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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 Reply Brief of Pennsylvania Power & Light Company. Also enclosed is an additional copy of the Company's Reply Brief 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 Reply Brief 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

ORIGINAL

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF RESPONDENT PENNSYLVANIA POWER & LIGHT COMPANY

Before Administrative Law Judge
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I. INTRODUCTION

As explained in its Initial Brief, PP&L requires substantial rate relief in this proceeding to recover its operating costs and to maintain its A- bond rating; to ensure that today's customers pay today's cost of service; to continue to provide safe, reliable and high quality service to its customers; to continue its leadership role in economic development and social programs; and to align its rates to address the increasing competition in the electric utility industry.

The opposing parties present a laundry list of proposed adjustments, which, if adopted, would provide the Company with little or no rate relief. For the reasons set forth below and in the Company's Initial Brief, these adjustments should be rejected. Many of these adjustments are flatly inconsistent with controlling Commission precedent and should be rejected for that reason alone. Other adjustments simply have no credible factual or legal basis and should not be adopted.

The Company is particularly concerned by those opposing party adjustments which seek to affirmatively penalize it for not filing more frequent base rate increases. The opposing party adjustments to disallow Susquehanna early window costs, deferred SFAS 106 costs and capital structure adjustments for debt reacquisition premiums all rely, in substantial part, on PP&L's "failure" to file more frequent base rate cases. The Company believes that rate stability is good for its customers and good for economic development in its service territory. It has worked

hard to maintain stable base rates. It should be rewarded, not penalized for those efforts.

The Company also has proposed several measures to assist it in maintaining rate stability prospectively, e.g., levelized depreciation for its Susquehanna plant, ECR recovery of the net cost of capacity returning from Jersey Central Power & Light Company, adjusted coal plant depreciation lives, and the adoption of SFAS 87 for ratemaking for pension expense. Each of these adjustments, if approved, would help establish rates in this case which would reasonably reflect prospective conditions. This would help ensure stable base rates, which, in turn, would promote customer satisfaction and economic development. This approach would substantially aid PP&L's efforts to meet increased competition in a way that protects all of its customers and not just a vocal minority.

The Company believes rate stability is in the public interest. PP&L therefore requests that it not be penalized for taking steps to maintain rate stability in the past and that the Commission seriously consider PP&L's modest proposals to maintain stable rates in the future.

II. MEASURES OF VALUE/RATE BASE

The adjustments to PP&L's claimed original cost measures of value proposed by the OTS and OCA were discussed at length in the Company's Initial Brief (pp. 14-76). The following discussion focuses on those areas where some further elaboration of the Company's position or a response to opposing party contentions is required.

A. Usefulness Of PP&L's Generating Capacity

Before addressing the specific arguments advanced by the OTS and OCA, PP&L must comment upon two underlying themes which emerge from their Initial Briefs: (1) that their recommended excess capacity adjustments represent a logical "continuation" of the action taken in PP&L's last rate proceeding (OTS Main Brief, p. 32; OCA Main Brief, p. 61); and (2) that customers would somehow be "penalized" if, after ten years of exemplary operating performance by SSES Unit 2, they were finally called upon to pay a full return on the Company's investment in that facility (OCA Main Brief, p. 55).

Although it is undeniable that the Commission adopted an excess capacity adjustment in the Company's Unit 2 Case, it did so based on a record that bears no resemblance to that developed here. In the Unit 2 Case, the Commission found that a 22% reserve margin was reasonable for PP&L and, applying that benchmark, concluded that PP&L would have more than sufficient

generating capacity for at least the next fifteen years (i.e., "until the end of the century") without SSES 2. The Commission also reviewed, but dismissed as too speculative, estimates of SSES 2's future costs and benefits.

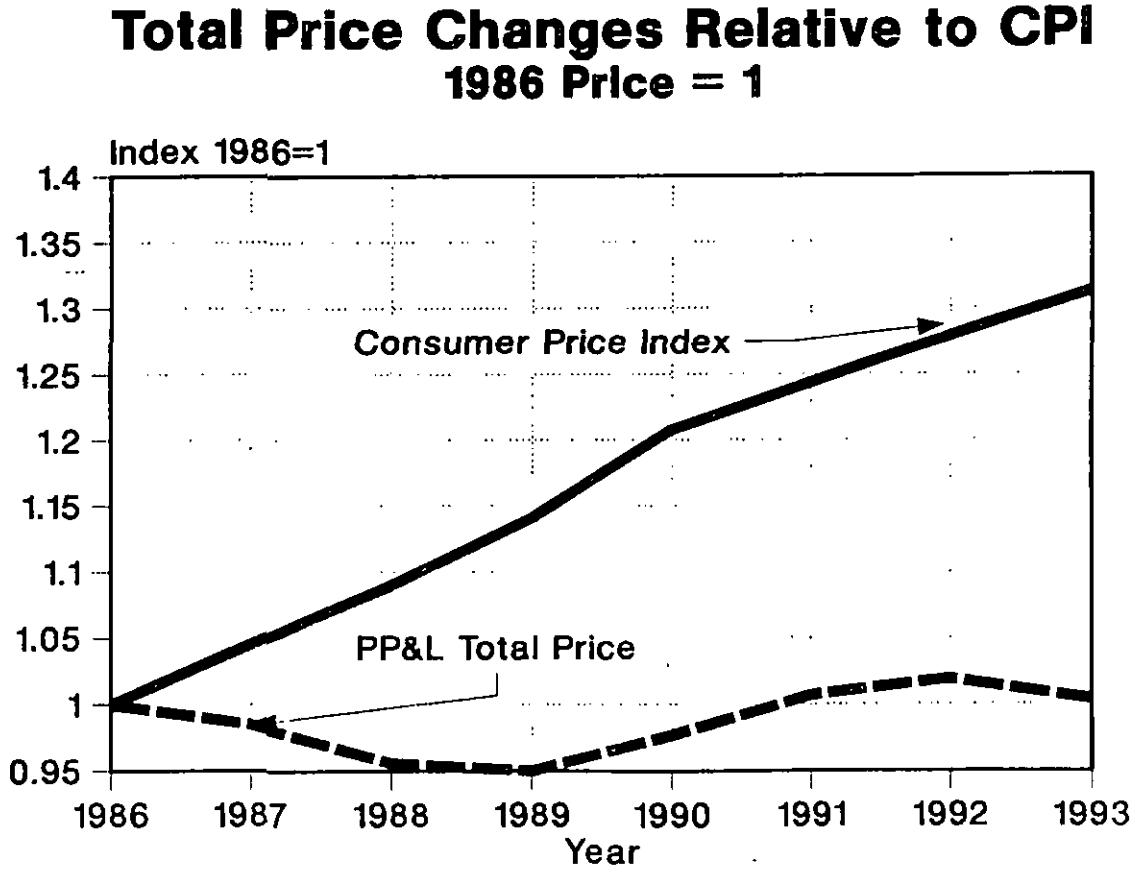
Rather than adhere to the Commission's findings in the Unit 2 Case, the opposing parties would radically alter the rules of the game. For example, they would reduce PP&L's allowable reserve margin from 22% to 15%-16%, even though the Company's installed capacity obligation to the PJM has increased in the interim (Tr. 2272-2273). In addition, the OCA would apply a market-based "economic benefits" test, which, to the best of the Company's knowledge (and apparently the OCA's),[1/] has never been applied in Pennsylvania or, for that matter, any other jurisdiction. It should, therefore, be recognized that the "continuity" which the opposing parties seek to preserve has everything to do with an end result ratemaking disallowance and nothing to do with the analytical framework or reasoning which led to that disallowance in the first place.

The OCA's claim that PP&L's customers would be "penalized" if a massive excess capacity adjustment were not adopted has an equally hollow ring. Indeed, the facts strongly suggest

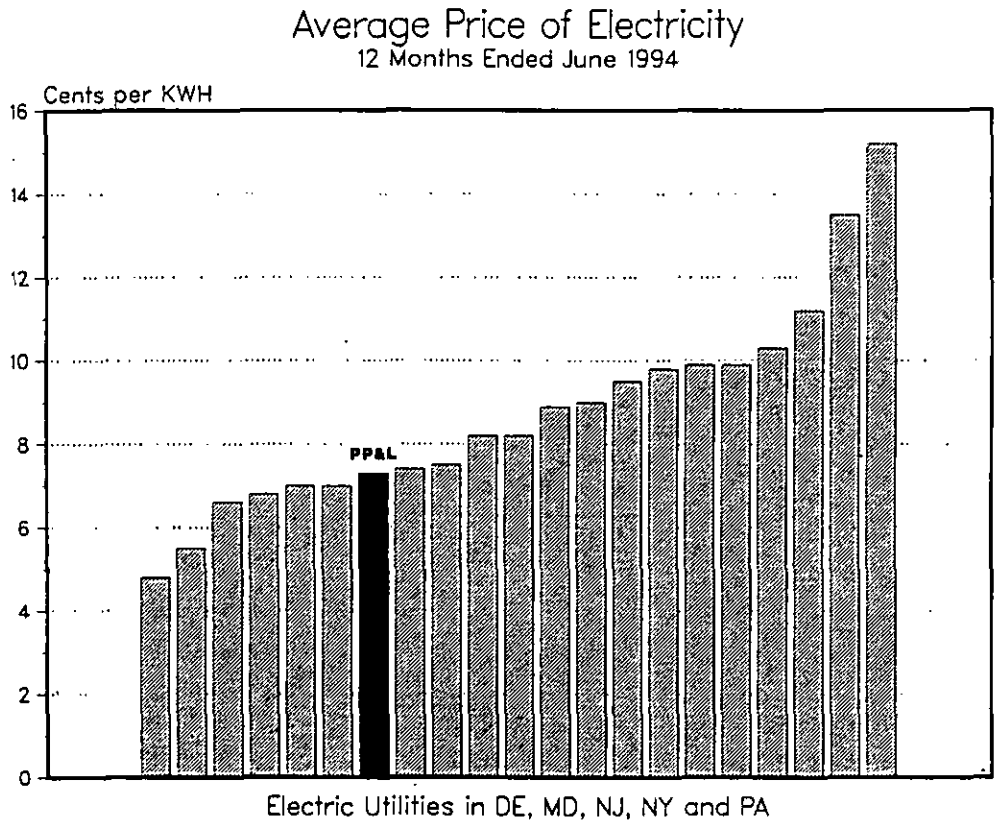
---

1/ The Company assumes that any precedent supporting Mr. Kahal's approach would have been cited by the OCA in its Main Brief. None was offered. Moreover, in the only case where a form of market-based economic benefits test was proposed in Pennsylvania (i.e. by Duquesne Light Company), it was rejected. See Pa. P.U.C. v. Duquesne Light Co., 66 Pa. P.U.C. 518 (1988).

otherwise. As set forth in graphic form in PP&L Exhibit 1 Future (Sch. A, p. 5), and reproduced below, the Company's rates have essentially remained unchanged in the last ten years and, as a consequence, have actually declined in real dollar terms:



As importantly, PP&L's total price for electricity compares very favorably with the average prices of other utilities in the region. The following chart, which was similarly extracted from PP&L Exhibit 1 Future (Sch. A, p. 6), depicts the average price of electricity in cents per kwh charged by PP&L and other electric utilities in surrounding states for the twelve months ended June 1994:



In view of the foregoing, one may safely assume that there are many customers in the Mid-Atlantic Region who would not feel "penalized", but would be pleased to be charged PP&L's rates.

1. Treatment Of QF Output

The Company has previously explained in detail why it believes QF output should not be included in an analysis of whether it has "physical" excess capacity (PP&L Initial Brief, pp. 22-31). Nothing in the Main Briefs filed by the OTS and OCA alters that conclusion.

What is most notable about the opposing parties' discussion of QF output is what is not said. Thus, the OTS and OCA make no attempt to reconcile their recommendations with Section 523 of the Code (66 Pa.C.S. § 523), which clearly expresses the Legislature's intent that utilities should be rewarded, not penalized, for their efforts to promote cost-effective cogeneration and/or small power production projects. Nor, for that matter, do the opposing parties acknowledge, much less address, the Commission's 1987 proposed policy statement or the various Commission and Appellate Court decisions that bear on the subject (PP&L Initial Brief, pp. 26-31). Their silence obviously speaks volumes about the weakness of their position.

The only point raised by either party that requires a response is the suggestion by the OTS that PP&L's management may have been guilty of a "lack of vision" in not anticipating the

future availability of QF output (OTS Main Brief, p. 32). As explained by Dr. Hieronymus (PP&L St. 16-R, p. 30), there is absolutely no basis for criticizing the Company in this regard. Moreover, the OTS's own witness Mr. Metro admitted as much.

> Q. On lines 6 through 10 of page 17 you allude to bad timing and luck or possible poor planning and vision. I gather from one of your interrogatory responses that you are not testifying today that PP&L was guilty of poor planning and vision with respect to the development of NUG generation, are you?
>
> A. That's correct. The interrogatory response states that it's been many years since the decision whether to build Susquehanna 1 and 2 and the development of NUG power came into this state, it's been maybe 20 years, so I'm not blaming PP&L for lack of vision or for bad luck.
>
> Q. Just so the record is clear, the 20-year figure that you alluded to was with reference to what?
>
> A. It's my understanding that PP&L began planning for Susquehanna 1 and 2 in the 1970s, early '70s.
>
> Q. And we can agree that it did not enter into a NUG contract until the mid '80s; is that correct?
>
> A. That's correct.

Tr. 1520 (emphasis added).

In the absence of any meaningful arguments to the contrary, PP&L can only reiterate that it would be grossly inequitable and constitute extremely poor public policy to utilize mandated purchases of QF output to disallow a return on pre-existing capacity.

2. The Determination Of A Reasonable Reserve Margin

The opposing parties' defense of their proposed 15%-16% reserve margins may be fairly characterized as one of overstatement and denial. For example, the OTS asserts that PP&L "has 564 MW of excess capacity" (OTS Main Brief, p. 29). In fact, application of Mr. Metro's recommended 16% reserve margin would support an excess capacity finding of only 371 Mw during the first year that new rates will be effective. Stated differently, more than one-third of the OTS's proposed adjustment represents capacity which is currently used and useful even by Mr. Metro's standards, but which he speculates may become "excess" sometime in the future.[2/]

In like fashion, the OCA overreaches when it claims that the Company's physical excess capacity is "somewhat less" than the 850 Mw of SSES 2 serving native load customers (OCA Main Brief, p. 45). Although Mr. Kahal repeatedly spoke of a 12%-15% reserve margin range, he never suggested that it would be appropriate to adopt the low end of that range (i.e. PP&L's installed capacity obligation to the PJM). To the contrary, he explicitly recognized that, from a capacity planning standpoint, "you just can't hit these things right on the nose" and that, in his view, a 3% "zone of reasonableness" was acceptable (Tr. 1605). This is

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2/ Similarly, the OTS refers to Mr. Metro's 250 Mw "padding" factor as PP&L's "1994 experienced forced outages" (OTS Main Brief, p. 30, ftn. 11). Yet, four pages later it notes that the incremental 250 Mw "was not intended to represent actual forced outages during peak" (OTS Main Brief, p. 34).

significant because, even at Mr. Kahal's unsupported and inadequate 15% reserve margin level, the majority of SSES 2 capacity is used and useful.[3/]

In addition to overstating its own case, the OCA either mischaracterizes or elects to deny unrebutted Company testimony. Thus, at page 32 of its Main Brief, the OCA, citing Mr. Kahal's surrebuttal statement, asserts that PP&L utilizes a 12% figure "as its target reserve margin for reliability planning purposes". This is simply not true.

The sole basis for Mr. Kahal's conclusion was the fact that the Company's 1995 Annual Resource Planning Report ("ARPR") showed PP&L's reserve margins dropping to the 11.5%-12.5% range in the years following 2007 (OCA St. 2A, pp. 13-14). As Mr. Sipics explained, however, Mr. Kahal simply misconstrued the nature and purpose of the ARPR (Tr. 2380-2381). Indeed, although projections reaching out 10-15 years were meaningful when utilities were constructing long lead-time generating units, their value today may be substantially discounted given the ability to add capacity in a much shorter (e.g., two-year) time period.

3/ As shown on Mr. Kahal's Schedule MIK-11 (p. 1), the alleged excess at the 15% level is not merely "somewhat less" than the 850 Mw of SSES 2 capacity reflected in this case, it is less than half (i.e. 419 Mw). Moreover, it must be recalled that these calculations, as well as Mr. Metro's, treat QF output as an available capacity resource. If such output is disregarded for ratemaking purposes, as it should, the issue of "physical" excess capacity becomes moot (PP&L Initial Brief, p. 22).

The OCA also refuses to accept the fact that there are various factors which are not taken into account in the PJM's reliability calculations (OCA Main Brief, pp. 36-37). However, Mr. Sipics, who is uniquely well-qualified to speak to the subject in light of his extensive involvement with the PJM (Tr. 2384-2385), could not have been clearer on this point. In his rebuttal statement (PP&L St. 9-R, pp. 4-6) and again on rejoinder (Tr. 2382-2384), he specifically quantified PP&L's recent exposure to "after-the-fact" capacity deficiency assessments and further explained that the models employed by the PJM treat generating unit availability and customer demands as independent variables. The OCA's attempt to wish Mr. Sipics' testimony away because it is still not convinced should be ignored.

The OCA also contends that maintenance of reserves in excess of the PJM obligation denies ratepayers the benefits of PP&L's membership in PJM and that the Company "has not even attempted to demonstrate that there is a benefit to PP&L's ratepayers of maintaining reserves in excess of its PJM obligation." (OCA Brief, pp. 31, 38). In fact, the Company presented a specific example, the SSES uprating, where an increase in capacity for economic reasons provided substantial and undisputed benefits to the Company's customers (PP&L Initial Brief, p. 40).

Finally, it should be noted that the OTS and OCA ultimately defend their proposed reserve margins on the ground that PP&L, if

capacity short, can always draw on the resources of other PJM members (OTS Main Brief, p. 30; OCA Main Brief, pp. 38-39). This premise is, of course, entirely inconsistent with Mr. Kahal's views regarding the impact of increased competition on the electric utility industry.[4/] Moreover, the PJM's recent operating experience (i.e. eight loss of load occurrences in the past eight years) seriously undercuts that assumption.

3. The Economics Of SSES 2

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 the Unit 2 Case, which, parenthetically, pre-dated the enactment of Section 1323 by over a year, it should be viewed now as claiming those costs "for the first time".

In support of its position, the OCA relies extensively on prior Commission Orders involving West Penn Power Company,

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4/ During his cross-examination (Tr. 1617-1618), Mr. Kahal was reminded of certain statements he had made in a paper authored last Fall wherein he warned that, in a fully competitive world, the long-standing cooperation among utilities was "likely to break down" and lead to the "potential for degradation of service". On redirect, he contended that those statements had "no bearing" or his presentation in this case because retail competition was only a longer-term, theoretical possibility (Tr. 1632-1633). However, as Mr. Sipics pointed out (PP&L St. 9, p. 16), Mr. Kahal was perfectly content to utilize data in his "economic benefits" analysis which presumed full retail competition.

Pennsylvania Power Company and Duquesne Light Company (OCA Main Brief, pp. 20-24). What is significant about those proceedings, however, is that, in each instance, the "new" generating unit in question was not completed or placed in service 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.

Nor, for that matter, would the Company's interpretation of the scope of Section 1323 produce an "absurd result" as alleged by the OCA. Rather, a finding that Section 1323 did not apply only would 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 argues extensively that the "same principles" should guide the Commission even if Section 1323 were determined not to apply (OCA Main Brief, p. 28).

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 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.

Moreover, and for the reasons set forth in the Company's Initial Brief (pp. 49-55), Mr. Kahal's proposed "economic benefits" test must be rejected regardless of whether Section 1323 is found to apply. In an attempt to breathe life into his analysis, the OCA asserts that the various criticisms offered by Mr. Sipics and Dr. Hieronymus are "red herrings" because (1) Mr. Kahal calculated his adjustment in the same manner as adopted in the Unit 2 Case (i.e., the denial of an equity return on SSES 2) and (2) the resulting disallowance does not have the effect of pricing SSES 2 "at market" (OCA Main Brief, p. 49).

The OCA, unfortunately, continues to miss the point. What is relevant is not how Mr. Kahal mechanically quantified his recommended adjustment, but rather how he arrived at his conclusion that an adjustment was warranted in the first place. In short, the inherent flaw in Mr. Kahal's analysis was not in his arithmetic, but in his use of a deregulated market-based model to justify the disallowance of regulated costs. That defect is not cured by the remedy selected.

Equally irrelevant is the OCA's observation that its approach "does not impose market prices on PP&L" (OCA Main Brief,

p. 49). If it is appropriate to establish SSES 2's ratemaking value at a point midway between historic cost and market price, as Mr. Kahal has proposed, then equity and consistency dictate that PP&L's other assets be treated in the same way. In the case of the Company's transmission and distribution facilities, this would necessitate an upward adjustment to PP&L's revenue requirement to provide an equity return on an additional $650 million ($1.3 billion disparity between market and book ÷ 2) (PP&L St. 16-R, p. 48). In addition, similar adjustments would be required for PP&L's other generating units (PP&L Initial Brief, p. 50).

Lastly, the Company must respond to the OCA's assertion that "there is no dispute between the OCA and the Company about the net present value impact Susquehanna on ratepayers" (OCA Main Brief, pp. 53-54). To the contrary, there are broad differences between the parties. The OCA, on the one hand, apparently views the results of PP&L's Strategy 2000 report as the definitive word on what the world will look like in a fully competitive environment. In contrast, and as Mr. Jones made clear (PP&L St. 15-R, p. 6), PP&L regards that report as a "strategic planning document, nothing more", in which the projected market price of electricity was, in all likelihood, substantially understated (PP&L Initial Brief, pp. 53-54).

B. Cash Working Capital

1. Negative Cash Working Capital Should Not Be Recognized

The overriding issue in this case with respect to cash working capital is whether a negative allowance should be recognized as a deduction from PP&L's rate base, as witnesses for the OTS and OCA have proposed. In their respective Main Briefs, the OTS and OCA contend, for somewhat different reasons, that it should. However, neither has provided any valid basis for departing from a long line of Commission and Pennsylvania Appellate Court decisions rejecting that position.

The OCA has acknowledged, as it must, that "this Commission has in the past set the cash working capital allowance at zero rather than adopting a negative cash working capital determination." It also has acknowledged that this principle was twice affirmed by the Commonwealth Court of Pennsylvania (OCA Main Brief, pp. 72-74). However, the OCA has attempted to minimize or distinguish that precedent by citing two cases in which the Commission allegedly adopted negative cash working capital allowances. Pa. P.U.C. v. Pennsylvania Power Co., 55 Pa. P.U.C. 552 (562-64) (1982) ("Penn Power 1982"); Pa. P.U.C. v. ALLTEL Pa., Inc., 59 Pa. P.U.C. 447, 457-58 (1985) ("ALLTEL"). Neither case supports the OCA's position. In Penn Power 1982, the Commission accepted certain adjustments to Penn Power's cash working capital claim that, nonetheless, resulted in a positive

cash working capital allowance of approximately $17 million. In ALLTEL, the issue of whether negative cash working capital should be recognized was not even discussed, let alone decided, presumably because it was never raised.

The OCA also has suggested that prior precedent is distinguishable because, in this case, the lag in payment of interest on long-term debt and dividends on preferred stock is responsible for sending PP&L's cash working capital negative. Thus, the OCA contends, failure to recognize a negative balance under these circumstances is inconsistent with the Commission's long-standing policy of reflecting an "offset" to cash working capital for interest and preferred stock dividends accrued prior to pay-out (OCA Main Brief, p. 74). This argument fails for two reasons. First the interest/dividend "offset" is precisely that -- an offset to a positive cash working capital claim, not a stand-alone deduction to a utility's rate base (PP&L Initial Brief, pp. 63-64). Second, in several cases in which negative cash working capital adjustments were rejected, the accrued interest and dividend "offset" was the factor that reduced the allowance below zero. See, e.g., Pa. P.U.C. v. Pennsylvania Power Co., 85 PUR4th 323, 360 (1987). Thus, this case does not present any unique or distinguishing factual scenario.

In contrast to the OCA, the OTS did not even address the cases that rejected negative cash working capital adjustments. Rather, it merely asserted, without reference to any authority,

that the "offset" for accrued interest and dividends should support a rate base deduction in excess of a utility's claim for positive cash working capital. This position is erroneous for the reasons previously discussed. Moreover, the OTS itself has argued, albeit in connection with another aspect of the cash working capital analysis, that "balances relating to long-term debt interest and dividend payment . . . are below the line items" that should not be reflected in a cash working capital claim (OTS Main Brief, p. 21) (emphasis added).

Finally, the OTS also contends that PP&L somehow opened the door for a negative adjustment because, in response to the Commission's filing regulations, it submitted a cash working capital analysis showing a small negative balance. This argument is totally meritless. As a practical matter, the fact that the Company did not initially zero-out the $320,000 negative balance can hardly be viewed as a tacit acceptance of the $12.3 million adjustment proposed by OTS. As a legal matter, the manner in which the Company chose to present its supporting data does not abrogate Commission and Appellate Court holdings that are contrary to the OTS's position.

2. Miscellaneous Adjustments To PP&L's Cash Working Capital Analysis

The OTS and OCA also have discussed in detail a myriad of adjustments to PP&L's cash working capital analysis proposed by their witnesses. For the reasons set forth above, it is not

necessary to address any of the arguments advanced by the OTS and OCA on these points. In any event, many of the proposed adjustments would have a negligible effect on the "bottom line" of the Company's cash working capital study. In fact, only two proposed revisions, relating to prepayments and the lag in payment of Clean Air Act Amendment ("CAAA") permit fees, would be at all material. The arguments advanced by the OTS and the OCA in support of those revisions, which simply repeat the contentions of their witnesses, have been addressed in the Company's Initial Brief (pp. 65-68) and shown to be meritless. Accordingly, a lengthy response is not required.

With respect to CAAA permit fees, it is significant that the OCA has offered no evidence to affirmatively support its proposed payment lag of 421 days. Other than a purely semantic argument derived from the Company's response to an interrogatory that did not even relate to the issue of payment lags, the OCA's case rests entirely upon Pa. P.U.C. v. West Penn Power Co., Docket No. R-00942986 (December 29, 1994). In that proceeding, the Commission did not actually decide the issue because West Penn chose not to pursue it beyond the Recommended Decision stage. Clearly, under those circumstances, this issue deserves a second look based on the substantial evidence presented by PP&L in this proceeding.

As explained in the Company's Initial Brief, by singling out CAAA permit fees for separate analysis, OCA witness Catlin has

improperly "cherry-picked" an item he assumed to have a longer-than-average lag. In addition, his lag assumption is wrong because CAAA permit fees are paid in advance, not in arrears. The latter point is virtually self-evident, since the Pennsylvania Department of Environmental Resources ("DER") would not have sufficient funds to run the state's air pollution control program if permit fees related to a prior fiscal year. Indeed, this relationship between payments and the DER's fiscal year is confirmed by provisions of the Air Pollution Control Act. 35 P.S. §4001 et seq. Specifically, Section 6.3(k) thereof (35 P.S. §4006.3(k)) directs that permit fees are to be used "during the fiscal year in which they are collected." Thus, the CAAA payment made in August 1994 was intended for use during DER's July 1, 1994 to June 30, 1995 fiscal year. Because December 31, 1994 is the mid-point of that service period, PP&L's August 26, 1994 payment results in a 120-day lead -- not a lag as Mr. Catlin assumed.

As to prepayments, the OTS and OCA have made no new arguments in their respective Main Briefs. In that regard, it is significant that prepayments are a well-recognized component of a utility's cash requirements and have not been disallowed as "duplicative" of cash working capital calculated in a lead/lag study. See, e.g., Pa. P.U.C. v. Metropolitan Edison Co., 141 PUR4th 336 (1993); Pa. P.U.C. v. National Fuel Gas Distribution Corp., 73 Pa. P.U.C. 552 (1990); Pa. P.U.C. v. Pennsylvania Power & Light Co., 57 Pa. P.U.C. 559 (1983).

C. Accrued Pension Liability As A Rate Base "Offset"

OCA witness Catlin proposed an unprecedented adjustment to reduce the Company's rate base by $74 million to reflect the difference between pension expense accrued for financial reporting purposes under Statement of Financial Accounting Standards No. 87 ("SFAS 87") and PP&L's cash contributions to its pension plan. Initially, Mr. Catlin based his proposal on the contention that expenses accrued pursuant to SFAS 87 should be deemed to have been recovered in rates by PP&L and, because the "recovered" amounts had not been contributed to the pension plan, they were available for Company use as no-cost capital.

The numerous factual and conceptual errors in the initial justification proffered by Mr. Catlin were pointed out by PP&L witness Berish (PP&L St. 2-R, pp. 11-14) and are summarized in PP&L's Initial Brief (pp. 71-73). In response to Mr. Berish's testimony, Mr. Catlin retreated from his original argument in his surrebuttal statement and, in a further concession to its defects, the OCA has abandoned that argument altogether in its Main Brief (pp. 65-66). Instead, the OCA has argued that Mr. Catlin's proposed rate base deduction should be adopted in order to "true-up" the difference between the pension expense allowance approved in the Company's 1985 base rate case and the lesser amounts that PP&L was permitted to contribute to its pension plan during the intervening 10 years pursuant to Internal Revenue Code restrictions. As fully explained in PP&L's Initial Brief

(pp. 73-74), the OCA's attempted "true-up" of one element of a prior base rate determination with PP&L's actual expense is improper as a matter of law. Philadelphia Electric Co. v. Pa. P.U.C., 93 Pa. Cmwlth. 410, 422, 502 A.2d 722, 727-28 (1985); Pike County Light & Power Co. v. Pa. P.U.C., 87 Pa. Cmwlth. 451, 487 A.2d 118 (1985).

In addition to its legal defects, the OCA's position is unfair and inequitable because it focuses upon a change in one element of PP&L's benefits expense without considering other components of that expense, which skyrocketed during the 10-year period following PP&L's last base rate case (PP&L Initial Brief, pp. 74-75). In its Main Brief (p. 67), the OCA responded to this criticism by accusing the Company of ignoring the "basic ratemaking presumption that a utility's revenues are adequate to recover its costs." However, that "presumption" encompasses a utility's total revenues and total expenses and incorporates the notion that increases in some expenses can offset decreases in other expenses. Of course, that is precisely the point the Company made by highlighting the increase in other elements of its employee benefit costs. In contrast, Mr. Catlin's historical analysis of a single expense item, to the exclusion of all others, is exactly the kind of "line-by-line examination" that the Commonwealth Court proscribed in Philadelphia Electric Co., supra, ("[T]here may be no line by line examination of the relative success or failure of the utility to have accurately projected its particular items of expense or revenue . . .").

D. Land Held For Future Use

PP&L has included no plant held for future use in its future test year rate base claim in this case. Instead, it is requesting Commission approval to record, for accounting purposes, a carrying charge, equivalent to the Allowance For Funds Used During Construction ("AFUDC"), on future use property. The Company is not asking that the Commission pre-approve the inclusion of the AFUDC-equivalent accruals in its rate base for ratemaking purposes. Similar accounting procedures have been approved by the Commission for a number of other utilities (PP&L Initial Brief, pp. 75-76).

The OTS was the only party that contested the Company's request. The OTS's witness, Mr. Metro, appeared to base his opposition on the mistaken belief that PP&L wanted a current determination that all accrued amounts would be properly includable in rate base in future rate proceedings. However, in its Main Brief (pp. 24-25), the OTS has made it clear that it opposes PP&L's request notwithstanding the Company's explicit qualification that pre-approval of future ratemaking treatment is not contemplated.

Although acknowledging that substantial Commission precedent supports the Company's position, the OTS has argued that accruing an AFUDC-equivalent amount on future use property is contrary to the "intent" of Barasch v. Pa. P.U.C., 516 Pa. 142, 532 A.2d 325 (1987); aff'd sub nom. Duquesne Light Co. v. Barasch, 488 U.S.

299 (1989) ("Barasch/Duquesne") which, allegedly, "prohibited recovery of the costs in question either by inclusion in rate base or by amortization." The "key" to the Pennsylvania Supreme Court's holding, according to the OTS, is that the FERC's Uniform System of Accounts does not provide for the accrual of AFUDC on future use property until it becomes construction work in progress ("CWIP") (OTS Main Brief, p. 25). The OTS has misread Barasch/Duquesne and has misconstrued the interrelationship of FERC's ratemaking and accounting procedures for future use property.

In Barasch/Duquesne, the Court "prohibited" any recovery "either by inclusion in rate base or by amortization" of cancelled nuclear plant costs, for the obvious reason that those plants would never provide service to customers and, therefore, could not meet the "used and useful" standard set forth in Section 1315 of the Public Utility Code (66 Pa. C.S. §1315). However, as to future use property, its holding was much narrower:

> Based on the standard set forth by the final sentence of Section 1315 of the Code, as to when the property of an electric utility may be deemed "used and useful," we conclude that the vacant land here in issue does not meet that test . . . We thus hold that the addition of the land investments to Penn Power's rate base violated the terms of Section 1315 of the Code. (Emphasis added.)

The Court only decided the issue of when investments in future use property could be included in rate base, not the

wholly separate issue of how the utility's investment should be quantified if and when the criteria for rate base inclusion were satisfied at some future date. Significantly, the accrual of AFUDC on CWIP is allowed as an appropriate addition to original cost in order to recognize the carrying charges a utility incurs on property before it becomes "used and useful."[5/] If Section 1315 were interpreted as broadly as the OTS believes it should be, then the accrual of AFUDC on CWIP also would be impermissible. Of course, the fact that AFUDC accruals on CWIP have never been considered a violation of the "used and useful" standard is definitive proof of the error of the OTS's position.

Finally, the FERC's treatment of future use property, upon which the OTS relies, actually supports the Company's request. It is true, as the OTS asserts, that FERC's Uniform System of Accounts does not provide for the accrual of AFUDC on future use property before it becomes CWIP. However, the reason for that accounting treatment is because the FERC permits the inclusion of future use property in the rate base of its jurisdictional utilities. Moreover, the FERC had considered allowing the accrual of AFUDC on future use property in lieu of rate base inclusion, but concluded that utilities deserve to earn a current return on that property. Accounting Treatment For Land Held For Future Utility Use, 45 F.P.C. 106 (January 7, 1971)(36 Fed. Reg. 507).

5/ The accrual of AFUDC terminates when CWIP is placed "in service."

III. REVENUES

The OCA revenue adjustment for EDI/IDI credits and the Oil Dealers revenue adjustments relating to Rate RTS are addressed in the Rate Structure section (Section VII) of this Reply Brief.

IV. EXPENSES

A. Operating And Maintenance Expenses

1. Voluntary Early Retirement Program Savings

PPLICA and the OCA oppose the Company's proposed net reduction in operating expenses of $12,742,000 ($11,029,000 on a PUC jurisdictional basis) resulting from its Voluntary Early Retirement Program ("VERP") (PPLICA Main Brief, pp. 43-44; OCA Main Brief, pp. 158-160).[6/] More specifically, they contend that the Company's claim should be adjusted to reflect additional cost savings allegedly produced by the VERP prior to the end of the future test year (PPLICA Main Brief, p. 43; OCA Main Brief, p. 159). In addition, PPLICA argues that PP&L's claimed VERP costs should be amortized over a ten-year period (PPLICA Main Brief, p. 44). As explained in the Company's Initial Brief (pp. 79-84), these proposed adjustments are without merit and should be rejected.

First, the VERP has not in fact produced the future test year cost savings assumed by Messrs. Kollen and Catlin. Rather, the unrebutted record evidence shows that any savings attributable to VERP retirements were offset by increased costs

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6/ As explained in PP&L's Initial Brief (p. 81), DOD witness Prisco initially opposed the Company's claim for costs associated with its VERP. In light of the updated information submitted by the Company during the course of these proceedings, the DOD has withdrawn its proposed adjustment (DOD Brief, p. 28).

incurred to temporarily supplement PP&L's workforce during the transition period following implementation of the VERP (Tr. 2048-2049).

The OCA attempts to bolster its position by noting that PP&L's actual January wage costs exceeded its budgeted expenses because of the substantial one-time vacation payment to employees departing under the VERP (OCA Main Brief, p. 159). This evidence is fully consistent with the Company's claim. Indeed, it is precisely because of the large number of employees retiring under the VERP that PP&L was forced to supplement its work force with added overtime, temporary employees, and outside contractors. Significantly, these added costs continued to offset the purported wage and benefit savings in subsequent months (Tr. 2048-2049).

Second, PPLICA's and the OCA's proposed adjustment is inconsistent with well-established ratemaking principles. As explained in its Initial Brief (p. 83), the Company's wage and benefit expense claim already reflects a full year of VERP savings. Any attempt to include additional savings attributable to the regulatory lag between the effective date of the VERP and the effective date of new rates would inappropriately recognize a one-time, isolated decrease in operating expense without recognizing off-setting cost increases.

Third, PPLICA's recommended ten-year amortization period is inconsistent with Commission practice. Because Pennsylvania's

utilities are not permitted to earn a return on the unamortized balance of an expense amortization, the Commission generally has accepted three to five-year amortization periods. Moreover, most of the Company's expenditures under the VERP will be made during an initial five-year period. PPLICA's proposal therefore should be denied.

2. Pension Expense

The OTS and OCA oppose PP&L's pension expense claim of $11,867,000 or $6,776,000 on a PUC jurisdictional basis (OTS Main Brief, pp. 86-91; OCA Main Brief, pp. 147-151). The OTS asserts that the Company's claim should be based on actual cash contributions made in accordance with ERISA and IRS rules. The OCA, on the other hand, contends that PP&L employed an unreasonably low discount rate.[7/] The Company has discussed the primary weaknesses of these two arguments in its Initial Brief. The OTS and OCA, however, raise several arguments in their Main Briefs which require an additional response.

First, the OTS relies heavily on the Commission's prior orders in Pa. P.U.C. v. West Penn Power Co., 73 Pa. P.U.C. 454 (1990)("West Penn 1990") and Pa. P.U.C. v. West Penn Power Co., Docket No. R-00942986, 1994 Pa. PUC LEXIS 144 (December 29, 1994)("West Penn 1994") for the proposition that pension expense

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7/ The OCA offers this same argument in connection with PP&L's claim for deferred SFAS 106 costs. See Section IV.A.3, infra.

should be treated on a "cash only" basis (OCA Main Brief, pp. 88-91). The OCA's reliance on these cases, however, is misplaced.

As explained in its Initial Brief (pp. 87-89), PP&L's proposal to treat pension expense on an accrual basis under SFAS 87 is fully consistent with West Penn 1994. Specifically, West Penn 1994 involved a request to recover pension expenses determined in accordance with SFAS 87. In approving the utility's claim, the Commission rejected OTS and OCA arguments that such costs should be determined based on actual cash contributions in accordance with West Penn 1990. The Commission's decision rested on its conclusion that the utility would be required to make a cash contribution during the test year, and that the amount of succeeding contributions would exceed SFAS 87 requirements for each of the next four years.

In the instant case, the record evidence demonstrates that the Company's claim is virtually identical to the claim approved by the Commission in West Penn 1994. PP&L will resume cash contributions to its pension fund as early as 1996, which is during the first year the rates established in this proceeding will be effective (PP&L St. 2-R, p. 13). Similarly, record evidence shows that PP&L will likely need to make contributions in each of the three years thereafter, and that these cash contributions will be significantly higher than the corresponding annual SFAS 87 accruals (PP&L Ex. MJB-14). Thus, as the

Commission found in West Penn 1994, PP&L has made "a reasonable proposal which promotes the public interest" (West Penn 1994, slip op., p. 45). The OTS' recommended adjustment therefore should be rejected.

The OTS also argues that PP&L's claim should be rejected because the Company will not actually be required to make a cash contribution to its pension plan for the 1996 plan year until March 15, 1998 (OTS Main Brief, pp. 90-91). This same argument, however, was reviewed and rejected by the Commission in Pa. P.U.C. v. Pennsylvania-American Water Co., Docket No. R-00932670 (July 26, 1994) (Order, pp. 53-56). Moreover, as explained in PP&L's Initial Brief (pp. 85-87), determination of pension expense under ERISA and IRS rules may result in highly variable costs from year to year. The Company's proposal establishes a more stable and normal level of expense. The OTS' recommendation lacks merit and should be disregarded.

Second, in support of its argument that PP&L has utilized an unreasonably low discount rate in determining its pension expense, the OCA relies on the discount rates used by several other utilities with rate cases pending before this Commission (OCA Main Brief, pp. 149-150). The OCA also asserts that the Company has failed to explain why its actuary recommended a discount rate of 8.5% for Pennsylvania-American Water Company ("PAWC") in its current rate case (Id.). The OCA's argument is without merit and should be rejected.

As explained in PP&L's Initial Brief (pp. 89-90), the Company's proposed 7.5% discount rate is wholly consistent with SFAS 87 and SFAS 106. These guidelines state that discount rates shall be determined so as to "reflect the rates at which the pension benefits could be effectively settled" (PP&L St. 14-R, p. 2). This determination is to be made on a case-by-case basis based on a variety of factors (Id.).

In the instant case, PP&L witness Beers explained that the Company's pension obligations likely can be settled at rates 25 to 50 basis points below long-term government yields. As of January 1, 1995, these yields equalled 7.9%. The OCA's own rate of return witness noted that those yields had declined by approximately 50 basis points as of mid-March (PP&L St. 14-R, p. 3), and the OCA relies on this decline in rates to support its unreasonably low return on common equity. Thus, the OCA's claims notwithstanding, the record evidence suggests that PP&L's proposed discount rate of 7.5% may in fact be too high.

Furthermore, the OCA misstates the Company's burden of proof in this proceeding. PP&L is not required to show that the discount rates utilized by other utilities do not apply; it must demonstrate that its proposed discount rate is reasonable in light of the particular facts and circumstances present in this case. As discussed above and in its Initial Brief (pp. 89-91), PP&L has established that its proposed rate is reasonable and

consistent with SFAS 87 and SFAS 106. The OCA's argument is simply inapposite and should be rejected.

3. Post-Retirement Benefits (SFAS 106)

The OTS, OCA and PPLICA oppose the Company's claim of $31,095,000 for deferred SFAS 106 costs amortized over 17.3 years, or an annual expense of $1,797,000 or $1,555,000 on a PUC jurisdictional basis (OTS Main Brief, pp. 91-97; OCA Main Brief, pp. 151-155; PPLICA Main Brief, pp. 44-45).[8/] The parties argue that the Company's claim violates the general rule against retroactive ratemaking.[9/] This argument must fail for several reasons.

First, 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

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8/ A detailed explanation of the Company's claim for SFAS 106 costs is included in its Initial Brief (pp. 91-96).

9/ In addition, the OCA contends that the Company's claimed SFAS 106 costs are inflated because it used an unreasonably conservative discount rate in calculating its expenses (OCA Main Brief, pp. 147-151). This argument is identical to the one the OCA offers in connection with PP&L's claimed pension expense, and therefore should be rejected for the same reasons. See Section IV.A.2, supra; PP&L Initial Brief, p. 96.

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).

Second, even if the rule against retroactive ratemaking hypothetically were to apply, PP&L's claim falls within the well-established exception for extraordinary and non-recurring costs.[10/] The OTS and OCA nevertheless argue that the Company's claim fails to qualify for this exception. Collectively, the parties rely heavily on the Commonwealth Court's recent decision in Popowsky v. Pa. P.U.C., 164 Pa. Cmwlth. 338, 642 A.2d 648 (1994)("PP&L") and the Commission's recent Order in West Penn 1994, supra.

10/ As the Company explained in its Initial Brief (p. 93), extraordinary and non-recurring costs can be recovered in rates established in a base rate proceeding through use of an amortization allowance. See, e.g., Pa. P.U.C. v. Columbia Gas of Pa., Inc., 74 Pa. P.U.C. 242 (1990) (allowing amortization of cost of Commission-mandated audit of utility operations between base rate cases); Pa. P.U.C. v. Pennsylvania-American Water Co., 68 Pa. P.U.C. 343, 362 (1988) (allowing amortization of initial costs incurred to comply with Pennsylvania One Call System for utilities); Pa. P.U.C. v. National Fuel Gas Distribution Corp., 67 Pa. P.U.C. 264 (1988) (approving amortization of costs incurred for new programs to assist low-income customers with their utility bills); Pa. P.U.C. v. Bell Telephone Co. of Pa., Docket No. R-80061235 (April 24, 1981) (approving amortization of storm damage expenses and costs of implementing new tariffs); Pa. P.U.C. v. PECO-Gas Div., 33 PUR4th 319 (1980) (allowing amortization of cost to install leased computer).

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 Court's recent decision in Popowsky v. Pa. P.U.C., 164 Pa. Cmwlth. 600, 643 A.2d 1146 (1994)("PAWC").[11/]

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 past 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

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11/ Petitions for Allowance of Appeal to the Pennsylvania Supreme Court were filed by the Commission and the Company at Docket No. 0294 M.D. Allocatur Docket 1994. These Petitions are still pending. The Court's decision in PAWC therefore remains in full force and effect at this time.

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 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 West Penn 1994 (OCA Main Brief, p. 155). This argument is completely without merit and should be rejected. 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 the instant case, PP&L is claiming its deferred SFAS 106 costs in the first base rate

case following the Commission's adoption of SFAS 106. West Penn 1994, therefore, simply does not apply.

4. SFAS 112 Costs

The OCA asserts that the Commission should reduce PP&L's claim of $996,000 for SFAS 112 costs by $592,000 on a Pennsylvania jurisdictional basis.[12/] The OCA's recommendation is based on its assertion that the Company plans to pay for these short-term liabilities on a pay-as-you-go basis (OCA Main Brief, pp. 156-158). Because PP&L does not intend to create a separate accrual fund, the OCA argues that there is no reason to switch from cash to accrual accounting for these long-term benefits (Id.). In addition, the OCA contends that the reasons supporting the use of SFAS 106 do not apply to SFAS 112.

PP&L fully addressed each of these arguments in its Initial Brief (pp. 96-98). For the sake of brevity, the Company will not repeat those arguments here.

12/ SFAS 112 addresses the appropriate accounting treatment of long-term disability and other benefits provided to disabled employees and the families of deceased employees prior to retirement. In accordance with SFAS 112, PP&L's claim reflects an accrual for the anticipated increase in future liability for such long-term benefits (PP&L Initial Brief, pp. 96-97).

5. SSES Early Window Costs

The OTS and OCA argue that the Company's entire claim of $39,215,000[13/] for "early window" deferrals related to SSES 1 and 2 should be denied (OTS Main Brief, pp. 103-106; OCA Main Brief, pp. 103-117). The parties contend that PP&L's claim violates the prohibition against retroactive ratemaking because: (1) it is not timely; and (2) it does not fall within the exception for extraordinary and non-recurring expenses. As discussed below, these arguments are without merit and should be rejected.

a. PP&L's Claim Is Timely

The OTS and OCA first assert that the Company should have claimed SSES 1 early window costs in its Unit 2 Case in 1984 (OTS Main Brief, p. 104; OCA Main Brief, p. 111). As explained in its Initial Brief (pp. 100-101), PP&L did not claim deferred SSES 1 costs in its 1984 rate case because it sought to minimize the requested rate increase and its impact on customers.[14/] The Company's action was reasonable and in the best interest of its customers.

13/ PP&L proposes to amortize this amount over a ten-year period, resulting in an annual PUC jurisdictional expense of $3,922,000 (PP&L Ex. 1 Future - Revised, Sch. D-14).

14/ In its 1984 base rate case, the Company sought a rate increase of $330 million, or approximately 23% (PP&L St. 3-R, p. 11).

In support of this argument, the OTS cites Columbia Gas of Pa. v. Pa. P.U.C., 149 Pa. Cmwlth. 247, 613 A.2d 74 (1992), aff'd, 535 Pa. 517, 636 A.2d 627 (1994) ("Columbia Gas"). Columbia Gas, however, is completely distinguishable from the instant case and should be ignored. In Columbia Gas, the Commonwealth Court affirmed a Commission order denying, inter alia, the utility's claim for past environmental investigation and remediation costs. Finding that the Company had not received Commission authorization to defer its claimed costs and that its ongoing expenses were completely anticipated, the Court concluded that the utility's claim violated the rule against retroactive ratemaking. Columbia Gas, 613 A.2d at 77-78. In the instant case, PP&L received Commission authorization to defer its SSES 1 early window costs. Thus, the concerns raised by the Commission and the Court in Columbia Gas are not present here. The OTS' argument to the contrary lacks merit and should be rejected.

The OTS and OCA further argue that PP&L's claim is simply too late (OTS Main Brief, p. 105; OCA Main Brief, pp. 110-112). In support of this argument, the OCA relies on the Commission's prior Orders in Pa. P.U.C. v. Philadelphia Electric Co., 74 Pa. P.U.C. 1 (1990)("PECO 1990") and Pa. P.U.C. v. Pennsylvania Gas & Water Co., 79 Pa. P.U.C. 349 (1993)("PG&W 1993"). In PECO 1990 and PG&W 1993, the Commission allowed recovery of early window costs within 3 and 4 years, respectively, after such costs were incurred. The Commission, however, did not establish a time

limitation for the filing of such claims in either case. The OCA's reliance on PECO 1990 and PG&W 1993 therefore is in error.

Similarly, as explained in the Company's Initial Brief (pp. 99-101), the Commission's Orders authorizing SSES 1 and 2 deferrals did not establish a time limit on PP&L's ability to recover these costs. Petition of Pennsylvania Power & Light Co., Docket No. P-820367, 1982 Pa. PUC LEXIS 75, *17-18 (July 29, 1982); Petition of Pennsylvania Power & Light Co., Docket No. P-830461, slip op., p. 5 (November 9, 1983). The Company's alleged "delay" has had absolutely no effect on the amount of its claim, since such costs do not include any carrying charges accrued during the deferral period (PP&L Main Brief, p. 101, n. 36). PP&L is properly claiming its SSES 1 and 2 early window costs in this proceeding.

In summary, the Company's claim is timely and consistent with prior Commission Orders. The OTS and OCA arguments to the contrary should, therefore, be rejected.

b. PP&L's Claim Does Not Violate The General Prohibition Against Retroactive Ratemaking

The OTS and OCA also argue that the Company's claim for its SSES 1 and 2 early window deferrals violates the general rule against retroactive ratemaking (OTS Main Brief, pp. 104-105; OCA Main Brief, p. 104). The OCA develops this argument in detail. Thus, the Company will focus on those issues raised by the OCA,

with the understanding that its comments apply with equal force to the OTS.

The OCA begins by noting that the Commission only allowed PP&L to defer its SSES early window costs; it did not guarantee future recovery of such costs (OCA Main Brief, p. 103). The OCA states that the Commission has established the basic criteria for recovery of deferred early window costs in PECO 1990 and PG&W 1993 (OCA Main Brief, pp. 108-110). Generally, these cases require the Company to show that:

> (1) The costs are both extraordinary and nonrecurring; and
>
> (2) The denial of recovery would have a substantial negative financial impact on the utility.

PECO 1990, 74 Pa. P.U.C. at 111; PG&W 1993, 79 Pa. P.U.C. at 369. The OCA concludes that PP&L's claim must be denied because the Company has failed to satisfy these requirements. These arguments lack merit and should be rejected for several reasons.

First, it makes no sense to argue that PP&L's deferred early window costs violate the rule against retroactive ratemaking. The Commission would not have allowed PP&L to defer such costs if it were simply going to disallow the Company's subsequent claim as violative of the prohibition against retroactive ratemaking. In fact, the Commission reached this same conclusion in PG&W 1993, where it agreed with the ALJ's reasoning:

> For the Commission to allow the deferral of costs and then summarily deny recovery in a future rate proceeding as being retroactive ratemaking would be a sham and we cannot believe such a result was the Commission's intent.

PG&W 1993, 79 Pa. P.U.C. at 368.

Consequently, the Commission has determined that recovery of deferred early window costs does not constitute impermissible retroactive ratemaking as a matter of law:

> In particular, we would note that by definitively allowing into rates an amortization of defined costs pertaining to bringing new plant on line, we have, in the 1990 PECO case, put to rest any contention that such an amortization is impermissible retroactive ratemaking as a matter of law.

PG&W 1993, 79 Pa. P.U.C. at 371 (emphasis added). The parties' retroactive ratemaking argument is completely without merit and therefore should be rejected.

Second, PP&L has shown that its claimed SSES early window costs fall within the exception for extraordinary and non-recurring costs. The Commission has concluded that early window costs associated with new nuclear generating plants like SSES are plainly extraordinary and non-recurring:

> "Early window" costs are extraordinary for the reason that the initial commercial operation of a large nuclear plant, costing billions of dollars, occurs infrequently, and clearly represents a nonrecurring event.

PECO 1990, 74 Pa. P.U.C. at 111 (emphasis in original). The OCA's argument (Main Brief, p. 114) that PP&L's claimed costs

were anticipated and thus not extraordinary has previously been rejected by the Commission. PG&W 1993, 79 Pa. P.U.C. at 370-371.[15/] The Company's SSES early window deferrals are clearly extraordinary and non-recurring.

Furthermore, as explained in the Company's Initial Brief (pp. 102-103), the unrebutted record evidence plainly demonstrates that denial of PP&L's claim will have a substantial adverse impact on the Company's earnings. PP&L would be required to write-off its entire claim of $39 million in 1995. As conceded by the OCA, PP&L's 1995 earnings would drop by approximately 17.7%. Viewed from a different perspective, its 1985 earnings would have decreased by approximately 20% if PP&L had been forced to recognize these costs at that time (OCA Main Brief, pp. 114-115). None of the cases relied upon by the OTS or OCA set forth specific numeric criteria that must be met to satisfy the substantial negative financial impact test established by the Commission. Although PP&L's decreased earnings would not match the approximate 50% decrease recognized in PECO 1990 or PG&W 1993, a 17%-20% decrease in earnings is clearly "substantial" by any reasonable standard.

15/ The Commission concluded (Id.):

> The OCA's argument that the treatment plant costs are neither extraordinary nor non-recurring defies logic. The fact that the subject costs were anticipated does not make them "not extraordinary."

The OCA also relies on Pa. P.U.C. v. Pennsylvania-American Water Co., Docket No. R-932670 (July 26, 1994), in which the Commission denied the utility's claim for early window costs associated with a new water treatment plant (OCA Main Brief, p. 113). The OCA's reliance is misplaced, however, because in that case, the utility failed to offer any evidence regarding "the potential effect on [the company's] earnings with and without rate recovery of these window costs." Id., slip op., p. 72. As explained above, there is ample record evidence demonstrating the substantial negative impact on PP&L of the OCA's proposed adjustment.

In an attempt to justify its proposed adjustment, the OCA further suggests that Pa. P.U.C. v. Philadelphia Electric Co., 58 Pa. P.U.C. 7 (1983), aff'd, 93 Pa. Cmwlth. 410, 502 A.2d 722 (1985) ("PECO 1983"), controls this proceeding (OCA Main Brief, pp. 105-106). In PECO 1983, the Commission rejected the utility's claim for deferred early window costs related to the installation of pollution control equipment. The OCA's reliance on PECO 1983 is completely misplaced.

In PG&W 1993, the Commission rejected arguments by the OCA that PECO 1983 mandated denial of the utility's claim for early window costs associated with several new water treatment plants. Adopting the ALJ's recommendation, the Commission concluded that PECO 1983 was distinguishable because, inter alia, the "pollution control equipment was ancillary to the principal utility plant."

PG&W 1993, 79 Pa. P.U.C. at 368. Finding that the utility's claim for new treatment plant costs was "best analogized" to the claim for new nuclear plant costs approved in PECO 1990, the Commission held that PECO 1983 was inapposite (Id.).

Citing Commissioner Rolka's concurring opinion in PECO 1990, the OCA also argues that the Company has failed to show that it has not already been compensated for its early window costs through prior rates during the period when such costs were experienced (OCA Main Brief, pp. 115-116). Based on the fact that PP&L avoided filing the instant case for over nine years, the OCA suggests that PP&L's rates were excessively high so as to allow the Company to recover these additional costs. The OCA offers no evidence to support this completely unfounded allegation. PP&L has explained the efforts it undertook to avoid filing the instant case (PP&L Initial Brief, p. 112). If PP&L's rates were truly as high as the OCA suggests, then the OCA was remiss in upholding its obligation to protect consumer interests by filing a complaint. It is particularly disturbing that the OCA would make such a claim when it presented absolutely no evidence to support it.

In summary, the Company has demonstrated that its claimed SSES early window deferrals do not violate the rule against retroactive ratemaking. PP&L's claim fully satisfies the requirements established by the Commission in PECO 1990 and PG&W

1993. The OTS and OCA arguments to the contrary should be rejected.

6. SSES Refueling Outage Expense

The OCA recommends that the Commission reduce PP&L's claim for SSES refueling outage costs by $1,111,000 or $873,000 on a Pennsylvania jurisdictional basis (OCA Main Brief, p. 118). Specifically, the OCA proposes to reduce the Company's claim to reflect annualized costs based on the "most recent" refueling outage at each plant (i.e., Unit 1, Reload 8 and Unit 2, Reload 7) (OCA Main Brief, p. 118).

The Company has already addressed the majority of the OCA's arguments in its Initial Brief (pp. 103-105). However, the OCA continues to insist that its proposed adjustment is based on the "most recent" refueling outage at each SSES unit. The OCA is in error and its recommendation, therefore, should be rejected.

The record evidence demonstrates that the OCA's adjustment is not based on the "most recent" refueling outage at each SSES unit. The OCA itself concedes that its adjustment is based on projected refueling costs for the next scheduled outage at each unit (OCA Main Brief, p. 118). In fact, the "most recent" outages are Unit 1, Reload 7 and Unit 2, Reload 6, both of which the OCA seeks to exclude from PP&L's claimed costs. Consistent with the OCA's stated rationale, the Company submits that it is more appropriate to determine SSES refueling outage expenses

based on the "most recent," actual costs of Unit 1, Reload 7 and Unit 2, Reload 6, rather than the estimated data relied upon by the OCA.

7. Environmental Remediation Costs

The OTS proposes to reduce PP&L's claimed environmental remediation expense by $326,000 or $266,000 on a PUC jurisdictional basis (OTS Main Brief, p. 85). This adjustment reflects the difference between the Company's claim of $5,400,000 based on estimated costs, and the maximum amount PP&L allegedly agreed to spend under its agreement with the Pennsylvania Department of Environmental Resources ("DER").[16/]

The OTS' recommendation should be rejected. Although the agreement requires PP&L to spend up to $5 million each year, it does not prohibit the Company from spending additional amounts to assure that the sites meet applicable clean-up standards and do not pose a threat to human health, safety or the environment.

In light of the number of sites and the type of work covered by the agreement, PP&L's claim of $5,400,000 for environmental remediation costs is reasonable. The OTS' proposed adjustment, therefore, should be rejected.

16/ The Company entered into an agreement with DER on April 27, 1995. This agreement requires PP&L to investigate and, if necessary, clean up 134 potentially contaminated sites (PP&L St. 2-R, pp. 2-3).

8. Uncollectible Accounts Expense

The OTS opposes the Company's claim for uncollectible accounts expense, and costs associated with its customer assistance program, which is referred to as the OnTrack Payment Program ("OTPP") (OTS Main Brief, pp. 101, 103).[17/] These adjustments lack merit and should be rejected.

First, as the OTS states, the only issue with regard to PP&L's claim for normal uncollectible expense is whether or not it is appropriate for the Company to base its request on its provision for uncollectible expense instead of projected actual write-offs (OTS Main Brief, p. 100). As explained in PP&L's Initial Brief (pp. 107-109), the Company's proposal is fully supported and provides a better matching of expenses and revenues than the OTS' recommended methodology.

The OTS attempts to bolster its position by arguing that PP&L's claim is overstated. Specifically, the OTS asserts that PP&L's funding reserve fails to reflect an alleged decreasing trend in actual write-offs (OTS Main Brief, pp. 100-101). However, as explained in PP&L's Initial Brief (pp. 108-109), the OTS frequently has proposed use of a three-year average for uncollectible accounts expense to better reflect the costs experienced by utilities. The unrebutted record evidence demonstrates that, in this proceeding, a three-year average of

17/ A detailed explanation of the Company's claim is included in its Initial Brief (pp. 107-111).

actual write-offs results in an allowance of $17.1 million, or $0.2 million higher than PP&L's claimed expense (PP&L St. 2-R, p. 7). PP&L's claim, therefore, understates the level of expense that would be calculated using a methodology frequently proposed by the OTS. Further, PP&L's claim does not include any incremental impacts on uncollectible accounts expense associated with this proposed rate increase.

Second, the OTS persists in arguing that the Company has failed to reflect potential Low Income Home Energy Assistance Program ("LIHEAP") funding in determining its level of OTPP uncollectible accounts expense (OTS Main Brief, p. 102). As explained in its Initial Brief (pp. 110-111), the OTS' adjustment should be rejected because it simply fails to recognize that Federal funding for LIHEAP has been reduced significantly in the past and likely will decrease further or be eliminated as a result of ongoing Federal budget tightening.[18/]

9. Rate Case Expense

The OTS proposes to reduce the Company's PUC jurisdictional rate case expense claim to reflect a four-year normalization period rather than the two-year period utilized by PP&L (OTS Main Brief, p. 67). Similarly, the DOD recommends a three-year

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18/ Even if the Commission determines that an adjustment is appropriate, record evidence demonstrates that a maximum adjustment of $130,000 would be more reasonable than the OTS' recommendation (PP&L St. 11-R, pp. 2-4).

normalization period (DOD Brief, p. 11).[19/] None of the parties challenge the reasonableness or prudency of the Company's claimed costs.

The OTS asserts that a review of PP&L's base rate cases over a twenty-year period reveals that the Company has filed, on average, a rate case every four years (OTS Main Brief, p. 70). As explained in PP&L's Initial Brief (pp. 111-113), the OTS' proposal is flawed and should be rejected. The conditions that permitted the Company to delay filing this base rate case for over ten years (125 months) are not likely to recur (PP&L St. 3-R, pp. 5-6). The 125-month period, therefore, is abnormal and should be excluded from a determination of the proper rate case normalization period. Indeed, if the OTS' analysis is corrected to exclude this aberration, the Company's average rate case filing period is 2.3 years (PP&L St. 3-R, pp. 5-6). PP&L's proposed two-year period is plainly reasonable and, therefore, should be adopted.

In addition, the OTS' recommendation should be rejected because it ignores record evidence indicating that PP&L may be forced to file its next base rate in less than two years (PP&L St. 3-R, p. 6).

19/ Because the DOD includes no discussion of its proposed adjustment in its Brief, PP&L will focus on those arguments raised by the OTS. As explained below, PP&L's proposed two-year period is fully supported. The DOD's recommendation, therefore, should be rejected for the same reasons discussed below in connection with the OTS' proposed adjustment.

10. OTS' Arguments Regarding PP&L's Customer And Community Needs Programs Are Without Merit And Should Be Rejected

At pages 72-82 of its Main Brief, OTS objects to "ratepayer funding" of portions of PP&L's proposed Build-A-Neighborhood, Affordable Housing and Small Business Programs on the theory that it is improper, illegal and unreasonably discriminatory for PP&L to "request that customers pay for urban neighborhood revitalization, start up costs for small businesses or provide affordable housing for other customers" (OTS Main Brief, pp. 78-79). OTS is wrong.

OTS cites several cases for the proposition that the Commission "has no power to authorize 'forced contributions' or place a tax on ratepayers to pay for socio-economic theories proposed in a ratemaking proceedings" (OTS Main Brief, p. 79). To some extent, PP&L is sympathetic to the general legal proposition espoused by OTS. However, as PP&L has repeatedly explained, PP&L is not asking ratepayers to pay for neighborhood revitalization, start-up costs for small businesses, affordable housing for other customers or other socio-economic programs. PP&L is asking the Commission to approve ratepayer funding of certain conservation, efficiency, load management and rate incentive costs associated with these three programs. PP&L is not requesting and has never requested that the Commission approve ratepayer funding of the purely social costs of these programs. These social costs, e.g., charitable contributions,

neighborhood improvements, closing and real estate costs, grants for small businesses and so on, will be paid and funded entirely by shareholders, not ratepayers (PP&L St. 11, p. 30; PP&L St. 11-R, p. 11). OTS inexplicably refuses to recognize the different treatment of these two types of expenditures.

Further, the cases cited by OTS do not support its contentions. The U. S. Steel case does not stand for the proposition that any costs related to "socio-economic remedies" are illegal per se. U. S. Steel involved a challenge to the Commission's decision not to allocate a large portion of a Philadelphia Electric Company rate increase to the first 500 kwh of monthly usage by residential customers. U.S. Steel Corp. v. Pa. P.U.C., 37 Pa. Cmwlth. 173, 390 A.2d 865 (1978). The Court actually affirmed the Commission's allocation. The Court also confirmed the Commission's discretion to decide how to allocate and recover allowed revenues among rate classes and upheld the Commission's power to consider more than cost of service principles in such allocation. U. S. Steel, 390 A.2d at 871. Similarly, the Commission is empowered, under its broad powers to approve expenses and make appropriate rate allocations, to approve recovery of conservation, efficiency, load management and rate incentive costs associated with PP&L's proposed programs. While PP&L's three programs may on some level have a socio-economic orientation, these costs benefit ratepayers and are generally permitted by the Commission regardless of the specific program in which they are contained. PP&L is not suggesting that

the Commission use or mandate the proposed programs as a ratemaking or taxing device to solve socio-economic problems. PP&L simply is seeking rate recovery of conservation, load management and rate incentive costs which are routinely approved by the Commission in other contexts.

The Process Gas case, which noted that the Commission did not have the power to mandate or fund conservation programs, is inapplicable and has been reversed by legislative delegation of such power to the Commission. Process Gas Consumers Group v. Pa. P.U.C., 511 A.2d 1315 (1986). Process Gas involved the Commission's imposition of a rate surcharge to be added to the base industrial rates charged by gas utilities. The surcharge produced revenues in excess of individual utilities' revenue requirements as established in base rate proceedings. The Commission proposed to use the revenues derived from the surcharge to fund residential conservation programs. The Supreme Court held that the Commission did not have the power to mandate programs upon which to spend such funds. Process Gas, 511 A.2d at 1321. However, the General Assembly has modified the Public Utility Code, and the Commission now has authority to permit recovery of expenses related to conservation and load management. See, e.g., 66 Pa.C.S. §§ 523, 1319. The Commission has ample authority to permit recovery of conservation, efficiency, load management and rate incentive costs. See PP&L's Main Brief at pp. 116-119. Again, PP&L is not requesting that the Commission

require ratepayers to pay for any of the other costs of these programs. Process Gas simply does not apply.

Finally, OTS argues that PP&L's proposed expense claim constitutes unreasonable rate discrimination. PP&L's modest program will have little if any demonstrable effect on PP&L's rates, but will produce significant benefits. Under such circumstances, PP&L's proposed programs do not constitute unreasonable rate discrimination. OTS is complaining about program expenditures not rate differences. In any event, although not requested here, the Commission has broad authority to establish rate differences that are factually supportable. Mill v. Pa. P.U.C., 67 Pa. Cmwlth. 597, 447 A.2d 1100 (1982). Many of PP&L's programs are paid for by all customers, but benefit participants to a significantly greater degree than non-participants. All customers can and do benefit from such programs. This is nothing new and does not result in unreasonable rate discrimination.

Recovery of the types of conservation, efficiency, load management and rate incentive costs of these programs are legal, proper and appropriate as explained by PP&L at pages 116-120 of its Initial Brief. OTS's claims are without merit and should be rejected.

B. Decommissioning/Dismantlement Costs

1. Nuclear Decommissioning Costs

In their Main Briefs, the OTS, OCA and PPLICA have discussed the five major adjustments proposed by their respective witnesses to PP&L's claim for nuclear decommissioning expense. Their principal arguments, however, were fully addressed in PP&L's Initial Brief (pp. 124-146). Accordingly, only the most significant errors, mischaracterizations and new contentions appearing in the opposing parties' Main Briefs need be addressed. In addition, PP&L notes that Mr. Eric Epstein has filed a Brief, in which he has proposed disallowing a substantial portion of PP&L's nuclear decommissioning expense claim. As explained hereafter, Mr. Epstein's proposal is an attempt to introduce a wholly new issue at the briefing stage, which is a practice this Commission has repeatedly condemned. Moreover, his proposal is not supported by the evidence and is directly contrary to prior Commission decisions.

Before dealing with specific adjustments, it is important to contrast the nature of the evidence presented by the Company and by the OCA, which is the party that raised factual and regulatory issues relating to the site-specific decommissioning study prepared by Mr. Thomas S. LaGuardia, President of TLG Services, Inc. As explained in PP&L's Initial Brief (p. 125), TLG and Mr. LaGuardia have extensive "hands on" experience in planning and managing nuclear decommissioning projects; have prepared

site-specific decommissioning plans for most of the nuclear plants in the United States; and have been called upon by the Nuclear Regulatory Commission ("NRC"), the Department of Energy and the Atomic Industrial Forum to prepare books, manuals and studies on the subjects of nuclear decommissioning and decommissioning cost estimation.

The OCA's witness on decommissioning issues was Mr. Dale G. Bridenbaugh, who is quoted extensively in the OCA's Main Brief. Before becoming a consultant in 1976, Mr. Bridenbaugh worked for the General Electric Company in various capacities which, notably, did not involve any aspect of nuclear decommissioning. In short, he has neither training nor work experience in the decommissioning field, and his direct experience of any kind in the nuclear industry ceased in the mid-1970s. As a consequence, and as Mr. Bridenbaugh's testimony in this case makes clear, his familiarity with the subject of nuclear decommissioning was gleaned from second-hand sources, such as the magazine articles on which he relied to try to support several major contentions (e.g., OCA Exhibit DGB-2; Tr. 2294).

Not surprisingly, because Mr. Bridenbaugh lacked access to reliable, primary sources, he drew a number of inferences and assumptions from his limited information base that are simply contrary to the facts. One such example, which the OCA chose to repeat in its Main Brief (pp. 192-93), was Mr. Bridenbaugh's assertion that the "actual contingency" in the Shippingport

decommissioning project was "5% of the base estimate." When forced to document the source of his data, Mr. Bridenbaugh produced a magazine article which did not even discuss the contingency (Tr. 2301). Moreover, his attempted interpolation of the "actual" contingency was wrong, as pointed out by Mr. LaGuardia, who had a lead role in the Shippingport project and knows the cost data inside-out. In fact, contingencies actually experienced in executing that project added approximately 15% to the base estimate (Tr. 2066).

While Mr. Bridenbaugh no doubt testified in good faith, his lack of any prior experience in the decommissioning field and his virtually exclusive reliance on second-hand sources should alone make most of his sweeping conclusions suspect. Additionally, as explained below and in PP&L's Initial Brief, Mr. LaGuardia, through detailed and well-documented testimony, has identified the errors in all of Mr. Bridenbaugh's material contentions.

a. Removal Of Non-Radiological Structures

The OCA is the only party that has disputed the Company's claim for dismantling and removing non-radiological structures. While acknowledging that Commission precedent supports the recovery of such costs (OCA Main Brief, pp. 179-180), the OCA contends the Commission should reexamine its position in light of an Illinois Commerce Commission Order that denied Commonwealth Edison Company's request to recover non-radiological decommissioning expense. Re Commonwealth Edison, 158 PUR4th 458,

499 (1995). However, in that case, the utility's decommissioning study[20/] assumed that the sites of all thirteen of Commonwealth Edison's nuclear units would be returned to "greenfield" status and none of the non-radiological structures would be re-used. The Illinois Commission held that such an assumption was unreasonable.

In contrast to the Commonwealth Edison decommissioning study, Mr. LaGuardia's site-specific study for SSES 1 and 2 did not include any decommissioning costs for non-radiological structures that are reasonably subject to future re-use, which include the following (Tr. 2065):

- Switch Yard
- Transmission Towers and Lines
- Culverts and Head Walls
- Lay-Down Yard
- Meteorological Station
- Site Access Railroad Line
- Facilities Treatment Plant
- Sewage Treatment Plant
- Energy Operations Center
- Energy Information Center

Clearly, Mr. LaGuardia's decommissioning study for SSES is not subject to the defects that caused the Illinois Commission to reject Commonwealth Edison's claim. It is equally clear that the OCA's repeated allegation that Mr. LaGuardia failed to consider possible re-use of non-radiological structures is demonstrably incorrect (PP&L Initial Brief, pp. 128-129).

20/ That study was not prepared by TLG or Mr. LaGuardia.

Finally, the OCA has suggested that non-radiological structures do not pose the same level of health and safety risks as radioactively contaminated facilities; that applicable building codes may not require non-radiological structures to be removed despite their instability; 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) for prospective recovery of non-radiological decommissioning costs (OCA Main Brief, pp. 178, 182-183). 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 as unsupported when made in earlier cases where non-radiological decommissioning costs were approved:

> As also noted by the ALJ, there are safety considerations associated with this issue. The removal of contaminated facilities would severely damage a large portion of non-contaminated structures. Given current requirements both in Ohio and Pennsylvania regarding abandoned structures, the prudent course is to plan for the removal of all the structures.

Pa. P.U.C. v. Pennsylvania Power Co., 67 Pa. P.U.C. 91, 140 (1988)

b. Contingency

The OTS and the OCA oppose inclusion by Mr. LaGuardia of a contingency in his estimate of nuclear decommissioning costs. In their Main Briefs, the OTS (pp. 48-49) and the OCA (pp. 190 and 193) have attempted to support their position by relying

principally upon the Order in PP&L's last base rate case, wherein the Commission rejected a 25% contingency. However, as fully explained in PP&L's Initial Brief (p. 136), the decommissioning study and contingency analysis presented in this proceeding are much different and more precise than the "generic" estimates offered in the last case. Additionally, since that time, many more jurisdictions have approved the use of a contingency factor. In fact, this Commission has approved decommissioning cost estimates for other utilities that include a contingency (PP&L Initial Brief, pp. 130 and 136).

The OCA has also cited Commonwealth Edison, supra, where the Illinois Commission rejected a 25% contingency factor (OCA Main Brief, p. 190). Unfortunately, the OCA did not tell the whole story, which would underscore several distinguishing features of that case.

First, the Illinois Commission's decision was based on the fact that Commonwealth Edison used escalation factors that were "well in excess of the general inflation rate," such as a 10% escalation rate for waste disposal. 158 PUR4th at 502. As a result, the Illinois Commission found that the escalation factors used in Commonwealth Edison's decommissioning study already included an element of "contingency." In contrast, PP&L has used only a general inflation index to escalate its decommissioning costs to the end of the SSES license life.

Second, in lieu of a contingency, the Illinois Commission approved a "Decommissioning Rider" containing an automatic adjustment clause for decommissioning expense, so that "any increases or decreases in decommissioning costs would be reflected just as with the fuel adjustment clause." In so doing, the Illinois Commission stated: "Edison should not have to file a rate case to collect reasonable costs expected to be incurred during decommissioning." 158 PUR4th at 510. While the OCA opposes the inclusion of a contingency on the strength of Commonwealth Edison, it is a virtual certainty that the OCA would not support PP&L's adoption of a "Decommissioning Rider" like the one approved in that case. Indeed, if the OCA were willing to support such a Rider, then perhaps some credence might be given to its argument that a contingency factor is unnecessary because "cost estimates can be periodically updated" (OCA Brief, p. 192).

Additionally, the OCA has repeated in its Main Brief Mr. Bridenbaugh's hypothesis that no contingency should be recognized because various alleged "uncertainties" might cause some elements of decommissioning costs to turn out lower than estimated. However, each "uncertainty" discussed by Mr. Bridenbaugh would be unlikely to reduce costs and much more likely to be the cause of future increases (PP&L Initial Brief, pp. 132-135). This is undoubtedly the case with low-level waste disposal, which Mr. Bridenbaugh claimed is the cost item subject to greatest uncertainty. As Mr. LaGuardia explained, the cost of $279 per cubic foot used in the SSES study is clearly

conservative, whether measured by current actual costs or estimates approved by commissions in other jurisdictions. Mr. LaGuardia's testimony was corroborated by recent action of the South Carolina legislature, which voted to reopen the Barnwell site for waste from outside the Southeastern Compact, but at a cost of $335 per cubic foot.

c. Trust Fund Earnings Rate

The OCA and PPLICA contend that the trust fund earnings rate used in PP&L's annuity calculation should be higher, primarily to reflect a higher rate of return on the projected equity component of the fund (OCA Main Brief, pp. 169-174; PPLICA Main Brief, p. 42). As discussed in detail in the Company's Initial Brief (pp. 137-142), 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. 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. Moreover, the Company's claim is an opportunity cost rate, which it may or may not achieve.

Second, criticisms that the expected 30% commitment of trust assets to equity investments is too low ignore the nature of the liability being funded. They also fail to take into account the need to phase into equities and "ramp-down" the equity investment as the shutdown of SSES approaches.

Third, the opposing parties ignore the relationship between the inflation and earnings rates used in the annuity calculation. 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 rate proposed by the OCA.

d. Post-Shutdown Earnings Accrual

The OCA has acknowledged that Mr. LaGuardia testified correctly that NRC rules require full funding of radiological decommissioning costs as of the time a nuclear unit is retired (OCA Main Brief, p. 168). However, the OCA contends that the NRC might grant an "exemption" to that requirement, so that PP&L could recognize post-shutdown trust fund earnings in its annuity calculation. The OCA bases its position on the testimony of Mr. Catlin, who claimed that this view was confirmed by a telephone call to an NRC official (OCA St. 6A, pp. 15-16). However, as Mr. LaGuardia made clear, no such blanket exemption has ever been given. Moreover, Mr. Catlin may have been confused

by the fact that an exception to the general rule requiring full funding by the date of shutdown has been made where nuclear units were retired prematurely (Tr. 2075-76).

e. Amortization In Lieu Of Annuity

The OTS is the only party that disagrees with the use of the annuity method to calculate PP&L's nuclear decommissioning expense. As discussed in its Main Brief (pp. 46-53), 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[21/] and the trust fund earnings rate.[22/]

As to the Company's last case, the Commission approved the amortization method, but in a manner substantially different from that applied by the OTS's witness, Mr. Sivulich, in this proceeding. Specifically, the Commission permitted PP&L to recover deficiencies in prior accruals over a one-year period. Mr. Sivulich's proposed methodology would, in effect, amortize the deficiency over the remaining life of SSES (approximately 30 years). If a one-year deficiency amortization were adopted in connection with the simple accrual method, PP&L's claim would be

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21/ Contrary to the OTS's contention, 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.

22/ Although not mentioned by the OTS, amortization would eliminate the issue of post-shutdown trust fund earnings.

substantially higher. In its Main Brief, 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, it 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 Mr. Sivulich's method provides.

The OTS is correct that Mr. Sivulich's method does not require projections of future inflation[23/] or trust fund earnings rates. However, that is only because the simple accrual method implicitly assumes that trust fund earnings will always equal the future escalation in the cost of decommissioning. That assumption is unrealistic, as experience has shown. As a result, the simple accrual method will "back-end load" expense recovery and will unfairly burden customers in the future with ever-increasing revenue requirements (PP&L Initial Brief, pp. 145-146).

23/ The simple accrual method does require recognition of prior period inflation not reflected in the decommissioning estimate, which is another factor Mr. Sivulich ignored. Specifically, Mr. LaGuardia's nuclear decommissioning cost estimate is stated in 1993 dollars. The trust fund balance used by Mr. Sivulich is as of September 30, 1995 (see OTS Ex. 2, Sch. 2, p. 2). Consequently, at a minimum, the 1993 cost estimate should be escalated to September 1995, which would result in an increase of approximately 8%.

f. Mr. Epstein's Proposal

Mr. Eric J. Epstein has filed a Main Brief in which he has identified for the first time in this proceeding a proposed adjustment to the Company's nuclear decommissioning expense claim. A substantial portion of that Brief is devoted to a discussion of non-record evidence, including the repetition of various hearsay statements by individuals with whom Mr. Epstein had telephone conversations over the past several weeks. For this reason, PP&L is filing a Motion to Strike all references to non-record factual averments in Mr. Epstein's Main Brief.

The alleged basis for Mr. Epstein's proposed adjustment follows a convoluted course, but appears to consist of four fundamental contentions (Epstein Main Brief, pp. 30-31):

(1) SSES 1 and 2 will be shut down before achieving their full license life of 40 years;

(2) As a consequence of (1), above, customers will not receive the economic benefits of low-cost energy for as long as was expected when SSES was planned and constructed;

(3) Viewed in retrospect, PP&L's decision to build SSES was imprudent; and

(4) Therefore, a portion of the total decommissioning cost should be borne by PP&L's shareholders.

Mr. Epstein has proposed that PP&L should be entitled to recover from customers the level of nuclear decommissioning costs estimated for Boiling Water Reactors in a 1986 generic study performed for the NRC by Batelle Pacific Northwest Laboratories

("BPNL Study"). Mr. Epstein states that those costs should be "indexed" to current price levels based on "generic increases projected by the [NRC]" but has provided neither a calculation of the 1995 indexed amount nor the indices that would be used for such a calculation.

While it would hardly be possible, in the limited context of a Reply Brief, to identify all of the errors, misstatements and mischaracterizations in Mr. Epstein's Main Brief, the major defects, which are outlined below, provide ample reason to disregard his argument and reject his proposed adjustment.

Introduction Of New Issues And Adjustments In Brief. Mr. Epstein waited until the briefing stage to introduce his "prudence" argument. Similarly, his proposal to base PP&L's nuclear decommissioning expense on the BPNL Study was put forth for the first time in his Main Brief. If permitted, Mr. Epstein's attempt to introduce a major new adjustment at this late stage would violate the Company's right to adequate notice of contested issues and to a reasonable opportunity to present responsive evidence.[24/] In fact, the Commission has repeatedly

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24/ Well-established minimum standards of due process in regulatory proceedings require notice of issues that will be raised for decision, and such notice must be adequate to enable the parties reasonably to address the issues on the record. Town Development, Inc. v. Pa. P.U.C., 50 Pa. Cmwlth. 104, 411 A.2d 1317 (1980). In the same vein, parties must be afforded an opportunity to present evidence and examine witnesses with respect to issues to be decided. Furthermore, the Commission must make its decision based solely upon facts in the record. See Duquesne Light Co. v. (continued...)

-- and forcefully -- stated that it simply will not tolerate such tactics. E.g., Pa. P.U.C. v. Philadelphia Electric Co., Docket No. R-891364 (May 16, 1990) (Order, p. 324) 1990 Pa. P.U.C. LEXIS 155; Pa. P.U.C. v. Philadelphia Electric Co., 57 Pa. P.U.C. 260, 270 (1983); Pa. P.U.C. v. Pennsylvania Power & Light Co., 57 Pa. P.U.C. 559, 596 (1983); Pa. P.U.C. v. Philadelphia Electric Co., 56 Pa. P.U.C. 191, 236 (1982). Accordingly, because of its belated introduction, Mr. Epstein's adjustment must be rejected.

Prudence. As previously noted, the heart of Mr. Epstein's argument involves the prudence of PP&L's decision to construct SSES. However, this issue was decided in PP&L's favor in the two prior rate cases in which SSES 1 and 2 were included in the Company's rate base. Pa. P.U.C. v. Pennsylvania Power & Light Co., 59 Pa. P.U.C. 332 (1985); Pa. P.U.C. v. Pennsylvania Power & Light Co., 57 Pa. P.U.C. 559 (1982). Because issues of prudence are based on facts that do not change from one test year to another, the Commonwealth Court has held that, once decided, they cannot be collaterally attacked in a subsequent proceeding. Keystone Water Co. v. Pa. P.U.C., 81 Pa. Cmwlth. 312, 474 A.2d 368 (1984); Philadelphia Electric Co. v. Pa. P.U.C., 61 Pa. Cmwlth. 325, 433 A.2d 620 (1981).

24/(...continued)
Pa. P.U.C., 96 Pa. Cmwlth. 168, 507 A.2d 433, 437 (1986) (Commission violated due process by failing to provide utility with adequate notice and a reasonable opportunity to present evidence before determining an issue).

Furthermore, Mr. Epstein's prudence argument is constructed almost entirely upon an improper retrospective analysis, i.e., using facts and outcomes known today to second-guess decisions made years ago. This kind of "Monday-morning quarterbacking" is totally antithetical to the concept of "prudence" as it has been developed and applied in public utility regulation in this state. E.g., Re Limerick Nuclear Generating Station, 56 Pa. P.U.C. 47, 58 (1982); Pittsburgh v. Pa. P.U.C., 370 Pa. 305, 319, 88 A.2d 59, 64 (1952) ("[N]o abuse of discretion . . . can be inferred based solely upon hindsight.").

License Life. Mr. Epstein's hypothesis that SSES will not operate for its entire license life is based on a litany of alleged performance and safety "problems." However, the record evidence totally refutes Mr. Epstein's suppositions. As explained by Mr. George T. Jones, PP&L's Vice President - Nuclear Engineering, SSES has had an outstanding operating record; has always compared favorably to the "best plants" in the United States; and has consistently scored high in the NRC's Systematic Assessment of Licensee Performance. Moreover, none of the alleged "problems" cited by Mr. Epstein was nearly as severe or pervasive as he has represented; all were promptly and adequately addressed; and, thus, they will have no impact on SSES's license life (PP&L Initial Brief, pp. 301-302). Simply stated, there is

not a shred of evidence that even suggests SSES will not operate for its entire license life.[25/]

BPNL Study. Use of the BPNL Study as Mr. Epstein has proposed is totally improper. That study is generic in nature and, as such, cannot adequately assess the costs associated with decommissioning SSES. As every other party in this case has acknowledged, and as virtually all public utility regulatory agencies that have dealt with the issue have recognized, site-specific decommissioning studies, like Mr. LaGuardia's, are always preferable to generic cost estimates.

For the reasons set forth herein, Mr. Epstein's proposed adjustment should be rejected.

2. Fossil Decommissioning Expense

The OTS, OCA, PPLICA and DOD have opposed the Company's proposal to establish an annuity to recover the cost of dismantling and demolishing fossil-fired generating stations. More specifically, the opposing parties have advanced three basic arguments to support their position: (1) the Company's proposal is a request to recover prospective net salvage and, therefore, is barred by Penn Sheraton, supra; (2) a similar claim was rejected in Pa. P.U.C. v. West Penn Power Co., Docket No.

25/ Ironically, the OCA's witness, Mr. Bridenbaugh, has argued as a purported reason for reducing PP&L's nuclear decommissioning expense that the license life of SSES could be extended beyond 40 years (OCA St. 4, p. 29).

R-0942986 (December 29, 1994) (Order, pp. 59-63); and (3) PP&L will not be harmed because it will recover these costs after-the-fact through the amortization of net negative salvage. Each argument is either wrong or fails to consider significant countervailing factors that clearly support the Company's proposal (PP&L Initial Brief, pp. 146-156).

Penn Sheraton. As explained by Mr. LaGuardia, there are significant health and safety concerns associated with the hazardous materials and chemicals present in fossil-fired generating plants. The hazardous nature of the work required to dismantle those plants, and the risks to the public of not performing that work properly, clearly justify extending to fossil plant decommissioning the same "health and safety" exception to Penn Sheraton permitted for nuclear facilities. As such, Penn Sheraton is not a legal bar to the Company's claim (PP&L Initial Brief, pp. 151-153).

West Penn. Admittedly, the Commission rejected a claim similar to PP&L's in West Penn, supra. Nonetheless, the issue of fossil plant decommissioning expense should be revisited because of the greater magnitude of that expense for PP&L and the severe impact on future customers that will result if cost recovery is deferred (PP&L Initial Brief, pp. 150-151).

Net Negative Salvage Amortization. The Company has never denied that the costs encompassed by its claim would be recoverable by means of a net negative salvage amortization at

some future date. However, the opposing parties have completely ignored the customer impact and inter-generational equity issues that their proposed approach would create (PP&L Initial Brief, pp. 153-156). As explained in PP&L's Initial Brief (pp. 148-149), the cost to decommission two of PP&L's large coal-fired plants is estimated to be $698 million. A five-year amortization of that amount would peak at approximately $139.7 million per year. That substantial expense would be imposed on customers no longer receiving service from the facilities that gave rise to the underlying costs. The Company's proposal, in contrast, would provide for the recovery of the same cost in annual installments of approximately $18 million over the remaining lives of those plants.

C. Depreciation Expense

A complete explanation of the basis for the Company's claim for annual depreciation and amortization expense has been provided in PP&L's Initial Brief (pp. 157-159). As explained therein, the OTS, OCA, PPLICA and DOD[26/] have each opposed one or more of the Company's proposals to levelize the Modified Sinking Fund ("MSF") depreciation accruals for pre-1989 SSES investment; to reflect slightly shorter depreciable lives for its older fossil-fired units; and to implement amortization

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26/ Because DOD has essentially incorporated by reference the arguments made by other parties, its Main Brief need not be separately addressed.

accounting for certain General Property Accounts. Each issue is addressed below.

1. Pre-1989 SSES Investment

The OTS, OCA, PPLICA and DOD have opposed the Company's request to set the depreciation expense for pre-1989 SSES investment at a levelized annual amount of $173 million for the period from September 30, 1995 to December 31, 1998. For the reasons set forth below and in the Company's Initial Brief (pp. 160-167), none of the arguments advanced by the opposing parties is a valid basis for denying the Company's claim.

In its Main Brief (pp. 62-67), the OTS has simply repeated the four points offered by its witness, Mr. Sivulich, for denying MSF levelization. Each of these points was discussed in the Company's Initial Brief (pp. 162-164) and, as explained therein, are without merit. The substance of the OTS's argument 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. As the Company has explained, levelizing MSF not only provides a more equitable distribution of depreciation expense over the remaining period that MSF will be in effect, but will smooth the transition from MSF to straight-line depreciation.

In its Main Brief, the OCA has reasserted the contention of its witness, Dr. Johnson, that levelizing MSF would result in "inconsistent treatment" of depreciation expense and rate base, which will permit PP&L to "over recover" its revenue requirement. However, that argument is premised upon a projection of PP&L's future rate base which assumes that utility plant in service will remain static over the next 39 months. If, instead, a reasonable level of growth in PP&L's plant in service balances were used in Dr. Johnson's analysis, the exact opposite conclusion would be reached, i.e., there would be no "over-recovery" and, 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 under-recovery (PP&L Initial Brief, pp. 164-165).

PPLICA's opposition to the Company's proposal is based on the testimony of its witness, Mr. Kollen, to the effect that levelizing MSF depreciation is an "attempt to reach beyond the test year" (PPLICA Main Brief, pp. 40-41). This argument ignores the fact that levelizing MSF depreciation replicates the straight-line method, because the remaining amount of MSF depreciation (approximately $562 million) will be recovered in equal annual installments. In view of the fact that PP&L uses the straight-line method to depreciate the rest of its plant-in-service and the straight-line method is universally accepted as fair and reasonable, the proposal to levelize MSF depreciation can hardly be regarded as an inappropriate deviation from

standard depreciation practice that violates the test year concept.

2. Depreciable Lives Of The Older Fossil-Fired Units

The OTS, OCA and PPLICA have offered several grounds for opposing the Company's proposal to calculate the depreciation expense for Sunbury 1, 2, 3 and 4 ("Sunbury"), Martins Creek 1 and 2 and Holtwood 17 ("Holtwood") (collectively, the "older fossil-fired units") based on an estimated deactivation date of 2003.[27/] However, three themes emerge from the opposing parties' respective Main Briefs: (1) the Company does not have a current "plan" to retire these units; (2) no change justifying the earlier deactivation date has occurred since the Company filed its 1994 Annual Resource Planning Report ("ARPR") or the associated Five-Year Upgrade Plan For Coal-Fired Generation ("Five-Year Plan") on May 2, 1994; and (3) no studies or analyses support the proposed deactivation date. Each of these contentions was discussed in detail in the Company's Initial Brief (pp. 167-180) and, as summarized below, shown to be meritless.

Retirement "Plan". The opposing parties repeatedly assert that no credence should be given to PP&L's proposed deactivation date for the older fossil-fired units in the absence of a "plan"

27/ The 2003 deactivation date would result in life spans shorter than those currently being used to depreciated these units, but longer than those approved in the Company's last base rate case (PP&L Initial Brief, pp. 167-168).

for their retirement (OTS Main Brief, pp. 56-56; OCA Main Brief, pp. 129-130). However, none of the parties has articulated what such a "plan" would consist of or why a "plan" is required to substantiate the proposed deactivation date of the older fossil-fired units, but not any of PP&L's other generating plants. In fact, a "plan" for retirement of any unit would not even be initiated until shortly before the unit is to be taken out of service (Tr. 1936-37). Furthermore, the absence of such a "plan" has not caused the opposing parties to question the retirement dates for any of PP&L's other major facilities.

The OCA also has argued that, without a definitive retirement "plan" in place, PP&L's proposed deactivation date simply reflects the "possibility" of retirement (OCA Main Brief, p. 132). Unfortunately, neither the OCA nor its witness, Dr. Johnson, understood or appreciated the fact that any future deactivation date for a major facility that is used for depreciation purposes reflects the "possibility" of retirement (PP&L St. 4-R, pp. 18-19). Retirement dates are not written in stone, as evidenced by the changes in life spans made for depreciation purposes for the older fossil units in 1988 (PP&L Initial Brief, p. 168). Rather, the prospective deactivation date must reflect the aggregate of engineering and economic risks that make the "possibility" of retirement at any point in time more or less likely. As fully explained in PP&L's Initial Brief (pp. 171-172), the proposed deactivation date of 2003 properly reflects the substantial risks and costs created by

the 1990 CAAA. The opposing parties, however, propose that those risks simply be ignored.

Changed Circumstances Since May 1994. In an attempt to justify their positions, the opposing parties have relied heavily upon the absence of an explicit statement in either PP&L's 1994 ARPR or its 1994 Five-Year Plan that the older fossil-fired units will be retired in 2003. Of course, they have ignored the statements in those documents to the effect that planning decisions might have to be revisited based on capital additions required to comply with Titles I and III of the CAAA (PP&L Initial Brief, p. 176; Tr. 164-165). Instead, the opposing parties have advanced, in one form or another, the argument made in the OCA's Main Brief (pp. 130-131) that "nothing has changed" since the 1994 ARPR and Five-Year Plan were submitted.

As Mr. Krall explained, a great deal has changed since those reports were filed. Most importantly, on September 27, 1994, the member states of the Ozone Transport Commission executed a Memorandum of Understanding which made it clear that the magnitude of the nitrogen oxide (NO_x) and air toxics reductions to be implemented under the CAAA would require much larger capital additions for emissions control than had previously been contemplated (PP&L Initial Brief, p. 177; Tr. 1934 and 1938). For that reason, post-September 1994 analyses, which incorporated those capital additions, show that the continued operation of the older fossil-fired units beyond the compliance deadlines in 2003

may not be economically justified based on the information currently available (PP&L St. 5-R, p. 9).

Studies And Analyses. Incredibly, the OCA and PPLICA have contended that PP&L did not present "any sound engineering or economic analysis" to support its proposed deactivation date for the older fossil-fired units. In fact, Mr. Krall presented a detailed explanation of the economic analysis prepared by the Company and provided, as an exhibit, the portions thereof related to Martins Creek 1 and 2.[28/] Although Dr. Johnson and Mr. Kollen, on behalf of the OCA and PPLICA, respectively, questioned the validity of those analyses, neither witness could identify any fact, assumption or analytic technique he believed to be wrong or thought should be changed. Instead, and as the OCA's and PPLICA's Main Briefs bear out, their criticisms were grounded on the assertion that the Company's analyses should not be believed because they were prepared after the 1994 ARPR and Five-year Plan were submitted. However, as previously explained, in view of the dramatic new development heralded by the execution of the Interstate Compact on CAAA compliance in September 1994, there was a very good reason why the post-September 1994 analyses

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28/ The OCA has contended that the Company's evidence is incomplete because only the Martins Creek portion of the analysis was put on the record (OCA Main Brief, pp. 136-137). Perhaps, the OCA has overlooked the fact that the entire analysis for all of the older fossil-fired units was provided in responses to interrogatories of the OTS and OCA, as Mr. Krall noted (PP&L St. 5-R, pp. 5-6).

looked considerably different from earlier studies (Tr. 1934 and 1938).

Finally, the opposing parties have attempted to gloss over the investments that would be necessary to extend the lives of the older fossil-fired units beyond 2003. Those investments would nearly double the rate base of those units. As explained in PP&L's Initial Brief (pp. 172-175), where investments of that magnitude are required for life extension, sound depreciation practices dictate that the extended lives not be used for depreciation purposes until the associated investment is also reflected in the utility's rate base. Only in this way will the fixed costs of the old and new investment in such facilities be equitably distributed over their useful lives. This principle is well-recognized and has been approved by this Commission and commissions in other states.

In summary, there is substantial evidence that the Company's older fossil-fired units may not be operated economically beyond 2003 and, for that reason, life spans terminating on that date should be used to calculate annual depreciation expense in this case. Furthermore, even if it were assumed that the lives of those units would be extended beyond 2003, the longer lives should not be used to reduce depreciation accrual rates for ratemaking purposes until the capital additions necessary for life extension have been completed and recognized in rate base.

3. General Plant Amortization Accounting

For the most part, the arguments advanced by the OCA to reduce the Company's claim for amortization expense associated with General Plant Accounts have been discussed in PP&L's Initial Brief (pp,. 180-185) and, therefore, an extensive response is not necessary. However, there are several errors and misstatements in the OCA's Main Brief that must be addressed.

First, the OCA has misstated PP&L's claim and Dr. Johnson's proposed adjustment. As revised by Mr. Hoch, the Company's claim for General Plant Account amortization expense is $3,858,700 (Tr. 1845). The level of amortization expense calculated by Dr. Johnson was $1,357,990 (OCA Ex. CEJ-2, Sch. 3, p. 2). Consequently, the OCA's proposed adjustment is $2,500,710, not $3,028,129, as shown in the OCA's Main Brief (p. 147).

Second, the OCA contends that the manner in which the Company has implemented amortization accounting, i.e., by treating vintages older than the proposed amortization period as fully depreciated, "will increase the level of expense included in the test year for these accounts" (OCA Main Brief, p. 146). That statement is demonstrably not correct. By treating vintages of property older than the proposed amortization period as fully depreciated, no depreciation or amortization expense is included in the Company's claim with respect to them. If anything, the convention employed by the Company actually reduces depreciation/amortization expense. Moreover, the same convention

is routinely used to implement amortization accounting and was incorporated in the amortization proposals of UGI Utilities, Inc. and West Penn Power Company that were approved by the Commission (PP&L Initial Brief, pp. 180 and 183; Tr. 1848).

Third, as explained in detail in PP&L's Initial Brief (pp. 182-183), Dr. Johnson's proposed adjustment reflects not only different amortization periods, but a different implementation procedure as well. Dr. Johnson's implementation procedure is wrong and, in itself, is responsible for a part of his proposed adjustment.[29/] However, Dr. Johnson has not provided a breakout of the portion of his adjustment attributable solely to changes in PP&L's amortization periods. In all likelihood, Dr. Johnson's unorthodox implementation procedure accounts for a substantial part of the difference between his calculation of General Plant Account amortization expense and the Company's.

29/ Unfortunately, Dr. Johnson did not identify or discuss the differences between his proposed implementation procedure and the Company's until his surrebuttal statement was presented, which left the Company with relatively little time to respond (Tr. 1846).

V. TAXES

A. Income Taxes

1. Consolidated Tax Savings

Using the modified effective tax rate method, the OCA proposes to reduce PP&L's claimed Federal income tax expense to recognize "consolidated tax savings" of $2,548,000 on a total Company basis, and $2,161,000 on a Pennsylvania jurisdictional basis (OCA St. 6, p. 38). As explained in PP&L's Initial Brief (pp. 186-192), the OCA's adjustment lacks merit and should be rejected.

In its Main Brief (p. 202), the OCA argues that it is appropriate to include losses attributable to Pennsylvania Mines Corporation ("PMC") and Rushton Mining Company ("Rushton") in its adjustment even though both companies have ceased operations. The OCA's argument is based on the contention that the Company has failed to show that PMC and Rushton will not incur losses in the future (Id.). This argument is completely without merit and should be rejected for two reasons.

First, it is self-evident that PMC and Rushton will not continue to incur tax losses or produce taxable revenues "on a going forward basis." The tax losses incurred by PMC and Rushton following termination of their operations are attributable to timing differences created by the Federal tax rules. Such

temporary tax/book timing losses are not properly considered in establishing rates.[30/]

Second, as the Company has explained, PMC and Rushton were operated on a non-profit basis (PP&L Initial Brief, p. 190). Any income or loss shown for either company in any given year is a result of temporary tax/book timing differences.[31/] Because the OCA has already recognized that taxable income attributable to companies operating on a non-profit basis should be excluded,[32/] it also should exclude taxable losses incurred by PMC and Rushton.

30/ Indeed, the OCA itself proposed to exclude tax losses attributable to discontinued operations in Pa. P.U.C. v. Philadelphia Suburban Water Co., 75 Pa. P.U.C. 391, 421 (1991).

31/ Mr. Bernini explained (PP&L St. 3-R, p. 16):

> [W]hen these mines were operating, they shipped all their coal to PP&L. PP&L paid these companies their cost of producing the coal so that, on a book basis, the coal mines made no profit and incurred no loss. Any taxable income and losses occurred principally due to the differences in timing when certain expenses were recorded on the books but were not currently deductible for tax purposes. As a result of such timing differences, these companies would show small taxable income in some years and small taxable losses in other years. Timing differences of this type are not recurring losses of the type for which consolidated tax savings adjustments should be made.

32/ OCA witness Catlin excluded from his adjustment all taxable income attributable to Interstate Energy Corporation because it operates on a non-profit basis (OCA St. 6, pp. 37-38).

Finally, the OCA argues that PP&L has failed to demonstrate that customers have already received the benefit of the tax losses generated by PMC and Rushton through lower ECR charges (OCA Main Brief, p. 203). In support of its position, however, the Company submitted the rebuttal testimony of Mr. Bernini (PP&L St. 3-R, pp. 16-17). The OCA did not offer any evidence on this point and elected not to challenge Mr. Bernini's conclusions. The OCA should not be allowed to attack the Company's evidence for the first time in its brief. The OCA's argument is wholly without merit and, therefore, should be rejected.

2. Adjustments To Taxable Income

The OCA proposes three additional adjustments to the Company's claimed test year income tax expenses (OCA Main Brief, pp. 203-207). The Company fully addressed the various weaknesses in each of these adjustments in its Initial Brief (pp. 192-194). One point, however, deserves further discussion.

The OCA's adjustments are wholly inappropriate attempts to "cherry pick" individual expense items to reduce the Company's rate request. As previously explained, the OCA tends to reflect only those items that reduce PP&L's rate request; it conveniently ignores the fact that other items may increase the Company's request. The Company illustrated this flaw with a single example regarding a tax/book timing difference in the treatment of power plant inventory (PP&L St. 3-R, p. 19). The OCA agreed with the

Company's criticism, thereby demonstrating that any adjustment should be based on a complete analysis of all items, not just individual expenses.

3. Gross Receipts Tax

The OCA proposes to reduce PP&L's claimed gross receipts tax expense by $745,000 to reflect uncollectible expenses (OCA Main Brief, p. 196). PP&L has already explained that the OCA's proposed adjustment is completely inappropriate (PP&L Initial Brief, pp. 194-196).

In its Main Brief, the OCA asserts that the Commission adopted this same adjustment in West Penn 1994. To the Company's knowledge, West Penn 1994 is the only case in which this recommendation has been adopted. It does not appear, however, that the OCA's proposal was seriously contested in West Penn 1994. As PP&L explained in its Initial Brief (pp. 194-196), the OCA's recommended adjustment is completely inappropriate. The Company, therefore, submits that the Commission's prior Order in West Penn 1994 should not control in this case, and that a decision fully considering this issue on the merits is warranted.

VI. FAIR RATE OF RETURN

A. Capital Structure

The Company's proposed capital structure ratios are reasonable, fully consistent with well-established Commission precedent and should be approved. As explained in the Company's Initial Brief (pp. 200-209), the capital structure adjustments proposed by the opposing parties are without merit and should be rejected.

1. PPLICA's Proposed Use Of PP&L's Historic Test Year End Capital Structure Is Unsupported And Internally Inconsistent

PPLICA continues to argue that the Company's overall rate of return should be determined by reference to its actual capital structure ratios at September 30, 1994, and not its projected capital structure ratios at future test year end. As explained in the Company's Initial Brief (pp. 201-202), this recommendation is unsupported and internally inconsistent and should, therefore, be disregarded.

When PPLICA's witness, Mr. Baudino, was cross-examined with respect to his proposal, he enumerated certain "concerns" regarding PP&L's financing plans (Tr. 1556). However, Mr. Moul fully addressed Mr. Baudino's concerns in his rebuttal testimony and, significantly, Mr. Baudino offered no response. Not surprisingly PPLICA's Main Brief is silent as to Mr. Baudino's initial concerns. Instead, PPLICA attempts to find support for

its position in a 1990 Commission Order involving National Fuel Gas. See Pa.P.U.C. v. National Fuel Gas Distribution Corp., 73 Pa. P.U.C. 552 (1990)("NFG").

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 denied as being "too speculative" (PPLICA Main Brief, pp. 27-28). Rather, the problem in the NFG case was that no exception was taken. The factors the equity issuance in question was not identified or incorporated into the utility's overall rate of return request until the rebuttal phase of the case. The OTS protested the timing of the revision, the ALJ agreed and it appears that which troubled the parties in NFG are clearly not present here.

2. The OCA's Concerns Over The Proposed New Issuance Of Common Equity Are Without Merit And Should Be Rejected

The OCA contends that PP&L's planned issuance of common equity should be disregarded unless it actually takes place before the Commission reaches a decision in this proceeding (OCA Main Brief, pp. 213-214). This condition should be rejected. All elements of the ratemaking formula, e.g., revenues, expenses and rate base, are based on the best estimates available at the time the record is closed. These estimates are not re-evaluated based on actual conditions at the time of the Commission's decision. Similarly, there should be no requirement

that the proposed new equity actually be issued before the Commission's decision in order for it to be reflected in rates.

The undisputed record evidence shows that the Company must issue additional common equity to improve its financial condition, to increase its common equity ratio and to avoid further bond downgradings (PP&L Initial Brief, pp. 203-204). It also is undisputed that the Company has actual plans to issue additional common equity and has taken several important steps to implement that plan (Id.). The best, and indeed the only, evidence of record is that the Company should and will issue additional common equity shortly. That issuance, therefore, should be fully reflected in rates.

3. Debt Reacquisition Premiums

a. The OCA's Refusal To Recognize The Capital Structure Effect Of Reacquisition Premiums Is Illogical, Inconsistent And At Odds With Controlling Commission Precedent

As explained in the Company's Initial Brief (pp. 204-205), the Commission has actively encouraged utilities to refinance high cost debt and has repeatedly held that utilities can recover both a return of and return on premiums incurred as the result of such reacquisitions. The Commission also has established a consistent methodology to accomplish this objective -- the return of the premium is recovered through an amortization of the premium over the life of the new debt and a return on the premiums is provided by adjusting both the debt cost rate and the

debt ratio in the capital structure (PP&L Initial Brief, pp. 204-205).

The OCA asserts that its adjustment provides both a return of and a return on the acquisition premium (OCA Main Brief, p. 221). This is not true. The OCA would, in fact, adjust only the debt cost rate and not the debt ratio in the capital structure. As fully explained in the Company's Initial Brief (pp. 205-207), this adjustment is incomplete and inconsistent, and would not permit the Company to earn a full return on the reacquisition premium.

The OCA candidly acknowledges, as it must, that its adjustment is inconsistent with controlling Commission precedent (OCA Main Brief, p. 222). The OCA instead asserts that prior Commission decisions do not apply because PP&L has not filed a rate case for ten years, allowing shareholders to enjoy all of the benefits of lower cost debt during the intervening period (Id.). This argument is incorrect for two reasons. First, customers did, in fact, benefit because the reacquisition of high-cost debt helped PP&L avoid increasing its base rates over the last ten years. Second, shareholders have paid a portion of the cost of the refinancing. PP&L's shareholders initially financed the entire cost of the premium, and PP&L began amortizing the premiums when the high cost debt was called and new lower cost debt was issued (PP&L St. 12-R, Schedule 4-6). The Company's claim in this proceeding is to recover the

remaining unamortized portion of the premiums. Shareholders will absorb the amortization of the premium from the date of the issuance until new rates are set in this case.[36/]

b. The OCA's Deferred Tax Adjustment For Reacquisition Premiums Should Be Rejected

As explained in the Company's Initial Brief (pp. 208-209), PP&L seeks to match the recovery of the cost of the premiums and the associated tax savings. The Company would accomplish this by recovering the cost of the premiums over the life of the new debt and by returning the deferred tax savings over the same time period. The OCA would give the entire tax benefit to customers now, even though they will pay the cost over many years into the future (PP&L Initial Brief, pp. 208-209). This unfair and unprecedented adjustment should be rejected.

B. Cost Of Common Equity

As explained in the Company's Initial Brief (pp. 209-231), the Company's claimed 13% common equity opportunity cost rate is reasonable and should be approved. Indeed, there is no credible

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36/ The OCA also contends that the Company's adjustment should be rejected because the premium reacquisition is not reflected on the Company's balance sheet (OCA Main Brief, pp. 223-224). This argument misses the point. If the premium were already reflected on the Company's balance sheet, there would be no need to make an adjustment. The OCA's argument is circular and provides no basis for disallowing the Company's adjustment which is in accordance with well-established Commission practice.

basis for any allowance of less than 12%. The opposing party recommendations are clearly understated and should be rejected.

The most surprising aspect of the opposing parties' Main Briefs is their complete failure to address the most significant issue presented -- competition. Increased competition is undoubtedly the most important single issue facing the electric utility industry today (PP&L Initial Brief, pp. 210-212). Yet, not one word in the opposing parties' Main Briefs on fair rate of return addresses this issue. The determination of the cost of common equity is not a mathematical exercise; it must reflect, at least to some extent, real world conditions and investor expectations.

The result of the opposing parties' regulatory "head in the sand" approach is absurdly low equity cost recommendations, particularly as compared to other recent Commission Orders. In the Roaring Creek Water Company decision, issued only a few weeks ago, the Commission determined that the cost of common equity for a water utility was 11%. Pa. P.U.C. v. Roaring Creek Water Co., Docket No. R-943177 (May 31, 1995) (Order, p. 49). If Roaring Creek Water Company's cost of common equity is 11%, how can PP&L's cost of equity be 11.1% as proposed by the OCA, 10.63% as proposed by the OTS, or 10.85% as proposed by PPLICA. Obviously,

it cannot, and the opposing party recommendations must be rejected.[37/]

The effect on PP&L of the opposing party recommendations is equally clear. Their proposals, if adopted, would substantially weaken PP&L's financial condition and would very likely result in a further downgrading of its bonds (PP&L Initial Brief, p. 214). Indeed, their proposals provide earnings barely sufficient to cover the Company's current dividend. The OCA dismisses this argument out of hand, arguing that maintenance of the Company's dividend is totally irrelevant (OCA Main Brief, p. 246). However, the OCA presented no evidence to support this extreme view, and it is difficult to reconcile its biased and cavalier position with the public interest.[38/]

37/ The OCA seeks to avoid this result by pointing to the recent decline in interest rates (OCA Main Brief, p. 217-218). As explained in the Company's Initial Brief (p. 214), the Commission should not be misled by this temporary decline in interest rates to ignore the fundamental shift in risk facing the electric utility industry.

38/ PPLICA, on the other hand, asserts that any increased risk is the Company's own fault because it had the audacity to substantially "increase" interruptible industrial rates (PPLICA Main Brief, p. 11). PPLICA purports to be "baffled" by the Company's proposed increase. This is understandable, since, as explained in the Company's Initial Brief (p. 227), the Company is not proposing any increase in interruptible industrial rates. Rather, the Company simply seeks to eliminate a 20% discount offered between base rate cases in 1991. PPLICA's continued insistence on characterizing the Company's proposal as a substantial rate increase is simply wrong and reflects poorly on its credibility in this proceeding.

It is equally clear why the proposing parties reach absurdly low results. First, their sole reliance on the DCF method produces results which grossly understate the Company's cost of equity. The many problems with the DCF method are outlined in the Company's Initial Brief (pp. 225-228). More than one method must be considered if a proper common equity cost rate is to be established.

The flaws in the DCF method are demonstrated most clearly in the OTS's Main Brief. The OTS candidly admits that the DCF model requires the assumption of a constant dividend payout ratio and constant price earnings ratio. The OTS openly admits that neither assumption is true, but continues to rely solely on the DCF method (OTS Main Brief, pp. 116-117).

Second, the opposing parties each fail to properly reflect PP&L data in their recommendations. Although it should be obvious, it bears repeating that the issue in this proceeding is to establish a common equity cost rate for PP&L. Yet, the other parties give substantial and/or primary weight to non-PP&L data, and, as a result, make recommendations below their own indicated cost of equity for PP&L.

In fact, each of the witnesses' DCF analyses shows higher results for PP&L as compared to the corresponding comparison groups. The reason for this is clear: PP&L is riskier than the companies in the comparison groups. The rational response to such analysis would be to rely more heavily on PP&L data.

Counter-intuitively, however, the opposing parties give substantial or primary weight to non-PP&L data. For example, PPLICA's range of common equity results based on non-PP&L data is 10.05% to 10.88%, while its DCF range based on PP&L data is 10.53% to 11.57% (PPLICA Main Brief, pp. 12, 14). PPLICA's proposed common equity cost rate of 10.85% is well below the 11.05% midpoint result using PP&L data.

The OCA takes an even more extreme position, giving primary weight to non-PP&L data and using PP&L's own data "only as a check." (OCA Main Brief, p. 244). The OCA argues that PP&L data should be used only as backup in determining PP&L's cost of common equity. This simply makes no sense.

Perhaps recognizing the flaws in their own analyses, the opposing parties spend substantial time criticizing Mr. Moul's recommendations and analyses. Each of these arguments is wrong on the merits, but more importantly, they ignore the absurdly low recommendations of the opposing parties. Mr. Moul's recommendation is the only one that properly reflects the current competitive conditions facing the electric utility industry and the return allowances in recent Commission orders.

Each of the opposing parties extensively criticizes Mr. Moul's 4% DCF growth rate because it was not supported by a mathematical reliance on historic or projected earning growth rates. However, the DCF model assumes that all growth occurs from increases in earnings, dividends and book value. As

Mr. Moul explained in his testimony, there are many other sources of growth which are not reflected within the restrictive assumptions of the DCF analysis (PP&L St. 12, pp. 41-42). Mr. Moul appropriately considered these additional factors in his testimony; the other parties ignored them.

Much of the remaining criticism of Mr. Moul's testimony focuses on his decision to rely on more than one methodology in establishing a fair rate of return. The OTS extensively criticizes the equity risk premium and CAPM methods. In particular, the OTS admits that investors do in fact rely on these methods, but asserts that they are not appropriately used in ratemaking (OTS Main Brief, p. 128). Because the whole point of the exercise is to determine investor expected returns, it is unclear how the OTS can refuse to rely on methodologies that are admittedly investor influencing.[39/]

The opposing parties' criticisms of the comparable earnings methodology are particularly puzzling. The United States Supreme Court decisions which provide guidance as to the establishment of a fair rate of return specifically recognized that regulatory commissions should consider companies with comparable risk in

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39/ The OTS also criticizes the risk premium method because it allegedly requires an assumption of a constant risk premium. (OTS Main Brief, pp. 129-130). This is simply not the case. Mr. Moul's version of the risk premium model allows for variable risk premiums (PP&L St. 12, App. D).

establishing fair rate of return.[40/] Those decisions do not limit the scope of consideration to other public utility companies. Because investors are free to invest capital in regulated and non-regulated companies, all similar risk companies should be considered in any comprehensive fair rate of return analysis.

The opposing parties also extensively criticize the comparable earnings methodology because it relies on accounting or book values rather than market values. Of course, rates are set on book or accounting values, not market values, so the comparable earnings method is actually the only method that is directly relevant to original cost ratemaking. More importantly, as Mr. Moul explained and as several other Commissions have recently recognized, the DCF model significantly understates the cost of capital when utility stocks are trading at a market to book value ratio substantially in excess of 1.0 (PP&L Initial Brief, p. 226). In these circumstances, use of a comparable earnings approach is particularly important as a check on the DCF model.

In summary, the opposing parties have provided no support for their own recommendations which would produce absurdly low results, would damage PP&L's financial integrity, would result in

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40/ "[T]he return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks." Hope, 320 U.S. at 603.

a farther downgrading of PP&L's bonds and would not be in the public interest.

VII. RATE STRUCTURE

A. Cost Of Service

1. Opposing Parties Fail To Support Alternatives To The Commission-Approved 12 Coincident Peak Methodology Of Demand Allocation

a. The 1 CP Approach Has Not Been Supported

Two parties urge adoption of the single coincident peak (1 CP) methodology: UCC and Bethlehem Steel. Both wrongly claim broad support for their method.[41/] Neither party provides any sound basis for departing from the 12 CP method as the best approach for PP&L's system. PPLICA, representing high load-factor customers similar to Bethlehem Steel and UCC, agrees that the 12 CP method is the "most reasonable" for PP&L (PPLICA Main Brief, p. 56).

Bethlehem Steel's position should be accorded no weight at all, given that its own witness specifically stated that he did not oppose the 12 CP methodology for the Company and offered no grounds for moving to the 1 CP approach in this case (Bethlehem Steel St. 1, p. 8).

41/ Bethlehem Steel claims that PPLICA witness Baron supports a 1 CP approach (Bethlehem Steel Main Brief, p. 6). UCC claims that "most intervenors in this proceeding have rejected use of the 12 CP methodology (UCC Main Brief, p. 11). These contentions are simply wrong, and both parties misrepresent PPLICA's position. UCC and Bethlehem Steel remain a self-interested minority on this issue.

UCC contends that a recent increase in the relative size of PP&L's winter peak distinguishes the instant case from prior proceedings in which the Commission approved the 12 CP method (UCC Main Brief, p. 7, n. 1). This claim is completely without merit. First, the Commission did not rely upon the relative size of PP&L's winter peak in approving the 12 CP method previously. The key facts that supported the Commission's prior approval of the 12 CP method have not changed. Second, UCC's claim of a relatively larger winter peak is contradicted by arguments in UCC's own brief. UCC specifically contends that an increase in the winter peak alone was "unrealistic" and that, generally changes in a utility's winter peak are accompanied by changes in its summer peak (UCC St. 2, p. 6). "Between 1990 and 1994, PP&L's winter and summer peaks increased at an average annual rate of 3.3%" (UCC Main Brief, p. 16). UCC cannot have it both ways.

Furthermore, UCC mechanically recites its version of the testimony but fails to respond to the Company's principal argument that PP&L must meet substantial maximum capacity requirements throughout the year, and not just at the time of its system peak. UCC asserts that maintenance of generation equipment in off-peak months is irrelevant (UCC Main Brief, p. 18-19). This claim completely overlooks the fact that the Company has repeatedly been capacity-constrained in these "off-peak" months. The facts simply do not support UCC's claim.

b. The OCA's Peak And Average Approach Is Flawed In Concept And Implementation

Contrary to the OCA's contentions, neither precedent, ratemaking policy, nor the facts support its "peak and average" ("P&A") allocation methodology (OCA Main Brief, pp. 266-285). Application of Mr. Johnson's P&A approach on PP&L's system would ignore cost responsibility and establish perverse price signals which encourage inefficient use of PP&L's system.

The OCA asserts that the P&A method is supported by precedent in this jurisdiction as well as others (OCA Main Brief, pp. 270-274). In fact, these decisions do not support applying the P&A method for the Company's system. The first West Penn Power case and all of the non-Pennsylvania cases cited by the OCA were decided before the Commission's Order in PP&L's last base rate case which approved the 12 CP methodology and rejected the P&A methodology. 59 Pa. P.U.C. 332 (1985). Those precedents were available to and presumably rejected by the Commission when it approved the 12 CP methodology for PP&L. The basic facts supporting a 12 CP approach for PP&L -- a winter peaking company in a summer peaking power pool -- have not changed. The appropriate cost allocation methodology is a fact-based question that must be answered in light of the circumstances of the particular electric system at issue.

The cases cited by the OCA are distinguishable on other grounds as well. The facts on the West Penn Power case were

clearly different: "We agree...that West Penn must construct generation and provide energy on a fairly constant basis throughout each day and that types and sizes of transmission facilities are also determined by the amount of megawatt hours." West Penn Power I at 271. In contrast, the instant record shows that PP&L must provide energy on the basis of very distinct morning and evening peaks (Exs. JJS-10, 11; PP&L St. 6-R, pp. 4-12).

Similarly, in Pa. P.U.C. v. PECO, 61 Pa. P.U.C. 589 (1986), the Commission specifically found that the peak and average method proposed there (which may not even resemble the P&A approach of Mr. Johnson) "may best reflect the way PECO's system is planned and the manner in which production and transmission costs are incurred." PECO at 678. Unlike PP&L, PECO is a strongly summer peaking company in a summer peaking power pool (PJM). Use of a P&A approach for PECO has no bearing on the selection of appropriate cost allocation factors for PP&L.[42/]

Similarly, the North Carolina Commission's acceptance of the peak and average methodology was based on the specific facts of North Carolina retail jurisdiction. See Re North Carolina Power, 142 PUR4th 117 (1993). Again, Mr. Johnson made no effort to tie his theory of cost recovery to the facts of PP&L's system.

42/ Moreover, in PECO, the Commission approved the company's proposed 4 CP method. The Commission, however, required PECO to utilize the P&A approach in its next base rate case. Id.

Finally, the P&A method has not displaced a peak-oriented methodology, as implied by the OCA. Recent cases from other jurisdictions adopt the 12 CP method. See, e.g., Re Northern States Power Co., 139 PUR4th 348 (1992).

Precedent does not require adoption of a P&A approach, but does require adoption of an approach that best allocates costs based on the facts of the PP&L system. This record solidly supports the 12 CP methodology and provides no support for Mr. Johnson's P&A approach (PP&L Initial Brief, pp. 234-236).

The many flaws in Mr. Johnson's proposal have been thoroughly aired in the initial briefs. See PP&L Initial Brief, pp. 236-238; PPLICA Main Brief, pp. 56-60; Bethlehem Steel Main Brief, pp. 19-22; and OSBA Main Brief, pp. 7-10. Ultimately, Mr. Johnson's proposal does not even achieve his own goal of reflecting cost responsibility for the mix and type of capacity, rather than the amount (PPLICA Main Brief, pp. 56-60).

To the central argument that fixed costs do not change with usage, the OCA can only respond with hypothetical cases in which fixed costs do not respond immediately to short-term changes in demand (OCA Main Brief, pp. 274-275). This claim is incorrect. Fixed generation costs, obviously, do not increase or decrease instantaneously in response to changes in peak demand, but the Company must adjust plant over time to meet peak demand and provide reliable service. In contrast, as Mr. Johnson failed to

discuss, the Company does not add or retire plant to respond to fluctuations in load factor.

Finally, Mr. Johnson's P&A method fails to recognize that a higher load factor results in lower per unit costs. Under Mr. Johnson's P&A approach, customers with higher load factors and lower per unit costs would be allocated more costs. This is not only counter-intuitive but would send inappropriate price signals to customers who seek to increase the efficiency of their use of PP&L's system.

2. PPLICA And Bethlehem Steel Fail To Support Increasing The Value Assigned To Interruptible Load

The major industrial customers seek to further reduce their allocation of fixed generation costs in the cost allocation study by increasing the value of interruptible load (PPLICA Main Brief, pp. 48-50; Bethlehem Steel Main Brief, pp. 9-13). Their claims are addressed in detail in the Company's Initial Brief, but several points require emphasis. First, Bethlehem Steel fails to support its proposal to allocate zero generation costs to interruptible service customers. Whether or not other jurisdictions have adopted such an approach is irrelevant, Pennsylvania has not (Tr. 1246). Mr. Brubaker also failed to show whether the nature of the interruptible service at issue in those other jurisdictions is even remotely similar to that of the Company. PP&L's interruptible service customers are entitled to electric service at least 345 days of the year, and for 8,560 out

of the 8,760 hours in the year (97.7%).[43/] Moreover, interruptible customers cannot be compelled to interrupt service. Allocating zero demand costs to such customers is simply not tenable.

Both PPLICA and Bethlehem Steel continue to criticize the $300/kw credit accorded to interruptible service customers in the Company's cost allocation study. PPLICA again urges its "mismatch" theory, under which the Company would be required to raise the interruptible load credit from its proposed cost-based figure of approximately $3/kw/month to $6-8/kw/month, simply because the Company established a $6-8/kw/month credit for non-cost-based, economic development, rate design-related reasons. This approach confuses cost of allocation with rate design and should be rejected on that ground alone. In its brief, PPLICA also attempts to justify a higher amount (345 Mw vs. 287 Mw) of interruptible load for use in the cost allocation study to reflect PJM reserve requirements. The Company's cost allocation study assigns costs based on actual peak loads and did not consider associated reserve margins (Tr. 648). PPLICA's adjustment would treat interruptible service customers differently from all other customers on the Company's system.

43/ The interruption period is for only 20 days, for no more than 10 hours per day, and no more than 200 hours overall (PP&L St. 8-R, p. 34). There are 8,760 hours in a year (365 X 24 = 8,760).

Basically, the issue is whether a combustion turbine is the appropriate measure of value for the cost of capacity avoided by the presence of interruptible load. The record is replete with evidence that the combustion turbine proxy is clearly the highest defensible credit. Bethlehem Steel's attack in its brief only underscores the merit of the Company's position (Bethlehem Steel Main Brief, p. 12). Bethlehem Steel argues that utilities plan over the long-term to meet load using a mix of capacity -- a point with which the Company agrees. The Company does not, however, plan to meet load that will appear at most 20 days a year by using nuclear or coal generation, or even a mix of generation. It would meet such load via combustion turbines -- at most (PP&L St. 9, p. 14) The real alternative to combustion turbines would not be baseload capacity, but purchased capacity, whose market cost is now, and has been for some time, far below the cost of a new CT (PP&L St. 9-R, pp. 24-25). The Company continues to disagree with the OCA's request to value interruptible capacity at $15/kw/year, but considers OCA's theory to be more realistic than the industrial customers' inflated claims.

3. The Oil Dealers And OCA's Challenges To The Minimum System Are Without Merit

The OCA and, to a lesser extent, the Oil Dealers,[44/]

44/ The Oil Dealers' Main Brief does little more than recite its evidence and claim victory without discussion of the numerous opposing evidentiary points raised by the Company (continued...)

contend that a different allocation of distribution plant is appropriate. OCA fails to show that the Company's minimum system approach should be replaced with Mr. Johnson's gerrymandered substitute. The Company followed the NARUC-sanctioned minimum system approach, which should be approved.

4. The Oil Dealers' A&G And O&M Allocation Adjustments Are Unsupported

The Oil Dealers' arguments regarding allocation of A&G O&M are fully addressed in the Company's Initial Brief (pp. 245-248) contrary to the Oil Dealer's contention in their brief (CEPFOD Main Brief, p. 15). The fact that Mr. Andersen's recommended adjustments may be followed by non-regulated industries provides no basis for departing from the FERC-approved and NARUC Cost Allocation Manual-approved allocation method used by the Company (PP&L St. 7-R, pp. 25-26).

5. No Valid Reason Has Been Shown To Segregate Large Interruptible Users Into Separate Rate Classes

PPLICA and Bethlehem Steel urge segregation of interruptible customers into separate rate classes (PPLICA Main Brief,

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44/(...continued)
and others (Oil Dealers Main Brief, pp. 11-13). For example, the Oil Dealers claim that the Company "failed to explain" its alleged "departure from past practice" of using a variant of the zero intercept method. Yet, the Company showed that the "variant" (modified zero intercept) is in fact a variant of the minimum system approach, that it required too much data, and when last attempted the method produced patently unreasonable results (PP&L St. 7-R, pp. 20-22.

pp. 74-78; Bethlehem Steel Main Brief, pp. 31-32). PPLICA contends that the inclusion of firm and interruptible customers into one rate class masks the "hidden" increase to interruptible service customers. As the Company has repeatedly shown (see Section VII.C.3., below) interruptible service customers are not receiving an unreasonable increase, based on any reasonable frame of reference. The Company's cost allocation study clearly shows the impact of the proposed rate increase on interruptible service customers. The only purpose to establishing a new interruptible service rate class is to artificially reduce interruptible rates, based on the 1.5X limit on class rate increases proposed by the Company. The Commission should reject PPLICA's attempt to gain momentary tactical advantage in this rate proceeding by forcing the Company to create an entirely new rate class for interruptible service customers who, to a very large extent, are indistinguishable from firm customers (PP&L St. 8-R, p. 34).

B. The Opposing Parties' Divergent Allocations Of The Rate Increase Underscore The Reasonableness Of The Company's Proposal

The main briefs of the opposing parties demonstrate the extent to which the Company's proposed allocation of the rate increase steers a reasonable, middle course. Several parties hinge their proposals on the adoption of their own cost allocation studies. See, e.g., OCA Main Brief, pp. 289-292; PPLICA Main Brief, pp. 61-64. These proposals should be rejected because the underlying cost studies are flawed. Nearly all of

these parties subscribe to the principle of gradualism, although none of their proposals are in accord with that theory as fully as the Company's allocation.

Only one party throws off any pretense of honoring gradualism: UCC. UCC presents a complex and unsupported theory on the impact of rate increases upon changes in class returns and class subsidies. This theory then becomes the basis for a radical proposal that guarantees rate shock to key classes, particularly the residential class (UCC Main Brief, pp. 21-26). This proposal should be rejected. Whatever the merits of Mr. Eisdorfer's theory of reciprocal subsidies and returns, the answer should not be a 35.1% rate increase for Rate Schedule RTS and 25.5% for Rate Schedule RS.[45/]

C. Rate Design

1. Rate Schedule RS

a. Alternatives To The Company's Proposed Customer Charge Remain Unsupported

The Oil Dealers (CEPFOD Main Brief, p. 29) and OTS (OTS Main Brief, pp. 135-139) continue to support customer charges of $5.80 and $5.90, respectively; the OCA (OCA Main Brief, pp. 305-308)

45/ Mr. Eisdorfer's proposed 3X system average also is inconsistent with his testimony in the Company's last rate case where he proposed a cap of 1.66X system average (Tr. 1121).

continues to argue for a freeze at the current $4.80 rate.[46/] None have justified a reduction in the Company's proposed $7.20 charge.

OCA's arguments in its brief, in particular, are mistaken. The OCA argues that under a series of West Penn Power cases, the only permissible customer costs are "basic customer costs" which, in Mr. Johnson's view, exclude many of the costs classified as customer related in the Company's minimum system study of distribution costs. In fact, the Company presented an alternative calculation of "basic customer cost" in full accord with the West Penn standard. As Mr. Kasper stated (PP&L St. 8-R, p. 6):

> As indicated by reference to the Company's response to Questions OTS-RS-4D of Interrogatories of the Office of Trial Staff dated January 13, 1995, total customer component costs for the residential class are $17.51 per customer per month, with $10.18 per customer per month for billing, metering and services alone.

This $10.18 "basic customer cost" figure fully supports the Company's proposed $7.20 RS customer charge and demonstrates that

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46/ Sierra Club also supports a freeze, although it offered no testimony on this subject (Sierra Club Brief, pp. 16-18). Sierra Club relies on the arguments of others, addressed above, but also urges imposing higher customer charges on large users as well as an inclining block structure to discourage consumption. These recommendations are unsupported by any evidence, ignore the well-established ratemaking principles of this Commission and would send incorrect price signals (large users may be more efficient, for example, when their usage is off-peak). Sierra Club's goal of deferring new generating resources also fails to support inclining block rates, given the Company's current and continued adequacy of generating capacity.

the OCA's proposed $4.80 charge is grossly understated. Notably, even Mr. Andersen was unable to calculate a customer cost below $8.00. Apart from vague concerns over the size of the increase and unsubstantiated musings about rationing, none of the opposing parties raise a substantive challenge to the Company's proposed charge.

b. Attacks On The Third Billing Block Are Without Merit

Only the OCA and the Oil Dealers (very briefly) challenge the third billing block for Rate Schedule RS (OCA Main Brief, pp. 309-310; Oil Dealers Main Brief, pp. 28-29). Neither party presents any support for changing the proposed block structure. The OCA proffers an ad hoc example of the claimed impact of both PP&L's proposed customer charge and the revised block structure on a particular low-usage customer. This example does not separately measure the effect of adding a third block to the rate and provides no basis for rejecting the Company's proposal.

The Company's proposed three-block residential rate is logical, designed to track cost of service and should be approved. The first block (200 kwh) is designed to recover those customer costs not recovered in the customer charge. Virtually, all of the Company's RS customers (88%) use at least 200 kwh/month, thereby assuring full recovery of customer costs in the customer charge and the first block of the rate (PP&L Initial Brief, p. 254). The second block (600 kwh) is designed to

recover a substantial portion of demand costs. Without this third block substantial fixed costs would be recovered in the tail block of the rate where consumption is highly variable based on weather and economic conditions. This would significantly increase the Company's risk of non-recovery of its fixed costs. The addition of this third block is particularly important on PP&L's system where approximately one-half of all Rate RS customers use less than 600 kwh/month (PP&L Initial Brief, p. 254). Without the third block, those customers using more than 600 kwh/month would pay a disproportionate share of fixed costs. This is the problem with the current design of Rate RS and is the principal purpose for adding the third block to the rate.

The OCA's argument that the Company should not begin to recover demand charges before the tail block (OCA Initial Brief, p. 310) would be unfair to the larger use customers, who would bear a grossly disproportionate share of demand costs, and to the Company, which would be put unfairly at risk for the recovery of fixed costs.[47/]

47/ The Company believes that its proposed design of Rate RS is reasonable and should be approved. In the event that the Commission wishes to adopt a lower customer charge than that proposed by the Company and to retain the existing two-block rate, the Commission should adopt the alternative design described in Mr. Kasper's rebuttal testimony (PP&L St. 8-R, p. 8).

2. Rate Schedule RTS: The Oil Dealers Misrepresent The Facts, Misstate The Meaning Of Their Own Exhibits, Prove None Of Their Claims, And Should Be Ignored

Consistent with their evidentiary presentation, the Oil Dealers' Brief describes the history, purpose and effect of Rate Schedule RTS in a manner completely divorced from the facts (CEPFOD Main Brief, p. 2,4). They rely in toto on snippets from a set of Company documents handpicked by their antitrust counsel, which form virtually the only facts available to their witness, Mr. Andersen. In their brief, they virtually ignore the contrary facts presented by the Company's witnesses. The extraordinary and punitive relief they request should require solid proof; the Oil Dealers present nothing remotely adequate.

As noted in the comprehensive discussion of this issue in the Company's Initial Brief, even the key documents that Mr. Andersen relied upon contradict his conclusions (PP&L Initial Brief, pp. 265-66). Because the Oil Dealers persist in arguing their false Rate Schedule RTS history, this Reply Brief will note the numerous instances in which their claims, great and small, are contradicted or undercut by their own selected documents.[48/] The Commission should reject their fictive claims, which have no basis in fact or law.

48/ The Company does not consider many of the Oil Dealers' points addressed below to be relevant. By this discussion, the Company simply is alerting the Commission to the complete unreliability of the "facts" portrayed by the Oil Dealers.

Rate Schedule RTS was designed and implemented as a load management tool, and it has succeeded in assisting load management. From the earliest documents in 1985-1986 through the 1991 studies, the Company documents show that Rate Schedule RTS was intended to, and did, act as a load management tool. Load management was not a "post hoc" cover-up explanation, as the Oil Dealers' own exhibits demonstrate. See CEPFOD Ex. 2, p. 064175 (describing how the customers on Rate Schedule RTS shifted 6,130 kw to then off-peak nighttime hours, by January 1985); CEPFOD Ex. 7, p. 046900 ("The Supplemental Electric Storage System (SESS) Heat Pump Program encourages application of off-peak thermal storage installations which directly contribute to the demand management portion of the corporate managed load growth objectives"); CEPFOD Ex. 9, p. 0067703 ("The RTS program affects PP&L revenue requirements by changing customer energy and demand use. - Changes to customer demand use affect PP&L's CSO. - Changes to customer demand affect PP&L's capacity obligations to PJM. Although PP&L has no identified need for capacity prior to the year 2000, PP&L has been able to sell capacity to other utilities. The income from these capacity sales can reduce the amount of revenue required from PP&L's PUC jurisdictional customers."); CEPFOD Ex. 10, p. 018530 ("Thermal Energy Storage Equipment options allow peak demand energy demands to be met with greatly reduced peak demand contributions. This is accomplished by the use of energy storage mediums, which are changed [sic] during off-peak demands."); CEPFOD Ex. 12, p. 0155442 [1991]

("The introduction of RTS systems in PP&L's service area represents a major marketing success story. It established a system that was competitive in the market; provided an alternative to baseboard and traditional heat pumps; created the infrastructure needed to promote a new form of heating system; and helped achieve important load management objectives.").

The Company did not discover that the program was a failure in 1987 and subsequently ignore the problem until today. (See CEPFOD Main Brief, pp. 20-22) The 1987 study relied on by the Oil Dealers projected that the RTS systems would not become a problem because of nighttime peaking trends until 1995, even assuming continued aggressive marketing. The Study found that:

- As RTS systems are added to the PP&L system in the 1986-1995 period, there will be:
  - No increase in the system peak demand resulting from the RTS systems.
  - An increase in energy use during the off-peak periods.

CEPFOD Ex. 6, p. 0136680. The document went on to make the following recommendations:

- Continue the current marketing and economic development programs in the near-term to achieve the benefits of additional sales.
- Diversify the residential marketing programs to avoid the high rate of peak demand growth projected in the later years in the 9/86 "Integrated" Forecast. Specifically:
  - Reduce the emphasis of the RTS program in the long term.
  - Reexamine the marketing program to identify other sales opportunities.

CEPFOD Ex. 6, p. 0136670 (emphasis in original). Therefore, the very documents cited by the Oil Dealers to challenge the Company's intent, projected that promotion of the RTS systems could proceed through 1995 without affecting the peak.

The record is devoid of evidence that Rate Schedule RTS resulted in significant oil conversions. In their brief, the Oil Dealers contend that the issue here is loss of heating business from fuel oil to Rate Schedule RTS. E.g., CEPFOD Main Brief, pp. 2, 4, 23, 24, 28. This argument ignores the failure of the Oil Dealer to challenge or even question the Company's testimony that fuel oil conversions were negligible, and the Oil Dealers' own admission that they had no data to present about fuel oil to Rate Schedule RTS conversions or lost sales (Ex. OGK-7). Instead, the Oil Dealers rely on goals expressed by the Company's marketing group as conclusive evidence of the rate's purpose and effect on fuel oil consumption. They ignore the reality that, as of 1986, the Company was aware that Rate Schedule RTS conversions were negligible: "[w]e would prefer to see conversions [of fossil fuel] to off-peak storage systems, however, only 4% of the customers converting to electric space heating invested in an off-peak storage system during 1985." (CEPFOD Ex. 2, p. 064179).

Competition through promotional steps was undertaken by other utilities and the oil dealers themselves. The Oil Dealers attempt to portray the Company's efforts to expand sales through the use of grants as evidence of a monopolist's behavior, but

their own exhibits show other home heating competitors, including gas utilities and oil dealers, mutually engaging in promotions to advance sales--as would any competitors. See, CEPFOD Ex. 14, p. 0126075 ("They [gas utilities] both offer to run gas lines to new developments at no cost if gas is installed in some of the homes. No minimum guaranteed number of gas homes is required to some of the developments. Offers of lease purchase agreements for heating systems, discount prices for appliances, co-op advertising, financing and free trenching are common."); CEPFOD Ex. 2, p. 064174 ("Most gas companies will provide $100/lot to help cover the cost of trenching and will underwrite any reengineering cost from electric utilities to convert development to gas. Discussions are currently underway between gas companies and developers concerning bulk rate discounts for developments that choose gas for heating and cooking... One oil dealer in the Lehigh Valley will install an oil furnace with central air for $1,000 if you contract to buy oil from his firm for a minimum of three years.") See also CEPFOD Ex. 2, p. 064178.

In summary, the Oil Dealers' documentary "evidence" is so intrinsically weak, and has been presented so selectively as to lack any credibility.[49/] Their effort to force a "prudence" evaluation of the past ten years' history of Rate Schedule RTS

49/ The only legitimate ratemaking challenge raised by the Oil Dealers' testimony--the claim that the rate is too low and should be raised--appears only incidentally in their initial brief, and was thoroughly addressed by the Company (PP&L Initial Brief, pp. 266-270).

should be rejected. Indeed, under their theory, the Commission would have to be considered a major contributor to any alleged imprudence, by approving such a patently unlawful rate schedule in the first instance. The truth is told in the Company's evidence: Rate Schedule RTS was established as a load management tool; it succeeded in that role until recently; it has become less effective as a load management tool in its current form, as a result of shifts in customer usage patterns that have moved the Company's peak to the nighttime charging period of RTS system customers. The best course of action is that proposed by the Company and largely supported by the OCA: To close the rate schedule; to preserve existing rate differentials for at least a minimum period; to protect the interests of existing Rate Schedule RTS subscribers;[50/] and to work actively toward a new thermal storage rate schedule employing the latest technology. The Oil Dealers' punitive proposals -- which are not supported by any of the other customer classes that RTS is supposed to burden -- should be rejected.

50/ The Company notes the sample expressions of concern by Rate Schedule RTS subscribers quoted in OCA's brief (OCA Main Brief, pp. 297-299). The Company agrees that their interests, and investments, should be protected. However, the quoted customers all appear to misunderstand the impact of the rate increase. Even with the increase, all are still better off than under Rate Schedule RS and are assured of recovering their investment if the Company's proposal is accepted.

3. The Interruptible Service Customers Have Not Supported Receiving Even Lower Rates Than Those Proposed By The Company

Bethlehem Steel again claims that the rate increase to the customers using the interruptible option of Rate Schedules LP-5 and LP-6 is unreasonable. PPLICA goes further and levels at the Company a numbing cross-fire of invective that suggests frequent reference to a thesaurus.[51/] This fervent rhetoric plays an important role in the industrial customers' arguments: To distract the Commission from the truth that there is no "disproportionate" increase in their rates. The proposed rates simply reflect the Company's decision to return to the status quo before the large rate discounts given to interruptible service customers in 1992-1993. The Company's 1992 interruptible service rate reduction proved to be overstated. Earlier this year, the Commission agreed and approved the closure of those rates. The Company seeks to fully implement that closure in this case (PP&L Initial Brief pp. 277-281). In contrast, PPLICA seeks to ignore the Commission's specific finding that the superseded

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51/ PPLICA attacks PP&L's: "shoddy treatment," p. 65 and its "absurd treatment," p. 67; the proposal "evidences personal contempt for industrial customers that is astonishing," p. 68; it is a "proposal to jack up industrial rates," p. 69; it is a "shocking increase," p. 65; it is a "behemoth increase," p. 71; it would "skewer industrial customers," p. 71; it "represents a serious and unwarranted threat to individual PPLICA members," p. 71; it was to the "utter shock of PPLICA members," p. 6; the Company has "failed miserably at meeting its customers' needs," p. 7; the Company "obstinately refused to modify its absurd interruptible rate design and increase," p. 24; "PPLICA members are no less than shocked" by the proposal, p. 84.

interruptible service rates have ceased to benefit PP&L's system. PPLICA's proposal would undo the Commission's interruptible rate order and freeze in place interruptible rates which the Commission has already found to be unreasonable. This is the context in which to consider PPLICA's overheated and aggrieved rhetoric.[52/]

In response to these key points, PPLICA's and/or Bethlehem Steel's briefs make three main arguments: (1) that the past is irrelevant; (2) that pre-1992 industrial customer rates were firm, and are not comparable; and (3) that the Company's interruptible service rates ignore both the existing and imminent competitive upheavals in the electric industry. None have any merit.

On the first point, PPLICA asks the Commission to ignore its own order of earlier this year ordering PP&L to close its existing interruptible service options. To do so would ignore the ongoing threat of encouraging industrial customers to further convert to self-generation that does not benefit, but rather

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52/ Indeed, in PP&L's most recent case regarding rates for interruptible service, ALJ Schnierle stated in his Recommended Decision that:

> The use of gross exaggeration in briefs is not helpful. It complicates the task of the presiding officer because it requires the discussion of unnecessary issues.

Pa. P.U.C. v. Pennsylvania Power & Light Co., Docket No. R-00943081, slip op., p. 8 (Recommended Decision, November 21, 1994).

burdens, the PP&L system. The Commission should reject PPLICA's claims as factually inaccurate and contrary to sound regulatory policy.

On the second point, PPLICA fails to show that its members are treated unfairly by PP&L's proposed rates. Compared to the rest of the system, Rate Schedule LP-5 interruptible customers are receiving a 5% reduction in rates relative to the previous firm service rates; the rest of the system is receiving substantial increases. Compared to firm service customers, who would pay roughly 5.6 cents/kwh under proposed rates, the average interruptible service customer will pay an average of approximately 4.8 cents/kwh, or 14% less than firm customers. Interruptible service customers have been called upon to interrupt only infrequently in practice. Since 1984, interruptions have occurred only 15 times in total -- less in total than the number of interruptions permitted in a single year under the tariff. Interruptible service customers have received steep discounts vis-a-vis firm service, and will continue to receive substantial cost reductions that far exceed the actual benefit they confer on PP&L's system. See Section VII.A.2., above. The violent protests of PPLICA should be disregarded.

On the third and last point, both PPLICA and Bethlehem Steel miss the point. The context for this rate filing is not retail wheeling. Even Bethlehem Steel's witness admitted that such retail competition is not relevant in assessing the Company's

competitive status in this case (Tr. 1238-1239). Events in other jurisdictions, rates charged by distant and very different utilities, and the looming presence of increased industrial competition simply do not add up to the result that the industrial customers seek: Allocating massive costs away from the industrial customers. PP&L is well aware of the competition it may face, and it has acted appropriately within the existing regulatory context to prevent potential load loss (PP&L Initial Brief, pp. 271-276). If it fails, its shareholders will suffer. The contention that PP&L has been passively awaiting competitive destruction is illogical and lacks any record support. PPLICA's implication that the Company should engage in a panicky give-away of benefits to industrial customers at the expense of other classes is similarly unsupported.

4. The OTS' Revisions To Rate SE Should Not Be Adopted

The Company responded comprehensively to OTS' positions on Rate Schedule SE in its initial brief (PP&L Initial Brief, pp. 281-283). Two points in the OTS brief merit comment. First, whether a service contributes 0.2% to the system demand (because of its small size), or a higher level, should not dictate whether it should receive a reasonable allocation of system costs. Second, the OTS has not justified in any way its proposal to give Rate Schedule SE a zero increase. PP&L's proposal to allocate some of the increase to all rate classes remains the just and reasonable approach.

5. EDI/IDI Credits

a. EDI/IDI Credits Should Be Assigned To The Rate Classes Who Receive The Primary Benefit Of These Programs

PPLICA and Bethlehem Steel argue that assigning the costs of the EDI/IDI programs only to the classes that directly receive the benefits of those programs ignores the existence of system-wide benefits from the programs and undercuts the very purpose of the programs -- to provide incentives for industrial customers to expand in, and remain within, the Company's service territory (PPLICA Main Brief, pp. 52-54; Bethlehem Steel Main Brief, pp. 13-16). Both point to Rate Schedule ISA as the epitome of the unfairness of this approach, because as a one-customer class, the costs of the credits cancel the benefits.

These criticisms ignore the significant difference between EDI/IDI class benefits and system benefits. The system-wide benefit -- without any allocation of the costs of the credits outside the beneficiary classes -- was a positive 5% over the rate consequences that would have occurred had the programs not existed (PP&L St. 8-R, p. 38-43; Ex. OGK-13). In contrast, the classes receiving the credits showed dramatic improvements in their class rate of return. See PP&L Initial Brief, p. 286, fn. 89. Those classes receiving the credits benefitted far more than the non-recipient classes. It is reasonable and appropriate

to allocate the costs of the EDI/IDI programs to the primary beneficiaries.[53/]

b. The OCA's Proposal To Disallow Recovery Of 50% Of Cost Of The EDI/IDI Credits Is Without Merit And Should Be Rejected

The OCA requests that the shareholders and ratepayers "share" equally the cost of the Company's Economic Development Credit ("EDI") and Industrial Development ("IDI") programs (OCA Main Brief, pp. 86-93). In effect, the OCA seeks to disallow recovery of nearly $13 million in revenue requirement. In support, the OCA argues that: (1) the Company has not adequately supported the need for or benefits from the EDI/IDI programs, and (2) several cases decided in other jurisdictions support "sharing" as a valid response to competitive discounting. OCA is wrong on the facts, and the cited cases do not support its proposal. The OCA seeks to impose a completely novel rule of recovery in Pennsylvania for longstanding economic development programs that have been funded entirely by shareholders and have provided substantial ratepayer benefits for many years. The OCA proposal is unfair and would penalize PP&L retroactively. If such a standard of sharing were to be introduced in this jurisdiction, it should be done prospectively and apply only to

53/ Rate Schedule ISA is a special case. Given its extremely low return, the special benefits of the negotiated rate level, and the Company's allocation of virtually no increases to this class, the single customer served under Rate Schedule ISA should not complain of unfairness in the EDI/IDI allocation.

new programs. OCA's closing point -- that if its partial disallowance approach were adopted, the Company should nonetheless by required to continue granting the credits -- is particularly outrageous. If the programs are not in the public interest, and if the rules of recovery are being changed in mid-stream, then the credits should simply be ended. The Company cannot be lawfully required to involuntarily fund economic development programs at shareholder expense.

c. The Company Has Proven That The EDI/IDI Programs Benefit All Ratepayers

The OCA's claim that the Company has not justified recovery of the costs in is error. Each of the OCA's claimed criticisms are contrary to the record.

First, it should be noted that the OCA's lone statement of support for "sharing" in Pennsylvania, a statement issued by Commissioner Hanger, refers to "the shifting of lost revenues from such [negotiated lower] contracts to other classes of customers without any shareholder contribution..." (OCA Main Brief, p. 87). The Company is not seeking to shift costs to other classes of customers; the only customers who would pay for the EDI/IDI credits are the industrial/large customer classes eligible for such relief. The Company is not seeking to shift these economic development costs to captive residential and commercial classes of customers. The Company's proof of benefits must be seen in light of this proposed allocation.

The OCA Fails to Disprove Company Data. The OCA's evaluation of the evidence is also patently incorrect. The OCA focusses almost entirely on the 300 mw of avoided cogeneration capacity discussed by Mr. Farber. In fact, the Company's proof of economic benefits did not even rely on that figure. The Company's study was based solely on the impact of retaining the load of 20 individual customers (PP&L St. 8-R, pp. 39-40). As this study shows, the EDI/IDI program creates a net 5% benefit under the Commission's "all-ratepayers" benefit test (See, Ex. OGK-13).[54/]

No Additional Showing Is Required on the Need for the Credits. The Company also did not "assume that every kwh of sales for which EDI/IDI credits were provided would have been lost at the standard rate and that there were no free riders." (OCA Main Brief, p. 88, quoting OCA St. 3B, p. 18). In fact, the Company's unrebutted testimony was that participating customers "demonstrated that the EDI programs contributed to retaining their facilities in PP&L's service territory by allowing them to produce at a lower incremental cost than competing plants." (PP&L St. 8-R, p. 39).

Other Ratepayers Have Not Borne Additional Fuel-Related Costs. The OCA failed to address the Company's study, except to

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54/ The Company did show a variety of additional benefits of the EDI/IDI programs, including the avoidance of 300 mw of unneeded cogeneration capacity on its system. These additional benefits however, were separate from and in addition to the 5% savings from 20 selected customers.

note Mr. Johnson's claim that the incremental electric sales created by the retained load would have increased average fuel costs for all customers (OCA Main Brief, p. 88). The OCA ignores the fact, noted in the Company's rebuttal, that the Company calculated benefits based on marginal energy costs, and even on this conservative assumption, that all ratepayers still enjoyed a net savings.

d. The Cases Cited By The OCA Provide No Basis For The Relief It Seeks In This Case

The OCA cannot show that its proposed disallowance accords with any Pennsylvania rules or policies, and so relies exclusively on decisions by other jurisdictions. Yet, even these do not require or even support the OCA's position.

The Michigan cases are not helpful to the OCA. Re Detroit Edison Company, 160 PUR4th 132 (1995) ("Detroit 1995") appears premised on the Commission's conclusion that the primary benefits to other ratepayers had "not been clearly defined or quantified." Detroit 1995, 1995 Mich. PSC LEXIS 31. Moreover, the order merely put the utility on notice of the type of showing it would need to make in a future rate case -- an opportunity that the OCA would deny to the Company here. In the other Michigan case, Re Detroit Edison Co., 149 PUR4th 161 (Mich. PSC 1994) ("Detroit 1994"), the Commission found that the savings calculated to emerge from the discounted rates "are not likely to be positive within the eight-year term of the R-10 contracts,"

and that net benefits (including the effect of lost revenues) would "not provide a net positive benefit until 2000, almost at the expiration of the initial contracts." Id. at 223. The decision of the Michigan Commission was thus driven in large part by the absence of benefits, not a conclusion that mandatory sharing is desirable in all cases.

The New York discount policy provides, at most, support for the OCA to request that the Commission institute a prospective generic rulemaking proceeding on this subject. Re Competitive Opportunities Available to Customers of Electric and Gas Service, 154 PUR4th 19 (1994) ("New York Policy"). The New York Commission set guidelines for future cases only, unlike the OCA's effort to disallow costs already committed. The New York Policy required the utilities affected to file tariff sheets consistent with its term, "to apply to any contracts signed after the issuance of this opinion and order." (emphasis added) New York Policy at 31. Several individual settlements had preceded that policy, but again, were negotiated individually by the utilities -- and all of those contained shareholder absorption levels far below the 50% requested by the OCA. In contrast, the OCA presents no basis for its chosen 50% "sharing" level, except as an arbitrary means of burdening shareholders.

The principal concern of the New York Commission was to ensure that utilities have an incentive to minimize discounts and thus not to burden core customers. New York Policy at 24-25.

Here, where the new sharing policy would be applied retroactively, this incentive goal would simply not be served. If anything, the New York Policy and other precedents cited support granting the Company recovery of the EDI/IDI credits, whose benefits it has demonstrated, and leaving a "sharing" policy to a later, and perhaps generic proceeding in which utilities may be placed fairly on notice before they establish such programs.

Finally, the Company reiterates its position on this issue: If the Commission finds that EDI/IDI credits should not be recovered through rates, despite all the evidence of system benefits, then the entire program should be terminated, and the Company's obligation to make credit payments ended. Any other result would be unfair and confiscatory to the Company.

e. The Sierra Club's Proposals To Condition EDI/IDI Credits Should Be Rejected

Preliminary Procedural Matter. The Sierra Club makes various requests concerning the stricken portions of Mr. Biewald's testimony: to reconsider the ruling; to reopen the record; to include the testimony in the record; to permit cross-examination of Mr. Biewald and rebuttal and surrebuttal testimony; to impose costs on any parties seeking to cross-examine him; and that the Commission reverse the order striking the testimony (Sierra Club Brief, pp. 14, 16). Sierra Club also includes an argument in favor of the relief requested in the

stricken testimony (Sierra Club Brief, pp. 14-15). These requests are untimely, unsupported, procedurally inappropriate and raise issues that now should be raised solely before the Commission. The ALJ made his ruling and left further deliberation up to the Commission (Tr. 1432-1436). These requests should be disregarded for purposes of the initial decision.

The remaining Sierra Club request addresses proposed condition of tying economic development discount programs to "maximum cost-effective DSM" (Sierra Club Brief, pp. 18-21). PP&L did not object to requiring a non-binding audit (customer-funded) before granting discounts, but the broad (and vague) recommendations of the Sierra Club are simply unsupported. Mr. Biewald was almost completely unfamiliar with the Company's tariffs (Tr. 1437-1438). His proposal is a generic one, made independently of any particular facts on the PP&L system, and independent of whether PP&L needs or could benefit from such a requirement. His support consists principally of the application of some form of audit requirement for a specific type of commission-approved discount program in New York--programs with no identifiable counterparts in the Company's tariffs.

No demonstrated need for Mr. Biewald's proposal exists on the PP&L system. The EDI/IDI programs have already been established without these requirements. Other "discount" programs either generate savings for the system (real time

pricing) or impose an immediate burden on shareholders -- a feature likely to impose more than adequate incentive to the Company to ensure that the discount is no higher than required. The Sierra Club simply fails to show why its plan: (1) is needed for this utility; (2) addresses the needs of this utility's customers; or (3) is tailored to this utility's circumstances.

The remaining suggestion of the Sierra Club is that a system benefits charge be imposed to recover DSM, low-income programs, etc., (Sierra Club Brief, pp. 21-24). Like the stricken testimony, this request raises a matter best addressed in the pending generic DSM recovery proceeding at Docket No. I-900005 and related appellate litigation. Moreover, this request is premature, because it is premised on the Company's inability to recover these costs in a post-electric utility industry restructuring world. At present, the costs at issue are claimed for recovery in the Company's base rates. When their recovery is in doubt and the Company files a base rate case in response to changing conditions, this proposal may be more appropriately considered. The Sierra Club presents no discussion of the impact of this request nor its likely size, and merely suggests allocation on the basis of usage -- a proposal that would require careful scrutiny in its own right (Sierra Club Brief, p. 22). In summary, this proposal is poorly defined, premature and should at most be revisited in a later case.

6. The CEO's Proposals To Expand And Reallocate DSM Program Costs Should Be Rejected

The CEO argues that the Company's DSM programs should be expanded and focussed on baseload customers (CEO Brief, pp. 12-20). These proposals should be rejected.

Although nominally addressing the Company's DSM programs, the CEO's specific recommendations ultimately focus on a different interest: low-income customer needs. The Company recognizes the interest of low-income customers in both social and DSM programs, but, for DSM implementation purposes, the Company has a responsibility to balance the needs of all customer classes in light of the Company's real DSM needs. The Company's proposed level and distribution of DSM costs is reasonable.

The CEO simply fails to provide any factual evidence that a major expansion and refocussing of the DSM programs are in the best interests of the Company and its customers. Far from proving that the Company has underestimated its future load requirements -- a very serious charge -- the CEO's brief at most raises "questions" about the issue (CEO Brief, pp. 13-17). Mr. Sipics explained the Company's planning and assumptions in detail, the CEO presented no expert testimony to contradict him. The CEO's efforts to cobble together an "inadequate capacity" case in its brief lacks credible record support. None of the witnesses who assessed the Company's load projections in light of their technical background and evaluation of the data draw the

conclusion advanced by the CEO in its brief that DSM is needed to supply any looming undercapacity problems. Instead, the CEO relies heavily on selective and misleading references to a Company report not entered into the record, not evaluated by a witness, and not subject to any factual explanation or rebuttal by the Company (CEO Brief, Attachment B, "Pennsylvania Power & Light Company Annual Resources Planning Report, May 1995" ("ARPR")).

The Company agreed that CEO, in lieu of submitting surrebuttal testimony, could reference portions of the Company's ARPR on Brief. The intent of this compromise, at least from the Company's point of view, was to permit CEO to support positions taken in its direct case, not to introduce entirely new arguments on brief. CEO did not contend in its direct case that PP&L would be short of capacity in the near future. It should not be permitted to raise that argument for the first time on brief.

The CEO's attack on the Company's DSM programs on "baseload" grounds is similarly lacking in record support (CEO Brief, pp. 17-19). As PP&L's witnesses showed, new construction and heating load are the most cost-effective areas for DSM investment (PP&L Initial Brief, pp. 288-289). Again, the CEO relies almost exclusively on a selective and inaccurate portrayal of the ARPR, which should be disregarded. The CEO also makes complex comparisons of funding for particular programs for the first time in its brief, free of any contradiction or explanation from the

Company's witnesses. If these claims had any validity, they should have been presented on the record.

The CEO seeks to require other customer classes to pay higher rates in order to contribute to expanded baseload DSM programs. Its arguments are vague, focus on broad generalities, and were never fully presented for review on the record. They therefore should be rejected.

VIII. ENERGY COST RATE ISSUES

A. OCA's Opposition To The Company's Proposed ECR Adjustment For Returning Generating Facility Costs Is Unfounded

The OCA submits a blanket opposition to the Company's proposal to include the non-energy revenue requirements associated with terminating off-system sales agreements (OCA Main Brief, pp. 313-320). Several points in response deserve mention here, supplemental to the Company's Initial Brief (PP&L Initial Brief, pp. 291-295).

The OCA narrowly focusses on hypotheticals: what if the capacity might be excess; what if excess earnings might occur; what if the proposal might discourage the Company from marketing the capacity. All of these "what ifs" rest on speculation, particularly the latter two concerns; yet the OCA perfunctorily dismisses the Company's response (OCA Main Brief, pp. 318-320). The capacity will not be excess. PP&L's reserve margins with the return of the JCP&L capacity remain reasonable and appropriate (PP&L Ex. JFS-1). Future over- or under-earnings are always a possibility in utility ratemaking, and the Commission's financial reporting requirements allow scrutiny and prompt action if overearning were to occur (See Tr. 2149). Similarly, if the Company fails to market the capacity in passive reliance on the ECR mechanism -- an unlikely and purely hypothetical scenario -- the complaint mechanism is readily available. In contrast, the OCA ignores the very real benefits of the Company's proposal,

particularly that: customers would immediately receive the benefits of revenue credits through the ECR for off-system capacity-related sales occurring between base rate cases; and, the costs and burdens of successive base rate cases would be reduced. The OCA's sole emphasis on whether an innovative proposal might provide a chance of an undue benefit to the Company should not guide the Commission's decision on this important issue.

B. OCA's Attempt To Give Ratepayers The Energy Benefits Arising From Plant Excluded From Rates Is Unfair And Unsupported

Even more disappointing is the OCA's position that the Company's alternative ECR adjustment proposal -- in the event that the fixed costs of the returning facilities are not included in the ECR -- is "not reasonable" (OCA Main Brief, p. 319). Again, the OCA's recommendation is driven solely by a concern that the Company not be given options to respond to the treatment of costs and revenues. The OCA completely ignores the fundamental unfairness of placing the full cost of the returning facilities on the Company, but giving the full net benefit of energy cost savings ($15 million in early 1996) to the ratepayers.

The OCA's only reasoning to support this patently unreasonable result is that the proposal (1) could result in ratepayers paying energy costs through the ECR that are "higher than the Company's actual cost of energy supply," and (2) that,

"this could occur at a time when the Company is overearning." These reasons simply lack any merit. The ratepayers, under the OCA's reasoning, would be unjustly enriched by lower energy costs arising from generating facilities which are not included in rates.

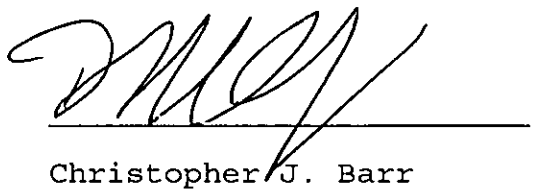
The "potential overearnings" point is also a red herring. The return of the first "slice" of facilities, and the arrival of the associated energy savings, would occur very shortly after new rates take effect. The Company is highly unlikely to be in an overearnings state immediately after a Commission order establishing just and reasonable rates.

Finally, the OCA's proposal that the Company address this issue in an individual ECR case, "based on the circumstances at that time," is inappropriate. The Commission has before it all facts necessary to decide this issue now. The Commission should modify the Company's ECR as requested to prevent a manifestly unjust result.

IX. CONCLUSION

For the foregoing reasons as well as those set forth in the Company's Initial Brief, the Commission's Investigation at Docket No. R-00943271 should be terminated, the various Complaints consolidated therewith dismissed, and the proposed rates permitted to become effective, with the revisions noted herein.

Respectfully submitted,



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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 a copy of the foregoing document upon the participants listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

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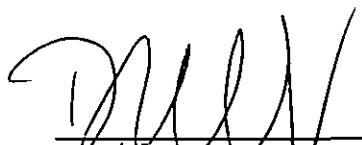

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KJH

IN REPLY PLEASE
REFER TO OUR FILE

July 3, 1995

JOHN G. ALFORD, SECRETARY
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POST OFFICE BOX 3265
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DOCUMENT
FOLDER

Re: Pennsylvania Power and Light Company
Docket No. R-00943271

Dear Secretary Alford:

Please find the original and three (3) copies of the **MOTION OF THE OFFICE OF TRIAL STAFF TO STRIKE PORTIONS OF THE REPLY BRIEF OF THE SIERRA CLUB, INC.** in the above-captioned matter. Copies are being served on parties of record.

Very truly yours,

J. E. Simms

Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

JES:sjh

cc: Judge Robert A. Christianson
Parties of Record

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CERTIFICATE OF SERVICE

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

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Office of Trial Staff

Dated: July 3, 1995

R-00943271

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MOTION OF THE OFFICE OF TRIAL STAFF TO
STRIKE PORTIONS OF THE REPLY BRIEF OF SIERRA CLUB

Pursuant to 52 Pa. Code §5.501(a)(3), the Office of Trial Staff ("OTS") hereby moves to strike pages five (5) through nine (9) of the Sierra Club's Reply Brief filed in the above-captioned proceeding on June 27, 1995. OTS submits that portions of the Sierra Club Reply Brief should be stricken for procedural reasons. In support of its Motion, OTS avers as follows:

1. The Sierra Club's Reply Brief in certain aspects violates the basic principle of fundamental fairness, which is the cornerstone of all proceedings before the Commission. Sierra Club raises arguments against certain OTS adjustments for the first time in its Reply Brief to which OTS cannot suitably respond. Prior to the Sierra Club's Reply Brief there was no indication that Sierra Club had any opinion regarding any of the adjustments proposed by OTS in this proceeding. Notably is the fact that Sierra Club did not cross-examined any of OTS's witnesses, did not provide any

rebuttal testimony to OTS's direct testimony nor provide any arguments in its Main Brief against OTS's adjustments. Instead, the Sierra Club engaged in a trial by ambush by waiting until its Reply Brief to address certain adjustments proposed by OTS, which effectively deprives OTS of the opportunity to respond to Sierra Club's arguments, thus violating OTS's due process rights.

2. Sierra Club had ample opportunity to present its arguments against any of OTS's proposed adjustments in this proceeding, including presenting such arguments in its Main Brief, which would have afforded OTS the opportunity to file a response in its Reply Brief. It is not clear why Sierra Club selected the avenue of avoiding to address OTS's proposed adjustments on an evidentiary basis or in its Main Brief and, instead, selected an unexpected and groundless filing of arguments in its Reply Brief. Clearly such a presentation by Sierra Club in its Reply Brief is fundamentally unfair. See, Application of Apollo Gas Company, Docket No. A-120450F0003, Initial Decision of Administrative Law Judge John H. Corbett, Jr., dated March 22, 1993, page 87, footnote No. 4.

3. The only remedy for restoring OTS's due process rights, is to grant the requested relief and strike pages five (5) through nine (9) of Sierra Club's Reply Brief. See, Appendix A, Application of Apollo Gas Company, Docket No. A-120450F0003, Twelfth Interim Order, March 19, 1993.

4. It is quite obvious that many of the arguments presented by Sierra Club in its Reply Brief is testimony in nature and/or

exhibits not admitted into evidence in this proceeding.[1] The Sierra Club did not file a petition to reopen the record for the inclusion of these purported facts, documents, recommendations and conclusions in its Reply Brief. Therefore, in accordance with Administrative Law Judge and the Commission rulings in e.g., Application of LP Water & Sewer Company et al., Docket No. A-211770 et seq., Order entered July 7, 1993, and Pennsylvania Public Utility Commission v. National Fuel Gas Distribution, R-00922499, Order entered July 30, 1993, pages 6-9, certain portions of Sierra Club's Reply Brief should be stricken by the Administrative Law Judge.

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[1] See, footnote No. 8, p. 7 and footnote No. 16, p. 9, respectively in Sierra Club's Reply Brief. These documents do not classify as documents that the Administrative Law Judge can simply take into evidence on judicial and/or administrative notice.

WHEREFORE, for the reasons stated above, the Office of Trial Staff respectfully requests that the Administrative Law Judge strike pages five (5) through nine (9) of the Reply Brief of Sierra Club in this proceeding.

Respectfully submitted,

Johnnie E. Simms

Johnnie E. Simms
Senior Prosecutor

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

Dated: July 3, 1995

APPENDIX A

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Apollo Gas Company for approval to offer, render, furnish or supply natural gas service to the general public in Allegheny, Armstrong, Clarion, Indiana, Jefferson and Westmoreland Counties, and Buffalo Township, Butler County.	:	No. A-120450F0003

TWELFTH INTERIM ORDER

On December 21, 1990, Apollo Gas Company ("Apollo") filed the instant application with the Pennsylvania Public Utility Commission ("Commission") seeking approval to offer, render, furnish or supply natural gas service to the general public in Allegheny, Armstrong, Clarion, Indiana, Jefferson and Westmoreland Counties. On June 14, 1991, Apollo amended its application to include Buffalo Township, Butler County. Five protests to this application were filed, including one filed by Equitable Gas Company ("Equitable").

After attempts to settle this litigation proved unsuccessful, hearings commenced on April 29, 1992 and continued on July 20, 1992. All parties have agreed upon a proposed settlement, with the exception of Equitable. The record in this proceeding was closed on September 25, 1992. All parties filed Main Briefs, with Apollo and Equitable filing Reply Briefs thereafter.

On September 29, 1992, Apollo filed a motion to strike a portion of Equitable's Reply Brief, to which Equitable responded on October 7, 1992. In its Motion to Strike, Apollo alleges Equitable raised an argument for the first time in Equitable's Reply Brief to which Apollo could not respond. Accordingly, Apollo seeks to have that portion of Equitable's Reply Brief struck, which raises this new argument.

In its Reply Brief at 4, Equitable challenges Apollo's claim of pre-existing authority arising from its continued use of pipelines, whose routes are expressly designated in charter documents. Equitable presents an argument pointing out an alleged discrepancy between a description of a pipeline route in certain charter documents set forth in Apollo Exhibit 5 and a pipeline route Mr. Kingerski describes in his prepared supplemental direct testimony (Apollo St. 3B at 11-12). Equitable argues the specific chartered pipeline route described in Apollo Exhibit 5 "as traversing Manor Township, Armstrong County and does not enter Burrell Township, Armstrong County." Equitable points out Mr. Kingerski testifies this pipeline route does not enter Manor Township, but does cross Burrell Township. Thus, Equitable argues these are obviously different pipeline routes, and, as a result, one must conclude the route Mr. Kingerski describes as in use today is not expressly designated in Apollo's charter documents (Equitable R.B. at 4).

While Equitable did indeed cross-examine Mr. Kingerski on this matter during the hearing on April 29, 1992, no further mention of this matter was made by any party until Equitable raised this argument in its Reply Brief. It is not simply a matter, as Equitable asserts in its answer to the motion to strike, of which party bears the burden of proof. It is a matter of fundamental fairness. Many matters are the subject of cross-examination during litigation, but later abandoned. A litigant must be given fair notice of what portions of its case are under serious attack, especially in complex litigation.

Equitable may not remain silent on an issue throughout the litigation of a case and then raise the issue for the first time in a Reply Brief without affording Apollo the opportunity to respond. Such tactics amount to nothing more than trial by ambush and are fundamentally unfair. To restore Apollo's due process rights, I shall grant the requested relief and strike that portion of Equitable's Reply Brief at 4 raising this argument for the first time. The deleted material shall include the first full paragraph of Equitable's Reply Brief at 4. For the foregoing reasons, the requested relief is granted and the following Order is entered; THEREFORE, IT IS ORDERED:

That the Motion to Strike of Apollo Gas Company is hereby granted and that portion of the Reply Brief of Equitable Gas Company at page 4, consisting of the first full paragraph on

that page, is hereby struck and shall receive no consideration whatsoever in the decision of this application.

Date: March 19, 1993

JOHN H. CORBETT, JR.
Administrative Law Judge

ORIGINAL

Ø New filing

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THOMAS P. GADSDEN
DIAL DIRECT (215) 963-5234

June 7, 1995

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INFO. CONTROL DIV.

Honorable Robert A. Christianson
Acting Chief Administrative Law Judge
Pennsylvania Public Utility Commission
North Office Building, Room G-06
P. O. Box 3265
Harrisburg, PA 17120

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

Dear Chief Judge Christianson:

At the hearing held on May 26, 1995, I cross-examined Office of Consumer Advocate witness Kahal regarding testimony that he had presented in a previous proceeding captioned Petition of Bethlehem Steel Corporation and Hadson Development Corporation at Docket No. P-870235. As you may recall, my questions went to certain avoided cost calculations that he had performed in that case and, more specifically, to the derivation of a levelized figure of approximately 8.5¢ per kilowatthour.

As reflected at transcript pages 2378-2379, I later asked a data request directed to that particular testimony. At that point, it was suggested that such testimony may already have been provided to Pennsylvania Power & Light Company ("PP&L") as part of the discovery process. Upon further review of our records, I have determined that, in lieu of furnishing copies of prior testimony, Mr. Kahal made such testimony available for review at his office in Maryland. And, while one of our consultants did visit Mr. Kahal's office, no testimony was reproduced at that time.

I have since obtained a copy of Mr. Kahal's testimony and supporting schedules from the Bethlehem Steel case and believe that the portions of that material dealing with his

DOCUMENT FOLDER

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avoided cost calculations should be admitted as a late-filed exhibit to clarify the record in this proceeding. I have therefore enclosed two copies of what has been pre-marked as PP&L Cross-Examination Exhibit 1, consisting of the cover page, pages 53-59 and Schedules MIK-5 and MIK-7 from Mr. Kahal's direct testimony in Bethlehem Steel, and request that it be accepted into evidence as marked.

As noted below and on the attached Certificate of Service, I am concurrently providing copies of PP&L Cross-Examination Exhibit No. 1 to the Court Reporter and to all active parties of record.

Sincerely,

Thomas P. Gadsden

Thomas P. Gadsden
Counsel for Pennsylvania
Power & Light Company

TPG:jod
Enclosure

cc: Commonwealth Reporting Service
All Active Parties of Record

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 a copy of the foregoing document upon the participants listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Dated: June 9, 1995

Thomas P. Gadsden

Thomas P. Gadsden
Counsel for Pennsylvania Power
& Light Company

COMMONWEALTH OF PENNSYLVANIA

BEFORE THE

PUBLIC UTILITY COMMISSION

Amended Petition of Bethlehem Steel Corporation and Hadson Development Corporation	)	Docket Nos. P-870235
American Power Corporation and CMS Generation Company v. Pennsylvania Electric Company	)	C-913318
Petition of Cambria Partners	)	P-910515
Robert Robinson v. Pennsylvania Electric Company	)	C-913764

DIRECT TESTIMONY

OF

MATTHEW I. KAHAL

ON BEHALF OF THE

OFFICE OF CONSUMER ADVOCATE

MARCH 1992

EXETER Associates, Inc.

10801 Lockwood Drive
Suite 350
Silver Spring, MD 20901

I have accepted the Penelec combined cycle costs, although there is evidence they are overstated.

The changes I have identified are projections and therefore uncertain. No one can know how much natural gas will cost over the next 30 years or the actual cost of constructing a coal plant in the late 1990s. Nonetheless, I believe the changes that I have made to Penelec's planning assumptions are conservative and are essential to protect ratepayers from paying excessive costs associated with QF contracts. The assumptions embedded in the avoided cost calculations of Drs. Shanker and Venkateshwara expose ratepayers to unreasonable risk.

Avoided Cost/Contract Cost-Effectiveness

Q. HOW HAVE YOU CONDUCTED YOUR AVOIDED COST ANALYSIS?

A. I have performed two separate studies. The first is the standard GPU differential revenue requirements analysis using Dr. Shanker's Case 1 (i.e., replace 80 mW of combined cycle capacity in 1997 with 80 mW of QF purchases). I made only one change to his Case 1 study, my revised fuel price projections. In my opinion, this study produces valid, though conservatively high estimates of avoided cost for an 80 mW QF.

The second study is a traditional coal proxy analysis. I have performed this study as a check on the coal proxy study submitted by Dr. Venkateshwara. The coal proxy study approach is of highly questionable validity, since Penelec has no plans to add coal capacity until 2005. I therefore regard my coal proxy study as illustrative.

In addition to these two studies, I comment briefly on Dr. Venkateshwara's "Ratepayer Acceptability Test" and PURPA energy rate comparison.

Q. PLEASE DESCRIBE YOUR DRR ANALYSIS?

A. As stated, my DRR uses GPU's standard methodology and Dr. Shanker's Case 1, along with my fuel price scenario ($2.50 per MMBtu in 1992 for natural gas and 8 percent escalation). This analysis was conducted by GPU staff using the PROBSYM model at the request of the OCA.

The computer output results are summarized on page 1 of Schedule MIK-4. The energy portion of avoided cost is shown for the on-peak period, off-peak period and an "all hours" weighted average and is expressed in dollars per mWh. The final column presents the avoided capacity costs in dollars per mW of capacity. Page 2 of Schedule MIK-1 combines the $/mWh energy and $/mW capacity to produce a rolled-in $/mWh schedule which reflects both capacity and energy. For comparability purposes, I have extrapolated the costs from 2022 when the PROBSYM results end to 2026. The 30-year present value total for 1 mWh per year at a 10.71 percent discount rate is $833.85.

Q. HOW DO YOUR DRR RESULTS COMPARE TO THE THREE CONTRACT OFFERS?

A. I have shown this comparison on Schedule MIK-5. Page 1 of that schedule is based upon a 10.71 percent discount rate, while page 2 is based upon 9.13 percent discount rate. As I mentioned earlier, the American/CMS cost figures are overstated by one year of inflation (i.e., 4 percent) because their offer calls for a 1998, not 1997 in-service date.

These schedules demonstrate that the offers substantially exceed the DRR avoided cost estimates. At a 10.71 percent discount rate, the QF offers are approximately $100 to $106 per mWh levelized compared to levelized avoided costs of $84.67 per mWh. The overstatement is about

20 percent. The results on page 2 using the 9.13 percent discount rate are similar in percentage terms.

Accepting the Commission's order, the DRR results provide a proper evaluation of the LG&E contract since LG&E has been awarded "first in line" status. This analysis overstates the cost-effectiveness of Cambria and American/CMS because it assumes that all 500 mW of capacity from those projects should receive a capacity credit in 1997 (or 1998) when the projects enter service.

Q. HOW HAVE YOU CONDUCTED YOUR COAL PROXY ANALYSIS?

A. That analysis is shown in spread sheet form on Schedule MIK-6. I have begun with the assumption that a coal plant would cost $1,500 per kW in 1990 dollars, or $1,974 for a 1997 in-service. I convert that installed cost to annual capital revenue requirement using the schedule of fixed charge rates in Penelec's 1991 ARPR. However, I have added 0.7 percent each year to the fixed charge rate (about a 5 percent increase) to recognize realty taxes and insurance. The annual capital charges per kW are converted to $ per mWh by dividing 7,008 hours (an 80 percent capacity factor).

The energy component of the coal proxy includes both fuel cost and non-fuel O&M (variable and fixed) per mWh. My energy figures are taken from Penelec's 1991 ARPR, but using 5 percent escalation for coal prices and 4 percent for O&M.

The capacity cost per mWh plus the energy cost per mWh equal the coal proxy total avoided cost. The final column of that schedule converts the total cost per mWh to present values and sums over 30 years.

Q. HOW DOES THIS COMPARE TO THE THREE OFFERS?

A. The comparison is shown on Schedule MIK-7, with page 1 using a 10.71 percent discount rate and page 2 using the 9.13 percent figure. The levelized cost of the coal proxy is about $90 per mWh, compared to about $85 for the DRR, confirming that Penelec's choice of a combined cycle over a coal plant in 1997 is an economic choice. While the coal proxy comparison is more favorable than the DRR to the cogenerator contract offers, it is still much less costly than those offers. The cogenerator offers are about 10 to 15 percent above the coal proxy.

Q. IS THE COAL PROXY COMPARISON APPROPRIATE?

A. No, it has several shortcomings. First, as was just mentioned, a coal plant in 1997 is less economic than the combined cycle. Avoided cost should reflect, to the extent practicable, a utility's least-cost (or most appropriate) resource options. Second, the American/CMS and Cambria capacity is largely excess capacity in the early years. This analysis assumes that 580 mW of coal capacity is needed in 1997/1998.

The third concern is referred to as an "end effects" problem and is very subtle. The problem arises because the cogeneration contract and the utility generation resource it replaces have differing lives. The contracts have assumed lives of 25 to 30 years, but the coal plant probably has a useful life of 40 to 50 years (or more). This means that at the end of the 25 year contract, Penelec must secure a new resource based on market prices or replacement costs at that time. For example, if a coal plant costs $2,000 per kW in 1997, the replacement coal plant will cost about $5,500 per kW in 2021 when the QF contract expires. On the other hand, had Penelec not accepted the QF contract, in 2021 it

would have a mostly depreciated but still very serviceable coal plant which can provide cheap coal energy for its customers for another two or three decades. As a technical matter, the coal proxy rates should be adjusted downward to take end effects into account.

For all three reasons, I believe my coal proxy study on Schedule MIK-6 is biased in favor of the cogenerators.

Q. DR. VENKATESHWARA OBTAINED MUCH HIGHER COSTS FROM HIS COAL PROXY ANALYSIS. HOW DO YOU EXPLAIN THAT?

A. There appear to be two main differences between our two studies. First, he assumes a Penelec coal plant costing $2,700 per kW. I believe that is an unrealistically and unreasonably expensive coal plant. Second, he assumes realty taxes and insurance -- two very minor expense items -- add nearly 20 percent of the carrying charge rate. This is equivalent to increasing the cost of the coal plant from $2,700 to $3,200 per kW. While I agree that these items should be included, they are just not that expensive.

Q. DR. VENKATESHWARA SHOWS SAVINGS FOR THE CAMBRIA CONTRACT USING HIS "RATEPAYER ACCEPTABILITY TEST". IS THAT A REASONABLE ANALYSIS?

A. This study assumes that Cambria replaces 200 mW of Met Ed and Penelec capacity in the late 1990s. Aside from the controversy of using Cambria to meet Met Ed's need, there are biases on both the capacity and energy side of his analysis. On the capacity side, he takes Penelec's already high combined cycle cost of $723 per kW and increases it by another $100 (about 15 percent). Next, he adjusts the fixed charge rate, as before, for his very large realty taxes and insurance adder. These adjustments lead to a large overstatement of the capacity charges.

The problem on the energy side is that his energy figures are driven by Penelec's 1991 ARPR gas price forecasts which I previously discussed.

Q. HAVE YOU CORRECTED THIS ANALYSIS?

A. I have performed some calculations to show what happens when the gas price forecast embedded in that analysis is revised in accordance with my scenario. Schedule MIK-8 presents that calculation. The first two columns compare my gas price scenario (in $/MMBtu) with GPU's forecast. The third column identifies the $/MMBtu difference. The fourth column translates that into a fuel dollars per year savings for 1 mW of combined cycle capacity. The combined cycle is assumed to operate at a 60 percent capacity factor, or 5,256 hours per year. As this schedule shows for 1997, a reduction of $0.70 per MMBtu translates into a savings per mW of capacity that year of $28,477. The 30-year present value for one mW (at 9.13 percent) is $2 million.

Dr. Venkateshwara claims a present value (1991) savings for Cambria of $18 and $62 million, or $31 million to $104 million if the present value date is 1997. My calculations indicate a present value cost reduction of $2 million per mW over 30 years from correcting the gas forecast. For the 200 mW Cambria contract this is a downward adjustment of $400 million. This offsets his claimed 30-year $105 million savings by a factor of four.

Thus, the "Ratepayers Acceptability Test" provides a present value increase in cost to ratepayers of nearly $300 million before considering any corrections to his capital costs.

Q. DR. VENKATESHWARA ASSERTS THAT THE CAMBRIA OFFER IS BELOW THE PURPA ENERGY ONLY RATES. IS HE CORRECT?

A. The PURPA energy rates which he refers to are based upon Penelec's overstated fuel price assumptions. In response to OCA Set II, item 2, Penelec provided PJM billing rate projections based upon my fuel price scenario. These PJM rates are substantially lower than the "PURPA energy rates" which he cites in his testimony. For example, by 2018, the PJM billing rate using my fuel price scenario is nearly 30 percent below his PURPA energy rate.

PENNSYLVANIA ELECTRIC COMPANY

Cogeneration Contract Offers versus
DRR Avoided Cost Projections
($/Mwh; 10.71% discount rate)

	LG&E	American/ CMS	Cambria	OCA DRR
1997	$73.30	$92.73	$87.40	$57.53
1998	76.40	93.95	89.50	60.25
1999	79.60	95.23	91.85	61.74
2000	83.00	96.57	94.04	63.60
2001	86.50	97.99	96.47	65.61
2002	90.20	99.47	98.95	67.93
2003	94.10	101.02	101.67	70.49
2004	98.10	102.66	104.35	73.59
2005	102.20	104.38	107.38	76.99
2006	106.60	106.18	110.36	80.70
2007	95.30	108.07	113.70	84.42
2008	97.90	110.06	117.00	87.23
2009	100.60	112.14	120.57	92.65
2010	103.50	114.33	124.30	97.87
2011	106.50	116.63	128.20	103.48
2012	121.00	119.05	130.70	108.91
2013	128.10	121.58	133.30	114.13
2014	138.10	124.24	136.10	121.16
2015	147.60	127.04	116.79	128.38
2016	159.90	129.97	119.89	136.86
2017	154.10	133.05	123.09	145.26
2018	166.70	136.29	126.39	154.80
2019	176.00	139.69	129.89	163.10
2020	185.90	143.25	133.59	172.00
2021	196.40	147.00	137.39	181.40
2022	208.20	150.93	141.49	185.90
2023	220.68	155.06	145.69	197.10
2024	233.92	159.40	150.19	208.90
2025	247.95	163.95	154.79	221.40
2026	262.83	168.73	159.69	234.70
Present Value	$1,008.15	$1,049.38	$1,046.05	$833.85
Levelized	$102.36	$106.55	$106.21	$84.67

(1) All calculations assume 80% discount factor.

PENNSYLVANIA ELECTRIC COMPANY

Cogeneration Contract Offers versus
DRR Avoided Cost Projections
($/Mwh; 9.13% discount rate)

	LG&E	American/ CMS	Cambria	OCA DRR
1997	$73.30	$92.73	$87.40	$57.53
1998	76.40	93.95	89.50	60.25
1999	79.60	95.23	91.85	61.74
2000	83.00	96.57	94.04	63.60
2001	86.50	97.99	96.47	65.61
2002	90.20	99.47	98.95	67.93
2003	94.10	101.02	101.67	70.49
2004	98.10	102.66	104.35	73.59
2005	102.20	104.38	107.38	76.99
2006	106.60	106.18	110.36	80.70
2007	95.30	108.07	113.70	84.42
2008	97.90	110.06	117.00	87.23
2009	100.60	112.14	120.57	92.65
2010	103.50	114.33	124.30	97.87
2011	106.50	116.63	128.20	103.48
2012	121.00	119.05	130.70	108.91
2013	128.10	121.58	133.30	114.13
2014	138.10	124.24	136.10	121.16
2015	147.60	127.04	116.79	128.38
2016	159.90	129.97	119.89	136.86
2017	154.10	133.05	123.09	145.26
2018	166.70	136.29	126.39	154.80
2019	176.00	139.69	129.89	163.10
2020	185.90	143.25	133.59	172.00
2021	196.40	147.00	137.39	181.40
2022	208.20	150.93	141.49	185.90
2023	220.68	155.06	145.69	197.10
2024	233.92	159.40	150.19	208.90
2025	247.95	163.95	154.79	221.40
2026	262.83	168.73	159.69	234.70
Present Value	$1,174.11	$1,199.37	$1,196.08	$979.00
Levelized	$105.93	$108.21	$107.91	$88.33

(1) All calculations assume 80% capacity factor.

PENNSYLVANIA ELECTRIC COMPANY

Cogeneration Contract Offers versus
Coal Proxy Cost Projections
($/Mwh; 10.71% discount rate)

	LG&E	American/ CMS	Cambria	Coal Proxy
1997	$73.30	$92.73	$87.40	$85.10
1998	76.40	93.95	89.50	85.00
1999	79.60	95.23	91.85	84.73
2000	83.00	96.57	94.04	84.62
2001	86.50	97.99	96.47	84.67
2002	90.20	99.47	98.95	84.85
2003	94.10	101.02	101.67	85.21
2004	98.10	102.66	104.35	85.74
2005	102.20	104.38	107.38	86.37
2006	106.60	106.18	110.36	87.10
2007	95.30	108.07	113.70	87.94
2008	97.90	110.06	117.00	88.91
2009	100.60	112.14	120.57	89.97
2010	103.50	114.33	124.30	91.16
2011	106.50	116.63	128.20	92.50
2012	121.00	119.05	130.70	93.93
2013	128.10	121.58	133.30	95.53
2014	138.10	124.24	136.10	97.27
2015	147.60	127.04	116.79	99.13
2016	159.90	129.97	119.89	101.19
2017	154.10	133.05	123.09	103.57
2018	166.70	136.29	126.39	106.48
2019	176.00	139.69	129.89	109.78
2020	185.90	143.25	133.59	113.28
2021	196.40	147.00	137.39	116.94
2022	208.20	150.93	141.49	120.83
2023	220.68	155.06	145.69	124.97
2024	233.92	159.40	150.19	129.31
2025	247.95	163.95	154.79	133.87
2026	262.83	168.73	159.69	138.70
Present Value	$1,008.15	$1,049.38	$1,046:05	$883.63
Levelized	$102.36	$106.55	$106.21	$89.72

(1) All calculations assume 80% capacity factor.

PENNSYLVANIA ELECTRIC COMPANY

Cogeneration Contract Offers versus
Coal Proxy Cost Projections
($/Mwh; 9.13% discount rate)

	LG&E	American/ CMS	Cambria	Coal Proxy
1997	$73.30	$92.73	$87.40	$85.10
1998	76.40	93.95	89.50	85.00
1999	79.60	95.23	91.85	84.73
2000	83.00	96.57	94.04	84.62
2001	86.50	97.99	96.47	84.67
2002	90.20	99.47	98.95	84.85
2003	94.10	101.02	101.67	85.21
2004	98.10	102.66	104.35	85.74
2005	102.20	104.38	107.38	86.37
2006	106.60	106.18	110.36	87.10
2007	95.30	108.07	113.70	87.94
2008	97.90	110.06	117.00	88.91
2009	100.60	112.14	120.57	89.97
2010	103.50	114.33	124.30	91.16
2011	106.50	116.63	128.20	92.50
2012	121.00	119.05	130.70	93.93
2013	128.10	121.58	133.30	95.53
2014	138.10	124.24	136.10	97.27
2015	147.60	127.04	116.79	99.13
2016	159.90	129.97	119.89	101.19
2017	154.10	133.05	123.09	103.57
2018	166.70	136.29	126.39	106.48
2019	176.00	139.69	129.89	109.78
2020	185.90	143.25	133.59	113.28
2021	196.40	147.00	137.39	116.94
2022	208.20	150.93	141.49	120.83
2023	220.68	155.06	145.69	124.97
2024	233.92	159.40	150.19	129.31
2025	247.95	163.95	154.79	133.87
2026	262.83	168.73	159.69	138.70
Present Value	$1,174.11	$1,199.37	$1,196.08	$1,004.82
Levelized	$105.93	$108.21	$107.91	$90.66

(1) All calculations assume 80% capacity factor.

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July 3, 1995

RECEIVED
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PUBLIC UTILITY COMMISSION
SECRETARY BUREAU

BY FEDERAL EXPRESS

John G. Alford, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-18
Commonwealth Avenue and North Street
Harrisburg, PA 17120

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

Dear Secretary Alford:

Enclosed for filing in the above-captioned proceeding are an original and two copies of the Motion of Pennsylvania Power & Light Company to Strike Portions of the Brief of Eric Joseph Epstein. Also enclosed is an additional copy of this letter and the Company's Motion which we request that you time and date stamp and return to us as proof of filing.

Copies of the enclosed are being served in accordance with the attached Certificate of Service.

DOCUMENT FOLDER

Very truly yours,

Alan K. Maesaka
Counsel for Pennsylvania Power & Light Company

AKM/cmb
Enclosures
cc: Certificate of Service
ALJ Robert A. Christianson

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MOTION OF PENNSYLVANIA POWER & LIGHT COMPANY TO STRIKE PORTIONS OF THE BRIEF OF ERIC JOSEPH EPSTEIN

Pennsylvania Power & Light Company ("PP&L" or the "Company"), by its attorneys, hereby files with the Public Utility Commission ("Commission"), pursuant to 52 Pa. Code §5.103, this Motion to Strike and states as follows:

1. On June 14, 1995, Eric Joseph Epstein (hereafter "Mr. Epstein") served upon PP&L his Brief in the above-captioned proceeding.

2. Mr. Epstein's Brief relies heavily on facts and information outside the record in this case. That evidence includes:

a. Various telephone conversations, occurring after the record closed, between Mr. Epstein and the following individuals:

(1) Laurence V. Bladen, Director of Finance and Administrative Services, Allegheny Electric Cooperative (March 30, May 12 and June 5, 1995)(Epstein Brief, pp. 6-7);

(2) Dr. Michael Masnik, Senior Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Plant Support, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission (June 7, 1995)(Epstein Brief, pp. 12-13);

(3) Richard Janati, Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources ("DER")(June 5, 1995)(Epstein Brief, p. 13); and

(4) Stan Maingi, Bureau of Radiation Protection, DER (June 9, 1995)(Epstein Brief, p. 16).

b. A meeting between Eric Epstein and Stan Maingi, Bureau of Radiation Protection, DER on June 9, 1995, after the record closed in this proceeding (Epstein Brief, p. 13).

c. Numerous other articles, reports, letters and memoranda which are not part of the record, including:

(1) U.S. Nuclear Regulatory Commission ("NRC"), Advisory Panel for the Decontamination of Three Mile Island Unit-2, September 23, 1983 (Epstein Brief, p. 4);

(2) Allegheny Electric Cooperative 1994 Annual Report (Epstein Brief, pp. 6 and 9);

(3) Allegheny Electric Cooperative 1993 Annual Report (Epstein Brief, p. 6);

(4) World List of Nuclear Power Plants: Operable, Under Construction, or on Order (30 MWe and Over) as of December 31, 1994, Nuclear News, March 1995 (Epstein Brief, pp. 11 and 15);

(5) Bill Paul, "Electric Utility Analysts Almost Never Discuss Financial Impact of Accidents at Nuclear Power Plants," March 18, 1987 (Epstein Brief, p. 14);

(6) Nuclear Monitor, November 21, 1994 (Epstein Brief, p. 15);

(7) Wall Street Journal, Wednesday, March 18, 1987, p. 63 (Epstein Brief, p. 16);

(8) Bureau of National Affairs, "Federal Facilities: Industry, DOE Struggle to Find Acceptable Solution to Interim Storage of Spent Fuel," Daily Environment News, March 18, 1994 (Epstein Brief, p. 19);

(9) State of Nevada, Nuclear Waste Project Office, Scientific and Technical Concerns (Epstein Brief, p. 19);

(10) New York Times, March 13, 1995, p. 1 (Epstein Brief, p. 19);

(11) Andrew Maykuth, The Dallas Morning Star, July 31, 1994, p. 4A (Epstein Brief, p. 20);

(12) Recent audit by the Pennsylvania House Legislative Budget and Finance Committee (Epstein Brief, pp. 21-22);

(13) "ACURIE Newsletter, About Low-Level Radioactive Waste Management," May 1995, p. 1 (Epstein Brief, p. 22);

(14) CRC Handbook of Chemistry and Physics 1988 (Epstein Brief, p. 23);

(15) U.S. NRC, "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use of Termination of Licenses for Byproduct, Source, or Special Nuclear Material," Policy and Guidance Directive FC 83-23, Division of Industrial and Medical Nuclear Safety, Washington, D.C., August 1987 (Epstein Brief, p. 23).

3. Mr. Epstein's extensive reliance on extra-record evidence is completely inappropriate and plainly prohibited. This evidence and all associated discussion of such evidence should be stricken for the following reasons:

a. Mr. Epstein's use of extra-record evidence violates Commission rules. Specifically, the Commission's regulations state that all evidence relied upon in briefs filed in formal proceedings must be a part of the record:

> (a) Briefs shall contain the following:
>
> * * *
>
> (2) Where evidence is relied upon by the participant filing the brief, he shall make reference to the pages of the record or exhibits where the evidence appears.

52 Pa. Code §5.501(a)(2)(emphasis added).

b. Mr. Epstein's use of extra-record evidence is wholly inconsistent with prior Commission precedent establishing that briefs may not rely on evidence outside the record. See, e.g., Application of Interstate Energy Co., Docket No. A-00140200, slip op., pp. 7-10 (Order entered May 5, 1995)(granting motion to strike portions of reply brief regarding events outside and after close of the record).

c. Mr. Epstein's reliance on extra-record evidence is plainly inappropriate because the Commission cannot rely on such evidence in issuing an order in this proceeding. It is well established that administrative decisions may not rest on evidence outside the record. See, e.g., Mercy Regional Health Sys. v. Dep't of Health, 165 Pa. Cmwlth. 629, 645 A.2d 924, 928 (1994)("Due process requires that administrative decisions of an

adjudicatory nature must be based exclusively on evidence contained in the formal record which has been made known to the parties and which they have had an opportunity to refute"); see also Philadelphia Electric Co. v. Pa. P.U.C., 93 Pa. Cmwlth. 410, 502 A.2d 722, 731 (1985)("The Commission's discretionary findings and conclusions must be accepted unless they are totally without support in the record"); Erie Lighting Co. v. Pa. P.U.C., 131 Pa. Super. 190, 198 A. 901, 904 (1938)("The restraints imposed upon the commission to which legislative power has been delegated must, however, be observed, particularly the requirement that its action be predicated upon facts contained in the record") (emphasis added).

4. In light of Commission regulations and prior precedent, those portions of Mr. Epstein's Brief discussing evidence not in the record (see Appendix A) are improper and should be stricken.

WHEREFORE, for the foregoing reasons, the Company requests the Presiding Officer to grant the Motion of Pennsylvania Power & Light Company to Strike Portions of the Brief of Eric Joseph Epstein described in Appendix A, hereto.

Respectfully submitted,

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OF COUNSEL:

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Philadelphia, PA 19103
(215) 963-5448

DATED: July 3, 1995

APPENDIX A

Portions of Mr. Epstein's Brief to be Stricken:

1. Page 4, lines 5 through 15.

2. Page 6, line 8 (beginning with "However, Allegheny is...") through line 17.

3. Page 7, lines 13 (beginning with "Unfortunately, AEC does not know...") through 26.

4. Page 9, lines 1 through 5.

5. Page 11, lines 1 through 14.

6. Page 12, line 16 ("Mr. Epstein contacted...") through Page 13, line 15 (through "Essentially monitors trends.").

7. Page 14, lines 1 through 10.

8. Page 15, line 7 (beginning with "Vessel shroud cracks are a serious problem...") through Page 16, line 4.

9. Page 16, lines 7 (beginning with "Certain designs have prompted...") through 10.

10. All of Page 19.

11. Page 20, lines 1 through 10.

12. Page 21, line 15 (beginning with "Unfortunately, the siting process is in complete disarray.") through Page 22, line 8.

13. Page 22, lines 16 through 22.

14. Page 23, lines 12 (beginning with "Therefore, the hazardous life...") through 15 (ending with "Physics, 1988").

15. Page 23, lines 21 (beginning with "and US NRC, 'Guidelines for...'") through 25.

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 a copy of the foregoing document upon the participants listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

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BY FEDERAL EXPRESS

Eric J. Epstein
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Dated: July 3, 1995

Alan K. Maesaka
Counsel for Pennsylvania Power
& Light Company

MID-ATLANTIC ENERGY PROJECT

A Project of the Pace University School of Law
Center for Environmental Legal Studies

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July 10, 1995

John J. Alford, Secretary
PA Public Utility Commission
Room G-23, North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Co.,
Docket No. R-00943271
Response of Sierra Club to OTS's Motion to Strike Portions of Sierra Club's Reply Brief

Dear Secretary Alford:

Enclosed please find the original and nine (9) copies of the Response of Sierra Club to OTS's Motion to Strike Portions of Reply Brief of Sierra Club. All parties of record have been duly served as evidenced by the attached Certificate of Service.

Please date-stamp a copy of this transmittal letter, the cover of our brief, and the cover of our Certificate of Service for our files.

Very truly yours,

Mary Lou Morin
Secretary to Alan J. Barak
Mid-Atlantic Energy Project

/mlm
Enclosures

cc: Honorable Robert A. Christianson
Parties of Record

\ppl\resp1.ltr

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	)	
v.	)	Docket No. R-000943271
Pennsylvania Power & Light Co. (General rate increase request)	)	

SIERRA CLUB'S RESPONSE TO
OTS' MOTION TO STRIKE PORTIONS OF
SIERRA CLUB'S REPLY BRIEF

Pursuant to 52 PA. CODE § 5.103(c) Sierra Club responds in opposition to the Office of Trial Staff's motion of July 3, 1995, to strike pages 5-9 of Sierra Club's Reply Brief of June 27, 1995. The ALJ should deny the motion because Sierra Club properly replied to matters raised in the testimony of PP&L, OTS and CEO witnesses and in those parties' main briefs.

1. The OTS motion argues that pages 5-9 should be stricken because Sierra Club:

   a. raises arguments for the first time in the reply brief (OTS Motion ¶ 1);
   b. gave no prior indication that it had an opinion regarding any of the OTS adjustments (OTS Motion ¶ 1);
   c. did not cross any of OTS' witnesses or provided rebuttal testimony (OTS Motion ¶ 1);
   d. did not argue against OTS' adjustments in Sierra Club's main brief (OTS Motion ¶ 1)

2. There is no dispute that Sierra Club was **replying** to OTS and other positions. The Company's case proposed certain adjustments in rates for certain energy efficiency-related services: Build-A-Neighborhood; Affordable Housing; Small Business; Keep Warm; Payment

Protection; Winter Emergency; Operating HELP; and CARES' pilot.[1] PP&L seeks rate recovery only for the conservation, efficiency, and load management programs, $3.5 million.[2] OTS offered testimony largely opposing the proposal.[3] The Commission on Economic Opportunity offered testimony supporting and opposing the adjustment.[4] The Company[5], the CEO[6] and OTS[7] briefed the adjustments. Sierra Club's Reply Brief, pp. 5-9, responded to all three positions, neither adopting nor rejecting any one position fully. The OTS Motion does not claim that Sierra Club was providing the first argument on any issue in the case. Rather, it essentially argues that because the Sierra Club position is opposed to OTS' position Sierra Club should have briefed its position in its own main brief.

3. There is no requirement in Commission rules that a party make its reply arguments in its main brief. OTS does not cite any such requirement, because there is none. Indeed, the Rules of Practice's requirement that "[b]riefs shall be as concise as possible", 52 PA. CODE § 5.501(e), suggests that parties carefully separate their direct case from their responsive positions in their briefs, so that those briefs be each as limited as possible.

4. OTS' asserted basis for its motion is inapposite, because it merely cites the Commission's rule that a party bearing the burden of proof argue its position in the main brief:

> (a) Briefs shall contain the following:
>
> > (3) An argument preceded by a summary. The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.

---

[1] PP&L Statement 11, pp. 14-27 (Stathos); OTS Statement 4, p. 32; OTS Main Brief pp. 72-84.

[2] PP&L Statement 11, p. 30, 11R p. 11 (Stathos)

[3] OTS Statement 4, pp. 31-41 (Weakley).

[4] CEO Statement 1, pp. 5-11. (Kuennen)

[5] PP&L Initial Brief, pp. 113-24.

[6] CEO Statement 1, pp. 5-11. (Kuennen)

[7] *E.g.*OTS Main Brief, p. 82.

52 PA. CODE § 5.501(a)(3), *cited* in OTS' Motion, first paragraph. In the instant case, the Company bore the burden of proof on the adjustments at issue, not Sierra Club. The Company offered the adjustments. Sierra Club merely responded. The Company bore, and carried, its initial burden of proof. It supported its case in its initial brief.[8]

5. OTS' reliance on ALJ Corbett's March 19, 1993 12th Interim Order in Apollo Gas, No. A-120450F0003 is misplaced. That Order rested on a finding that the matter in question was "abandoned" after cross and that there was no "fair notice of what portions of its case are under serious attack" to the aggrieved party.[9] By contrast, the adjustments in question were neither abandoned herein nor was there any doubt they were under attack. Not only did OTS know the issue was a live one; OTS placed the issue into controversy by filing its direct testimony against the Company adjustments. Further, both the Company and CEO argued the issue in their main briefs. If OTS had not itself challenged the adjustments there would have been nothing for Sierra Club to reply to. In order for Apollo to apply PP&L, not OTS, would have to persuasively claim surprise in, say, OTS' reply brief.[10]

6. The "only remedy"[11] is not to strike Sierra Club's Reply Brief's pages. If OTS is entitled to relief -- and Sierra Club says that it is not -- a less punitive remedy is to provide OTS with the limited opportunity to respond to the arguments in the five pages of Sierra Club's Reply

---

[8] PP&L Initial Brief, pp. 113-24.

[9] Apollo, Slip Op. p. 3.

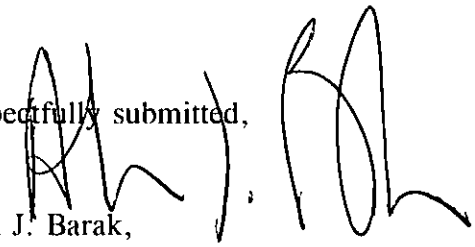
[10] The OTS position presents a larger issue of case management. Complex cases become more manageable when parties present the ALJ with their own positions in their main briefs and their replies in their reply briefs. Taken to the extreme, as in the instant case, the OTS position would make main briefs unwieldy. It suggests that all parties place ALL arguments into their main briefs in order to avoid losing an issue by seeing it "stricken" from a reply brief.

Cf., the Supreme Court's resolution of this case management issue: "the appellant may file a brief in reply to matters raised by appellee's brief not previously raised in appellant's brief...." Pa. R.A.P. 2113 (Reply Brief). In the instant dispute Sierra Club has responded on reply to OTS' Main Brief's arguments raised in opposition to the energy efficiency programs' adjustment (OTS Main Brief pp. 72-84).

[11] OTS Motion ¶ 3.

Brief. Striking Sierra Club's brief, thereby depriving Sierra Club of a voice on the adjustments, would be a harm far in excess of that injury which OTS claims -- surprise.[12]

Respectfully submitted,



Alan J. Barak,
Attorney for Sierra Club

Alan J. Barak (Sup. Ct. No. 67886)

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Harrisburg PA 17110

717/541-1967 voice
717/541-1970 fax

Daniel W. Rosenblum, Director MAEP, Of Counsel[13]
Dated: July 10, 1995

\pp11\resp1.pld

[12] If the essence of the OTS motion is that Sierra Club's Reply Brief footnotes 8 and 16 should be stricken because they refer to a June 20, 1995, NEW YORK TIMES story about PASNY's agreement to fund purchases of energy efficient refrigerators for public housing and to the CEEP's official report on DSM evaluation, OTS' motion is simply too broad.

[13] Member Illinois and New York bars.

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	)	
v.	)	Docket No. R-000943271
Pennsylvania Power & Light Co. (General rate increase request)	)	

SIERRA CLUB'S RESPONSE TO
OTS' MOTION TO STRIKE PORTIONS OF
SIERRA CLUB'S REPLY BRIEF

CERTIFICATE OF SERVICE

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COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	)	
v.	)	Docket No. R-000943271
Pennsylvania Power & Light Co. (General rate increase request)	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this, the 10th day of July, 1995, served a true copy of Sierra Club's Response to OTS's Motion to Strike Portions of Sierra Club's Reply Brief, upon the following parties of record to this proceeding by hand and by First Class Mail, as indicated and addressed as follows:

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TMI Alert
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Linda S. Herman
Notary Public

NOTARIAL SEAL
LINDA S. HERMAN, Notary Public
Harrisburg, Dauphin County
My Commission Expires Nov. 20, 1997

Mary Lou Morin

Mary Lou Morin, Secretary to Alan Barak
Attorney for Sierra Club
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ORIGINAL

BEFORE THE
PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL.	:	
	:	Docket No. R-00943271,
V.	:	R-00943271C001
	:	
PENNSYLVANIA POWER & LIGHT COMPANY	:	et seq.

REPLY IN OPPOSITION TO PENNSYLVANIA POWER & LIGHT COMPANY'S MOTION TO STRIKE PORTIONS OF THE BRIEF OF ERIC JOSEPH EPSTEIN AND REQUEST TO SANCTION PP&L

Eric Joseph Epstein ("Epstein") hereby files with the Public Utility Commission ("Commission"), this Motion in Opposition to Pennsylvania Power & Light ("PP&L's") Motion to Strike Portions of the Brief of Eric Joseph Epstein and the accompanying Brief. Epstein states as follows:

1. That the "[n]umerous other articles, reports, letters and memoranda" identified in c(1) - c(4), c(6)-c(9) and c(9-12)-c(15) of PP&L's Motion to Strike are admissible and may be relied upon by the Commission under the authority of 52 Pa Code §5.406 as "Public Documents".

2. That the newspaper and other articles objected to at c(5), c(10) and c(11) of the Motion to Strike are admissible and may be relied upon by the Commission under the authority of 52 Pa Code §5.401, which states that all "relevant and material evidence" is admissible, and under the "Public Documents" exception.

3. That the phone conversations identified in a(1) - a(4) were either conducted with an "agent" of PP&L or an official representative of a state or federal entity whom disclosed information of a nature and kind expressly allowed under the Public Records Exception, *supra*.

4. The Company's Motion to Strike portions of Mr. Epstein's Main Brief is frivolous and designed to cause Mr. Epstein inconvenience and additional expense. Mr. Epstein respectfully requests the Court to formally admonish PP&L for misconduct in the filing of above mentioned nuisance motion.

Respectfully submitted,

Eric Joseph Epstein, *Pro se*
2308 Brandywine Drive
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DATE: JULY 10, 1995

ORIGINAL

RECEIVED

JUL 11 1995

PUBLIC UTILITY COMMISSION
SECRETARY BUREAU

BEFORE THE
PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL.	:	Docket No. R-00943271,
V.	:	R-00943271C001
PENNSYLVANIA POWER & LIGHT COMPANY	:	et seq.

BRIEF IN SUPPORT OF THE MOTION IN OPPOSITION TO THE MOTION TO STRIKE PORTIONS OF THE BRIEF OF ERIC JOSEPH EPSTEIN

I. Items Identified in the PP&L Motion to Strike as "[n]umerous other articles, reports, letters and memoranda" Are Admissible and May be Relied Upon by the Commission Under the Public Records Exception of 52 Pa Code §5.406.

A. The Reports authored by the United States Nuclear Regulatory Commission ("NRC"), Allegheny Electric Cooperative ("AEC"), the State of Nevada, the Pennsylvania ("PA") House Legislative Budget and Finance Committee, and CRC Handbook of Chemistry and Physics fall Under the Authority of the Public Records Exception.

Under the Public Records Exception, 52 Pa Code §5.406, "an official report, decision, opinion, published scientific or economic statistical data or similar public document . . . issued by a governmental department, agency, committee, commission or similar entity" need not be moved into the evidentiary record and may be

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considered by the Commission in rendering a decision in an adjudicatory hearing. The reports relied upon by Epstein in his Main Brief fulfill the goals advanced by the exception, namely to allow the use of trade and scientific reports and journals to substantiate or refute claims and testimony made during the trial.

The Reports and Studies authored by the U.S. NRC [1] , the State of Nevada, the PA House Legislative Budget and Finance Committee [2], Allegheny Electric Cooperative, and CRC clearly fall within this "public records" exception. The availability of these documents is facially clear - most are official reports that were issued by a governmental agency, the others, namely the annual reports of the Allegheny Electric Cooperative, should be within the possession of PP&L, since Allegheny is a co-owner of Susquehanna Nuclear and a joint participant in decommissioning activities. If the movant has failed to obtain a copy of these reports, it is not because they are not freely available to anyone upon proper request. [3] To deny that a channel of access exists to these annual reports adds weight to the conclusions drawn in Epstein's Main Brief

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1 Mr. George T. Jones, Vice President-Nuclear Engineering repeatedly made claims and references to NRC meetings and documents without ever providing substantiation. (See Rebuttal Testimony of George T. Jones, Page 3, Lines 5-1; Page 4 Lines 4-5 & Lines 6-14 & Lines 15-18; Page 2265, Line 24 & Page 2266, Lines 6-8 & Page 2268, Lines 16-18 & Page 2269, Lines 4-11 & Page 2275, Lines 2-3.)

2 This was not publicly released until May 31, 1995. However, issues relating to cost overruns and failure to meet deadlines by Chem Nuclear were raised by Mr. Epstein in his Surrebuttal, Page 5. In addition, Barnwell's reopening was discussed in detail during cross-examination of Mr. Thomas LaGuardia, Page 2107, Lines 23-25 through Page 2108 Lines 1-9. This issue was also raised during cross-examination of Mr. George T. Jones, Page 2270, Lines 6-11. The final announcement to reopen Barnwell was made on June 27, 1995

3 Upon cross examination by Mr. Epstein, Mr. Ronald Hill, Senior Vice President-Financial admitted he had perused the Allegheny Electric Cooperatives 1993 Annual Report. "I believed I glanced at it last year, but I can't recall specifics." Page 448, Lines 15-22.

surrounding conflicting assumptions of both parties concerning decommissioning cost estimates.

Mr. Epstein frequently cross-referenced data Dr. Michael Masnik. (Page 2094, Lines 6-18, 2096 Lines 12-18) and the NRC. (Epstein, Surrebuttal Pages 2-5; Page 2115, Lines 8-17 and Page 2116, Lines 10-16 Page 2275, Lines 4-16 and Page 2277, Lines 3-25.) Dr. Masnik's responsibilities include the decontamination and decommissioning of Three Mile Island Unit-2. As such, he was the NRC's staff liaison for the Nuclear Regulatory Commission's Advisory Panel for the Decontamination of Three Mile Island Unit-2. The Company merely needed to contact site staff or Region I in King of Prussia to ascertain and confirm Dr. Masnik's critical role in nuclear decommissioning. Moreover, all NRC Advisory Panel meetings are a matter of public record and available in any Public Document Room.

Mr.Epstein was forced to respond to misleading comments made by Mr. George T. Jones on the final day of hearing. (Page 2265, Lines 17-25, Page 2266, Page 2267 through Line 11). Mr. Epstein sought to verify the veracity of claims made by Mr. Jones regarding the purpose of the Systematic Assessment of Licensee Performance. Clearly, Mr. Epstein's Main Brief ("Brief") demonstrated that the Company had misrepresented the nature and intent of the Systematic Assessment of Licensee Performance. ("SALP.") Mr. Epstein went the extra mile by meeting with the NRC and DER on three separate occasions so that the record would accurately reflect the purpose of the SALP.

Mr. Epstein's dialogue and meetings with the Allegheny Electric Cooperative were necessitated by the Company's inability and unwillingness to provide data on AEC's portion of decommissioning the Susquehanna Steam Electric Station. (Mr. Ronald Hill, Page 448 Lines 15-22, Page 449 Lines 5-8, and pages 450-451, Lines 1-25 & 1-12 and Mr. Thomas LaGuardia Page 1020, Lines 18-25, Page 1021, Page 1022 and Page 1023 through Line 14.)

Moreover, the Company has asked that Mr. Epstein's meetings with Laurence V. Bladen, Director of Finance and Administrative Services be stricken as untimely, i.e. "[V]arious telephone conversations, occurring after the record closed, between Mr. Epstein and the following individuals..." (PP&L, Motion to Strike, page 1, a.), despite the fact two of the meetings took place **before** the final day of hearings, i.e. March 30 and May 12, 1995. The Company has undermined its own argument by asking to strike dates that fell within the evidentiary hearing schedule. The Company has demonstrated an overt sloppiness in their research and preparation. Moreover, PP&L has been embarrassed by the discussions conducted by Mr. Epstein and the AEC, NRC and DER and is seeking a procedural remedy to substantive deficiencies.

The Company's request to strike the "World List of Nuclear Power Plants" (Part 2, subpart c. 4) is petty. Mr.LaGuardia and Mr. Epstein discussed at great length the size, type and operating history of numerous nuclear plants. Neither Mr. LaGuardia nor Mr. Epstein, despite wide ranging philosophical differences, disputed the above mentioned issues. Mr. Epstein provided the citation as reference to factual data established on the record by himself, Mr. LaGuardia and Mr. George T. Jones.

PP&L's demand to remove the reference from the State of Nevada, Nuclear Waste Project, Scientific and Technical Concerns is bizarre and absurd. On May 26, 1995, Mr. Epstein handed the document in question to Mr. David MacGregor and other parties present. (Page 2286, Lines 24-24, Page 2287 through Page 2288 Lines 1-10.) Either the Company or its counsel suffer from collective cognitive dissonance or this represents another example of shoddy and scatter shot research. In addition, the issue was discussed with the Company's witness, Mr. Thomas LaGuardia. (Page 1031, Lines 7-17 and Page 2108, Lines 10-24 through Page 2010 Line 8.)

The Company's request to strike the NRC's "Guidelines for Decontamination of Facilities and Equipment Prior to Release of Unrestricted Use of Termination of Licenses for Byproduct, Source, or Spent Nuclear Material," (Part 2, subpart c.15) is incongruent given the disparity acknowledged between NRC and EPA site cleanup

standards by Company witness Thomas LaGuardia. (Page 2099, Lines 20-25 through page 2100, Lines 1-25.) This cite **only suggests** that Parties see this document, ["For further discussion ... Epstein, Main Brief, Page 22.]." Additionally, if the Susquehanna Steam Electric Station were shutdown prematurely, which has been Mr. Epstein's contention since the outset of the hearing, the Company is asking to delete the very guidelines they are mandated and obligated to follow.

Similarly, Mr. Epstein is equally perplexed by what would motivate the Company to strike the CRC Handbook of Chemistry and Physics. This text is a highly regarded reference manual available in most libraries, colleges and universities. During his rebuttal testimony , Mr. LaGuardia rounded off half-lives for Cobalt-60 to 30 years. (Rebuttal Testimony of Thomas LaGuardia, page Page 12, Lines 8-10) Mr. Epstein did not seek to elongate the hearing and therefore provided the precise half-life for specific radioactive isotopes in his Main Brief. In any event, whether the half-life for Cesium-137 is rounded to 30 years or stated accurately at 30.1 years; the physical fact remains that the **hazardous life** of this isotope is at least 300 years. No amount of legal maneuvering will erase the inability of PP&L's expert witness on decommissioning to factor, or to comprehend, hazardous lives of isotopes.

B. The Newspaper articles Relied Upon in the Main Brief of Epstein Should be Accorded Similar Treatment Due to Their Indicia of Reliability and Their Particular Use Within the Brief

The newspaper articles identified in c(5) -c(8) and c(10), c(11), and c(13) of PP&L's Motion to Strike also should not be struck for similar reasons. Newspaper articles are easily obtainable and are maintained for easy access for anyone that wishes access to them. The newspaper articles, like the public documents listed above, were introduced to show statistical and scientific information relevant to the proceedings. Objections to their content and accuracy can be made by PP&L just as easily as objections to any of the other supporting materials advanced during the hearing stage of this formal adjudication.

In addition, the newspaper and journal articles were introduced and relied upon for a limited purpose: to establish statistical and scientific data to rebut contentions introduced during the adjudicatory stages of this hearing. Therefore, the information specifically introduced from each of these sources of material focuses on the same material allowed into evidence to be relied upon by the Commission under the Public Records Exception of 52 Pa Code §5.406. Therefore, these articles should be accepted for their limited nature and only for the material supplied through Epstein's

Brief which goes directly to the scientific and technical data and rebuttal of the same that was introduced into testimony during the adjudicatory stage of the hearings.

The Company's request to strike newspaper articles as "extra-record" and untimely reveal a policy of duplicity and double standards. (Part 2, subparts 5, 6, 7, 8, 10 and 11). On the one hand, the Company seeks to delete newspaper references that undermine nuclear safety arguments at Susquehanna; yet, feel no compunction about using an **identical** source, i.e."Wall Street Journal") in their Main Brief published **after the close of evidentiary hearings** on June 15, 1995. (PP&L's Main Brief, Pages 133-134.)

The Company has engaged brazenly outrageous behavior by asking to strike information from ACURIE (previously introduced in Mr. Epstein's Surrebuttal, Page 5, which the Company accepted into record without objection) and discussed with Company witness Thomas LaGuardia. (Page 1035, Lines 3-16 and Page 2111, Lines 12-25 through Page 2112, Line 2.). The information in this newsletter, which PP&L helps to finance, deals with the issue of Barnwell's reopening which had not been conclusively resolved when Mr. LaGuardia admitted on the record: "If and when that it [Barnwell's reopening] is approved by the House, that is something to be looked at. That could be looked at." (Page 2108, Lines 8-9.) Barnwell's reopening materially impacts upon the of issue of low-level radioactive waste disposal since the Company will be sending this radioactive waste to South Carolina at a fee much lower than those projected in Mr. LaGuardia decommissioning estimates. (Rebuttal Testimony of Thomas LaGuardia, Page 9, Lines 7-22, Page 10 and Page 11, Lines 1-5)

II. The Commission May Rely upon Collateral Evidence Outside of the Administrative Record.

PP&L contends that "Mr. Epstein's use of extra-record evidence is wholly inconsistent with prior Commission precedent" and that "[i]t is well established that administrative decisions may not rest on evidence outside the record." However, the cases that PP&L offers as foundational support for these broad statements are inapplicable to the immediate Motion to Strike.

The movant cites *Mercy Regional Health Sys. v. Dep't of Health,* 165 Pa. Cmwlth. 629, 645 A.2d 924 (1994) for the proposition that "administrative decisions may not rest on evidence outside the record." In *Mercy*, a regional health system was petitioning a decision of the Department of Health that granted a certificate of need to a surgical center. Among their other contentions, the petitioners argued that *ex parte* contacts between the original applicant and the Department invalidated the Department's decision to grant the certificate of need. The crux of the argument rested on the specific statute which governed the certificate of need process and which specifically defined *ex parte* contacts, and when they would be considered part of the formal record. The holding on this specific issue was to strike the inconsistent regulation and declare that the "common usage" of the *ex parte* term would apply, in that the adverse party must have notice and the opportunity to refute the particular evidence.

Here, the material relied upon by Epstein in his Main Brief stands in stark contrast to the material sought to be presented in *Mercy*. As stated in *PA PUC v. Lemont Water Co.*, Docket Nos. R-932673, R-932673C0001, R-932673C0003 (Nov. 29, 1993), the Commission is entitled to accept evidence that is "relevant" and "probative". Clearly, the newspaper articles fulfill this test in that they serve to explain and define the testimony given during the hearing. In addition, Epstein is relying upon evidence that is freely available and that can be obtained by the adverse party as supplementary information. Contrary to the situation offered in *Mercy*, in which the adverse party had to have specific access to particular information, the Main Brief uses information that is easily accessible, and in many cases, has been independently verified by state or federal governmental agencies. (The Company has admitted on the record to have in its possession the 1993 Annual Report from the Allegheny Electric Cooperative.) If PP&L were truly interested in an adjudication on the merits with an adequate factual foundation, then they should more readily address the merits of the articles and publications rather than seeking to throw the entire factual framework out through use of procedural evidentiary processes.

PP&L's use of *PECO v. Pa P.U.C.*, 93 Pa. Cmwlth. 410, 502 a.2d 722 (1985) is equally puzzling. The movant uses a slice of this case to demonstrate that "discretionary findings and conclusions [of the Commission] must be accepted unless they are totally without support in the record." In PECO, the applicant claimed that substantial evidence was lacking concerning a Commission reduction of a PECO expense. The court held that the "[c]ommission is granted a wide area of discretion as to the extent and type of adjustments to be made", and proceeded to find that substantial evidence existed to support the reduction. 502 A.2d at 731.

In the immediate case, however, the material that forms the basis of the movant's motion to strike is relied upon for a limited purpose: to supplement the evidentiary material and questioning contained within the administrative record. Therefore, the "substantial evidence" sought to sustain the judgment in *PECO* is provided by the transcript of the hearings. The collateral articles and media material simply serves to explain and define the testimony received during the adjudicatory portion of the hearing.

The Company's Motion to Strike the aforementioned data is devious and mean spirited. Mr. Epstein urges the Court not to allow the Company to tamper and dilute the content and substance of Mr. Epstein's Brief.

Respectfully submitted,

Eric Joseph Epstein, *Pro se*
2308 Brandywine Drive
Harrisburg, PA 17110

DATE: July 10, 1995

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PUBLIC UTILITY COMMISSION
SECRETARY BUREAU

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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
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Harrisburg, PA 17105-3265

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DATE: July 10, 1995

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July 12, 1995

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Mr. John Alford, Secretary
PUBLIC UTILITY COMMISSION
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket# R00943271
Public Utility Commission V Pennsylvania Power & Light Company

Dear Mr. Alford:

I am writing on behalf of Textron Lycoming regarding the above referenced case presently being heard by the Public Utility Commission. Textron Lycoming is a medium to large sized customer of Pennsylvania Power & Light Company (PP&L). We presently purchase about 19,000,000 KWHs per year under PP&L's LP-5 Optional Interruptible Power rate and our annual billing totals approximately $800,000.00.

We have studied the impact of PP&L's December 30, 1994 rate filing on our billings and have determined that if the proposed rate filing is approved, our bills would be increased by over $325,000.00 per year. Electricity costs represent a large portion of our production costs and the proposed filing represents about a 40% increase to our present billings. Needless to say, this type of an increase would have a severe negative impact on our business. We currently employ over 500 people at our plant.

We feel that it is in the best interest of the State, to insure that Pennsylvania manufacturers remain competitive in a global economy. Approval of a rate increase anywhere near the magnitude of the one that PP&L has filed for would severely damage our ability to compete with companies outside of the PP&L area.

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We are also concerned that PP&L's Interruptible customers will bear a greater portion of the rate increase than firm customers. PP&L initiated their Optional Interruptible Power rate as part of an overall economic development filing less than three years ago. We feel that Optional Interruptible Power was an integral part of this filing and that the reduced rate per KWH keeps many of PP&L's Industrial customers in the PP&L service area.

We hope that you will consider the above facts when making your recommendation to the Public Utility Commissioners. Thank you for your interest and understanding.

Very truly yours,

Larry Phillips
Manager, Facilities Engineering

cc: Chairman John M. Quain
Vice Chairperson Lisa Crutchfield
Commissioner John Hanger
Commissioner Robert K. Bloom
Commissioner David W. Rolka
Honorable Robert A. Christianson

7/28/95-copy of ltr sent to: ALJ;OTS;Cons.Servs.

KJR

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Public Utility Commission
PO Box 3265, Harrisburg, PA 17105-3265

July 17, 1995

IN REPLY PLEASE
REFER TO OUR FILE

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

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

Dear Ms. Kenney:

I am sending out this letter to provide advance notice of an additional request which we expect to include in the cover letter with my Recommended Decision. I have mentioned this to you and some of the other attorneys. As presently drafted, the request reads as follows:

> **"Parties are also requested, if possible, to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, either 3 1/2" or 5 l/4" in size, in either WordPerfect (Version 5.0 or 5.l) or ASCII format."**

Very truly yours,

Robert A. Christianson
Acting Chief Administrative Law Judge

RAC:gp

pc: All Active Parties of Record
New Filing
Cheryl Walker Davis
Eric Rohrbaugh

Pennsylvania Public Utility Commission v. Pennsylvania Powr & Light Company

R-00943271

NOTICE OF PETITION by Sierra CLub, the Commission on Economic Opportunity of Luzerne County, and Eric Joseph Epstein, at No. 1826 C.D. 1995, Commonwealth Court of Pennsylvania, SEC LTR from the order of the Commission dated June ~~19,~~ 22, 1995 in the above-captioned proceeding.

B-953572 Filed: July 26, 1995