

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet**

<p><b>1. REPORT DATE:</b>  December 15, 1997</p>	<p><b>2. BUREAU AGENDA NO.</b>  DEC-97-OSA-413*</p>
<p><b>3. BUREAU:</b>  Office of Special Assistants</p>	<p><b>5. PUBLIC MEETING DATE:</b> December 18, 1997</p>
<p><b>4. SECTION(S):</b></p>	<p><b>6. APPROVED BY:</b>  Director: C.W. Davis 7-1827 Supervisor: A. Arnold 7-8032</p>
<p><b>7. PERSONS IN CHARGE:</b> A. Arnold 7-8032</p>	<p align="center"><b>DOCKETED</b>  <b>JAN - 5 1998</b></p>
<p><b>8. DOCKET NO.:</b> R-00943271; [REDACTED]</p>	

- 9. (a) CAPTION (abbreviate if more than 4 lines)**  
**(b) Short summary of history & facts, documents & briefs**  
**(c) Recommendation**

(a) Pennsylvania Public Utility Commission, et al. v. Pennsylvania Power & Light Company; Remand Proceeding and Restructuring Proceeding Under Chapter 28

(b) On May 13, 1997, the Commonwealth Court decided the Petition for Review of the Office of Consumer Advocate in the appeal of the base rate proceeding of Pennsylvania Power & Light Company, (PP&L) at Docket No. R-00943271. 695 A.2d 448 (PP&L II). The Commonwealth Court affirmed the Commission except with respect to an issue pertaining to the "actual taxes paid" doctrine and directed the refund of \$745,000. A Secretarial Letter was issued to PP&L directing the utility to file a proposal for the refund of said amount. Because of the administrative burden presented by the relatively small size of the amount, PP&L responded with a counter-proposal to include the amount in its Restructuring Proceeding (Docket No. R-973954) filed pursuant to the Electricity Generation Customer Choice and Competition Act (Act).

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order, Tentative Form, which directs the reopening of the record in PP&L's Restructuring Proceeding for the limited purpose of including the refund proposal to reflect the refund of the remanded issue arising from PP&L II.

**10. MOTION BY:** Commissioner Chm. Quair  
 Commissioner Hanger - Yes  
 Commissioner Rolka - Yes  
**SECONDED:** Commissioner Bloom  
 Commissioner Brownell - Yes

**CONTENTS OF MOTION:** Staff recommendation adopted.

**DOCUMENT  
FOLDER**



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

IN REPLY PLEASE  
REFER TO OUR FILE

December 24, 1997

KJ

**DOCKETED**  
MAR 2 1998

All Parties

R-00943271 & R-00943954

Pennsylvania Public Utility Commission, et al  
v  
Pennsylvania Power & Light Company

**DOCUMENT  
FOLDER**

To Whom It May Concern:

This is to advise you that a Tentative Form Opinion and Order was adopted by the Commission at public meeting held December 18, 1997 on the above entitled proceeding.

A copy of the Tentative Form Opinion and Order is enclosed for your records.

Very truly yours,

James J. McNulty, Secretary

EMD

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg PA 17105-3265

Public Meeting held December 18, 1997

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
John Hanger  
David W. Rolka  
Nora Mead Brownell

**DOCKETED**  
MAR 2 1998

Pennsylvania Public Utility  
Commission, et al.

v

R-00943271

R-00943954

Pennsylvania Power & Light Company

**DOCUMENT  
FOLDER**

**TENTATIVE FORM OPINION AND ORDER**

**BY THE COMMISSION:**

On May 13, 1997, the Commonwealth Court of Pennsylvania decided the Petition for Review of the Office of Consumer Advocate (OCA), relative to the above-captioned proceeding. The Petition for Review sought review of the Order of the Pennsylvania Public Utility Commission entered September 27, 1995, in the general rate increase proceeding of Pennsylvania Power & Light Company (PP&L or Company). See Popowsky v. Pennsylvania Public Utility Commission, 695 A.2d 448 (Pa. Cmwlth. 1997)

(PP&L II hereafter).<sup>1</sup> By order entered September 30, 1997, the Pennsylvania Supreme Court denied the OCA's petition for allowance of appeal filed at No. 449 M.D. Allocatur Docket 1997.

The issues presented before the Commonwealth Court were: (1) whether the Commission erred in permitting PP&L to charge current ratepayers for deferred prior period costs associated with a change in post-retirement benefits expense, (SFAS 106 expenses) where the Court had previously held that recovery of these same costs would be prohibited by the rule against retroactive ratemaking; (2) whether the Commission's decision to permit PP&L to charge current ratepayers for costs incurred ten years earlier for carrying charges and operation and maintenance expenses (early window expenses) associated with the Susquehanna Unit 2 nuclear plant violated the same rule; and (3) whether the Commission's decision to allow PP&L to charge ratepayers for gross receipts taxes that PP&L will not incur violated the actual taxes paid doctrine. See 695 A.2d at 449 (footnote omitted).

On consideration of the positions of the OCA, PP&L and this Commission, the Commonwealth Court held that the Commission's allowance of SFAS 106 expenses and Susquehanna Unit 2 early window expenses did not violate the rule against retroactive ratemaking. However, the Court held that the Commission violated the actual taxes paid doctrine by allowing recovery of gross receipts taxes that PP&L would not incur. 695 A.2d at 455.

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<sup>1</sup> In Popowsky v. Pa. P.U.C., 642 A.2d 648 (Pa. Cmwlth. 1994), appeal denied, 543 Pa. 733, 673 A.2d 338 (1996) (PP&L I), the Commonwealth Court reversed a declaratory order of the Commission which granted the request of PP&L to record the costs of post-employment benefits other than pensions (OPEBS) as a regulatory asset subject to recovery in a future base rate case, to the extent such costs were prudently incurred.

## DISCUSSION

Consistent with the directives of the Commonwealth Court concerning the actual taxes paid adjustment, we issued a Secretarial Letter to PP&L requesting the Company to file a plan for refund for this Commission's review. Subsequent to the issuance of this Secretarial Letter, the Commission was advised by responsive letter that PP&L desired an extension of time in order to present an alternative proposal for the treatment of the remanded issue.

PP&L, on December 11, 1997, made a presentation to the Staff of the Commission concerning an alternative proposal for treatment of the remanded issue.

On January 1, 1997, Governor Thomas Ridge signed into law the Electricity Generation Customer Choice and Competition Act, P.L. 802, No. 188, §4, effective January 1, 1997, 66 Pa. C.S. §§ 2801-2812 (Act). Pursuant to Section 2806(c) of the Act, PP&L was required to file a restructuring plan to implement direct access to a competitive market for the generation of electricity. On or about April 1, 1997, PP&L submitted its restructuring plan pursuant to Section 2806(d) of the Act. See Docket No. R-973954 (Restructuring Proceeding). The matter has been assigned to the Office of Administrative Law Judge (OALJ), per Administrative Law Judge (ALJ) George Kashi. The record in the Restructuring Proceeding has been closed and the proceedings are now at the briefing stage.

With regard to the filing of a refund plan so as to implement the directives of the Commonwealth Court in PP&L II, Staff was advised by the Company that the dollar amount representing the level of refund is so small so as to impose an administrative burden on PP&L to reflect the amount in pro forma financial tables. The \$745,000 involved constitutes a figure in excess of one-hundred thousandth of a percentage of the

annual revenues of PP&L. Based on the foregoing, PP&L proposes the following treatment of the amount made necessary by the remand in PP&L II:

- (a) PP&L expects to receive a Commission Order in its Restructuring Plan proceeding no later than April 30, 1998. The rate changes approved by the Commission in the Restructuring Proceeding will be effective on January 1, 1999.
- (b) PP&L proposes to establish a regulatory liability for amounts which are associated with the remanded issue, recovered through existing retail customer rate charges from September 28, 1995 through December 31, 1998.
- (c) PP&L will refund the full amount of this regulatory liability through a one-time adjustment to retail customer rates beginning January 1, 1999.
- (d) The total rate charges approved by the Commission in PP&L's Restructuring Proceeding will be reduced from their existing levels, which were approved by the Commission in the above-captioned docket by \$745,000 so that going-forward retail customer rates reflect the full effect of the remanded rate case adjustment.

On consideration of the representations of PP&L, we find that good cause has been presented for including the refund of the \$745,000 from the PP&L II remand for consideration in the PP&L Restructuring proceeding. Based on the foregoing, we shall direct that the issue be included in the PP&L Restructuring proceedings. Notwithstanding that the record has been closed, we note that the \$745,000 is an amount which is not in controversy, and the only issue remaining is the adequate manner in which to refund this money to ratepayers. Consequently, we discern no prejudice to the parties in the Restructuring Proceeding based upon the inclusion of this matter in the record developed there. We shall, however, issue this Opinion and Order in Tentative Form, directing that

all parties to the underlying PP&L II Proceeding, and the Restructuring Proceeding be given the opportunity to comment upon the Company's proposal; **THEREFORE;**

**IT IS ORDERED:**

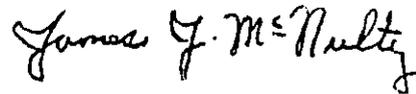
1. That the record in Docket No. R-973954 shall be reopened for the limited purpose of receiving evidence limited to the proposal of PP&L to refund \$745,000 resulting from the remand of the Commonwealth Court in the matter of Popowsky v. Pennsylvania Public Utility Commission, 695 A.2d 448 (Pa. Cmwlth. 1997), appeal denied, No. 449 M.D. Allocatur Docket 1997 (September 30, 1997) .

2. That this Opinion and Order shall issue in Tentative Form.

3. That the parties to Docket No. R-973954 and the instant docket, No. R-00943271, shall be given ten (10) days from the date of entry of this Opinion and Order to comment to or either object to the proposal of PP&L.

4. That a copy of this Opinion and Order shall be served upon the Office of Administrative Law Judge, and the parties to the proceedings at Docket Nos. R-973954 and R-00943271.

**BY THE COMMISSION,**



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: December 18, 1997

ORDER ENTERED: **DEC 24 1997**