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June 26, 1995

WRITER'S DIRECT DIAL NUMBER

(717) 231-5842

John G. Alford, Secretary
Pennsylvania Public Utility Commission
Commonwealth Avenue and North Street
North Office Building - Room B-20
Harrisburg, PA 17120

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

Dear Mr. Alford:

Enclosed for filing please find an original and nine (9) copies of the Reply Brief of University/College Coalition. Copies of the Brief have been served upon all counsel as indicated on the attached Certificate of Service.

Thank you for your consideration in this regard.

Very truly yours,

James P. Melia

James P. Melia

JPM/pkw
Enclosure
cc: Certificate of Service (w/encl.)
University/College Coalition (w/encl.)

ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
ADMINISTRATIVE LAW JUDGE ROBERT A. CHRISTIANSON PRESIDING

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	:	
v.	:	Docket No. R-00943271
PENNSYLVANIA POWER AND LIGHT COMPANY.	:	

REPLY BRIEF OF UNIVERSITY/COLLEGE COALITION

Filed Pursuant to Section 5.501
of the Commission's Regulations,
52 Pa. Code §5.501.

Daniel P. Delaney
James P. Melia

Counsel for University/
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Dated: June 26, 1995

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STATEMENT OF THE CASE

On December 30, 1994, Pennsylvania Power and Light Company ("PP&L") filed its Supplement No. 50 to Tariff Electric-Pa. P.U.C. No. 200, proposed to become effective February 28, 1995. In its filing, PP&L requested a $261 million or 11.7% increase in its annual electric base rate revenues. On or about February 23, 1995, the Pennsylvania Public Utility Commission ("Commission") suspended Supplement No. 50 pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. §1308(d) and initiated an investigation into the lawfulness, justness and reasonableness of the rates, rules and regulations proposed in those tariff supplements. The investigation was assigned initially to Administrative Law Judge ("ALJ") Michael C. Schnierle and then to Robert A. Christianson as Presiding Officer.

On March 6, 1995, a Petition to Intervene was filed by the University/College Coalition ("UCC"), an ad hoc coalition of colleges and universities in the PP&L service territory. For purposes of this proceeding, the UCC consists of Muhlenberg College, Wilkes College, Kings College, Messiah College, University of Scranton, Elizabethtown College, Dickinson College and Keystone Junior College. The UCC, in its Petition, averred that its members predominantly receive service under PP&L's existing Rate Schedules LP-4 and GS-3 and various riders and related tariffs. The Petition further alleged that the cost of electric utility service is a significant component in UCC

members' cost of operation and that the proposed rate increase and tariff changes may have an adverse impact on UCC members.

A Prehearing Conference in this case was held on March 7, 1995 and UCC's Petition to Intervene was granted. Approximately 15 days of hearings were conducted in this proceeding. The record closed in this matter on May 26, 1995.

UCC presented the Direct and Surrebuttal Testimony and supporting exhibits of Kenneth Eisdorfer. (UCC St. Nos. 1 and 2). Mr. Eisdorfer presented testimony on the issues of cost of service and interclass subsidization. UCC also cross-examined other parties' witnesses concerning their positions on cost of service issues.

UCC's Main Brief was filed on June 15, 1995. UCC's Reply Brief is being filed in compliance with ALJ Christianson's directive.

ARGUMENT

I. PP&L'S ARGUMENTS REGARDING THE FAILURE OF THE 1 CP METHOD TO REFLECT COST RESPONSIBILITY HAVE BEEN INVALIDATED.

At pages 235-236 of its Main Brief, PP&L argues that UCC's 1 CP approach is "simplistic and unsupported" and that PP&L's generating and transmission plant costs are not incurred solely to meet this single peak day requirement. Rather, PP&L argues that customers impose generating and transmission obligations on PP&L throughout the year. Further, PP&L alleges that it experiences usage levels relative to its available capacity that places strenuous demands on the system even in so-called "off peak" months due to heavy scheduling of maintenance in off peak periods. UCC has thoroughly rebutted this argument in its Main Brief at pages 5-9 and 17-19 and incorporates those arguments herein by reference.

Further, PP&L argues that the 1 CP method implies that PP&L should have a system which relies heavily on gas turbines. This is not the case. The 1 CP method reflects that PP&L must have enough capacity installed to be able to meet its overwhelmingly large winter peak. PJM further recognizes this same principle and its use of the winter peak is the overwhelming determinant of PP&L's installed capacity obligation. (UCC St. No. 1, pp. 6-8).

Further, no demand cost allocation method is intended to imply what mix of generating units a utility should have. PP&L has not attempted to support the 12 CP method by stating that it is reflective of its generating mix. In fact, one could use PP&L's argument in its Main Brief against the 12 CP method. For

example, if PP&L were to match its generating plant to meet system demands for only 12 days per year, it would rely heavily on gas turbines.

The bottom line is that PP&L must have enough capacity to satisfy its annual system peak which invariably occurs in the winter. PJM recognizes this and Mr. Eisdorfer demonstrated it at pages 6-8 of his Direct Testimony at UCC St. No. 1. Thus, this Commission should likewise recognize the applicability of the 1 CP method in this case.

PP&L further argues against the UCC's proposed allocation of revenues in its testimony of Mr. Eisdorfer. (PP&L Main Brief, pp. 248-249). PP&L criticizes Mr. Eisdorfer's proposal to cap class increases at three times the system average. In a footnote on page 249, PP&L attempts to create a conflict between this proposal and Mr. Eisdorfer's recommendation in PP&L's 1982 rate case in which he advocated a cap of 1.66 times the system average. PP&L's argument is predicated upon the statement that the two cases were of comparable dollar value. PP&L's use of the dollar basis for comparing these cases is misleading.

On a percentage basis, the two cases were very different. In the 1982 case, PP&L proposed an overall jurisdictional increase of 28%. In this case, the corresponding figure is 11.7%. A 1.66 times system average cap in the 1982 case would have produced a maximum increase of 46.5% (1.66 x 28%) about 1/3 greater than the maximum increase of 35.1% (3 x 11.7%) proposed by Mr. Eisdorfer in this case. Therefore, Mr. Eisdorfer's rate

impact proposal in this case is considerably more moderate than in the 1982 case. Thus, PP&L's attempt to create a contradiction between Mr. Eisdorfer's two positions should be ignored.

II. THE CRITICISMS RAISED BY THE DEPARTMENT OF DEFENSE SHOULD BE DISMISSED.

The Department of Defense's ("DOD") Main Brief states, at page 19, in its discussion of the allocation of generation and transmission cost, that "at off peak times scheduled outages at major units can result in PP&L having its lowest reserve levels, in any month."

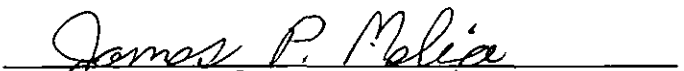
The fallacy of this contention, as it pertains to cost allocation, has been addressed on a conceptual level in UCC's Main Brief at page 18 in which it is explained that utilities schedule the bulk of their maintenance during months when there is no risk that weather extremes would create a capacity shortage problem. The UCC incorporates this argument herein by reference.

Further, with respect to 1994, it is shown on UCC Exhibit No. 5, appended as Attachment A to this Brief, that scheduled outages on the PP&L system produced the lowest reserve levels during the month of January (7.0%). This was less than 1/3 of the second lowest reserve level (22.7% during March). Therefore, the DOD's assertion has no relevance to the selection of the cost allocation methodology for PP&L and should be ignored.

CONCLUSION

For all the foregoing reasons, the University/College Coalition respectfully requests the Administrative Law Judge and the Commission to reject PP&L's proposed rates, rate design and rate structure as unjust and unreasonable and to permit PP&L to file revised tariff supplements implementing a revenue allocation consistent with that proposed by Mr. Eisdorfer in his Direct Testimony.

Respectfully submitted,



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Dated: June 26, 1995

University/College Coalition
Cross-Examination Exhibit No. 5

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R-943271

PENNSYLVANIA POWER & LIGHT COMPANY

Monthly Planned Capacity, System Peaks and Resulting Reserves for 1994

Line	Month	Planned Capacity (MW) (1)	System Peak (MW) (2)	Reserve Amount (MW) (3)	Reserve Percent (4)
1	January	6,852	6,403	449	7.0%
2	February	7,639	6,193	1,446	23.3
3	March	6,973	5,681	1,292	22.7
4	April	5,953	4,742	1,211	25.5
5	May	6,039	4,404	1,635	37.1
6	June	7,200	5,521	1,679	30.4
7	July	7,716	5,638	2,078	36.9
8	August	7,716	5,329	2,387	44.7
9	September	7,064	4,477	2,587	57.8
10	October	7,192	4,661	2,531	54.3
11	November	6,480	5,083	1,397	27.5
12	December	7,116	5,646	1,470	26.0%
13	Average of Eleven Months Excluding January	7,008	5,216	1,792	34.4%

Notes: 1. The source for the figures in Columns 1 and 2 is PP&L's response to OCA Interrogatory, Set III, Question 28.

2. Planned Capacity figures are equal to PP&L's Installed Capacity plus Capacity Purchases minus the sum of Capacity Sales and Scheduled Maintenance.

Attachment A

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
ADMINISTRATIVE LAW JUDGE ROBERT CHRISTIANSON PRESIDING

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	:	
v.	:	Docket No. R-00943271
PENNSYLVANIA POWER AND LIGHT COMPANY.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Reply Brief of University/College Coalition upon the parties identified below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Dated: June 26, 1995

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June 26, 1995

VIA UPS NEXT DAY AIR

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
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P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Alford:

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

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

Very truly yours,

Joan O. Brandeis

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

Enclosures

cc: All Parties of Record
The Honorable Robert A. Christianson

ORIGINAL

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
OF
BETHLEHEM STEEL CORPORATION

Joan O. Brandeis, Esquire
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Dated: June 27, 1995

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TABLE OF AUTHORITIES

CASES

STATUTES

I. INTRODUCTION

Bethlehem Steel Corporation ("Bethlehem") addressed the main issues[1] raised in this proceeding in its Main Brief, and in addition anticipated the positions taken by Pennsylvania Power & Light ("PP&L" or the "Company") and other parties in this case. To a great extent therefore, Bethlehem has already responded to the contentions made by the Company and by other parties and will not burden the record unnecessarily by repeating those arguments here.

This Reply Brief will be confined primarily to addressing and rebutting the proposal put forth by the Office of the Consumer Advocate (the "OCA") that the terms of the currently effective, PUC-approved contract (the "ISA Contract") for service under Rate Schedule Interruptible Service by Agreement be modified or abrogated in this proceeding.

Before addressing the ISA Contract modification issue however, Bethlehem would like to endorse the views set forth in the Preamble to the Main Brief submitted by the PP&L Industrial Customer Alliance ("PPLICA") in this case. In particular, Bethlehem concurs with PPLICA's sentiments regarding the competitive arena in which all companies must operate today.

---

1. Bethlehem has addressed only cost of service, rate structure and rate design issues in this proceeding. As noted in its Main Brief, the fact that it has not taken a litigation position on other issues should not be interpreted as an endorsement of PP&L's position on these issues.

> "...when the Commission ultimately decides this case, it must do so, not only in the context of a traditional rate base\rate of return analysis, but also with the knowledge of what is occurring outside of Pennsylvania's borders. That world is one where many commissions and investor-owned utilities have already recognized that a competitive electric world is upon us and that customers with choices will actively pursue those choices unless the local investor-owned utility and state commission is responsive to their respective needs."

PPLICA M.B., p. 7 (Emphasis in the original).

II. SUMMARY OF ARGUMENT

For a summary of Bethlehem's position regarding cost of service and rate structure issues, see Section II of Bethlehem's Main Brief.

With respect to the OCA proposal to increase the percentage of any revenue requirement allocated to Rate Schedule ISA in this case, Bethlehem submits that such an increase would effectively modify or totally abrogate the ISA Contract. There is simply no basis in the evidentiary record of this proceeding to support the findings required by Section 508 of the Pennsylvania Public Utility Code for such action. To do so without an adequate record and the required findings would violate fundamental due process rights of the parties. The existing ISA Contract must be given effect and PP&L's allocation of revenue to Rate Schedule ISA in accordance with the terms of that contract must be accepted.

III. THE REVENUE ALLOCATION TO RATE SCHEDULE ISA

A. PP&L's Proposal to Allocate the Revenue Increase to Rate Schedule ISA in Accordance with the Terms of the ISA Contract Should be Accepted.

Under its existing tariff, PP&L has been authorized by the Pennsylvania Public Utility Commission ("Commission") to provide service to certain customers under the terms of special contracts entered into pursuant to Rate Schedule Interruptible Service By Agreement ("Rate Schedule ISA"). PP&L filed Supplement No. 21 to Tariff-Electric Pa. P.U.C. No. 200 (denominated Interruptible Service by Agreement) together with the ISA Contract between the Company and Bethlehem Steel Corporation (and a second, similar agreement with another of its customers) with the Commission in 1988. TR. 2179. Pursuant to Commission procedure, copies of the Supplement, the two contracts and all other required data included in the filing were served on the Office of the Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate. After investigation and analysis of the tariff filing and supporting data, the Commission, in an Opinion and Order issued January 26, 1989, permitted the tariff supplement and the related agreements to become effective on February 6, 1989. TR. 2179. No complaint regarding Rate Schedule ISA or the ISA Contract was received at the time of the original filing or has been received by the Commission since the issuance of that Opinion and Order.

In its allocation of the revenue increase requested in this case, PP&L is properly proposing to increase the rates of Rate Schedule ISA in accordance with the terms

of the contract between it and the single customer which takes service under that rate--Bethlehem. PP&L witness Oliver Kasper explained that under the terms of the ISA Contract, the rates charged for firm service can be increased or decreased by an amount equal to the overall system average increase or decrease approved by the Commission. TR. 718. PP&L calculated its proposed increase to Rate Schedule ISA in this case on the basis of these contract terms. The existing rate, as well as the terms governing increases in that rate, have been investigated and accepted by the Pennsylvania Public Utility Commission when it permitted the ISA Contract to go into effect. As succinctly argued by PP&L in its Main Brief, the fact that the rate was embodied in a contract accepted by the Commission without protest or condition should be accorded weight in this proceeding. PP&L M.B. p. 283.

The majority of the parties in this case who have addressed the rate structure issues support PP&L's proposed allocation. The University/College Coalition specifically recognizes the validity of the ISA Contract and accepts PP&L's allocation proposal for that class (UCC Main Brief at 26). Similarly, the Department of Defense and the Office of Small Business Advocate both endorse PP&L'S allocation proposal.

The OCA and PPLICA however, have each made proposals to increase the amount of the revenue allocated to Rate Schedule ISA, notwithstanding the existence of an effective, PUC approved agreement. In order for the Commission to approve either of these proposals, it would have to exercise its powers under Section 508 of the Public Utility Code

to vary the terms of the existing agreement. Bethlehem submits that there is no evidentiary basis in the record of this proceeding which would support the abrogation or modification of the ISA Contract. Accordingly, both the OCA and the PPLICA proposals regarding the revenue allocation to Rate Schedule ISA must be rejected.

B. Neither the OCA Nor PPLICA Has Provided Any Legal Basis for Modifying the Terms of the ISA Contract.

The OCA has not directly referred to or invoked the Commission's powers under Section 508 of the Public Utility Code in support of its proposal to modify the ISA Rate, but rather has put forth an argument that, notwithstanding the rate set forth in the ISA Contract, "it is within the Commission's discretion" to set a different rate in this case. OCA M.B. 293. The only authority cited by the OCA for this remarkable proposition is the Roaring Creek case, discussed at length below, which provides no support for the OCA view whatsoever.

PPLICA does not address or allude to the issue of the existing ISA Contract at all, but its proposed revenue allocation proposal (which can be found in PPLICA Exhibit __ (SJB-3), page 3, attached as Exhibit B to its Main Brief), if adopted by the Commission, would necessarily result in abrogation of the terms of the existing ISA Contract. PPLICA offers no factual or legal basis whatsoever for such modification or abrogation.

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

Section 508 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §508, grants to the Commission the power and authority to vary, reform or revise the terms of any contract entered into between a public utility and a corporation "which embrace or concern a public right, benefit, privilege, duty or franchise. . . or are otherwise affected or concerned with the public interest."

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

66 Pa.C.S. § 508.

Putting aside the issue of whether the ISA Contract meets the threshold requirement of Section 508 abrogation, that it "embraces a public right " or "is otherwise affected or concerned with the public interest", it is clear that the justness and reasonableness of the terms of the ISA Contract have not been put at issue in this proceeding. This is self-evident from the fact the that the ISA Contract itself has not been introduced into the evidentiary record of this case. As PP&L points out in its Main Brief, the sum total of the

witness evidence on the subject of the ISA Contract consists of one sentence in the direct testimony of OCA witness Johnson.

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

As explained by PP&L witness Kasper, the creation of Rate Schedule ISA was a specifically-designed competitive response to the particular end-use environment and customer needs. PP&L Statement 8-R, p. 41; PP&L M.B. 283. This Commission has frequently approved rate structures where competition has been a factor is establishing rates for customer classes. See e.g. Pennsylvania Public Utility Commission v. The Peoples Natural Gas Company, R-901631 (April 1990).

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

record in this proceeding provides no basis for the Commission to find either that the terms of the ISA Contract are unjust or unreasonable or to prescribe alternative terms.

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

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

In Roaring Creek, the utility served Foster Wheeler, its largest customer, under a contract as opposed to a tariffed rate. It should be noted initially that, unlike the ISA Contract between PP&L and Bethlehem, the contract between Roaring Creek and Foster Wheeler had never been submitted to or approved by the Commission. Roaring Creek, supra at 432. During the course of a rate proceeding in which Roaring Creek Water Company

sought an increase in its rates[2], the Administrative Law Judge made the following recommendation:

> "Accordingly, we recommend that the Commission abrogate the Foster Wheeler water service contract under its power in Section 508 of the Public Utility Code, 66 Pa. C.S. § 508, and direct that Roaring Creek's compliance tariff, filed pursuant to the Commissions's Opinion and Order, provide for a rate consistent with that set forth in the present contract. The record in the instant case simply affords no basis for a different treatment. Thus there will be no immediate adverse consequences to Foster Wheeler but rate considerations relating to it will necessarily be dealt with in future rate cases."

Pennsylvania Public Utility Commission v. Roaring Creek Water Company, 73 Pa. P.U.C. 373, 431. (1990) Emphasis added.

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

---

2. In Roaring Creek, the utility proposed to allocate no portion of the rate increase to Foster Wheeler, unlike this case where Rate Schedule ISA is in fact being allocated a portion of the increase in revenue.

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

Finally, the OCA attempts to argue that the language of the Commission's 1989 Opinion and Order permitting Rate Schedule ISA and the ISA Contract to become effective, grants to the PUC the discretion to consider a different revenue allocation for the ISA class than the one required by the ISA Contract. OCA M.B. p. 293. This argument must fail for the reason that, by necessary implication, any alternative allocation would result in a modification or abrogation of the ISA Contract. As set forth above, the record in this proceeding is insufficient to support such an action under Section 508.

IV. CONCLUSION

The proposals of the OCA and PPLICA to increase the allocation of any revenue increase to the ISA class must be rejected. The terms of the ISA Contract must be

given effect in this proceeding and PP&L's revenue allocation proposal which is in accordance with the existing, PUC approved contract must be adopted.

Respectfully submitted,

Joan O. Brandeis

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

Dated: June 27, 1995

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held April 5, 1990

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice Chairman
Joseph Rhodes, Jr.
Frank Fischl
David W. Rolka

Pennsylvania Public Utility Commission
v.
Peoples Natural Gas Company

Docket No. R-901631

OPINION AND ORDER

BY THE COMMISSION:

On February 20, 1990, The Peoples Natural Gas Company ("Peoples" or "Company") filed Supplement No. 13 to Tariff Gas-Pa. PUC No. 42 in which it sought to recover approximately $48.2 million of take-or-pay costs, plus interest, through a Section 1307(a) proceeding. 66 Pa. C.S. §1307(a). Peoples' filing was made pursuant to the Pennsylvania Public Utility Commission's ("Commission") Final Statement of Policy Regarding Recovery of Take-or-Pay Expenses ("Final Statement of Policy") which was published in the Pennsylvania Bulletin on August 5, 1989.

BACKGROUND

On June 30, 1989, this Commission issued for publication in the Pennsylvania Bulletin a Final Statement of Policy Regarding

Recovery of Take-or-Pay Expenses at Docket No. L-880043. Take-or-pay costs represent the penalties attached by the interstate pipelines which arise out of the various gas companies' failure to purchase gas at the full contract requirement levels. The contracts provided that, in lieu of purchasing the contract gas supplies, a company would be required to pay for the gas that was not taken. The incurrence of this liability represents the take-or-pay issues now before us.

In the Final Statement of Policy, we stated that there should be a sharing of take-or-pay costs among all segments of the industry, including producers, pipelines, distributors and consumers. In addition, we found that take-or-pay costs are non-gas costs and, as such, are precluded from being recovered in a Section 1307(f) proceeding.

In the Final Statement of Policy we set forth two options for recovery of these costs. The first option is that if a company elects to absorb what this Commission considers to be a reasonable portion of the take-or-pay costs, then the non-absorbed costs would be recoverable through a Section 1307(a) proceeding. The second option states that in the event the company elects not to absorb a reasonable portion of these costs, the recovery should be through a standard Section 1308(b) or (d) proceeding. In the case of both forums, a period of two (2) to five (5) years would be established for the recovery of all take-or-pay claims.

It was the intention of this Commission to establish a schedule for the claiming of take-or-pay costs. For this reason, our Final Statement of Policy also provided that:

> If a utility does not make a claim before, or an offer to, the Commission for recovery of take-or-pay expenses within one year of entry of the Final Policy Statement, we will deem the utility to have waived any further claim for recovery of this expense.

52 Pa. Code §69.181(m).

The Commission revisited the issue of its one year deadline for LDCs to file for recovery of their take-or-pay expenses in light of the decision of the U.S. Court of Appeals for the District of Columbia Circuit in American Gas Association v. Federal Energy Regulatory Commission, 888 F.2d 136 (D.C. Cir. 1989). In AGA, the Court vacated the FERC's Interim Order No. 500, and found that the FERC's March 31, 1989 cutoff date to be unlawful. In amending its Final Statement of Policy, the Commission stated that:

> We believed at the time we approved the Final Statement of Policy, as we believe now, that it is in the best interests of the LDCs, their customers, as well as the Commonwealth at large, that the matter of the recovery of these costs be resolved with all due expedience. Insofar as the bulk of pipeline take-or-pay costs are now known, Pennsylvania LDCs should be in a position to make, at the very least, a filing for recovery of the take-or-pay expenses currently being collected by the suppliers. Therefore, we shall not abrogate our August 6, 1990 deadline. However, we have always anticipated that, once filed, it may become necessary to make adjustments for changes in the recovery of take-or-pay charges as reflected in pipeline rates. See e.g 52 Pa. Code §§69.181(i) and (l).
>
> With this in mind we shall allow LDCs to seek recovery of any supplier take-or-pay charges

> filed with FERC between August 6, 1990, and December 31, 1990, provided that the LDC files an application for recovery of such charges no later than March 31, 1991. This modification of our deadline shall not apply to the recovery of pipeline take-or-pay charges which were on file at FERC prior to August 6, 1990.

The Commission did not extend the initial August 6, 1990 deadline established in the Final Statement of Policy, however it did modify the deadline by allowing LDCs to file for recovery of any supplier take-or-pay costs filed with FERC during August 6, 1990 and December 31, 1990. This modification does not apply to take-or-pay charges that were on file at FERC prior to August 6, 1990.

On August 2, 1989, Peoples filed its initial Section 1307(a) take-or-pay proposal in which it sought to recover $48.5 million plus interest. See Pennsylvania Public Utility Commission v. The Peoples Natural gas Company, Docket No. R-891385 (Order entered October 6, 1989) ("Peoples I"). We rejected Peoples' initial proposal on the grounds that the filing, as a whole, did not constitute a reasonable offer. This Commission found fault, inter alia, with the cost allocation, the reconciliation and interest claim.

On February 20, 1990, Peoples submitted its second proposed tariff filing to recover take-or-pay expenses through Section 1307(a). The Company's claim consists of the following:

1. An offer to absorb 10% of the total estimated take-or-pay costs over a four (4) year period. The Company has also claimed an additional potential absorption of $1 million which represents take-or-pay costs allocated to the competitive customer groups, that the Company predicts will not be recovered due to the downward

flexing of rates to avoid the potential threat of bypass.

2. An allocation of take-or-pay costs based upon a customer class competitive situation or market sensitivity. Those customers Peoples classifies as competitive, or whose price is sensitive to market forces, will be charged a range of rates from $.05/Mcf to $.15/Mcf per year. The non-competitive customers will pay a rate of $.20/Mcf on total throughput volumes for the first two years and $.13/Mcf for years three and four.

3. A claim of $714,166 in interest calculated at the legal rate of 6% for the period October 1988 to February 1, 1990.

4. A proposed recovery of the take-or-pay costs over a four (4) year period with recovery of 30% of the charges in each of the first two years and 20% in each of the last two years as applied to non-competitive customers.

5. Provisions that would extend the life of the recovery period beyond the four years, up to an additional three (3) years,for the competitive customer groups,if the take-or-pay costs allocated to this group is not recovered in the proposed four year recovery period.

6. An annual reconciliation of the take-or-pay charges for each recovery year. Peoples' reconciliation proposal addresses a number of elements including: (a) over or under collections calculated by comparing actual take-or-pay amounts collected, with filed-for projections based on throughput volumes, (b) actual pipeline take-or-pay charges compared to projected charges, (c) 90% of supplier refunds received that relate to take-or-pay charges covered under the rider.

Peoples has also proposed to separately reconcile the competitive and non-competitive groups. Any remaining over or under collection at the end of the

fourth (4th) year attributable to the non-competitive class will automatically extend the rider into a fifth and final year. If over or under collections attributable to the competitive class remain after the fourth (4th) year, Peoples will extend the surcharge for those customers up to a maximum of three additional years.

7. Peoples has proposed to make another Section 1307(a) filing if at the end of the initial recovery period additional take-or-pay costs are incurred.

Additionally, Peoples proposes that if the Commission votes to allow Supplement No. 13 to become effective, the Company will exercise the right to modify its appeal of its Section 1307(f) in the Commonwealth Court at No. 2073 C.D. 1989, in order to remove any challenge of the Commission's denial of the Company's recovery of take-or-pay liability; to withdraw its appeal in Commonwealth Court at No. 2147 C.D. 1989, where the Company challenged the Commission rejection of its initial Section 1307(a) filing; to remove from its general rate case its claim for recovery of take-or-pay liability as an amortized expense; and to remove from its Section 1307(f) natural gas cost recovery filing its claim for recovery of take-or-pay liability on an as-billed basis.

On March 5, 1990, the Office of Trial Staff ("OTS") filed a Response to the proposed tariff filing, and on March 11, 1990 the Peoples Industrial Intervenors filed a Response and a petition to intervene in the above proceeding. The Bethlehem Steel Corporation also filed a petition to intervene. No complaint was filed by the Office of Consumer Advocate.

DISCUSSION

The issuance of a Final Statement of Policy Regarding Recovery of Take-or-Pay Expenses provides the gas industry in Pennsylvania with sufficient guidance upon which it can make its decisions on take-or-pay recovery claims. We recognized in the Statement of Policy that "[t]he issues raised are complex and require innovative yet soundly based decision making."

In the present case, we find that Peoples' tariff supplement does meet the challenge of the Final Statement of Policy, and we are convinced that the offer made, will result in just and reasonable rates. As we stated in our Final Statement of Policy, our primary obligation is to insure that rates are just and reasonable and that any mechanism employed in the recovery of take-or-pay costs is in the public interest.

This Commission, in reviewing these filings to determine whether or not rates are just and reasonable and the recovery of costs is in the public interest, is concerned with the filing as a whole. This Commission carefully reviews each individual segment of the filing but then looks at the overall filing to determine whether it reflects the spirit of the Final Statement of Policy.

After carefully reviewing this filing, we conclude that the offer made by Peoples, taken as a whole, constitutes a reasonable offer as anticipated in our Final Statement of Policy and it will be accepted. The areas of concern which have been adequately addressed by Peoples in this filing are: (1) the allocation of the take-or-pay costs among the customer classes; (2) the matter of the

interest rates to be charged and the approved recovery period for recovering interest; and (3) the reconciliation as it pertains to each customer class. We believe that it would serve the interests of all parties to address some of the specific aspects of the offer which were of concern to us in the Company's original filing but have been appropriately addressed by Peoples in this current filing.

A. Peoples' Current Section 1307(a) Filing, Constitutes A Reasonable Offer With Respect to Absorption of Take-or-Pay Expenses.

In promulgating our Final Statement of Policy we stated explicitly that recovery of take-or-pay costs via a Section §1307(a) surcharge would be contingent upon the utility absorbing a reasonable amount of the total expense. As we stated therein:

> We believe the absorption of a reasonable portion of the take-or-pay costs creates a presumption that existing rates will remain just and reasonable. Absent such an offer, we are compelled to review all aspects of the existing rates to insure that the rates set are just and reasonable. Since we do not believe that a Section 1307(a) proceeding is the appropriate forum for a multiple issue rate investigation, any filing made pursuant to Section 1307(a) which does not include a reasonable offer to absorb take-or-pay costs will be rejected.

19 Pennsylvania Bulletin at 3311.

Peoples has offered to absorb 10% of its total estimated take-or-pay liability which represents a definitive absorption of approximately $4.8 million. However, with regard to its absorption of take-or-pay expenses, we would point out that, although the

Company has allocated a portion of these costs to all customer classes in this current filing, Peoples indicated that because of the market sensitivity of its competitive customers, the Company is at risk to absorb $1 million in additional take-or-pay costs.

Peoples has indicated that in order for the Company to recover the allocated take-or-pay costs from its competitive customers, it may have to discount the amount allocated to those customer groups. This $1 million represents those take-or-pay costs allocated to the "competitive" customer groups that will not likely be recovered due to the downward flexing of rates to avoid bypass. For this reason, the Company has included a provision which would allow it to extend the recovery period for these customers beyond that contemplated in the Final Statement of Policy. In the event the company still does not recover the total share allocated to them, the company is at risk for those dollars. This may ultimately result in the additional $1 million absorption proposed by the Company.

While we recognize that there is a potential that Peoples may absorb additional take-or-pay costs under this scenario, we find that such a conclusion would be too speculative and, as such, cannot be quantified. In Pa.PUC v. Philadelphia Electric Co., R-891470 (Order entered November 30, 1989), the Commission also found that PECo's claim of $37.3 million "at risk" dollars to be too speculative and it was not considered in the Company's total absorption. However, in Pennsylvania Public Utility Commission v. Columbia Gas Company, R-901615 (Order entered March , 1990), the Commission included the additional absorption claimed by Columbia

as part of its total absorption. In Columbia, the Commission found:

> [B]ased solely upon the actual cost/Mcf to be recovered from these customer classes, Columbia's claim demonstrates a greater potential for additional absorption than any claim thus far. However, when coupled with the data provided by the company as support for its claimed potential absorption, we believe that the potential for additional absorption is no longer speculative. With regard to the final amount of such absorption, it is quite reasonable to assume that some portion of the $7.4 million "at risk" will be recovered, particularly where the recovery period is extended out to the full seven years; however, the total amount of the company's take-or-pay expenses and the allocation to transportation customers virtually precludes full recovery of these expenses. The question is whether the company will absorb the additional $1.3 million needed to reach the threshold absorption of 10%. We believe that the facts and circumstances of Columbia proposed filing provide a reasonable basis for such a conclusion.

Columbia Mimeo at 7.

Columbia's claim was for approximately $7.4 million at risk while the claim proposed by Peoples in this current filing is $1 million. Also, it should be noted that the take-or-pay expenses are substantially higher for Columbia than they are for Peoples. Peoples' claim is for $48.2 million while Columbia's claim is for $66.7 million and Columbia has proposed to recover $.2523/Mcf from its LGS, LVIS, FIS and TS transportation customers for the first year, compared to Peoples' range of $.05 to $.15/Mcf charge to its competitive customers. Since the costs to be allocated on a customer class basis are substantially higher in Columbia's filing

than in Peoples, it is less speculative to assume that Columbia will not recover $.2523/Mcf than it is for Peoples to recover an average of $.056/Mcf. The Peoples' $1 million claim cannot, therefore, be considered in our determination of whether the percentage of absorption is reasonable. The 10.00% offer by the company must stand on its own.

We would note that it consistently has been our position that an extension of the recovery period would be acceptable for market sensitive customers. For that reason, we have no difficulty with accepting Peoples provision for an additional recovery period for competitive customer groups where the Company is unable to recover its take-or-pay costs allocated to those customers in the proposed recovery period.

With regard to a specific percentage to be absorbed, we left the determination of whether an offer is reasonable to a review of the "facts and circumstances of each individual case." Id. In our initial decision regarding the request for recovery of take-or-pay expenses by Peoples, we concluded that, where other aspects of a utility's proposal reflect the spirit of the Final Statement of Policy, a 10% absorption would not be a per se unreasonable amount for the utility to absorb. Peoples. Mimeo at 5. In Columbia, however, we found 8% to be acceptable where the company is potentially at risk to absorb a substantially higher percentage, possibly 19%. However, in the present case, we believe that, based upon a review of the filing in its entirety, Peoples proposed absorption of 10% is reasonable and should be accepted.

B. Peoples Inclusion of Interest in its Filing is Consistent with the Final Statement of Policy.

In addition to its offer to absorb 10% of the total take-or-pay expenses, Peoples seeks recovery of interest for the period set forth in the Amended Final Statement of Policy at the legal rate of 6%, i.e., $714,166.

With regard to the matter of interest recovery, the Final Statement of Policy provided:

> (n) Collection of interest or LDC take-or-pay claims will be allowed for the period of time from October 2, 1988 through November 3, 1989.

52 Pa. Code §69.181(n).

The time established for interest represents the period from the issuance of the Proposed Statement of Policy, published on October 21, 1988 until ninety (90) days after the publication of the Final Statement of Policy. The allowance of interest for this period was established in recognition of the time frame required by the Commission to provide the requisite guidance to the LDCs and an appropriate time was allotted to them in which they could act upon the Final Statement of Policy. It should be noted that this interest allowance was not the result of a statutory obligation but was based upon this Commission belief that "equity" supported such a position.

Pursuant to the issuance of our statement of policy on take-or-pay, a number of companies have made offers under Section 1307(a) to absorb some portion of their take-or-pay expenses. Unfortunately, for a number of reasons, these filings

have not been accepted. At the Public Meeting held on November 2, 1989, Commissioner Fischl moved to extend the time period for allowing recovery of interest as follows:

> 1. To extend the interest recovery period to the point in time of acceptance by this Commission of a reasonable take-or-pay recovery proposal for each local distribution company through either the 1307(a) or 1308(b) or (d) proceeding; or,
>
> 2. February 1, 1990, whichever comes first.

As was stated by Commissioner Fischl the basis for the motion was "the nature of this policy statement, the good faith efforts of the local distribution companies to comply and the burdensome administrative and regulatory delays associated with the implementation of the policy statement."

The Commission granted Commissioner Fischl's request to extend the interest recovery period to February 1, 1990. Thus, in light of the extension, Peoples request to recover interest from October 21, 1988 to January 31, 1990 is consistent with the Amended Final Statement of Policy.

C. Peoples' Allocation of Costs Among the Customer Classes is Acceptable.

Section 1304 of the Public Utility Code, 66 Pa. C.S. §1304, addresses the matter of rate discrimination, in pertinent part, as follows:

> No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any

> unreasonable difference as to rates, either as between localities or as between classes of service . . . .

It is well settled that not all differences in rates are discriminatory and, thus, unlawful but that only unreasonable differences are prohibited. Philadelphia Electric Company v. Pennsylvania Public Utility Commission, 79 Pa. Commonwealth Ct. 445, 470 A.2d 654 (1983); Building Owners and Mangers Association v. Pennsylvania Public Utility Commission, 79 Pa. Commonwealth Ct. 598, 470 A.2d 1092 (1984). In Building Owners, at p. 605 the Court held:

> Before addressing the individual arguments of the Association, we reiterate the mere variation in rates among classes of customers does not violate the Public Utility Code. The requirement is merely that rates of one class of service shall not be unreasonable prejudicial and disadvantageous to a patron to any other class of service. Thus, for a rate to be found unlawfully preferential, there must be both an advantage to one and a resulting injury to another. (citation omitted).

Id. at 605, 470 A.2d 1095.

With regard to the matter of what would constitute a reasonable basis for differences in rates among classes of customers, it has been recognized by the Courts that one of the factors which may be considered in establishing a rate is the cost of alternate fuel. In Philadelphia Electric Company, supra, the Court reviewed the Commission establishment of a surcharge for outdoor gas lighting on residential customers. One of the factors considered by the Commission in its decision was that electricity was more efficient for lighting. PECo argued that it was

inappropriate for the Commission to base the difference in rates on end use. The Court disagreed:

> [I]n United States Steel Co. v. Pennsylvania Public Utility Commission, 37 Pa. Commonwealth Ct. 195, 209, 390 A.2d 849, 856 (1978), we stated, "costs of alternative fuels may be considered, along with other factors, in determining the reasonableness of a rate structure."

In this current Section 1307(a) filing, Peoples' proposed rate of collecting its take-or-pay costs will not be equal for all customer classes. The customer groups Peoples classifies as competitive[1], or whose price is sensitive to market forces, have been assessed a surcharge which varies within a range of 5 to 15 cents per Mcf. Peoples has estimated that on average the most that the Company will be able to recover from these competitive customer groups will be $.056/Mcf. This was demonstrated by the Company in Schedule #3 where Peoples calculated this rate based upon the customers' annual throughput and the surcharge that Peoples assigns these groups. The customer groups classified as non-competitive will pay $.20/Mcf for the first two years and $.13/Mcf for years three and four.

We recognized that Peoples opted to establish different levels of recovery for different customer classes because of the Company's concern that, potentially, an allocation of take-or-pay costs to the competitive or market sensitive customers, if set too high, will result in the loss of those customers from the system. If

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[1]The competitive customers are those customer groups serve under rate schedules CER, GS-T and T.

that happened, this would result in a decrease in the base upon which the unrecovered take-or-pay costs would be allocated.

The Final Statement of policy provides:

> (f) The commission intends to prospectively require recovery of take or-pay expenses from all customers classes, including gas transportation customers.

52 Pa. Code §69.181(f).

The issue of allocation of take-or-pay costs among customer classes was initially addressed by this Commission in the initial Peoples filing. As we stated therein:

> Although this Commission did not state that recovery of take-or-pay costs should be accomplished on an equal percentage across the board basis per customer class, it must be assumed that an "equitable" sharing of such costs among the classes was anticipated, barring a clear showing that this sharing would result in the loss of customers. Such a showing cannot be speculative but must involve a definitive demonstration of possible loss and the price level at which such loss would occur. It is only then that this Commission would consider implementing different rates of recovery for different classes.

Mimeo, at 9.

We concluded, however, that the filing did not provide a sufficient basis to warrant the different charges. Peoples did not justify the $.05/Mcf rate versus the $.23/Mcf rate per customer class. This matter was further clarified in the statement of Vice Chairman William Smith:

> Unless the company can demonstrate in a compelling way its need for unequal rates for the different customer classes, I would prefer

> the establishment of one uniform surcharge applicable to all customer classes. . .[2]

In further demonstration of the disparate rate treatment between its customer groups, Peoples provided this Commission, in Schedule #4, with an individual market analysis of its 147 customer and has further shown the extent, with regard to its competitive groups, to which these groups could absorb additional costs without the risk of loss to competitive sources. Peoples has shown that the Company is faced with potential loss from competitive sources such as other gas companies which have little or no take-or-pay costs, as well as cheaper alternate sources of fuel in the form of fuel oil, propane and coal. The price of the competitive sources of gas, fuel oil, propane and coal, only allows Peoples to allocate $.05 to $.15/Mcf to its competitive customer groups above their current competitive rate levels over the next four years. The surcharge assigned to the individual customer group is indicative of this fact, as the surcharge is lowest, where the throughput is high and the risk of loss due to competition is high.

While Peoples believes that it may be possible to recover a portion of the take-or-pay costs billed to its competitive customer groups, it estimates that approximately 27% of those dollars will not be recovered. Peoples' position is supported to a large extent by the rates and supporting schedules provided in its tariff filing.

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[2] Chairman Shane and Commissioner Rhodes concurred in Vice Chairman Smith's statement.

The issue thus becomes, whether the disparate allocation of take-or-pay costs between the customers groups is sufficiently supported by the Company to warrant Peoples discrimination in rates. As we have indicated, in Philadelphia Electric Company, Supra, citing Peoples I, where the LDC is faced with a real threat, as loss of customers, a demonstration of this situation would support a different rate for some customers.

We find that Peoples has met its burden of demonstrating compelling reasons for assessing its competitive customers a different rate. In this case, the compelling reason is the threatened loss of these customers to competitive forces which, in turn, would result in the loss of any contribution, including take-or-pay costs, by this group. We find that such a loss would harm all customers and would not be in the public interest. These customers have a competitive source of supply which is one of the factors which may be considered in establishing a different rate for a particular class of customers. As such, we conclude that Peoples' proposed allocation of take-or-pay costs, with regard to its competitive customer group is reasonable.

D. The Reconciliation Plan Set Forth By Peoples is Adequate.

With regard to the issue of reconciliation of claims filed pursuant to Section 1307(a), the Final Statement of Policy, in pertinent part, provided:

> (g) If a utility offers, to the Commission's satisfaction, to absorb a reasonable portion of its take-or-pay expenses, the commission will allow the rates to go into effect without further investigation. Under these rates, the

> nonabsorbed expenses would be recovered by amortizing the expenses over a 2 to 5 year period with a provision for annual reconciliation... .

52 Pa. Code §69.181(g).

In accordance with the policy statement, Peoples has provided for annual reconciliation in its proposed tariff supplement. The proposed reconciliation provides for recovery of over or under collection of take-or-pay costs due to (a) variations in throughput, (b) actual compared with projected take-or-pay principal charges, and (c) 90% supplier refunds received that relate to take-or-pay charges.

While we have no difficulty in accepting such a proposal, one of our concerns throughout the various Section 1307(a) filings has been the potential shift of one customer class' responsibility for take-or-pay costs to others through the reconciliation. Our position on this was clearly set forth in Peoples I. In this second proposal, Peoples has provided for a separate reconciliation of costs allocated to the competitive customers where the Company finds it necessary to discount the rate and extend the amortization period.

With regard to the mechanics of the reconciliation, Peoples has proposed that any resulting over or under collection for the non-competitive customer groups, at the end of the proposed four year recovery period, will automatically extend the rider for a fifth and final year. If over or under collections are

attributable to its competitive customer groups after the fourth year, the company will extend the surcharge up to three years.

Peoples has proposed the above reconciliation in an attempt to curb the cross subsidization that existed in its previous filing. As such, we find Peoples reconciliation to be acceptable. We would, however, note that reconciliation will require that a new filing be made prior to the implementation of any changes in rates and, that in addition, any adjustments made pursuant to additional take-or-pay costs experienced by the LDC would also require a new filing. Reconciliation will be on a twelve month basis with thirty days prior notice of any changes to the tariff.

E. Peoples Take-or-Pay Cost Recovery Should Be Limited To Its Section 1307(a) Filing.

On January 26, 1990, Peoples filed for a base rate increase pursuant to Section 1308(d). Included in its base rate claim was a request for recovery of its take-or-pay expenses. While the base rate case was still pending, the Company, on February 20, 1990, filed for take-or-pay recovery through a Section 1307(a) request.[3]

While the Final Statement of Policy provides utilities with the option of choosing between the two forums in which to claim

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[3]Peoples' Section 1307(a) claim reflects a $1,531,303 increase over the claim in the current base rate case at R-901607. The increase is attributed to additional costs for the commodity take-or-pay costs and the direct-billed costs. The rate case claim did not include take-or-pay claims associated with commodity rate surcharges which is estimated to be $797,850. The second element is related to updated direct bill costs of $733,453 which was not included in the rate case.

their take-or-pay costs, it clearly did not intend that a company would be permitted to seek recovery in both forums.

In Columbia, we stated that there are serious potential legal impediments to the continuation of a base rate recovery request for take-or-pay once a Section 1307(a) recovery request has been approved. In addition, we concluded that the continuation of an appeal for recovery of the take-or-pay costs or a subsequent request for recovery of these costs in another forum, potentially, could render the use of the Section 1307(a) an interim relief mechanism. For that reason, we conditioned our approval of Columbia's Section 1307(a) proposal upon the withdrawal of its base rate take-or-pay claim and its Section 1307(f) appeal.

We would note that, in the case of Peoples, the Company has already agreed to these conditions in its filing. Based upon the Company's agreement in these matters, we will approve the Section 1307(a) filing by Peoples.

F. Peoples Individual Notice Requirement To Its Customers Has Been Waived.

In its tariff filing, Peoples requested Commission guidance with respect to the guidelines a Company should use with respect to notice, in filing a Section 1307(a) proceeding. Peoples has correctly identified that the notice provisions set forth in Section 53.45 of the Code, 52 Pa. Code §53.45 apply specifically to a tariff filing that constitutes a general rate increase pursuant to Section 1308(d), and Section 53.45(c) states that the

Commission would provide guidance as to what notice is required for filings other than Section 1308(d) filings.

The Commission in its Final Statement of Policy did not set forth what notice requirements should be used for take-or-pay filings pursuant to Section 1307(a). The purpose of notice requirements is to inform customers of the utility's action and to provide them the opportunity to respond. The Commission believes that the guidelines set forth at §§53.41-53.45(relating to posting of tariffs and notices) and §53.68 (bill inserts) would provide reasonable notice to the ratepayer. As such, we shall adopt them for the purpose of Section 1307(a) filings to recover take-or-pay costs.

Peoples, in its tariff filing, explained that while it awaited the Commission's directive with regard to the appropriate notice requirement, the Company used Section 53.45(a) as a guideline and notified its customers of its filing by (1) posting a notice of Supplement No. 13 in its office and (2) has issued a news release to the print and electronic media in its service territory.

For purposes of this filing only, we will accept Peoples notice as adequate and will essentially waive its obligation to notify its individual customers via a bill insert. This Commission believes that, in light of the previous notices sent by Peoples to its customers through its prior Section 1307(a) filing, its last Section 1307(f) filing, its base rate case currently pending before the Commission and the notice requirement sent by Peoples in this filing, ratepayers have been adequately notified. Based on the

foregoing, the notice requirement provided by Peoples for purposes of this filing is accepted and deemed sufficient by this Commission.

G. The Commission's Opinion and Order Regarding Acceptance Of A Section 1307(a) Filing Is limited To The Facts And Circumstances Of the Individual Filing And Has Limited Precedential Value In Other Proceedings.

As the Commission discussed in PECo, the Commission has agreed to review offers to absorb a reasonable portion of take-or-pay costs in the context of a Section 1307(a) filing. However, such filings are reviewed solely on a case-by-case basis and the Commission evaluates the total filing in determining whether or not a filing is "reasonable" and will be accepted.

Peoples has made a section 1307(a) filing which we consider to be reasonable and, therefore, will accept. However, the findings of the Commission in this proceeding with respect to absorption and the allocation of costs are based upon circumstances peculiar to Peoples and are not binding in other rate proceedings. In other words, the actual filing used by Peoples in this case does not create a specific formula resulting in automatic approval for other LDCs. Each Section 1307(a) filing must stand or fall based upon its application to the particular LDC's circumstances.

In addition, it must be remembered that the Section 1307(a) filing is made pursuant to the guidelines established in the Final

Statement of Policy which is based on the idea of an equitable sharing of the burden of take-or-pay costs.

This Commission will continue to review each filing based on the facts and circumstances of the filing as applied to that company and will continue to consider the total filing in determining whether it meets the challenge of the Final Statement of Policy.

CONCLUSION

We find that the February 20, 1990 Section 1307(a) tariff filing, submitted by Peoples, constitutes a reasonable offer to absorb a portion of take-or-pay costs and that it reflects the spirit of our Final Statement of Policy Regarding Recovery of Take-or-Pay Expenses. We also find that peoples allocation of the remaining costs among the customer classes is just and reasonable. Of these reasons, we will approve the tariff filing; THEREFORE, IT IS ORDERED:

1. The Peoples Natural Gas Company's Supplement No. 13 to Tariff Gas-Pa. PUC No. 42, is hereby approved, subject to ordering paragraph 2.

2. That approval of the filing and implementation of Peoples' Section 1307(a) recovery mechanism for take-or-pay costs is contingent upon

(a) Peoples's withdrawal of its claim for recovery of take-or-pay costs in its pending Section 1308(d) base rate

proceeding at Docket No. R-901609 prior to its Section 1307(a) rates being placed into effect.

(b) Peoples withdrawal of its appeal from this Commission's decision in the Section 1307(a) Order at Docket No. R-891385 (Order entered October 6, 1989).

(c) Peoples' withdrawal of that portion of its appeal from this Commission's decision in the Section 1307(f) Order at Docket No. R-891232 (Order entered September 29, 1989) which pertains to all take-or-pay recovery issues.

3. That Peoples Natural Gas Company's compliance filing, which may be effective on one day's notice, shall reflect interest recovery for the period October 22, 1988 through January 31, 1990 at the six percent legal rate of interest.

4. That a copy of this Order shall be served upon the Office of Consumer Advocate, Office of Trial Staff and upon all others who have intervened, filed complaints or otherwise made an appearance in this docket.

BY THE COMMISSION:

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: April 5, 1990

ORDER ENTERED: April 5, 1990

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the attached Reply Brief by UPS Next Day Air or First Class Mail upon the persons listed below:

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June 26, 1995

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RE: Pennsylvania Public Utility Commission et al. v. Pennsylvania Power & Light Company, Docket No. R-00943271 et. seq.

Dear Secretary Alford:

Enclosed please find an original and nine (9) copies of the Reply Brief of the Central Eastern Pennsylvania Fuel Oil Dealers in the above-referenced matter. Copies have been served on all parties pursuant to the attached Certificate of Service. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

Robert P. Haynes

RPH/me

Enclosures

cc: Hon. Robert A. Christianson, Administrative Law Judge (2 copies)
All parties per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Honorable Robert A. Christianson, Presiding Administrative Law Judge

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	:	
v.	:	DOCKET No. R-00943271 et seq.
PENNSYLVANIA POWER & LIGHT CO., Respondent	:	

REPLY BRIEF
OF
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FUEL OIL DEALERS

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DATED: June 26, 1995

TABLE OF CONTENTS

I. SUMMARY OF THE ISSUES AND PARTIES' POSITIONS

This reply brief of the Central Eastern Pennsylvania Fuel Oil Dealers ("CEPFOD") will address the ratemaking treatment of the RTS rate subsidy and PP&L's proposed residential rate design, which were issues raised in the Main Briefs of Pennsylvania Power & Light Company ("PP&L" or "Company"), the Office of Consumer Advocate ("OCA"), and the Office of Trial Staff ("OTS").

CEPFOD's interest is limited to the rate design and ratemaking treatment of the RTS revenue subsidy and issues involving the RTS and RS rates. CEPFOD recommends that the unquestionably subsidized RTS rate be eliminated. However, because PP&L continued to promote this service long after it knew that it received no benefit from RTS, and certain ratepayers installed more expensive heating equipment at PP&L's urging, provision must be made to prevent harm to these customers. Therefore, PP&L should credit RTS customers $50 a month to enable those customers who relied upon the subsidized rate to recover the higher costs of their investment in RTS equipment.

Alternatively, CEPFOD recommends that the potential for increased RTS subsidies be eliminated immediately by precluding the extension of the RTS rate to any new customers. At the same time, the existing rate should be increased by the 17.4% PP&L originally proposed in order to minimize the RTS subsidy, with PP&L bearing all remaining unrecovered costs. The existing rate should be phased

out by limiting its duration to the shorter of the time when the RTS equipment is replaced or eight years. OCA and PP&L support closure of the rate to new customers, except for a disagreement as to the time which the closing of access to the rate should occur. PP&L would continue to bring new customers on to the subsidized rate through year-end while OCA would cease offering RTS service effective with the entry of the Commission's final order. OCA opposes any restriction on the duration of a subsidized rate to existing customers, but would accept a RTS increase higher than RS service based upon a 2.3¢ rate differential between RTS and RS rates, as calculated in CEPFOD Exh. No. 17.

Like several other parties, CEPFOD has also opposed certain RS rate changes; specifically, introduction, without cost justification, of the third billing block and the 50% increase in the customer charge as proposed by PP&L.

II. ARGUMENT

A. PP&L Should Not Be Rewarded For Its Imprudence By Allowing It To Shift The RTS Subsidy To Other Customers.

1. The Fundamental Basis Of CEPFOD's Claim Remains Undisputed.

Regardless of the origin of the RTS rate, PP&L seized upon the RTS rate as a marketing opportunity to utilize its excess capacity and foreclose competitors from the market. PP&L now seeks to profit from imprudently attracting customers through subsidized rates by shifting the subsidy from its shareholders to other ratepayers.

In order to justify having other ratepayers bail out its shareholders, PP&L claims the opposition to its plan is based upon "wildly inaccurate and easily disproved misstatements." PP&L Main Brief at 261. In spite of this characterization of CEPFOD's expert's testimony, PP&L offered no additional documents in rebuttal to disprove them.[1] The reason for this failure is obvious; PP&L could not because CEPFOD's recommendations are based upon several undisputed facts.

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[1]PP&L had ample opportunity to locate documents because CEPFOD served PP&L with the documents to be used as early as March 23, 1995 in its request for admissions.

It is undisputed that PP&L knew that the RTS rate was a load management failure in 1987. PP&L has conceded this by admitting that "by the late '80's" it knew its peak was shifting to the same time of day for which it was granting RTS customers lower rates. PP&L Main Brief, p.255. In spite of this knowledge, PP&L continued promoting the rate for several years and did not begin "phasing out advertising promotions and grants" until 1991. Indeed, its promotion continued until 1995. PP&L Brief, p.255. A key promotional selling point has been that the huge rate discount applies to all of a customer's electric usage, including air conditioning, appliances, etc., and that discount is being offered to this day. There is no load management justification for this discount to a customer's non-heating usage, which results in PP&L recovering less than its fuel costs for the heating usage. CEPFOD St. No. SR1 at 5.

It is not surprising, that the majority of the RTS customers have been added after PP&L knew that the RTS was a load management failure. CEPFOD St. No. 1 at 13. It is similarly undisputed that RTS is a subsidized service. This was demonstrated by all of the parties' class cost of service studies. See CEPFOD Main Brief, pp.7-8. Even PP&L does not refute this fact but simply contends that subsidies are not unlawful. PP&L Main Brief at 268. The RTS subsidy is unjust and unreasonable and this Commission should require PP&L, and not other ratepayers, to bear the costs resulting from PP&L's imprudent conduct in promoting RTS.

The fundamental basis of CEPFOD's claims rest on these facts -- that RTS class imposes an evening peak demand that coincides with PP&L's system peak demand; that PP&L knew of this load management failure but continued for years to promote RTS anyway; that the RTS rate is (and always has been) subsidized; and that the Company is now seeking to shift the subsidy to other classes -- which are not "wildly inaccurate and easily disproved misstatements" but undisputed. These facts are facts verified by PP&L's own internal documents and analysis that PP&L is unable to refute.

B. PP&L's Ancillary Arguments Against CEPFOD's Recommendations Are Unpersuasive.

PP&L's other attempts to avoid the consequences of its own imprudence are similarly unconvincing. PP&L argues that the case is not about RTS' displacement of oil and gas as heating sources. PP&L Main Brief, p.262. While that is not the primary focus of these proceedings, PP&L's own documents demonstrate that RTS succeeded in raising the electric heat saturation (i.e., market share) from 61 percent to 85 percent. CEPFOD Exh. No. 2, p.5. Indeed, comparative prices are a self-evident element in all purchasing decisions, which should require no proof. Nevertheless, PP&L's own documents concede that PP&L needed to subsidize its prices to be competitive. Almost a decade ago PP&L observed: "The impact of lower fossil fuel prices on [market share] will depend largely on the length of time current low pricing levels remain in effect. PP&L's standard residential rate cannot compete on a price-only basis with either gas or oil in the heating fuel market". CEPFOD

Exh. No. 2, p.3. (Emphasis added.) By this proceeding, PP&L wants the rate subsidy it offers to "compete", albeit unfairly, against price competition from fossil fuels to be paid by all other ratepayers.

Nor is the fact that PP&L can point to its failure to achieve its projected marketing goals dispositive of, or even relevant to, any issue before the Commission. PP&L Main Brief, p.266. Had PP&L achieved its goals, it undoubtedly would be seeking a far larger subsidy than it now is, or than it would have if it had closed access to RTS when it first knew that the rate was a load management failure.

Most egregious is PP&L's attempt to excuse its imprudence by claiming that "[t]he negative class return is a recent development." PP&L Main Brief, p.268. In fact -- more than a decade ago -- in March of 1985, PP&L concluded with respect to off-peak heating that "[s]ince the non-participants' negative net present value is substantial, the program is a net cost to all ratepayers as a whole." CEPFOD Exh. No. 7, pp.89, 95. See, also, CEPFOD Exh. No. 8 at page 93, which PP&L realized in 1989 that the return on equity for RTS was a negative 3.5 percent. In the same report, PP&L recognized: "RTS customers are producing a negative return on common equity". CEPFOD Exh. No. 8, p.105. The plain fact is there is no evidence of record in this or any prior proceeding showing that PP&L's RTS rate has ever produced a positive rate of return on investment. Until this case, PP&L's

shareholders have borne these losses, but now PP&L seeks to recover the $8.2 million subsidy from other ratepayers.

PP&L cannot justify the continuation of this rate by its claim that RTS revenues of 5.4¢/kWh exceed PP&L's incremental fuel cost of 1.8¢ to 2.2¢/kWh PP&L Main Brief, p.270. Such an analysis disregards the fact that all electric usage -- air conditioning, refrigeration, lighting and appliances -- would still have to be served regardless of the choice between fossil fuel or electric heat. Under the existing tariff (which would be continued for at least some customers), all such usage is secured at a substantial discount. When that usage is re-priced at the RS rate and deducted from total revenues, the incremental revenue derived from RTS space heating is less than the incremental fuel charge (CEPFOD St. No. 1 at 3 and 8. Dr. Andersen explained as follows:

> Q. AT PAGE 11 OF HIS REBUTTAL TESTIMONY MR. KASPER CLAIMS THAT RTS SERVICE BENEFITS OTHER CUSTOMERS BECAUSE IT PROVIDES A "CONTRIBUTION TO THE COMPANY's FIXED COSTS." DO YOU AGREE?
>
> A. No. The claim that RTS contributes to the recovery of fixed costs is false. The incremental revenue derived from RTS service is the difference between RTS revenues and the revenues that RTS customers would have provided had they opted for a conventional heating system and taken service under the RS rate. As discussed at pages 3 and 8 of my direct testimony (see also Kasper rebuttal exhibit OGK-7, CEPFOD response to question 18) incremental RTS revenues are not sufficient to even recover incremental energy costs. As a result, the service imposes a net cost on other classes even if costs and revenues are measured on an incremental basis rather than a more conventional comparison of revenues with embedded cost. Mr. Kasper's comparison of average RTS revenues ($.054 per kWh at page 20)

> with average and incremental energy cost ($.018 to $.022 per kWh at page 21) is deceptive because it assumes that an RTS customer's total usage would be zero if the customer had installed a conventional heating system.

CEPFOD St. No. SR1 at 5. (Emphasis added.)

PP&L cannot contest the analysis that RTS' heating usage fails to even recover fuel costs because PP&L utilized a similar methodology when evaluating the financial impact of RTS. See CEPFOD Exh. No. 13, p. 272; and CEPFOD Exh. No. 8, pp.109-117.[2] Thus, PP&L's construction that RTS recovers the fuel or margin cost for RTS' heating usage is disproved by PP&L's own analysis.

PP&L simply has not made the case to justify charging other ratepayers for the ongoing consequences of its past imprudence. In a complete non sequitur, PP&L goes on to contend that the assumption "that RTS customers would otherwise have been RS customers...is inconsistent with the claim that they converted from oil heat." PP&L Brief, p.263. It is "inconsistent" only if homeowners who use oil heat do not also have other end uses for electricity, such as refrigerators, lights and appliances. All residential fossil fuel customers will still be PP&L customers.

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[2]In each of these studies revenue increase resulting from sales to RTS customers is calculated as the difference between RTS revenues and the revenues that would have been received if these customers had opted for alternative space heating and been served under the RS rate.

As further effort to justify shifting the subsidy to other ratepayers, PP&L claims that it can utilize new technology and "the existing timers for thermal storage units can easily be reset to move them away from the current peak." Even though PP&L has been experiencing evening peaks since 1992, and has known that it would since 1987, it has failed to implement this "easy solution." CEPFOD St. No. 1, p.15. PP&L's failure to offer that solution as part of its rate design belies its own argument. Indeed, if the solution were so easy, there would be no need for the pilot program implemented by PP&L (PP&L Main Brief, p.256), and PP&L would or should have presented the results of its study in the form of a different rate proposal request. Rates cannot be set based upon illusory future expectations, but on the "known and measurable test year." Popowsky v. Pa. P.U.C., 642 A.2d 648, 650-52 (1994), Columbia Gas of Pennsylvania, Inc. v. Pa. P.U.C., 149 Pa. Comm. Ct. 247, 252, 613 A.2d 74, 176 (1992) aff'd. 535 Pa. 518, 636 A.2d 627 (1994). PP&L's promises to fix the RTS problem in the future are hollow since PP&L has known about the problem since 1987 and has done nothing except to continue to promote RTS, thereby increasing the problem.

C. CEPFOD's Recommendations Are Fair To All Customers.

The OCA's apparent only concern is the treatment of RTS customers, which they wish to see subsidized by all of PP&L's other customers, including RS and RTD customers. It is precisely because CEPFOD shares the OCA's concern with RTS customers that it has proposed compensating RTS customers through a $50 per

month credit, at PP&L's stockholders' expense. Awarding this credit for the lesser of the duration of the equipment or five years would permit them to recover fully their added investment. PP&L essentially agrees. See PP&L Main Brief, pp.259-260. It is self-evident that at the end of the equipment's useful life, any recovery of benefits would also end. Thus, there is no justification for continuing the subsidy beyond that time.

The $50 a month credit for five years provides an additional $3,000 toward the recovery of such additional costs to install such equipment. The testimony from the Bethlehem Public Input Hearing cited at page 298 of OCA's Main Brief shows that the ratepayer was seeking to "recover approximately 50 percent of the additional cost of [his] heating over a five" year period. The $3,000 provided by the subsidy over a five-year period would be more than 50 percent of the additional $4,500 installation costs expended by this customer, who, incidentally, had already had three years of recovery through subsidized heating.

The fact is the $50 credit does protect RTS customers, as PP&L's workpaper established. CEPFOD Exh. No. 17. More importantly, all of the OCA's arguments assume that the elimination of RTS would cause a shift to RS rather than to RTD, where the existing customers would continue to enjoy a comparative rate advantage (although one which does not produce a negative rate of return). It is, quite frankly, ironic that OCA is advocating shifting a subsidy caused by PP&L's imprudence from one consumer class to another rather than seeking to charge the

subsidy to the utility which created it by promoting, unjustifiably, a heavily-subsidized rate.

D. PP&L Cannot Justify The Third Block It Seeks To Introduce Into The RS Rate Or A 50% Increase In The RS Customer Charge.

PP&L has provided no empirical evidence to support the introduction of a third block or a widening of the current 1.96¢/kWh differential between the RS first and second blocks. CEPFOD St. No. 1 at p.44. Demand-related costs should be recovered for all kWh sold because such costs vary with usage. Since demand for heating customers is almost three times the demand for the average RS customer, excluding demand-related costs from the third block fails to account for the higher demands which heating customers impose upon the system. CEPFOD St. No. 1, p.44, Table 10. This causes such customers to be subsidized by smaller RS customers, primarily the customers who heat with fossil fuel. PP&L's proposed third block is simply one more attempt to have non-heating customers subsidize electric heat customers.

As "justification" for this new subsidy, PP&L claims that the third block is necessary to recover both unrecovered customer costs and demand costs. The only reason that PP&L has "unrecovered" customer costs is because it grossly over-calculates such costs. The unanimous conclusion of all non-PP&L witnesses who addressed the issue is that PP&L's customer costs are not as large as PP&L claims they are. See OCA Main Brief, p.306. When the total actual customer cost, computed by Dr. Andersen to be $8.00 (CEPFOD St. No. 1 at 42), is compared to the

RS customer charge of $5.80 as recommended by CEPFOD,[3] there is, at most, $2.20 of unrecovered costs. The current differential of 1.97¢/kWh between the first and second RS blocks is more than enough to permit recovery of such unrecovered costs (i.e., $2.20 per customer divided by 200 kWh equals only 1.1¢/kWh). Since all of the customer costs are fully recovered in the first block, there is no reason to introduce a third block. CEPFOD St. No. 1 at 43. Indeed, to the extent the customer charge is increased above the $5.80 recommended by CEPFOD, PP&L's purported justification evaporates. Thus, there is no cost support for PP&L's huge proposed 50% increase in the customer charge for RS customers and creating a third rate block.

[3] It should be noted that CEPFOD's $5.80 customer charge is almost the same as the $5.90 recommended by the OTS' expert.

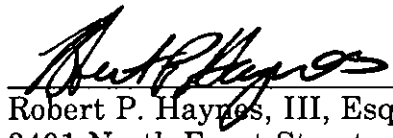
III. CONCLUSION

The fairest way to deal with the massive subsidy of off-peak heating customers built up over the years by PP&L's promotion of subsidized rates is to end it and compensate former RTS ratepayers at PP&L's shareholders' expense. Alternatively, further subsidies must be eliminated by immediately denying any new customers access to the RTS rate. At the same time, the rate must be phased out for existing customers as quickly as possible consistent with allowing them to recover their investment while the amount of the subsidy must be reduced.

There is clearly no reason to begin a new subsidy to electric heating customers by establishing a third RS block. Moreover, PP&L's proposed 50% increase in the RS customer charge is not justified and should be reduced.

Respectfully submitted,

METTE, EVANS & WOODSIDE



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DATED: June 26, 1995

CERTIFICATE OF SERVICE

RE: Pennsylvania Public Utility Commission et al. v. Pennsylvania Power & Light Company, Docket No. R-00943271 et. seq.

I hereby certify that I have this day served the document identified in cover letter upon the parties of record and in the manner indicated below which satisfies the requirements of §1.54:

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June 27, 1995

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

Dear Secretary Alford:

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

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

Sincerely,

Karen Oill Moury

Karen Oill Moury
Assistant Small Business Advocate

Enclosures
cc: Hon. Robert A. Christianson
Administrative Law Judge
(2 copies with disk)

Parties of Record

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE OFFICE OF SMALL BUSINESS ADVOCATE

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Dated: June 27, 1995

I. INTRODUCTION

The Office of Small Business Advocate ("OSBA") files this Reply Brief for the limited purpose of responding to specific assertions set forth in the Main Brief of the Office of Consumer Advocate ("OCA"). Additionally, this Reply Brief refers to the Main Briefs filed by Pennsylvania Power & Light Company ("PP&L" or "Company") and the PP&L Industrial Customer Alliance ("PPLICA").

Since our position is fully described in the OSBA's Main Brief, we do not reiterate those arguments here. Rather, we include particular references to our Main Brief and urge the Administrative Law Judge and the Commission to refer to that document for a thorough discussion of our position.

II. ARGUMENT

In its Main Brief, the OCA seeks rejection of PP&L's cost of service study and revenue allocation proposal. To replace PP&L's cost study and recommended revenue allocation, the OCA requests adoption of Dr. Johnson's cost of service study and an alternative revenue distribution based upon the results of his cost study. OCA M.B. at 288, 291.

In response, the OSBA submits that Dr. Johnson's cost of service study is flawed, and that therefore, his proposed revenue allocation should not be implemented. Since the Company's study reasonably reflects the incurrence of costs on a class basis, it is reliable and should be utilized for purposes of spreading any revenue increase or decrease among the customer classes. Further, the Company's recommended revenue distribution recognizes and begins to rectify the imbalances inherent in the existing rate structure. See OSBA M.B. at 13-15.

1. Allocation of Generating and Transmission Demand Costs

Challenging the Company's twelve coincident peak method ("12 CP") for allocating generating and transmission plant costs, the OCA argues that the 12 CP study fails to consider energy consumption of the classes in the allocation of generating plant investment. OCA M.B. at 266. As the Company notes, however, "energy usage simply is not an appropriate measure for the allocation of fixed generating costs. The cost of generating and transmission plant and related depreciation and property taxes are fixed costs that simply do not vary with energy usage." PP&L M.B.

at 236. Numerous other problems with the peak and average methodology, dealing with both the theory of the method and its application in this case, have been identified in the Main Briefs of the Company, PPLICA and the OSBA. See PP&L M.B. at 236-238; PPLICA M.B. at 56-60; OSBA M.B. at 7-10.

In support of Dr. Johnson's peak and average methodology, the OCA relies on three Commission decisions. A review of those cases, however, reveals that none of them involve a situation where the Commission opted for adoption of a peak and average methodology in lieu of a utility-sponsored 12 CP methodology.

First, the OCA refers to Pa. Public Utility Commission v. West Penn Power Company, 54 Pa. P.U.C. 602 (1981), in which the Commission noted its preference for a methodology advanced by the OCA's witness over the single coincident peak ("1 CP") study relied upon by the utility. The OCA's method in that case was not designated by name but was described as allocating demand related costs 80 percent on the basis of a peak demand allocator that measured a number of peak hours, rather than the peak hour of the peak day as urged by the utility. Even having expressed a preference for the OCA's method, the Commission did not accept the OCA's proposal for allocating the revenue increase among customer classes. Rather, the Commission directed the company to utilize an average of the results of both the OCA's study and the Company's 1 CP study in spreading the revenue increase among the rate schedules. It is not at all clear how that approach would compare

to Dr. Johnson's version of the peak and average method presented in this case.

The second decision relied upon by the OCA is Pa. Public Utility Commission v. Philadelphia Electric Company, 61 Pa. P.U.C. 589 (1986). In that case, PECO had allocated production and transmission plant costs on the basis of class contribution to the average of the monthly peaks for the four summer months ("4 CP"). Deciding not to endorse the 4 CP methodology relied upon by PECO, the Commission indicated that the peak and average method may better reflect the way PECO's system is planned. Nevertheless, the Commission also declined to adopt the peak and average method. Rather, it directed that PECO, in its next general rate increase filing, develop a cost of service study based upon that method and to use the results of that study merely "to test the reasonableness of its proposed revenue allocation." 61 Pa. P.U.C. at 678 (emphasis supplied). In so ruling, the Commission neither concluded that the peak and average method was superior to any other particular method nor held that it should be the basis for the distribution of a revenue increase among an electric utility's customer classes.

The OCA's third reference is to Pa. Public Utility Commission v. West Penn Power Company, 73 Pa. P.U.C. 454 (1990). Of the cost of service methodologies advanced by the parties in the 1990 West Penn Power proceeding, including studies based upon 1 CP, average and excess, and peak and average, the Commission found that OCA's peak and average study was the most reasonable. We note, however,

that the 12 CP method was not advanced by any party in that proceeding. Further, the Commission explicitly stated that West Penn Power "should not be required to perform its cost of service studies in future rate proceedings in accord with the OCA's recommendations in the instant proceeding. These issues must be addressed on a case by case basis." 73 Pa. P.U.C. at 518. Indeed, in West Penn Power's very next general rate increase proceeding, the Commission rejected the OCA's peak and average methodology and found the Company's average and excess study in that case "to be the most reasonable upon which to rely for revenue allocation and rate design decisions." Pa. Public Utility Commission v. West Penn Power Company, 79 Pa. P.U.C. 122, 210 (1993). Moreover, in view of the differences between the version of the peak and average method advanced by Dr. Johnson in the present case and that utilized by the same witness in the 1994 West Penn Power case (See OSBA M.B. at 9-10; PPLICA M.B. at 57), we have no way of knowing how Dr. Johnson's present peak and average method compares to the method relied upon by the Commission in the 1990 West Penn Power case.

In summary, none of the Commission decisions cited by the OCA support the adoption of a peak and average method in this case. In each of those cases, the Commission clearly focused on determining the most reasonable method of those that were presented, as applied to the system planning criteria of the particular utility. Since the 12 CP study is widely accepted and more accurately reflects the way that PP&L's system is planned and the manner in which

production and transmission costs are incurred, it is appropriate to rely upon the results of that study in allocating a revenue increase or decrease among the customer classes.

2. Classification of Distribution Plant Costs

The results of Dr. Johnson's cost study are also faulty due to his improper classification of distribution plant costs. In its Main Brief, OCA argues that the Company's minimum sized distribution system method overstates the amount of costs that are considered to be customer related, and that Dr. Johnson has made an adjustment to reduce this overstatement. OCA M.B. at 277-278. As noted by Mr. Knecht, however, Dr. Johnson's adjustment results in a negative customer weight for all secondary distribution cost components except service drops. See OSBA M.B. at 12. Such an unreasonable result invalidates Dr. Johnson's study, leaving the Company's minimum system study as the only comprehensive one in the record and as the most reasonable of the methods posited in this proceeding. See OSBA M.B. at 13; PP&L M.B. at 243-244.

3. OCA's Revenue Allocation Proposal

The OCA's revenue allocation proposal is entirely based upon Dr. Johnson's defective cost study. In an effort to justify its proposal for a Residential class increase that is equal to the system average increase, the OCA notes that under its proposed cost of service study, the Residential relative rate of return is almost equal to the overall system average rate of return. OCA M.B. at 292.

A review, however, of the Company's cost study shows that the Residential rate of return is less than eighty percent of the overall system average rate of return. Even at proposed rates, assuming full rate relief, the Company's proposed revenue allocation would result in a Residential rate of return that is less than ninety percent of the overall system return. See PP&L Exhibit OGK-3. Clearly, a system average increase for a class that is currently being subsidized by other customers, many of whom are small businesses, is not justified. See OSBA M.B. at 13-19.

Since the OCA's revenue allocation proposal is dependent upon approval of Dr. Johnson's cost study, which has been extensively refuted, it should be afforded no consideration. Simply, rejection of any one of the changes proposed by Dr. Johnson to PP&L's cost allocation study invalidates the OCA's proposal for allocating the revenue increase or decrease among the customer classes. OSBA M.B. at 17-19. Thus, the Company's recommended revenue distribution should be implemented, in conjunction with the weighted scaleback approach previously described in detail by the OSBA. See OSBA M.B. at 23-28.

III. CONCLUSION

Based upon the foregoing, the Office of Small Business Advocate respectfully requests that the ALJ and the Commission approve (1) the Company's reliance on the twelve month coincident peak methodology for allocating generating and transmission plant costs and (2) the Company's revenue allocation proposal.

Respectfully submitted,

Karen Oill Moury
Assistant Small Business Advocate

Date: June 27, 1995

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

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MID-ATLANTIC ENERGY PROJECT

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June 27, 1995

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RE: Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Co.,
Docket No. R-00943271
Brief of Sierra Club

Dear Secretary Alford:

Enclosed please find the original and nine (9) copies of the 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,

Alan J. Barak
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V/717-541-1967
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AJB/mlm
Enclosures

cc: Honorable Robert A. Christianson
Parties of Record

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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)	)	

SIERRA CLUB'S REPLY BRIEF

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SIERRA CLUB'S REPLY BRIEF

SUMMARY

This Reply Brief addresses the following matters: a Commission interlocutory ruling; Sierra Club positions on environmental remediation costs; PP&L low income and energy efficiency programs; and nuclear decommissioning; and the relief Sierra Club has requested.

HISTORY OF THE CASE: PROCEDURAL RULING

By letter motion of May 25, 1995, Sierra Club asked the Commission to order that transcripts be provided to it, the Commission for Economic Opportunity and Eric Epstein at cost, and the schedule be adjusted accordingly. At its June 22, 1995, meeting the Commission denied the request, and Secretary Alford, by sealed letter that day, notified the parties of the Commission decision.

ARGUMENT: EXPENSES

1 THE COMMISSION SHOULD APPROVE FULL FUNDING OF ENVIRONMENTAL REMEDIATION BECAUSE THE POLLUTION WAS A COST OF PROVIDING POWER.

There is no controversy that the Company will have to fund environmental clean-up costs pursuant to an agreement with DER (soon to be renamed DEP, Dept. of Environmental Protection).[1] The Company may have to clean up as many as 134 sites.[2] The issues which PP&L's claim for clean-up expense treatment presents is really whether its clean-up responsibilities are legitimate costs of service, and the amount.

No party claims that environmental clean-up from activities related to the production and supply of power to the customers is other than a legitimate ratemaking expense. Indeed, to fail to recognize these expenses in the cost of service would understate the true cost of the power.

The Company claims its likely annual costs will be $5.4 million, or $4.4 million on a jurisdictional basis.[3] The scope of the work is defined in the DER agreement on which the estimate must rest. We urge the Commission to adopt this figure, but to do so in a manner that assures the funds are actually spent for the purposes stated, rather than being folded into general rates, and corporate profitability.

The Commission should require annual reporting of the environmental remediation costs, with budgets and comparisons between budget and actual figures. If, as is common in the field, the cost of remediation substantially increases, the Company should be given the

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[1] PP&L Statement 2R , pp. 2-3. (Berish); PP&L Ex. MJB-10.

[2] PP&L Statement 2R , pp. 2-3. (Berish)

[3] PP&L Statement 2R, p. 2. (Berish)

opportunity to return for a revision of the figure. If the cost of work turns out to be significantly less, or the period of the work significantly less than the next base rate case review, other parties should have an opportunity to petition the Commission for a related rate reduction.

We urge the Commission to conclude that, on balance, the Company should undertake fund accounting for this item. Fund accounting, we acknowledge, does not always produce the most cost-effective solutions; there is a tendency for managers to spend up to fund limits because the savings would not otherwise increase corporate profitability. However, the public which is funding these expenditures should know that (a) the rate increase has a public purpose to it, and (b) the funds will go to the purpose the Commission intended -- environmental remediation. Accounting for the approved revenues in an internal Company-managed fund, will provide the necessary assurances.

2 CUSTOMER AND COMMUNITY NEEDS PROGRAMS SHOULD BE ADEQUATELY FUNDED BECAUSE THEY CONTRIBUTE TO THE PP&L SYSTEM.

There should be little doubt by the end of the 20th century that reasonable and prudently incurred utility costs include the type of small customer and community needs programs that PP&L contemplates funding: Build-A-Neighborhood; Affordable Housing; Small Business; Keep Warm; Payment Protection; Winter Emergency; Operating HELP; and CARES' pilot.[4] PP&L seeks rate recovery only for the conservation, efficiency, and load management programs, $3.5 million.[5] Thus, the expenditures sought to be covered directly enhance PP&L's ability to deliver cost-effective energy services to ALL its customers.

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

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

The programs are traditionally recognized as compensable through the rates. Indeed, for a utility the size of PP&L, and the great geographical breadth of its service territory, the $3.5 million ratepayer cost of the programs is trivial. We do not claim that these programs offer a complete solution to the Company's uncollectibles expense level, or the amount of high-cost peaking power that must be secured annually from other utilities. They do, however, contribute to minimizing these costs.

We share the concerns of the Commission for Economic Opportunity that PP&L's proposals are too narrow, too geographically limited, and underfunded.[6] One solution is NOT to spread already limited funds over a broader geographic region. Rather, fairness to PP&L's customers implies that funds be allocated to qualifying customers across the system and that PP&L "ramp up" its funding. The Commission should hold that the failure to do so is unreasonable and imprudent. Those funds that are available should be allocated on clear cost-effectiveness criteria.

We also agree that PP&L should not limit its programs to peak-shaving. The Company is incorrect if it believes that attacking baseload inefficiencies fails to benefit the other customers[7]. Helping low income customers cut baseload, as with the type of refrigerator change-outs recently announced between PASNY and the New York Housing Authority,[8] also helps cut bad debts.

Whether the Build-A-Neighborhood and Affordable Housing Programs' funding should issue as block grants is probably best left to determination after Company discussions with affected community groups, with articulated goals and strategies. We hope that the intent is not to reinvent the proverbial wheel, however. There are some very exciting, and successful,

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

[7] PP&L Statement 11R, p. 19 (Stathos)

[8] "Public Housing Efficiency Plan, Step One: Get New Refrigerators", NEW YORK TIMES, "Metro Section" (Jun. 20, 1995), p. B1.

affordable housing efforts around the country which PP&L staffers can draw upon. Because the information from these programs should be transferable to other utility service territories we urge the Commission to require PP&L to keep CEEP in the chain of communication, so that the office might informally evaluate the programs' lessons.

Indeed, the Commission has approved the funding of economic development programs, and economic development rate breaks, with far less certainty of benefit.[9] LIURP offers benefits to all customers through targeted low income programs. *See* 52 Pa. Code §§ 58.1-.18. OTS' initial position, rejecting the programs because their benefits are "not[t] identifiable"[10] would, if adopted, place a special burden on these programs that no others must carry. Nothing, of course, is known in advance, nothing identifiable with certainty.

To the extent that OTS argues that such programs are "social programs" and inappropriate for ratemaking, the claim is wrong, and unfair to both PP&L and its targeted customers.[11] First, these programs offer traditional economic and financial benefits to the prudent management of an integrated utility system. Second, the argument is unfair to PP&L. The utility, unlike a freely competitive, and mobile, firm, is "stuck" with its customers. In order to have a fair opportunity to earn limited authorized rate of return, it must be given the freedom to develop solutions to serving ALL of its customers in order to retain them and profit from their purchases. Finally, the customers targeted for these programs are "stuck" with PP&L. Because they can go to no other supplier for their electricity, the Commission has an obligation to configure rates to serve them. In utility ratemaking parlance it would be "unjust and unreasonable" to deny ratemaking treatment for these programs to captive customers, particularly in light of the bill-reduction strategies available to large industrial customers through economic development rate discounts.

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[9] *See* PP&L docket no's R-943238(1994); R-00922363 (1992); R-870060C001 (1987); R-850251C001 (1987); R-832542 (1984). *See also* PA. PUC V. NAT'L FUEL GAS DISTR. CORP., 69 Pa. PUC 379, 382 (1989).

[10] OTS Statement 4, pp. 36-39 (Weakley); OTS Main Brief, p. 82.

[11] OTS Main Brief pp. 72-84.

We share OTS' concern that the programs may be "driven" by PR considerations rather than a judgment that they are good for the system[12]. But the issue is not motive; frequently people and corporations do the right things for the wrong reason. The issue is whether the programs can enhance the services provided to PP&L's customers, particularly those who would turn into bad debt statistics without the programs.

We fail to see the "unreasonable rate discrimination" that OTS argues[13]. These customer assistance programs are no more discriminatory than any service a utility provides that responds to the needs of a particular customer, or group of customers. In this case the customers happen to be poor ones, who would constitute an economic burden on the system if creative solutions are not found to their payment problems. OTS's argument, if accepted, would simply cast these customers off the system. PP&L's solution seeks to retain them as valued contributors to system costs.

While some reporting and monitoring of these programs is a good idea[14], and the Company has volunteered to provide some reporting[15], we urge the Commission to insure that limited funds are spent doing good instead of doing reporting. The CEEP Bureau has spent over a year in a broad collaborative of utility-PUC-customer groups in devising a balance for the need to monitor DSM programs with reporting's potential cost-ineffectiveness. The recent CEEP 100-page report[16] should serve as a model for reporting on PP&L's programs.

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[12] OTS Main Brief, p. 74, citing OTS Statement 4, p. 36 (Weakley).

[13] OTS Main Brief, p. 80.

[14] *See* OCA Main Brief, Vol. I pp. 161-62.

[15] PP&L Statement 11R, p. 14. (Stathos)

[16] DEMAND-SIDE MANAGEMENT IMPACT AND PROCESS EVALUATION GUIDELINES FOR PENNSYLVANIA UTILITIES (Pa. PUC's CEEP April 1995).

3 NUCLEAR DECOMMISSIONING EXPENSE SHOULD BE INCREASED TO REFLECT THE COMPANY'S RECENT, CONSERVATIVE RE-ESTIMATES IN ORDER TO INSURE THAT THE MONEY IS AVAILABLE WHEN NEEDED.

The Company's decommissioning estimates are too low. The Company has calculated a stream of revenues to cover the total current cost of decommissioning Susquehanna of $723.8 million in 1993 dollars.[17] The decommissioning trust fund is projected to be roughly $98.3 million by September 30, 1995.[18] The Company must fully fund the amount necessary to terminate the license at the time of plant shutdown.[19] Decommissioning is projected to occur on an "overnight" basis at license expiration -- 2022 for Unit 1 and 2024 for Unit 2,[20] although in fact it will require 10 years for each unit[21]. The PP&L rate proposal is to increase the annual decommissioning contribution from $7.126 million (total Company basis) to $30.042 million (total Company), $23.570 million (jurisdictional).[22]

OCA argues that the Company has OVERestimated decommissioning costs by including the decommissioning costs of nonradiological structures and equipment in the annual charges.[23] OCA puts the Company estimate at $804 million on a total Company basis, and its witness

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[17] *See* PP&L Initial Brief, p. 139.

[18] *See* PP&L Initial Brief, p. 139.

[19] PP&L Statement 13R, p. 14. (LaGuardia) NRC Final Rule "General Requirements for Decommissioning Nuclear Facilities", 53 Fed. Reg. 24018 (June 27, 1988); NRC Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors"; NRC Regulatory Guide 1.159 (availability of funds for decommissioning).

[20] PP&L Statement 13, Ex. TSL-2 p. 2-1. (LaGuardia)

[21] PP&L Statement 13, Ex. TSL-2, pp. 5-8. (LaGuardia)

[22] PP&L Statement 3, p. 20-21. (Bernini); PP&L Ex. Future 1, Sched. D-11. Cf. OCA Statement 6, pp. 23-24 (Catlin).

[23] OCA Statement 4, pp. 18-20. (Bridenbaugh)

Bridenbaugh recommends a level of $573.0 million (total Company).[24] OCA argues that PP&L's funding and disbursement assumptions understate likely earnings.[25] OCA also argues that the NRC funding requirement does not apply to nonradiological portions of the plant.[26]

Actually, the prospect of such errors offers the Commission an opportunity to hedge the uncertainties associated with the ultimate cost of decommissioning. We urge the Commission to adopt the Company number and require a revisiting of this issue annually.

The Commission's maintaining some control over the ratemaking of nuclear decommissioning will become increasingly important over the next decade, as the costs are re-estimated during a period in which the utility does not return for base rate review. Just as nuclear construction came to dominate PP&L, and other utility, activity over the previous decade, nuclear decommissioning will increasingly come to dominate PP&L's planning as it becomes the utility's single largest capital project. The Commission should open a sub-docket for the ratemaking treatment of PP&L decommissioning.

If anything, Mr. LaGuardia's decommissioning estimates are too conservative. He recognizes that the NRC decommissioning regulations require restoration of the entire site.[27] Given the hazards of the radionuclides embedded in the to-be-decommissioned structures, it is better to err on planning for clean-up of the entire site, than find at the time that "nonradiological" structures have been contaminated in the invasive decommissioning

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[24] OCA Statement 4, p. 6. (Bridenbaugh)

[25] OCA Statement 6, pp. 22-24. (Catlin)

[26] OCA Main Brief, Vol. I p. 168, citing Tr. 2084. (LaGuardia)

[27] PP&L Statement 13R, p. 3. (LaGuardia)

process[28], but that there is no money collected to correct the problem. Mr. LaGuardia, however, offers an overly optimistic scenario for calculating costs.

First, the trend of his costs is too low. For instance, the Company case acknowledges that the costs involved in nuclear decommissioning have historically increased at a rate well in excess of the general rate of inflation,[29] while the Company estimate uses merely the 4.0% CPI change rate for its projections.

Second, the annual decommissioning contribution, the rate, is too low because it spreads collections over too many years. Susquehanna will truly be an outlying statistic in the compilation of nuclear plant operating lives if the LaGuardia assumption is correct -- the Bridenbaugh presentation demonstrated that all commercial reactors entering the decommissioning phase so far have been prematurely shut down[30]. As the Company Initial Brief acknowledges, the LaGuardia estimate rests on the licensing life for the calculation of annual contributions.[31] PP&L has no plans to extend the operating life of the facility.[32] Thus, the track record for nuclear operating lives is that they are shorter, not longer, than the LaGuardia assumption for licensing life. This suggests that there will be fewer years in which to collect the recommended annual charges, and that, therefore, the fund will be short when the decommissioning work must begin.[33]

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[28] PP&L Statement 13, pp. 37-38. (LaGuardia)

[29] *See* PP&L Initial Brief, pp. 137-38, citing PP&L Statement 17R, pp. 3-4 (Chappalear).

[30] Mr. Bridenbaugh points out that the commercial projects supplying decommissioning experience have been premature closures. OCA Statement 4, pp. 10-11. (Bridenbaugh)

[31] PP&L Initial Brief, p. 135.

[32] OCA Statement 4, Ex. DGB-11 (Bridenbaugh), PP&L Response to OTS-RB-37.

[33] To the extent that Susquehanna proves not to be commercially competitive, there will be further pressure to shut it down prematurely. *See* the OCA sealed (for asserted confidentiality) Cross Examination Ex. 21, "Strategy 2000: Positioning Susquehanna SES For A Competitive Environment", and OCA's argument that the document itself constitutes an admission that the Susquehanna plant is highly uncompetitive. OCA Main Brief, Vol. III (sealed), pp. 53-59.

Third, the 18%-19% contingency which Mr. LaGuardia established[34] is conservative, given the escalations in other plants' decommissioning estimates[35]. While OCA's Bridenbaugh offers encyclopedic knowledge of the nuclear industry[36], the Commission should infer from his well-supported description of the uncertainties of decommissioning cost[37] that cost and schedule could far exceed the LaGuardia projections.[38]

Indeed, fourth, while the Company describes Mr. LaGuardia's disposal cost estimate of $279 per cubic foot as a "fair proxy" and "very conservative",[39] the logic upon which it rests suggests that it is too conservative. Mr. LaGuardia built his disposal cost estimate on an assumption that a shallow-land facility, as used for current disposal, is the model for the Susquehanna Plant.[40] Indeed, the Company is left justifying the number with estimates cited from other utilities, estimates approved by their commissions, all but two of which are higher than the estimate which Mr. LaGuardia adopted.[41] The Company acknowledges that the regional nuclear storage facility at Barnwell will charge at least $335 per cubic foot for storage.[42]

The imperatives of the regulatory process contribute to the UNDERprojections of decommissioning costs. While the Company has a financial incentive, if not imperative, to

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[34] PP&L Statement 13, pp. 22-24. (LaGuardia); OCA Statement 4, p. 23. (Bridenbaugh)

[35] PP&L Statement 13R, pp. 5-6. (LaGuardia)

[36] Mr. Bridenbaugh's credentials are extensive. OCA Statement 4, pp. 1-3, Ex. DGB-1. (Bridenbaugh)

[37] OCA Statement 4, pp. 4, 11, 24-31. (Bridenbaugh) Mr. Bridenbaugh points out that the "reference cases" for commercial reactor decommissioning are still theoretical, and that the commercial projects supplying decommissioning experience have been premature closures. OCA Statement 4, pp. 10-11. (Bridenbaugh)

[38] PP&L Statement 13R, pp. 6-13. (LaGuardia)

[39] PP&L Initial Brief, p. 132.

[40] *See* PP&L Statement 13R, p. 9. (LaGuardia)

[41] PP&L Initial Brief, pp. 132-34.

[42] PP&L Initial Brief, pp. 133-34, citing WALL STREET JOURNAL (June 15, 1995), p. A5.

project high expense levels, a projection in excess of Mr. LaGuardia's might generate too unpleasant a message to send to the Commission, and detract from other arguments for line item rate increases. The OCA, and other customer representatives, are bound to advocate the lowest reasonable rates; and they may well have legitimate arguments that the shareholders take responsibility for the decommissioning of facilities that the Company's board and management chose to construct.

But our concern is that wastes with half-lives of thousands of years, including the power-generating facilities of the Susquehanna plant, be properly managed. Due to the time value of the collected funds, underestimates today become increasingly hard to correct in the future.[43] As a society, we must plan for the inevitable mitigation of the nuclear power plant pollution. From society's point of view, intergenerational equity requires that those who benefit from the power generation which produces pollution should pay for mitigating the pollution[44]. Thus, the Commission should adjust rates to reflect the present underassessment for the responsibility to safely dispose of the "hot" portions of Susquehanna.[45]

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[43] Mr. Bridenbaugh's point regarding the likely continued use of hard-to-find and expensive-to-prepare generation sites, OCA Statement 4, p. 20 (Bridenbaugh), is persuasive. However, the consequences of decommissioning underestimates are so grave that the Commission would be better advised to err on the side of overcollection now, making provision that savings from future site reuse accrue to the benefit of the customers.

[44] OCA Statement 4, p. 12 . (Bridenbaugh)

[45] To the extent that the Commission considers OCA's powerful arguments on the economic excess capacity which Susquehanna represents, it must take account of the contribution which decommissioning expense makes to the premium which customers pay over "market" for the plant's nuclear power. Then, to the extent the Commission determines that PP&L shareholders must bear some of the cost responsibility for the premium, it may weigh allocating decommissioning cost responsibility to the shareholders. Our concern is that explicit, real contributions be made to the decommissioning fund.

RELIEF REQUESTED

Sierra Club requests, as relief, that the Commission:

a. Reverse the ALJ and receive into evidence the Biewald DSM cost recovery testimony;

b. After providing the public with adequate notice, and AFTER THE COMPLETION OF THE FORMAL PARTIES' EVIDENTIARY HEARINGS herein, so that the issues before the public may be properly developed and focused, hold public input hearings throughout PP&L's service territory in order to provide its customers with an opportunity to be heard on the record, and make the testimony and exhibits received therein a part of the record;

c. Revisit Sierra Club's May 25 request for at-cost transcripts and provide an opportunity to brief the case with purchased transcripts in hand;

d. Deny any increase or change in PP&L's rates that is unjust, unreasonable, unduly discriminatory or inconsistent with the Public Utility Code, sound ratemaking principles, and public policy;

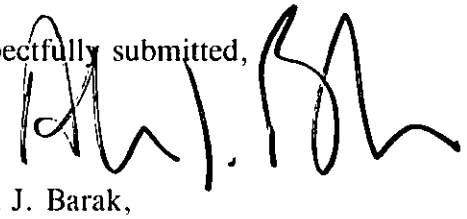
e. Determine the justness and reasonableness of Respondent's current and proposed rates;

f. Adopt the recommendations and proposals advocated in this Brief;

g. Grant all other relief to which Sierra Club is entitled; and

h. Grant such other relief which the Commission may deem to be necessary and proper.

Respectfully submitted,



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Dated: June 27, 1995

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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 27th day of June, 1995, served a true copy of the Reply Brief of Sierra Club, upon the following parties of record to this proceeding by First Class Mail, addressed as follows:

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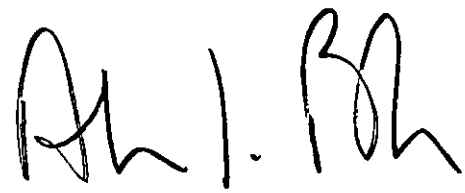

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COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	)	
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SIERRA CLUB'S REPLY BRIEF

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COMMONWEALTH OF PENNSYLVANIA
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PLEASE RESPOND TO HARRISBURG

June 27, 1995

John G. Alford
Secretary
PA Public Utility Commission
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Re: Pennsylvania Public Utility Commission, et. al. v. Pennsylvania Power and Light Company, Docket No. R-943271

Dear Secretary Alford:

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

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

Sincerely,

STEVENS & LEE

Kenneth Zielonis

Kenneth Zielonis

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET. AL.	*	
	*	DOCKET NO. R-943271
v.	*	
PENNSYLVANIA POWER AND LIGHT COMPANY	*	

REPLY BRIEF OF CROWN AMERICAN REALTY TRUST

Kenneth Zielonis, Esquire
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ATTORNEYS FOR CROWN AMERICAN REALTY TRUST

Dated: June 27, 1995

I. STATEMENT OF CASE

The presiding Administrative Law Judge, ("ALJ"), has required that Main Briefs be filed on or before June 16, 1995. Main Briefs were filed by Pennsylvania Power and Light Company, ("PP&L"), the Office of Consumer Advocate, ("OCA"), the Office of Small Business Advocate, ("OSBA"), the PP&L Industrial Customer Alliance, ("PPLICA"), the United States Department of Defense, the Central Eastern Pennsylvania Fuel Oil Dealers, the Sierra Club, Crown American Realty Trust, ("Crown American"), the Commission on Economic Opportunity, Bethlehem Steel Corporation, the University and Colleges Coalition, and Eric Epstein. The presiding ALJ has required that Reply Brief be submitted or before June 27, 1995, Crown American submits this Reply Brief in accordance with that directive.

II. SUMMARY OF ARGUMENT

The OCA's cost-of-service methodology advanced in this proceeding, a "modified" peak and average cost allocation methodology, must be rejected by this Commission. Such a study is fatally flawed, is contrary to prior Commission precedent in regard to PP&L, is contrary to prior Commission precedent as applied to other public utilities, and does nothing to eliminate the substantial subsidies currently provided to residential customers. For all these reasons the OCA recommendation in this regard must be rejected.

III. ARGUMENT

A. The OCA's Proposed Average Cost Allocation Methodology Must Be Thoroughly Rejected In This Proceeding.

Of all the parties in this proceeding, only the OCA rejects the use of a cost allocation methodology which allocates production and generation cost solely on the basis of class peak demands. Only the OCA advances the argument that such costs should be allocated not only on a peak basis but also on a energy or consumption basis. Indeed, the OCA recommends that a substantial portion of such fixed costs be allocated on a energy or consumption basis. Specifically, OCA witness Johnston recommends that approximately 61% of such fixed costs be allocated on an energy consumption related basis. OCA St. No. 3 at 9. Conversely, 39% of such fixed costs are recommended by Dr. Johnston to be allocated on the basis of each classes' peak demand. Id. The OCA's recommendation should be rejected by Your Honor and this Commission for the following reasons.

As PP&L witness Kleha indicated, the Commission rejected the OCA's peak and average cost allocation methodology in PP&L's last base rate proceeding at Docket No. R-822169. PP&L St. No. 7-R at 8. Additionally, the OCA's peak and average cost allocation methodology does not recognize the significant importance of a particular customer's load at the time of each monthly peak. Id. Such load is important in determining the amount and type of generating capacity that must be installed on PP&L's system to provide safe and reliable service. Id. The OCA's recommendation

also fails to consider seasonal class diversities for the entire twelve (12) months of the year. Id.

Further, Dr. Johnston's cost allocation methodology ignores the fact that PP&L must perform maintenance on its generating facilities during the other seven (7) months of the year not selected for purposes of allocating costs on a peak basis. Id. Generation and transmission facilities are fixed capacity supply resources. Id. at 9. As a result, such fixed cost do not vary with a customer's energy usage. Id. The cost of these fixed capital supply resources are directly related to the utility's peak demand. Such resources are needed to meet instantaneously the entire system demand in a reliable fashion.

In addition, the OCA's recommendation will increase substantially the cost responsibility of large high load factor customers. Id. It would perversely increase cost to those customer classes who increase their load factors by more efficient use of PP&L's system. Id. at 10. This perverse policy resulting from the OCA's proposal should not be encouraged. Finally, the OCA's proposal is incomplete. It fails to consider the corresponding effect on energy costs when one changes the allocation of production costs. Id. at 10.

OSBA witness Knecht also provides various reasons for rejecting the OCA's recommendation in regard to the cost allocation methodology for generation and production demand cost. Specifically, he indicates that:

> Generation planners design an integrated system of various types of generating

> equipment to minimize total costs, not simply capital or fuel costs. If it can be argued that utilities expend higher capital costs in constructing base load units to save fuel costs, it can equally be well argued that utilities expend substantially higher fuel costs for peaking units in order to save capital costs. Thus, following the logic of these methods, all fuel costs in excess of those needed to run, say a baseload nuclear plant should be classified "demand - related" and allocated using a peak allocator. While there are cost classification/allocation schemes for all generation costs, including energy and capacity costs, that attempt to model a duality of the tradeoff, the fixed-variable approach used by PP&L is the most practical. These other methods require substantial data inputs for computing the allocators and can be sensitive to assumptions regarding relative fuel prices, which can fluctuate substantially between rate proceedings. Overall, the fixed-variable classification scheme reasonably reflects the duality of the fuel/capital tradeoff for generation planning.

OSBA at St. No. R1 at 4-5.

As PPLICA witness Baron indicates, the peak and average methodology proposed by the OCA is simplistic in nature. It is simplistic because it fails to consider the actual composition of generating plants on the PP&L system. PPLICA St. No. 7-R at 4. As a consequence, the OCA's methodology would produce the same allocation results despite the fact that generating capacity may be of the very same construction. As PPLICA witness Baron also indicates, the OCA's recommended cost allocation methodology is irrational. It is irrational because it discourages customers from increasing consumption during off-peak periods. Id. at 8. This price signal is inefficient for cost allocation purposes. Id. It is also irrational in that it discourages additional consumption

over which fixed cost can be spread. Obviously, the Commission should not encourage this result.

For all of the above reasons, Your Honor and the Commission should reject the OCA's proposed peak and average cost allocation methodology for purposes of designing rates in this proceeding.

IV. CONCLUSION

WHEREFORE, for all of the reasons contained herein, Crown American Realty Trust respectfully requests Your Honor and this Commission to adopt each and every recommendation contained herein.

Respectfully submitted,

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Dated: June 27, 1995

ATTORNEYS FOR CROWN AMERICAN REALTY TRUST

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 27th day of June, 1995, served a copy of the attached Reply Brief upon the participants listed below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code Section 1.54:

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