

Mary Houston
510 Winans Course
Evoca, PA

Mr. and Mrs. N. L. Schaffer
Bethlehem, PA

Chester Knoles
Plains, PA

Mr.. and Mrs. Albert Yeager
West Hazleton, PA

Bill Lentz
Shamokin, PA

Susan Schweitzer
Cook Twp., PA

Attorney Kastilino
Pittston, PA

Martin Krowkik, Jr.
111 Basslga Street
Jessup, PA 18434-1108

Lester Stine
1692 Pine Road
Carlisle, PA 17013

Raymond Curran
3511 Church Road
Easton, PA 18045

Donald Loring
3225 Lloyd Byren Drive
Bethlehem, PA 18017

Mrs. Glen Barr
Carlisle, PA

Harry Bailey
P. O. Box 325
Sunbury, PA 17801-0325

Wayne Hittinger
Bethlehem, PA

William Shimp
6 Carter Place
Carlisle, PA

Tom Willett
Allentown, PA

Sue DeSanto She is purchasing an all electric home and cannot afford
1094 N. Main Avenue
Scranton, PA

Gerald Smith
531 Chestnut Street
Millersburg, PA

Craig Bartholomew
Emmaus, PA

Irene Gabriel
Northumberland, PA

Nancy Betting
R. D. #1, Box 133
Mt. Pleasant Mills, PA 17853

Mike Moscaritolo
3595 Magnolia Drive
Easton, PA 18045

Dan Bollandorf
188 Jacobs Church Road
Halifax, PA 17032

Cecelia Noratus
Plains, PA

John Macken
Hazleton - no increase please 717-454-1086

Did not give name - from Hazleton - Read Annual Report and top executives are getting $500,000 and $274,000 pension when they retire. He is a shareholder and thinks it is time they cut down on the inside.

Irwin Nailor
North Milton, PA

Wednesday - August 30, 1995

Leon Marut
Shamokin - protests increase. No reason for increase. We are paying excess profit tax.

Jean Smith
Bethlehem

Helen Wilson
Cumberland Co.

Thursday, August 31

Mark Opdycke

Lois Connley
Halifax, PA

Elinor Hoffman
Lykens, PA

Sylvia Lawler
703 Pennsylvania St.
White Hall, PA

Barry and Janice Anderson
7105 Silver Fox Court
Hummelstown, PA 17036

Ron Raker
Halifax, PA

Eugene Smith
Marysville, PA

Wilford Kromer
Dalton, PA

Gene Hackman
Lititz, PA

Agnes Snyder
Moscow, PA

Thursday 7:10 pm

Spencer Ehrhart
Lititz, PA

Friday, September 1, 1995

Nancy Gerlach
Freeland, PA

Myra Groff
Lititz, PA

Anthony Genovesc
Honesdale, PA

Patricia Frey
Ickesburg, PA

Elizabeth Andrews
Honesdale, PA

Ed Quaca
582-7961

Priscilla Hayes
717-226-1578

Milt Page

Tuesday September 5, 1995

William Sarge, Jr.
Orange Twp.

Mr. and Mrs. John Mangle
Thompsontown, PA

Mr. and Mrs. Randall Spayd
Millersburg, PA

Pricilla Leckie
Berwick, PA