



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

IN REPLY PLEASE  
REFER TO OUR FILE

November 22, 2004

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

ORIGINAL

Re: Pennsylvania Public Utility Commission v.  
PPL Electric Utilities Corporation  
Docket No. R-00049255

Dear Secretary McNulty:

Enclosed please find for filing an original and nine copies of the Reply Exceptions of the Office of Trial Staff in the above-captioned proceeding. Copies have been served according to the certificate of service.

Respectfully submitted,

Richard A. Kanaskie  
Prosecutor

Enclosure  
cc: Parties of Record

DOCUMENT  
FOLDER

RECEIVED  
2004 NOV 22 PM 1:16  
SECRETARY'S BUREAU

75

**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :

v. :

Docket No. R-00049255

PPL Electric Utilities Corporation :

---

REPLY EXCEPTIONS  
OF THE  
OFFICE OF TRIAL STAFF

---

SECRETARY'S BUREAU

2004 NOV 22 PM 1:16

RECEIVED

Johnnie E. Simms  
Chief Prosecutor

Richard A. Kanaskie  
Prosecutor

Office of Trial Staff  
Pennsylvania Public  
Utility Commission

**DOCKETED**  
DEC 15 2004

P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: November 22, 2004

**DOCUMENT  
FOLDER**

**TABLE OF CONTENTS**

TABLE OF CITATIONS.....ii

I. INTRODUCTION..... 1

II. REPLY EXCEPTIONS.....3

A. PRELIMINARY STATEMENT..... 3

B. RATE BASE.....3

C. REVENUE..... 3

D. EXPENSES .....3

    1. The ALJ Properly Rejected Regular Wages From The Company’s Claim For Expense Recovery Associated With Hurricane Isabel. The ALJ’s Recommendation Of A Ten Year Amortization Is Proper .....3

    2. The ALJ’s Recommendation To Reject The Company’s Claim To Amortize Employee Severance Costs Associated With Its Automated Meter Reading System Is Proper And Should Be Accepted .....4

    3. The ALJ’s Recommendation To Adjust The Company’s Service Corporation Claim Is Proper And Should Be Adopted.....5

    4. The ALJ’s Recommendation Limiting The Company’s Recovery Of Expenses Related To Its On-Track Program To The Planned Expenditures Is Appropriate And Should Be Adopted ..... 7

E. TAXES .....8

    1. The ALJ’s Recommendation Acknowledges The Impact Of Including Generation Revenue In The Capital Stock Calculation..... 8

F. RATE OF RETURN.....9

    1. An Appropriate Cost Of Common Equity In This Proceeding Is 9.00% As Recommended By OTS And Supported By Credible Evidence In The Record.....9

G. MISCELLANEOUS ISSUES ..... 14

    1. The ALJ Correctly Recommended That A Distribution System Improvement Charge Be Rejected..... 14

III. CONCLUSION ..... 17

**TABLE OF CITATIONS**

**CASES**

Bluefield Water Works and Improvement Company  
v. Public Service Commission of West Virginia, 262 U.S. 679 (1923)..... 11

Federal Power Commission v. Hope Natural Gas Co.,  
320 U.S. 591 (1944) ..... 11

Pa. P.U.C. v. Bell Telephone Company of Pennsylvania,  
Docket Number R-0061235 ..... 5

**STATUTES**

66 Pa. C.S.A. § 1307(a) ..... 15

66 Pa. C.S.A. §1308(d) ..... 2

66 Pa. C.S.A. § 1307(g) ..... 15, 16, 17

## I. INTRODUCTION

On March 29, 2004, PPL Electric Utilities Corporation (PPL or Company) filed Supplement No. 38 to Tariff Electric-Pa. P.U.C. No. 201 (Supplement No. 38) with the Pennsylvania Public Utility Commission (PUC or Commission). Supplement No. 38 proposed changes in distribution rates, rules and regulations designed to increase retail distribution rates by over \$164 million annually. The Company based its request on the use of future test year data ending December 31, 2004.

At the same time, the Company informed the Commission that the transmission rate would be increased by approximately \$57.2 million. The transmission charges arise under Federal Energy Regulatory Commission (FERC) regulated PJM Open Access Transmission Tariffs (OATT) and are not the subject of this proceeding. The combined requested increase is over \$221.0 million representing an 8.1% increase to annual revenue.

On May 7, 2004 the Commission stated that, pursuant to 66 Pa. C.S.A. §1308(d), the filing would be suspended by operation of law effective June 1, 2004. The suspension was directed to remain in effect until January 1, 2005.

The proceeding was assigned to Administrative Law Judge (ALJ) Allison K. Turner for investigation and hearings culminating in the issuance of a Recommended Decision. The initial Prehearing Conference was held on May 19, 2004 at which time a litigation schedule was developed. A total of 9 Public Input

Hearings were held throughout the Company's service territory. Evidentiary Hearings were held in Harrisburg during the week of August 9, 2004.

Main Briefs were filed by all interested parties on September 2, 2004 and were followed by Reply Briefs on September 13, 2004. On October 22, 2004 the Recommended Decision of the ALJ was issued in this proceeding. Exceptions to the ALJ's Recommended Decision were filed by OTS and the other active parties on November 12, 2004. OTS hereby files Reply Exceptions to certain of the Exceptions filed by the active parties in this proceeding. These Reply Exceptions will be addressed in the same order as the previously filed Exceptions.

## II. REPLY EXCEPTIONS

### A. PRELIMINARY STATEMENT

No Reply Exceptions offered.

### B. RATE BASE

No Reply Exceptions offered.

### C. REVENUE

No Reply Exceptions offered.

### D. EXPENSES

1. The ALJ Properly Rejected Regular Wages From The Company's Claim For Expense Recovery Associated With Hurricane Isabel. The ALJ's Recommendation Of A Ten Year Amortization Is Proper.

OTS Main Brief, pp. 24-26.

OTS Reply Brief, pp. 15-18.

Recommended Decision, pp. 54-57.

The ALJ recommended that the Company's claim for recovery of wages and benefits – regular time associated with Hurricane Isabel be rejected.<sup>1</sup> Furthermore, the recovery period for the accepted extraordinary expenses was appropriately established at ten years.<sup>2</sup> The Company filed exceptions to these recommendations arguing that regular time wages included in the storm claim are a reasonable estimate for other increased expenses. The Company further argues that a ten year recovery period is not appropriate.<sup>3</sup>

---

<sup>1</sup> Recommended Decision, p. 57

<sup>2</sup> Id.

<sup>3</sup> PPL Exceptions, p. 31.

Wages and Benefits – regular time are normal operating expenses associated with the operation of the utility. Claiming this expense in a regulatory asset to be recovered in this proceeding is inappropriate as the Company has failed to support that this category of expense would not have occurred absent the storm. Its argument that these expenses are an estimate of what will be needed to complete routine work fails as it was not claimed as a proxy for anything. It was claimed as an expense associated with the storm. There is no evidence in the record to support the Company’s claim, therefore its rejection is appropriate.

A ten year recovery of an extraordinary expense fairly balances the interests of ratepayers and the utility. A storm of this magnitude occurs infrequently and the recovery period associated with the claim must reflect this. The Commission has recognized this time period as appropriate in the past<sup>4</sup> and should continue to do so in this proceeding.

2. The ALJ’s Recommendation To Reject The Company’s Claim To Amortize Employee Severance Costs Associated With Its Automated Meter Reading System Is Proper And Should Be Accepted.

OTS Main Brief, pp 26-27.

OTS Reply Brief, p. 18.

Recommended Decision, 58-62.

The ALJ properly recognized that this expense was neither paid nor incurred by PPL and recommended that these costs be rejected.<sup>5</sup> The

---

<sup>4</sup> See, Pa. P.U.C. v. Bell Telephone Company of Pennsylvania, Docket Number R-0061235 (10 year recovery for the effects of Tropical Storm Agnes).

<sup>5</sup> Recommended Decision, p. 62.

displacement costs associated with the Automated Meter Reading (AMR) program were recorded as a special termination benefit charge to be paid by the PPL Retirement Plan pension trust. This expense is the responsibility of the Pension Trust and there is no record evidence that the Company will incur this expense nor is there any evidence to support the notion that it will be contributing any funds to its trust for these costs. As such, no contributions from ratepayers are required as no actual expense will be incurred by PPL.

The ALJ's recommendation recognizes the appropriate regulatory treatment of the Company's claim and therefore, should be supported.

3. The ALJ's Recommendation To Adjust The Company's Service Corporation Claim Is Proper And Should Be Adopted

OTS Main Brief, pp. 28-29.

OTS Reply Brief, p. 19.

Recommended Decision, p. 77.

The ALJ's recommendation that this expense claim be rejected is supported by the record. Initially challenged by OTS as a non-recurring expense, the Rebuttal Testimony of the Company witness established that the claim had been entered twice. In his Rebuttal Testimony the Company witness stated that "PPL Electric anticipated \$2,000,000 in rate case expenses associated with this case. The \$2,000,000 of anticipated expenses include \$1,000,000 of budgeted expenses by PPL Services (including \$130,000 budgeted by External Affairs)...."<sup>6</sup> OTS was not aware that the Company had included the \$130,000 budgeted by External

---

<sup>6</sup> PPL Statement Number 2-R, pp. 9-10.

Affairs in its rate case expense claim until the Company witness succinctly stated this in his Rebuttal Testimony. A subsequent review of the Company's evidence did not indicate that the rate case communication portion of the External Affairs claim had been removed from the original filing. In other words, the Company claimed the \$130,000 as an expense under External Affairs, agreed with OTS that it was non-recurring, but then proclaimed in Rebuttal Testimony that it is part of rate case expense and therefore should be accepted. The same Rebuttal testimony did nothing to address the Company's original filing or any adjustments to reflect the deletion of this expense from its External Affairs claim.

The Company did not produce sufficient evidence to support its allegation that it is not a double count. The additional evidence presented by the Company in response to the OTS witness Direct Testimony revealed that an adjustment was necessary. The Company maintains the burden of proving each and every element of its claim. The Company has filed testimony indicating the claim is entered in two categories. Originally filed under External Affairs and then claimed as a rate case expense when challenged, the Company failed to demonstrate that the contested amount is not contained in both claims. Therefore the claim is inappropriate. The ALJ correctly recommended its disallowance and her findings should be approved.

4. The ALJ's Recommendation Limiting The Company's Recovery Of Expenses Related To Its On-Track Program To The Planned Expenditures Is Appropriate And Should Be Adopted.

OTS Main Brief, pp. 29-31.

OTS Reply Brief, pp. 19-20.

Recommended Decision, pp. 70-71.

The ALJ appropriately recognized that the Company proposal to ramp-up this program would require ratepayers to contribute excess funds. The appropriate regulatory treatment of the Company's request is to allow it to recover the necessary funds to compensate it for planned expenditures budgeted for the next two years. The adjustment offered by OTS accomplishes this.<sup>7</sup> The Company's claim of increasing enrollment and adherence to Commission Orders neglects the fact that they do not intend to spend all the ratepayer funds it will collect during the first two years. Excess funding is unnecessary and contrary to sound ratemaking and must be rejected. Subsequent rate cases can address any funding deficiencies should the Company determine it inhibits its ability to earn an adequate return on its investment. As the Company has indicated it will file another rate case in two years, this matter can be addressed again.

Allowance of recovery of the Company's actual planned expenditures for the next two years is appropriate and should be adopted.

---

<sup>7</sup> The Office of Consumer Advocate witness offered a similar recommendation.

E. TAXES

1. The ALJ's Recommendation Acknowledges The Impact Of Including Generation Revenue In The Capital Stock Calculation.

OTS Main Brief, pp. 39-42.

OTS Reply Brief, pp. 22-23.

Recommended Decision, 89-94.

The ALJ's recommendation appropriately recognized that the Company's claim for Capital Stock Tax was distorted as its inputs contained information derived from the generation component of PPL's operations. OTS recognized that removal of this anomaly was necessary to present an accurate portrayal of the Company's liability.

After evaluating the Company's Exceptions on this matter, and in light of the Company's acknowledgment that generation income distorted its calculation, OTS believes that it is in the public interest that a clear statement of the appropriate years to be used in the calculation of the Capital Stock Tax be issued by the Commission. Given the unique nature of this claim by the Company, OTS recommends the application of its adjustment in this proceeding to present an accurate Company liability. OTS recognizes that the Company does not object to the amount of the Capital Stock Tax calculated by witness Weakley in this proceeding.<sup>8</sup> Given the Company's agreement and satisfied that the public interest is protected, OTS can accept the Company's formula presented in its Exceptions for future calculations to the extent anomalies are adequately addressed.

---

<sup>8</sup> PPL Exceptions, p. 26.

F. RATE OF RETURN

1. An Appropriate Cost Of Common Equity In This Proceeding Is 9.00% As Recommended By OTS And Supported By Credible Evidence In The Record

OTS Main Brief, pp. 43-61  
OTS Reply Brief, pp. 24-32.  
Recommended Decision, 94-122.

The ALJ's recommendation, while recognizing the appropriate use of the Discounted Cash Flow Analysis ("DCF") as the basis for an equity determination, erred in suggesting that a 10.25% allowance for return on equity is equitable in this proceeding.<sup>9</sup> The credible evidence in this proceeding supports a cost of common equity of 9.00% as recommended by OTS witness Deardorff. This recommendation provides an equitable balance between the interests of both ratepayers and shareholders.

The inflated recommendation of the ALJ is made more egregious by the Company's Exception to this recommendation proclaiming that 11.5% return is warranted. Mired in the Company's Exception is its misguided basis for requesting an inordinately excessive return on equity. The Company continues to suggest that it is the responsibility of the Commission to provide it with an equity return that will enable it to upgrade its bond rating.<sup>10</sup>

The Company incorrectly believes that it is incumbent upon the

---

<sup>9</sup> Recommended Decision, p. 121.

<sup>10</sup> PPL exceptions, pp. 6-7.

Commission to abandon the standards set forth in the landmark Bluefield Water Works and Hope Natural Gas cases<sup>11</sup> and replace them with its own recommendation that returns now be required to enable a utility to improve its rating. Both cases, as discussed in the OTS Reply Brief, establish that the Commission must allow a return on equity that will enable the utility to maintain its credit rating.<sup>12</sup> Apparently the Company believes this is no longer the appropriate standard. OTS maintains that Bluefield and Hope provide the proper guidance on this matter and the Company's claim must be examined within these parameters.

As the Company's basis for its claim is misguided, its recommendations must be rejected. The fundamental flaw in the Company's rationale distorts the evidence offered as support of its claim.

Excessive returns on equity benefit only shareholders. The additional cost to support this excess is borne only by ratepayers. The standards of public utility regulation maintain the proper balance by not allowing monopoly utilities to reward its investors to the detriment of its captive ratepayers. Pennsylvania is already investor friendly as offered by Lehman Brothers in its ranking of 2 on a scale of 1 to 5 with 1 being the most supportive of investors.<sup>13</sup> An extraordinary

---

<sup>11</sup> Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679 (1923), Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944).

<sup>12</sup> OTS Reply Brief, p. 25 (quoting Bluefield at 692-3 and Hope at 603). See also, Recommended Decision, p. 97.

<sup>13</sup> PPL Statement Number 10, pp. 17-18.

return on equity allowance could skew these results even further at the expense of ratepayers.

Absent in the Company's pleading is the uncontroverted fact that its own capital structure is consistent with comparable companies with the same rating.<sup>14</sup> The Company steadfastly believes that the Commission should grant a return that will enable it to improve its rating instead of adjusting its own capital structure to help attain its goal. Commission intervention is not required for PPL to adjust its debt/equity ratio to be consistent with companies having an "A" rating.

Furthermore, the Company's return request based on an ability to improve its bond rating ignores its inescapable relationship to a non-regulated entity. The Company's own evidence identifies the concerns expressed by Standard and Poors (S&P) as to the relationship between PPL and its parent corporation. S&P's comments state that PPL's insulation from its corporate parent is not strong enough to support more than a two notch differential in its rating between the two entities. The Company is currently rated two notches above its parent, but "if PPL [Corporate] is downgraded, PPL[EU]'s ratings would be lowered as well."<sup>15</sup> As such, any failings or weaknesses of the non-regulated entity are going to affect the regulated entity. No action by the Commission is going to remedy this situation. It appears that the Company wants the Commission to address the concerns of

---

<sup>14</sup> See PPL Rebuttal Exhibit PRM-4.xls. (This Exhibit is attached to the Rebuttal testimony of the Company's witness Paul Moul. This exhibit shows that a 52% debt ratio is consistent with companies having an A- rating. The Company's claimed debt ratio in this proceeding is 51.3%.

<sup>15</sup> PPL Exhibit Regs. §53.53, Part III, Rate of Return, Attachment III-F-4c, p. 1. (S&P refers to PPL Corporate as PPL and the subject of this proceeding as PPLEU).

both itself and its interconnected non-regulated influence. OTS agrees with the Company's comment that investment risk is captured by a company's bond rating.<sup>16</sup> In this case, however, the Company's bond rating is undeniably tethered to a non-regulated entity. The distribution Company's bond rating can only improve if the non-regulated entity's rating improves based on the Company's evidence as provided by S&P. Providing an excessive return on equity as part of this proceeding will not change this situation. The only benefit that will be received will be an enhancement to shareholder value. The Commission should deny the Company's Exception as the fundamental basis for PPL's request is flawed and contrary to longstanding ratemaking principles.

Furthermore, as stated in the OTS Main Brief, Reply Brief and Exceptions, an appropriate return on common equity is 9.00%. The Discounted Cash Flow method ("DCF") remains the foundation for Commission based return on equity determinations. As it is market based, it appropriately accounts for risk and investor concerns and does not require external adjustments. Proper inputs will yield proper results. In this proceeding, the growth rates used by both the Company and the Department of Defense are flawed because of the faulty inputs and therefore must be rejected.

The Company's request for an excessive return based, in part, on its claimed superior management performance must be rejected. The record will indicate that the Company believes that the Commission must abandon precedent

---

<sup>16</sup> PPL Exceptions, p. 7.

and help it improve its bond rating. The evidence also reveals that the Company supports its social programs, but only if ratepayers are required to contribute. It also endorses the work of the Sustainable Energy Fund (SEF) but will not fund it, instead recommending that responsibility for funding be transferred to its ratepayers. Also, the record will indicate that the Company believes it deserves preferential treatment in the equity return determination despite its acknowledgement that it has received over \$10 million per year since its last rate case for pension expenses, but did not contribute anything to the fund during this time. The efficiency of the management must be questioned as it claims as support for continued ratepayer contributions to this pension fund, a \$75 million liability existing that the Company is responsible for. There can be no support for a management efficiency claim that includes misuse of approximately \$100 million of ratepayer funds granted in its last rate case for a pension expense. No funds were contributed, the fund shows a \$75 million liability, and the Company has requested more. The Company has not demonstrated that it deserves any consideration for a recommendation that considers management efficiency as a positive attribute. The Company provides safe and adequate service as statutorily mandated and is compensated accordingly. No further adjustments are necessary.

The Company's reliance on two previously decided water cases is misguided as the facts are clearly distinguishable from that of this proceeding.<sup>17</sup>

---

<sup>17</sup> OTS Reply Brief, pp. 31-32.

The Company has not presented sufficient evidence to indicate that it deserves the same type of consideration.

The DCF analysis provided by OTS witness Deardorff provides the most reliable information to be used in determining a proper cost of common equity in this proceeding. Mr. Deardorff's recommendation utilizes a market based methodology relying on the most current data. The result is a 9.00% cost of common equity.

#### G. MISCELLANEOUS ISSUES

1. The ALJ Correctly Recommended That A Distribution System Improvement Charge Be Rejected.

OTS Main Brief, pp. 62-64.

OTS Reply Brief, p. 33.

Recommended Decision, pp. 32-47.

The ALJ correctly determined that the Company's proposed Distribution System Improvement Charge (DSIC) lacks statutory support and, therefore, must be rejected. The Company's reliance on Section 1307(a) of the Public Utility Code<sup>18</sup> as its statutory authority is misguided. As presented in the OTS Main Brief and Reply Brief, implementation of a mechanism such as the DSIC is guided by §1307(g).<sup>19</sup> This section of the Code clearly pertains to the water industry and offers no support for the Company's request. The Company's position requires that the Commission disregard the actions of the Legislature with respect to

---

<sup>18</sup> 66 Pa. C.S.A. § 1307(a).

<sup>19</sup> 66 Pa. C.S.A. § 1307(g)

attempts to implement a similar proposal in the natural gas industry. The Legislature has, on two occasions, rejected this type of proposal in non-water utility settings. If the current statutory provisions allowed for the implementation of this type of mechanism, there would have been no need for the Legislature to address passage of a similar proposal again, much less twice. Notwithstanding the Company's introduction of evidence on this issue during its Exceptions addressing the intent of the Legislators,<sup>20</sup> one need look no further than the overt actions of the full House of Representatives to understand Legislative intent. On two separate occasions the House has declined to extend the DSIC mechanism beyond its intended purpose. By defeating the measure twice, the Legislature clearly intends that the proper statutory interpretation limit DSIC type mechanisms to the water industry.

The Company's recommendation that the Commission grant it permission to implement the mechanism, then wait and see what the legislature thinks is inappropriate and must be rejected. The analogy to the water industry fails in this instance as the facts are clearly distinguishable. The water company involved in the request for a DSIC mechanism had been involved in the acquisition of small, troubled water systems that, in some cases, were not in compliance with statutory

---

<sup>20</sup> The Company, for the first time in its Exceptions, attempts to rebut the evidence presented by the Northeast Delegation. The honorable Phyllis Mundy's representative read a statement into the record at a Public Input Hearing and now, during Exceptions, the Company offers the voting record and Delegation membership into the record for consideration. Interestingly, the Company believes that even though certain members of the House voted against the enactment of §1307(g) in 1996, they cannot comment as to the purpose of the legislation. The Company has failed to present any evidence as to why this observation is significant. Legislative action does not require a unanimous vote.

mandates. Improvements were needed immediately. The regulatory lag associated with rate cases would hinder the utility's ability to acquire and rehabilitate these systems in order to provide safe and adequate service to the customers in its service territory. PPL has provided no evidence suggesting that it is in a similar situation. There have been no acquisitions nor have there been any statutory mandates that would support the need for this proposal in the same manner as the water industry. Furthermore, the Legislature was presented with this alternative for the first time in 1996 and reacted appropriately by limiting its application to the water industry. Subsequent measures before the Legislature has yielded no changes. As evidenced by the refusal to expand the interpretation of §1307(g) or to add new legislation, it is evident that this statute is narrowly defined and applied.

The Company's request to implement a DSIC is unlawful and violates the public interest. The ALJ appropriately recognized this and her recommendation should be adopted.

III. CONCLUSION

For all the reasons stated herein OTS respectfully requests that the Commission adopt the aforementioned OTS Reply Exceptions to the Recommended Decision of the Administrative Law Judge.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Johnnie E. Simms", written over a horizontal line.

Johnnie E. Simms  
Chief Prosecutor

Richard A. Kanaskie  
Prosecutor

Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: November 22, 2004

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :  
: v. : Docket No. R-00049255  
: PPL Electric Utilities Corporation :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Exceptions** of the Office of Trial Staff, dated November 22, 2004, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

Paul E. Russell, Associate  
General Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179

David B. MacGregor, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Michael W. Gang, Esquire  
John H. Isom, Esquire  
Morgan, Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904

SECRETARY'S BUREAU

2004 NOV 22 PM 1:16

RECEIVED

David A. McCormick, Esquire  
Regulatory Law Office  
U.S. Army Legal Services Agency  
DAJA-RL 4120  
901 N. Stuart Street, Room 713  
Arlington, VA 22203-1837

David M. Kleppinger, Esquire  
Pamela C. Polacek, Esquire  
Karen S. Miller, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Steven C. Gray, Esquire  
Office of Small Business Advocate  
Commerce Building - Suite 1102  
300 North 2<sup>nd</sup> Street  
Harrisburg, PA 17101

Tanya McCloskey, Esquire  
James A. Mullins, Esquire  
Lori A. Herman, Esquire  
Aron Beatty, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place - 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

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

Mr. Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Daniel Clearfield, Esquire  
Kevin J. Moody, Esquire  
Wolf, Block, Schorr and Solis-Cohen LLP  
212 Locust Street  
Suite 300  
Harrisburg, PA 17101

Scott Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357

Joseph L. Vullo, Esquire  
1460 Wyoming Avenue  
Forty Fort, PA 18704-4237

Roger E. Clark, Esquire  
Sustainable Development Fund  
718 Arch Street  
Suite 300 North  
Philadelphia, PA 19106-1591

Kent Murphy, Esquire  
Legal Division  
Exelon Business Services Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Patricia Armstrong, Esquire  
Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

John L. Munsch, Esquire  
Allegheny Energy  
800 Cabin Hill Drive  
Greensburg, PA 15601

Mark C. Morrow, Esquire  
UGI Utilities, Inc  
460 North Gulph Road  
King of Prussia, PA 19406

Richard S. Herskovitz, Esquire  
Duquesne Light Company  
411 Seventh Avenue, 8<sup>th</sup> Floor  
Pittsburgh, PA 15219

Honorable Phyllis Mundy, Chair  
Northeast Delegation  
House Box 202020  
Harrisburg, PA 17120-2020

Louise A. Knight, Esquire  
Saul Ewing LLP  
2 North Second Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101-1604

Michael Fiorentino, Esquire  
Clean Air Council  
135 South 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103

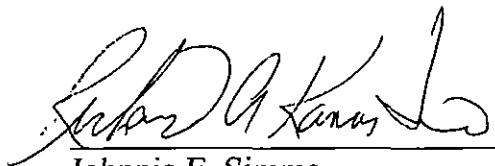
Peter Adels, General Counsel  
Citizens for Pennsylvania's Future  
117 South 17<sup>th</sup> Street, Suite 1801  
Philadelphia, PA 19103

Michael G. Wolfe, Esquire  
Metropolitan Edison Company,  
Pennsylvania Power Company, &  
Pennsylvania Electric Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001

Hon. Allison K. Turner  
Administrative Law Judge  
Pa. Public Utility Commission  
1302 Philadelphia State Office Building  
Broad and Spring Garden Streets  
Philadelphia, PA 19130

Hon. Susan D. Colwell  
Administrative Law Judge  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Hon. Ember Jandebaur  
Administrative Law Judge  
Pa. Public Utility Commission  
Room 317, Scranton State Office Building  
100 Lackawanna Avenue  
Scranton, PA 18503



Johnnie E. Simms  
Chief Prosecutor

Richard A. Kanaskie  
Prosecutor

Office of Trial Staff  
Pennsylvania Public Utility Commission

Dated: November 22, 2004  
Docket No. R-00049255

Morgan, Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904  
Tel: 717.237.4000  
Fax: 717.237.4001  
www.morganlewis.com

**Morgan Lewis**  
COUNSELORS AT LAW

ORIGINAL

SECRETARY'S BUREAU

2004 NOV 22 PM 12:46

RECEIVED

John H. Isom  
717.237.4022  
jisom@morganlewis.com

November 22, 2004

DOCUMENT  
FOLDER

VIA HAND DELIVERY

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
PO Box 3265  
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation  
Docket No. R-00049255**

Dear Secretary McNulty:

Enclosed, for filing, are the original and nine (9) copies of the "Replies of PPL Electric Utilities Corporation to Exceptions of Other Parties" in the above-referenced proceeding.

As indicated on the enclosed certificate of service, copies have been served on all parties.

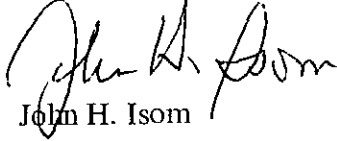
A copy of the Replies have been provided to the Commission's Office of Special Assistants on a 3 1/2" computer disk in Microsoft Word 6.0 format.

Enclosed with this filing letter, is an amended Certificate of Service indicating that certain parties will be served via Federal Express instead of via E-Mail and/or First Class Mail as indicated on the Certificate of Service that is attached to the Replies. We do not have e-mail addresses for these parties.

71

James J. McNulty  
November 22, 2004  
Page 2

Respectfully submitted,



John H. Isom

DBM/jl

Enclosure

c: Certificate of Service

RECEIVED

2004 NOV 22 PM 12:46

SECRETARY'S BUREAU

# ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, :  
*et al.* :

v. :

PPL Electric Utilities Corporation :

Docket Nos. R-00049255, *etc.*

**REPLIES OF PPL ELECTRIC UTILITIES CORPORATION  
TO EXCEPTIONS OF OTHER PARTIES**

Paul E. Russell  
Associate General Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
Voice: 610-774-4254  
Fax: 610-774-6726  
E-mail: perussell@pplweb.com

David B. MacGregor  
Kenneth M. Kulak  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Voice: 215-963-5000  
Fax: 215-963-5001  
E-mail: dmacgregor@morganlewis.com  
kkulak@morganlewis.com

Michael W. Gang  
John H. Isom  
Morgan, Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904  
Voice: 717-237-4000  
Fax: 717-237-4001  
E-mail: mgang@morganlewis.com  
jisom@morganlewis.com

Of Counsel:

Morgan, Lewis & Bockius LLP

Date: November 22, 2004

**DOCKETED**  
DEC 16 2004

**DOCUMENT  
FOLDER**

RECEIVED  
BUREAU

NOV 22 PM 12:49

RECEIVED

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. ARGUMENT.....	2
A. RATE OF RETURN.....	2
1. Introduction.....	2
2. The ALJ Properly Concluded That A Growth Rate Of 5.5% Should Be Used In The DCF Analysis.....	2
3. The Commission Should Not Rely Solely On An Unadjusted DCF Analysis .....	5
B. RATE BASE, REVENUES AND EXPENSES.....	7
1. Amortization Of Hurricane Isabel And Automated Meter Reading Expenses Would Not Violate The Rate Cap.....	7
2. OTS' Adjustment To Revenues Should Be Rejected .....	10
3. PPL Electric's Proposed Transmission Service Charge Should Be Approved, As The ALJ Recommended .....	13
4. The Commission Should Approve PPL Electric's Distribution System Improvement Charge.....	15
5. The ALJ Properly Rejected OCA's Proposed Adjustment To Prepaid Postage Expense.....	16
6. OCA's Proposed Adjustment To Capital Stock Tax Should Be Rejected.....	17
7. PPL Electric's Pension Expense Is Properly Based Upon The Accrual Method Under Generally Accepted Accounting Principles .....	17
8. Mr. Epstein's Proposals On Executive Compensation Should Be Rejected.....	19
9. Tables .....	19
C. UNIVERSAL SERVICE AND CUSTOMER/COMMUNITY PROGRAMS.....	20
D. SUSTAINABLE ENERGY FUND.....	22
E. RETAIL COMPETITION ISSUES .....	22
F. RATE STRUCTURE AND DESIGN.....	23
1. Class Revenue Allocation.....	23
2. Rate Design.....	24

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
3. Tariff Rule 5(a) .....	24
III. CONCLUSION.....	25

**TABLE OF AUTHORITIES**

**Page**

**STATE STATUTES**

66 Pa.C.S. § 2802(16)..... 15  
66 Pa.C.S. § 2804(4).....7  
66 Pa.C.S. § 2804(4)(iii)(d).....8

**PENNSYLVANIA APPELLATE COURT ORDERS**

ARIPPA v. Pa. P.U.C., 792 A.2d 636 (Pa. Cmwlth. 2002), appeal denied, 572 Pa. 737, 815 A.2d 635, appeal denied, 572 Pa. 736, 815 A.2d 635, appeal quashed, 572 Pa. 737, 815 A.2d 635 (2003) (“ARIPPA”) .....8, 9

**PENNSYLVANIA PUBLIC UTILITY COMMISSION ORDERS**

Petition of Metropolitan Edison Co. and Pennsylvania Electric Co. for Interim Relief, Docket No. P-00001860 (February 21, 2001)..... 8, 9  
Popowsky v. Pa. P.U.C., 695 A.2d 448 (Pa. Cmwlth. 1997).....7  
Pa. P.U.C. v. Pennsylvania-American Water Co., 231 PUR 4th 277 (2004) ..... 2, 5, 6, 18  
Pa. P.U.C. v. Aqua Pa., Docket No. R-00038805 (August 5, 2004) ..... 2, 5, 6, 18  
Pa. P.U.C. v. Bell Telephone Co., 55 Pa. PUC 97, 109-10 (1981) .....7  
Pa. P.U.C. v. Equitable Gas Co., 73 Pa. PUC 301, 347 (1990) .....13  
Pa. P.U.C. v. National Fuel Gas Distribution Corp., 73 Pa. PUC 552, 621 (1990) .....13  
Pa. P.U.C. v. Pennsylvania Gas & Water Co., 52 Pa. PUC 77, 102 (1978) .....7  
Pa. P.U.C. v. Pennsylvania Power & Light Co., 85 Pa. PUC 306, 323-25 (1995) .....7, 17  
Pa. P.U.C. v. West Penn Power Co., 73 Pa. PUC 452, 516, 18 (1990)..... 13

## I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) files these Replies to Exceptions in response to the numerous exceptions filed by other parties in this proceeding. Although the ALJ has provided a thorough and reasoned analysis of most issues, other parties have excepted to nearly every issue decided adversely to them. Due to the page limitations on Reply Exceptions, PPL Electric can respond to only the most important issues in this document. For additional information, PPL Electric requests that the Commission refer to its Initial and Reply Briefs to the ALJ.

*In reviewing the Recommended Decision (“RD”) and in addressing the many Exceptions filed by other parties, it is important to recognize that PPL Electric has made every reasonable effort to limit its proposed rate increase to the absolute minimum necessary for it to attract capital on reasonable terms and provide reliable service to its customers. Despite operating under essentially the same rates for the past 19 years, while undergoing a fundamental restructuring of its business and making major capital investments to improve service, PPL Electric has limited its proposed increase to just over 8%, and roughly 25% of that amount is simply a flow through of increased FERC-approved transmission service charges. A modest 8% increase, after almost 20 years of rate stability, is clearly reasonable under any standard and should be approved. In order to provide PPL Electric with the financial stability to attract capital and continue to provide extraordinary service to its customers, it is particularly important to substantially increase the ALJ’s recommendation as to the cost of common equity and approve the proposed Distribution System Improvement Charge (“DSIC”).*

## II. ARGUMENT

### A. RATE OF RETURN

#### 1. Introduction

OTS, OCA, and PPLICA except to the ALJ's recommendation that PPL Electric's cost of equity be set at 10.25%. OCA contends that the cost of equity should be set at 9.5% based solely on the unadjusted DCF analysis of OCA witness Kahal. OCA Exc., pp. 18-24. PPLICA simply supports OCA's position and offered no evidence on rate of return in this proceeding. PPLICA Exc., p. 12. OTS contends that the equity cost rate should be set at 9.3% based upon a recalculation of the unadjusted DCF analysis performed by DOD witness Kinzel.<sup>17</sup> All of these arguments must be rejected for three reasons. First, the analyses performed by OCA and OTS understate the growth rate to be used in the DCF analysis. Second, OTS and OCA simply refuse to accept that the Commission has concluded that the DCF analysis understates the cost of equity and either must be adjusted or other equity cost rate models must be given weight. And third, the equity cost rate recommendations of OTS and OCA are totally inconsistent with the Commission's recent decisions in *Pa.-American* and *Aqua Pa.* that the cost of equity is 10.6% for these companies and PPL Electric's greater risk as evidenced by its lower bond ratings and riskier business profile.

#### 2. The ALJ Properly Concluded That A Growth Rate Of 5.5% Should Be Used In The DCF Analysis

OCA and OTS criticize the ALJ's recommendation that a growth rate of 5.5% be employed in the DCF analysis. In arriving at her conclusion, the ALJ reviewed all of the

---

<sup>17</sup> OTS's final recommendation in testimony was a 9.0% cost of equity. Tr. 657.

evidence as to growth rates, concluded that a growth rate at the high end of the growth rate range should be employed and adopted the growth rate of 5.5% recommended by DOD witness Kinzel, based upon dividend growth rates forecasted by Value Line.<sup>2/</sup> The ALJ's recommendation is reasonable for several reasons. First, it is reasonable to adopt a DCF growth rate at the high end of the range when interest rates are rising as they have been in 2004. Second, use of an expected dividend growth rate is particularly reasonable in this environment because investors in utility stocks are increasingly looking to growth in dividends with the recent reduction in federal tax rates on dividends. And third, a growth rate of 5.5% was also recommended by PPL Electric witness Moul based upon a review of both projected dividends and earnings growth rates, with primary reliance on earnings growth. PPL Electric St. 9, pp. 31-34, PPL Electric St. 9-R, pp. 16-17.

OCA and OTS contend that the data used by Mr. Kinzel to calculate a projected dividend growth rate for the Electric Group is flawed. OCA and OTS cite the dividend growth rate of 16% projected by Value Line for PEPCO and contend that this growth rate is flawed. This is the growth rate projected by Value Line upon which some investors rely. As noted by OTS, Value Line also projected a dividend growth rate of minus 4% for Duquesne. OTS Exc., p. 24; PPL Electric St. 9-R, p. 17. And, as both witnesses recognized in their testimony, a barometer group is used to smooth out such aberrations in the data. OCA St. 3, p. 25; OTS St. 1, p. 10. OTS and OCA provide no rational basis for ignoring the PEPCO growth rate while considering the negative Duquesne growth rate.

---

<sup>2</sup> OCA and OTS offered no response to DOD witness Kinzel's testimony in their rebuttal cases. However, they now attempt to use criticisms of Mr. Moul's presentation to attack the ALJ's recommendation.

More importantly, however, Value Line's dividend growth rate projections are not the only basis in this record to conclude that a growth of 5.5% is appropriate. PPL Electric witness Moul selected a growth rate of 5.5% for use in the DCF in his direct testimony based upon a review of numerous growth rates with emphasis on analysts' projections of earnings growth rates. PPL Electric St. 9, pp. 31-34.

In an effort to support its contention that the dividend growth projected by Value Line is not appropriate, OCA reproduces a table in which its witness calculated his own dividend growth rates based upon current dividend levels and Value Line's projections of future dividend levels and concludes that an appropriate dividend growth rate is 3.3%. OCA Exc., p. 20. However, OCA fails to advise the Commission that it was established on cross examination that application of OCA's procedure to earnings produces a projected earnings growth rate of 5.36% for the 10 Electric Group companies and 5.67% for the 8 Electric Group companies preferred by Mr. Kahal. Therefore, a 5.5% growth rate in earnings ( $5.67\% + 5.36\% \div 2 = 5.52\%$ ) is produced by applying exactly the same method to earnings as was employed by Mr. Kahal with regard to dividends. PPL Electric Cross Exam Ex. 2, PPL Electric RB, pp. 31-32.<sup>3/</sup> This evidence, along with Mr. Moul's previously cited direct testimony and Mr. Kincel's analysis of Value Line's projected dividend growth rates, fully support the ALJ's recommendation of 5.5% growth for use in the DCF analysis.

---

<sup>3</sup> It also was demonstrated on cross that OCA witness Kahal used inconsistent procedures to calculate dividend and earnings growth rates. He used Value Line's projected earnings growth rates using 3-year base and forecast periods but chose to calculate his own dividend growth rates based upon a single base year and Value Line's projection of the dividend level in a future year. Tr. 612-620.

The record clearly supports the ALJ's recommendation that a growth rate of 5.5% should be employed in the DCF analysis. However, the controversy over the appropriate growth rate to be employed in the DCF analysis also illustrates a concern that the Commission has recognized in its recent decisions. Despite OCA's and OTS's contentions that the DCF analysis as applied by their witnesses is flawless, significant judgment must be employed in selecting a growth rate. Furthermore, the selection of a growth rate for an electric distribution company at this point in time is particularly difficult given that electric distribution companies are relatively new entities and have had depressed earnings during rate cap period.<sup>4/</sup> For all these reasons, it is important that the Commission also review the appropriately calculated results of other equity cost rate models in reaching its conclusion as to the cost of equity for PPL Electric.<sup>5/</sup>

### **3. The Commission Should Not Rely Solely On An Unadjusted DCF Analysis**

Despite the Commission's recent decisions in *Pa.-American* and *Aqua Pa.* that an unadjusted DCF analysis understates the cost of equity, OTS and OCA cling to their unadjusted DCF analyses as the basis for their very low cost of equity recommendations. PPL Electric will not repeat here the quotations in its Exceptions and briefs that clearly

---

4 For this reason, Mr. Moul also calculated a DCF cost rate for a group of similar risk gas distribution companies and derived an unadjusted DCF cost rate of 10.43% based upon a 6.25% growth rate and an adjusted DCF analysis of 11.22%. PPL Electric St. 9, p. 37. As explained by Mr. Moul, there is no reason to conclude that a gas distribution company is more risky than an electric distribution company. PPL Electric St. 9-R, pp. 11-12. *The gas distribution group analysis provides further support for a 5.50% growth rate for the Electric Group and an unadjusted DCF cost rate of 10.25% adopted by the ALJ.*

5 OTS did not employ any other cost of equity model. When asked on cross whether he could conceive of any circumstance in which sole reliance on an unadjusted DCF analysis would understate the cost of equity the OTS witness indicated that he could not. Tr. 657. Of course, such confidence is not supported by the Commission's recent decisions in *Aqua Pa.* and *Pa.-American.*

OCA witness Kahal employed a CAPM analysis as a check and produced a cost rate of 9.14% to 9.99%. OCA St. 3, p. 32. However, such analysis understates the cost of equity by failing to use expected interest rates as the risk free rate, a properly calculated risk premium and a size adjustment. When such errors are corrected, the CAPM cost rate is indicated to be 11.13%. PPL Electric IB, pp. 85-87.

demonstrate that the Commission has concluded that the DCF understates the cost of equity when market prices exceed book value, as is the case for the Electric Company barometer group. These cases clearly recognize the deficiency of the DCF analysis and conclude that the DCF result must be adjusted to reflect the greater percentage of leverage at book value as compared to market capitalization.<sup>6/</sup> Further, in *Aqua Pa.* the Commission noted that the ALJ had failed to give enough weight to other equity cost rate models such as risk premium, CAPM and comparable earnings. *Aqua Pa.*, p. 62. All of the above analysis is applicable in this case and there is even more of a basis to doubt the reasonableness of the DCF result given the effect of low earnings during the rate cap period on analysts' projections of future earnings.

The deficiency of OTS' and OCA's DCF analyses also is illustrated by the unreasonableness of the results produced by their witnesses. In the face of rising interest rates, recent decisions by the Commission in *Aqua Pa.* and *Pa.-American* that the cost of equity is 10.6% and a greater risk profile for PPL Electric as illustrated by its lower bond ratings and more risky business profile (PPL Electric Exc., pp. 7-9), OTS and OCA suggest that the cost of equity for PPL Electric is only 9.3% and 9.5%, respectively. Their recommendations are not in accordance with Commission decisions and market expectations.<sup>7/</sup> The ALJ properly rejected their recommendations in this proceeding.

---

6 Mr. Moul calculated the required adjustment to be .44% for the Electric Group, raising his DCF result from 10.25% to 10.69%. PPL Electric St. 9, p. 37.

7 OCA contends that PPL Electric is less risky because it is an electric distribution company divested of generation. The barometer group establishes the cost of equity for electric distribution companies, not integrated electric utilities. The market evaluates PPL Electric's risk relative to other entities through bond ratings and business profiles, and PPL Electric is clearly more risky than the water companies.

**B. RATE BASE, REVENUES AND EXPENSES**

**1. Amortization Of Hurricane Isabel And Automated Meter Reading Expenses Would Not Violate The Rate Cap**

OCA and PPLICA contend erroneously that amortization of Hurricane Isabel storm damage expenses and expenses from the automated meter reading (“AMR”) program would violate the rate cap set forth in Section 2804(4) of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2804(4)(“Competition Act”) and the settlement of PPL Electric’s restructuring proceeding. OCA Exc., pp. 8-15; PPLICA Exc., pp. 4-7. These contentions are incorrect. PPL Electric IB, pp. 32-37; PPL Electric RB, pp. 12-15.<sup>8/</sup> Amortization of non-recurring, extraordinary expenses has been long accepted by the Commission and the Pennsylvania Appellate Courts. *See, e.g., Pa. P.U.C. v. Bell Telephone Co.*, 55 Pa. PUC 97, 109-10 (1981) (hurricane); *Pa. P.U.C. v. Pennsylvania Gas & Water Co.*, 52 Pa. PUC 77, 102 (1978) (hurricane); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 85 Pa. PUC 306, 323-25 (1995) (voluntary early retirement program); *Popowsky v. Pa. P.U.C.*, 695 A.2d 448 (Pa. Cmwlth. 1997) (early window costs). Thus, it is proper and consistent with past practice for such extraordinary, non-recurring expenses to be deferred and amortized following the first rate case after the expenses occurred.

In essence, OCA and PPLICA contend that PPL Electric is forever barred from recovering these expenses because the events which gave rise to them occurred during the rate cap period. The authorities upon which they rely, the Competition Act, the

---

<sup>8</sup> The ALJ recommended disallowance of the amortization of the cost of enhanced pension benefits for meter readers whose jobs had been eliminated as a result of the AMR program for other reasons. RD, pp. 58-62. PPL Electric has excepted to this recommendation by the ALJ. PPL Electric Exc., pp. 28-30.

settlement of PPL Electric's restructuring proceeding, the Commonwealth Court's decision in *ARIPPA v. Pa. P.U.C.*, 792 A.2d 636 (Pa. Cmwlth. 2002), *appeal denied*, 572 Pa. 737, 815 A.2d 635, *appeal denied*, 572 Pa. 736, 815 A.2d 635, *appeal quashed*, 572 Pa. 737, 815 A.2d 635 (2003) ("*ARIPPA*") and the Commission's decision in *Petition of Metropolitan Edison Co. and Pennsylvania Electric Co. for Interim Relief*, Docket No. P-00001860 (February 21, 2001) ("*GPU Petition*"), do not support their contention.

The rate cap provisions of the Competition Act and PPL Electric's restructuring proceeding are exactly that – rate caps. In no way do these provisions “undo” traditional Pennsylvania ratemaking. In this proceeding, PPL Electric has not proposed any increase in rates to recover Hurricane Isabel or AMR expenses to become effective during the rate cap period. Instead, PPL Electric seeks to recover these costs prospectively **after** the rate caps have expired pursuant to normal ratemaking practices. The rate caps are not cost caps and they are not statutory disallowances of revenue requirements associated with events occurring during the rate cap period.

Opposing parties' reliance upon *ARIPPA* is misplaced. There, the Commonwealth Court held that the EDCs were not entitled to increase their stranded costs to recover increases in purchase power costs. “Stranded costs” under the Competition Act were to be determined with finality in EDCs' restructuring proceedings. Such finally-determined stranded costs could not thereafter be increased, nor could CTCs be used to recover other expenses. *ARIPPA*, 792 A.2d, *supra.*, at 666-68. In *ARIPPA*, the Commonwealth Court also held that the EDCs' increased purchased power costs did not qualify for the specific exemption to the rate caps under Section 2804(4)(iii)(d) of the Competition Act, 66 Pa.C.S. § 2804(4)(iii)(d), because the increases in purchased power

costs were within the EDCs' control. Although OCA, in an attempt to portray ARIPPA as supporting its position, misstates its holding (OCA Exc., p. 11), the Commonwealth Court did not reach the issue of whether normal ratemaking procedures could be used to recover costs occurring near the end of the rate cap period. Instead, the Commonwealth Court held only that such purchased power costs could not be recovered as increases to stranded costs and that the EDCs did not meet the standards for a rate cap exception.

OCA's reliance upon *GPU Petition* also is misplaced. There, the Commission held that the EDCs could not defer increases in purchased power costs to recover such costs many years later because to do so would violate the rate cap. *GPU Petition*, pp. 4-5. The difference between that proceeding and the instant base rate case is that PPL Electric proposes to recover Hurricane Isabel and AMR expenses through normal, routine ratemaking procedures that have been utilized many times over many years. This was not the case in *GPU Petition* where, under normal energy cost rate procedures, increased purchased power costs would have been recovered either in the year in which they were incurred, through the cost or "C" factor, or in the following year through the experience or "E" factor. Such recovery would have taken place long before the expiration of the rate cap. Thus, in *GPU Petition*, the Commission considered a novel procedure for recovery of increased purchased power costs, the sole purpose of which was to create a means to postpone recovery of the increased costs until after the rate cap period.

OCA also contends that during the rate cap period, PPL Electric assumed the risk of all operating costs except those subject to statutory rate cap exceptions. OCA Exc., p. 12. OCA is incorrect. The plain language of the statute applies to rates, not costs. There is no cap in the Competition Act on cost recovery, much less any determination that

EDCs were to bear all operating cost risks during the rate cap. Further, the Competition Act clearly contemplated that it would apply to the ratemaking effect of events, not to the timing of the events themselves. OCA's and PPLICA's contentions are without support in the law.

## **2. OTS' Adjustment To Revenues Should Be Rejected**

OTS contends that its calculation of revenues should be accepted and that PPL Electric's projection of revenues should be rejected. OTS Exc., pp. 8-13. OTS repeatedly asserts that PPL Electric has not met its burden of proof. OTS, however, ignores what PPL Electric did establish. In PPL Electric Exs. DRW-1 through DRW-6, PPL Electric provided detailed information concerning changes in number of customers and changes in use per customer by rate schedule. PPL Electric explained further that *forecasts were developed by econometric models using regression analyses of historical sales data, economic data and weather data. Economic data were obtained for the Commonwealth of Pennsylvania and weather data were obtained for the Lehigh Valley, Harrisburg, Wilkes-Barre/Scranton and Williamsport weather centers located at airports.* PPL Electric St. 3, p. 4. The annual adjustment of sales, and revenues were explained in detail. *Id.*, pp. 6-7.

The OTS makes much of the fact that PPL Electric did not provide its econometric model to the OTS. OTS ignores the facts that it was impossible for PPL Electric to comply with the OTS request and that OTS never followed up on PPL

Electric's response to an OTS interrogatory in which PPL Electric explained why the model could not be provided.<sup>9/</sup>

OTS also claims that there are two flaws in PPL Electric's econometric model. First, OTS states correctly that PPL Electric used "only" twenty years of data. OTS Exc., p. 10. OTS, however, ignores PPL Electric's clear explanations of why it used twenty years of data. First, twenty years of data was used to be consistent with PJM requirements. PPL St. 3-R, p. 7. In addition, PPL Electric does not have available to it 30 years of sales information on a revenue-month basis. It is necessary to analyze the data on a revenue-month basis in order to match properly sales with weather. PPL Electric St. 3-R, pp. 3-4, 6.<sup>10/</sup>

OTS' second objection to PPL Electric's econometric model is that the data are received from a private firm instead of the National Oceanic and Atmospheric Administration ("NOAA"). Despite OTS' protestations, the data sources for both are the same – weather monitoring equipment at the respective airports that is installed, operated and maintained by either NOAA or the FAA. PPL Electric obtains data from Meteorlogix, instead of from NOAA, because Meteorlogix provides hourly data on a daily basis. Data from NOAA is substantially delayed before it is published. PPL Electric St. 3-R, pp. 6-7.

---

<sup>9</sup> Specifically, the OTS requested the econometric model in Excel format. The model, however, does not exist in that format. Further, it is subject to licensing restrictions, and OTS does not have a license to use the model. Further, the model is very large. It is installed on a server and requires access to PPL Electric's network in order to operate it. PPL Electric St. 3-R, pp. 5-6.

<sup>10</sup> OTS simply ignores the problem with its weather normalization calculation arising from a failure to match calendar month revenues and calendar month usage by asserting, without support in law or evidence, the effects of the mismatch are negated when the data are annualized. OTS Exc., p. 11.

Further, OTS fails to address the many flaws in its own revenue calculation. OTS mismatches revenue month sales with calendar month weather. PPL Electric St. 3-R, pp. 3-4. OTS ignores the effect of air conditioning and cooling degree days on electric sales forecasts. PPL Electric St. 3-R, p. 4. OTS misdesignates October usage as "base load," even though October has significant heating load. PPL Electric St. 3-R, p. 5. OTS ignores increased winter load from holidays and increased lighting requirements due to reduced daylight hours. PPL Electric St. 3-R, p. 5.

Further, OTS' forecast fails a basic reality check. OTS projected an increase in usage for the future test year of 10.4% over actual sales in 2003 and 12.7% over normalized sales for 2003. PPL Electric St. 3-R, pp. 7-8. One year increases in sales of 10 to 12% in PPL Electric's service territory are simply not realistic. PPL Electric's forecast for the future test year, in contrast, is realistic. PPL Electric forecasted growth of 1.6% over actual sales for 2003 and 3.7% over normalized 2003 sales. PPL Electric St. 3-R, p. 8.

The fundamental flaw of OTS' projection is that it is based on a procedure that is used for gas companies, but which has never been accepted for electric companies. The only inputs for OTS' weather normalization adjustment is the number of customers, actual load, base load, actual heating degree days and normal heating degree days. OTS Ex. 3, Sch. 7. This procedure may be reasonable for gas companies whose residential load varies from base load primarily due to winter temperatures. Such a simplistic weather normalization, however, is not suited to an electric company. Due to the many different uses of electricity, many more inputs are required. Indeed, OTS can cite no case

in which the Commission has accepted its method for an electric company. OTS cites only gas company cases in support of its weather normalization. OTS Exc., p. 10, n. 8.

OTS argues that PPL Electric has the burden of proof. The burden of proof, however, means that PPL Electric must support and explain its revenue projection. Only the OTS challenged PPL Electric's sales forecast and provided an alternative forecast. As explained above, however, PPL Electric's forecast is clear, reasonable and far superior to OTS' flawed forecast. PPL Electric has met its burden of proof, and OTS' proposed adjustment should be rejected.

### **3. PPL Electric's Proposed Transmission Service Charge Should Be Approved, As The ALJ Recommended**

The ALJ recommended that PPL Electric's proposed Transmission Service Charge ("TSC") be approved as filed. RD, pp. 124-40. Other parties have raised two issues with regard the TSC. Several parties have objected to the allocation of the TSCs among the rate classes. Each party filing objections on this issue, predictably, favors an allocation that benefits the customer groups that it represents.

OSBA and PPLICA advocate allocations based on cost causation. A cost of service study, however, is only a guide in rate structure, and cost of service allocations are one of the most subjective elements of a rate case. *Pa. P.U.C. v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552, 621 (1990); *Pa. P.U.C. v. Equitable Gas Co.*, 73 Pa. PUC 301, 347 (1990); *Pa. P.U.C. v. West Penn Power Co.*, 73 Pa. PUC 452, 516-18 (1990). Moreover, rigid adherence to cost of service study results would shift recovery under the TSC substantially to the residential rate classes. Specifically, strict cost of service principles would allocate an additional \$19.6 million to the residential rate classes. PPLICA St. 1, p. 28.

Moreover, strict adherence to cost of service principles would produce substantial rate volatility. If, as PPLICA proposes (PPLICA Exc., pp. 15-18), transmission charges are to be allocated using the method followed by PJM to recover transmission costs from load serving entities, a substantial portion of such allocations are based on the load serving entity's annual peak day. PPL Electric, however, experiences its annual peaks in winter in certain years and in summer in other years. Winter peaks cause allocations to individual rate classes to be very different from allocations based on summer peaks due to, for example, differences in air conditioning load, heating load, lighting, etc. PPL Electric's proposal to recover TSCs from all customers who use PPL Electric's provider of last resort ("POLR") service on the basis of an equal amount for kWh avoids this significant volatility and therefore is superior to the proposals based on strict cost causation principles. In addition, it is simple, easy for customers to understand, and easy for PPL Electric to administer.

One party, OTS, contends that the TSC should not be reconciled. OTS Exc., pp. 26-29. In making this contention, OTS simply ignores PPL Electric's evidence. PPL Electric explained that under well-established Commission precedent, reconciliation is appropriate where an expense is substantial, the expense is subject to substantial variation, and the variation is beyond the utility's control. PPL Electric St. 4-R, p. 20. All of these conditions are present here. For 2005, transmission service charges are expected to equal approximately \$200 million. PPL Electric St. 4-R, p. 20. These charges are clearly substantial. In addition, such charges vary substantially from year to year; for example, from 2000 to 2003, transmission charges have varied from as low as \$140 million to as high as \$194 million. PPL Electric St. 4-R, pp. 20-21.

Further, PPL Electric has no control over the level of transmission charges that it incurs. These charges are imposed under PJM's Open Access Transmission Tariff ("OATT"), which is subject to review and approval by the FERC. Moreover, transmission charges are allocated by PJM among load serving entities based upon peak and annual usage. Thus, PPL Electric's POLR customers affect the allocation by their use of electricity. PPL Electric, itself, does not control POLR customers' usage, and therefore, does not control allocations of transmission charges under the OATT. OTS' objections to reconciliation should be rejected.

**4. The Commission Should Approve PPL Electric's Distribution System Improvement Charge**

The ALJ recommended that the Commission approve PPL Electric's proposed Distribution System Improvement Charge ("DSIC") with certain modifications following legislative input. RD, pp. 32-47. In Exceptions, PPL Electric explained that the ALJ's modifications and legislative input are unnecessary. PPL Electric Exc., pp. 15-24.

In Exceptions, OSBA cited Section 2802(16) of the Declaration of Policy of the Competition Act, 66 Pa.C.S. § 2802(16), as additional authority in opposition to the DSIC. The Section states that the distribution of electricity should continue to be regulated as a natural monopoly "subject to the jurisdiction and active supervision of the Commission." Section 2802(16), however, does not support OSBA's contention.

The DSIC would not remove PPL Electric, its rates, or its new facilities reflected in the DSIC from the active supervision of the Commission. In fact, PPL Electric's proposed DSIC calls for annual review by the Commission of the DSIC and the facilities whose costs are recovered through it. Traditional rate case review would continue whenever PPL Electric files base rate cases such as this one. The DSIC also would be

subject to review by the Commission's Bureau of Audits. Further, any entity challenging the amount of the DSIC or the appropriateness of including specific plant in the DSIC may file a complaint. Contrary to OSBA's contentions, the DSIC would not cause a reduction in regulatory oversight of PPL Electric and its rates. In fact, there would be additional supervision as a result of annual reviews of the DSIC and reviews by the Bureau of Audits. OSBA's contentions are without merit.

**5. The ALJ Properly Rejected OCA's Proposed Adjustment To Prepaid Postage Expense**

OCA continues to press its erroneous adjustment to prepaid postage, OCA Exc., pp. 5-7. Based on long-standing practice, PPL Electric included in its rate base claim components of postage expense in both the lead-lag study and in the average prepayment balances. OCA objects to the inclusion of postage in the average prepayment balances because it believes that approach results in a double recovery. OCA St. 1, pp. 10-11. OCA is incorrect. See, Tr. 417-18; PPL Electric IB, pp. 18-20; PPL Electric RB, pp. 8-9. In fact, there are two separate, distinct and non-overlapping components of PPL Electric's working capital requirement for postage expense.

The average prepayment balance of postage addresses the time period between payments for postage by PPL Electric, to the United States Postal Service, and the time when postage is used to mail bills to customers. The lead-lag study, on the other hand, addresses the period of time between the mailing of bills, when the postage is used and expensed on the Company's income statements, and the time when customers pay their bills, thereby reimbursing PPL Electric for postage expense. Both components of postage expense are valid and clearly do not overlap. The first component addresses the period of time between payment to the United States Postal Service and mailing of bills; the second

component addresses the period of time between the mailing of bills and customer payments. Tr. 417-18. PPL Electric's long standing method of determining cash working capital for postage should be approved.

**6. OCA's Proposed Adjustment To Capital Stock Tax Should Be Rejected**

OCA contends that capital stock tax should be adjusted by eliminating data from 2001. OCA Exc., pp. 16-17. OCA's adjustment is based upon a factual misunderstanding. OCA believes that PPL Electric owned and operated generation facilities during a portion of 2001. Such belief is erroneous.

In fact, all of PPL Electric's former generation operations were transferred to affiliates effective July 1, 2000. PPL Electric, thus, had no generation facilities, operations, revenues or income after July 1, 2000. PPL Electric St. 5-R, p. 15. Electric generation plant and operations had no effect on PPL Electric's income during 2001. Therefore, there is no basis for eliminating experience from 2001 from the capital stock tax calculation. OCA's proposed adjustment should be rejected.

**7. PPL Electric's Pension Expense Is Properly Based Upon The Accrual Method Under Generally Accepted Accounting Principles**

OTS continues to press its claim that PPL Electric's pension expense, for ratemaking purposes, should be based upon cash contributions instead of accruals pursuant to generally accepted accounting principles under the Financial Accounting Standard Boards Statement of Financial Accounting Standards No. 87. OTS' position ignores the fact that it made exactly the same contention in PPL Electric's prior rate case in 1995 and that such contentions were rejected by the Commission. At *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 85 Pa. PUC 306, 329 (1995), the Commission stated:

“On review of this issue, we find the recommendation of the ALJ that the Company’s claim for this item be accepted to be in accord with the evidence as developed in this proceeding. We note that pension expense tends to be an extremely variable cost from year-to-year. As noted by the ALJ, *consistent* use of the accrual should be fair to both rate payers and stockholder, over the *long term*. Further, consistent use of the actuarial method will, over time, provide for a more consistent and less variable expense element. We agree with the Company’s position that it makes no sense to calculate pension expense on a cash basis but to calculate retirement benefits other than pensions on an accrual basis.

“For these reasons, the Exception filed by the OTS on this issue is denied.” (Emphasis in original.)

It is to be emphasized that fairness to both ratepayers and PPL Electric requires that pension expense be consistently established for ratemaking purposes on the same basis. It would be grossly unfair to opportunistically switch back and forth between methods as such methods, from time to time, favor either ratepayers or PPL Electric.<sup>11/</sup>

PPL Electric explained that, despite that fact that it has no present obligation to make a cash contribution to the pension fund, it does have a liability under SFAS 87 of approximately \$75 million. Tr. 440. Unfortunately, OTS, in its Exceptions, without citations to accounting authorities, legal authorities or evidence, embarks upon an erroneous explanation of that data. OTS incorrectly states that the liability represents the difference between what PPL Electric has recorded on the books and its contributions to the fund. OTS Exc., pp. 114-15. This is not the case. In fact, PPL Electric’s liability of \$75 million is an unfunded accumulated benefit obligation, which is the amount by which

---

11 In support of its contention, OTS cites *Pa. P.U.C. v. Aqua Pa.*, Docket No. R-00038805 (August 5, 2004) and *Pa. P.U.C. v. Pennsylvania-American Water Co.*, 231 PUR 4th 277 (2004). OTS Exc., p. 14. OTS’ reliance on these orders is misplaced. In those cases, each company based its pension expense claim for ratemaking purposes on cash payments. There was no controversy with regard to the matter, and the Commission made no holding in the matter. In fact, the issue was not litigated or even mentioned in the Commission’s order in *Pa- American*. Nothing in these orders, however, indicates that cash payments are the only basis that can be used to establish pension expense for ratemaking purposes.

the present value of accrued pension costs exceeds the fair value of plan assets. SFAS 87, pp. 15.

The OTS should not be allowed to shift the basis, for ratemaking purposes, of PPL Electric's pension expense from case to case. Instead, the Commission should utilize a consistent method for determining PPL Electric's ratemaking pension expense, as it did in PPL Electric's 1995 base rate case.

**8. Mr. Epstein's Proposals On Executive Compensation Should Be Rejected**

In his Exceptions, Eric J. Epstein contends that compensation to PPL Electric's executives should be aligned with the interest of customers. Under his proposal, a portion of executive compensation should be based on reliability of service and customer satisfaction. Epstein Exc., p. 13. As PPL Electric has explained, however, such proposals are unnecessary because executive incentive compensation arrangements already contain such measures. Tr. 442, 449-50.

In his Exceptions, in support of his proposals on executive compensation, Mr. Epstein seeks to introduce into the record for the first time certain "ratings." Such "ratings" are set forth, *inter alia*, at pages 17-18 and in Appendices I and II of his Exceptions. These "ratings" should be disregarded by the Commission because they were never produced in evidence and never subjected to cross examination. Nor did PPL Electric have any opportunity to rebut these "ratings" or their significance. Mr. Epstein's improper attempt to supplement the record in Exceptions should not be countenanced.

**9. Tables**

OTS, in its Exceptions, asserts that corrected Tables for the RD contain errors. OTS Exc., pp. 3-7. PPL Electric agrees, and to address these errors, PPL Electric

provides corrected Tables appended hereto. These Tables are in the same format as the Tables for the RD.<sup>12/</sup>

### **C. UNIVERSAL SERVICE AND CUSTOMER/COMMUNITY PROGRAMS**

A description of and support for PPL Electric's universal service and customer/community programs are set forth at length in its Initial Brief (pp. 134-53) and Reply Brief (pp. 64-81). PPL Electric is a leader in this area and has the most successful universal service program in the Commonwealth in terms of meeting the statutory standard of maintaining electric service to low-income customers. In this case, PPL Electric proposed a significant expansion of its already successful programs, tempered by the recognition that the increased cost of such programs must be paid for by other residential customers. PPL Electric offers the following brief comments, however, on certain arguments presented by CEO and OCA.

CEO contends that the ALJ erred by adopting PPL Electric's CAP funding proposal. CEO Exc., p. 8. CEO also asserts that PPL Electric's proposal violates the Commission's 2003 Universal Service Order, where the Commission directed PPL

---

12 The attached tables were revised to: (1) include the ALJ's recommended adjustment of \$130,000 to Service Corporation charges associated with rate case expense on Table II; (2) reflect PPL Electric's state jurisdictional claim for interest expense for income tax purposes, and the ALJ's revised amount of rate base adjustments calculated on Tables IV, V and VI, on Table III; (3) reflect the Company's state jurisdictional working capital claim for Interest and Preferred Dividend payments on Table IV; (4) reflect the Company's state jurisdictional tax expense at present rates and its claim for Working Cash-Accrued Taxes, and the ALJ's recommended adjustments to state and federal income tax, and to reflect the gross receipts tax, and revised state and federal income tax, expense associated with the ALJ's revised recommended rate increase, on Table V; and, (5) reflect the Company's state jurisdictional O&M expense for working capital purposes, excluding non-cash ALJ recommended O&M adjustments, and the Company's state jurisdictional claim for Working Cash-O&M Expense on Table VI. The results of all these changes are reflected on the income statement summary on Table I. The ALJ's revised recommended rate increase is \$131.2 million, rather than the \$130.1 million shown on the October 25, 2004 Errata tables.

Electric to enroll at least 17,000 customers in the CAP Program. *Id.*, pp. 4-5. CEO's arguments are in error for several reasons.

First, the ALJ did **not** adopt PPL Electric's proposal. PPL Electric proposed a CAP Program that would permit it to enroll 15,000 to 17,000 customers. PPL Electric IB, p. 136. The ALJ rejected this proposal and adopted a **lower** level of funding proposed by both the OTS and OCA. RD, p. 164. Second, CEO's reliance on the *Commission's 2003 Order is misplaced. That Order did find that PPL should enroll at least 17,000 customers in the CAP Program, but recognized that this result could not be currently achieved due to rate caps in effect at the time the Order was issued. It is apparent from the Order that the scope of PPL Electric's CAP program and its cost were to be determined after the distribution rate cap ended, when both the scope of the program and its cost could be considered. This rate case is the place to decide these important issues.*

The fundamental flaw in CEO's proposal is that it wants the Commission to expand PPL Electric's CAP Program without any consideration of the cost which would be imposed on other customers by such an expansion. CEO has failed to provide any evidence of any kind as to the cost of implementing its various proposals.<sup>13/</sup> CEO's proposals, therefore, are incomplete and cannot be adopted by the Commission.<sup>14/</sup>

---

<sup>13</sup> For example, CEO cites a study that identifies 30,000 potential CAP recipients in PPL Electric's service territory. CEO Exc., p. 3. Assuming approximately \$7,000 in benefits per customer, their proposal alone would cost other residential customers approximately \$30 million per year.

<sup>14</sup> Similarly, CEO's arguments regarding elimination of the \$150 arrearage requirement for PPL Electric's CAP Program also should be rejected. CEO Exc., pp. 9-11. Again, CEO cites the Commission's 2003 Universal Service Order, but provides no information as to the cost effect of eliminating this arrearage requirement. Without additional funding to reflect the elimination of this requirement, it is uncontested that the net effect of CEO's proposal would be to deny or reduce CAP benefits to the customers on PPL Electric's system most at risk for termination of service. PPL IB, pp. 139-40; RB, pp. 72-74.

OCA and CEO also continue to raise issues regarding PPL Electric's Operation HELP. OCA Exc., pp. 26-28; CEO Exc., pp. 11-12. As explained in PPL Electric's Initial (pp. 145-58) and Reply Briefs (pp. 76-78), Operation HELP is an entirely voluntary program over which the Commission has no jurisdiction. OCA asserts that because PPL Electric files certain information with the Commission regarding Operation HELP, the Commission can oversee and regulate this program. This is simply not the case, and the OCA provides no support for its position.

Finally, the OCA argues at length that the cost of the universal service program should be allocated to all customers and not just the residential customer class which receives all of the benefits of the CAP Program. OCA Exc., pp. 28-34. PPL Electric's current rates collect these costs from residential customers and OCA has provided no basis for changing this long-standing practice.

#### **D. SUSTAINABLE ENERGY FUND**

PPL Electric has proposed to continue funding the Sustainable Energy Fund for the remainder of its generation rate cap, *i.e.*, through December 31, 2009, at .01 cents per kilowatt hour applied to all customer usage. Opposing parties presented various proposals, including doubling the funding for SEF, eliminating it entirely, transferring it to another agency and phasing out funding over time. PPL Electric believes that it has presented a balanced approach that continues funding at existing levels. Any concerns regarding structure, governance or investments of SEF should be addressed in a separate proceeding and certainly do not support termination of this important program.

#### **E. RETAIL COMPETITION ISSUES**

Strategic Energy presented a number of proposals regarding implementation of retail competition. The ALJ properly rejected each of these proposals. RD, pp. 176-78.

Strategic Energy has filed no Exceptions to the RD. However, the Commercial Customer Consortium has filed Exceptions even though it presented no evidence on these issues. The lack of merit in Strategic Energy's proposals is addressed at length in PPL's Briefs and CCC provides no evidence of delay by PPL Electric in implementing retail competition as required by the Commission. PPL Electric IB, pp. 157-160; RB, p. 83. As explained there, PPL Electric's retail competition rules were fully reviewed and approved by the Commission as part of its restructuring proceeding, and there is no evidence of any kind that PPL Electric's rules in any way have impeded or delayed retail competition. The ALJ's decision is well founded and should be affirmed.

**F. RATE STRUCTURE AND DESIGN**

**1. Class Revenue Allocation**

PPL Electric proposed allocating the distribution rate increase in this proceeding based on the results of its cost of service study with the constraint that no rate class receive a total increase in average rates of greater than 10%. This approach was consistent with principles of gradualism in rate design and also with the fact that PPL Electric continues to be subject to generation rate caps and that a full reallocation and reconsideration of its rate structure cannot be undertaken at this time. PPL Electric IB, pp. 165-168; RB, pp. 90-96. Various parties to this proceeding have presented alternative proposals under which a lesser amount of the increase would be imposed on their clients and a correspondingly greater rate increase on other customers. For the reasons set forth in its *Initial Brief* (pp. 165-168) and *Reply Brief* (pp. 90-96), the Company's proposal is reasonable, balanced and consistent with long-standing Commission precedent in prior

PPL Electric rate cases. It should be approved.<sup>15/</sup>

## 2. Rate Design

The Recommended Decision properly rejected PLUG's proposal regarding establishing a separate unmetered rate schedule for traffic lighting service. RD, p. 160. The ALJ did, however, recommend that PPL "cooperate" with PLUG in developing incentives for the introduction of LED traffic lights. *Id.* PLUG takes this reference to mean that PPL must "cooperate" with PLUG in adopting all of the proposals presented by PLUG in this proceeding. This is clearly a complete misreading of the Recommended Decision, which rejected all of PLUG's proposals. The lack of merit in PLUG's proposal is addressed in detail in PPL Electric's Initial Brief (pp. 170-72), Reply Brief (pp. 100-02) and its Exceptions (pp. 31-33).

## 3. Tariff Rule 5(a)

PPLICA excepts to the ALJ's failure to reject PPL's proposed revisions to Rule 5(a) of its tariff regarding customer responsibilities. PPLICA Exc., p. 28. PPLICA erroneously asserts that PPL Electric seeks to change its legal responsibility to provide service to customers. This is patently incorrect. As fully explained in PPL Electric's Reply Brief (pp. 102-04), the changes proposed by PPL Electric simply confirm other

---

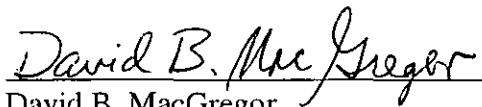
<sup>15</sup> PLUG argues that street lighting rates should receive no rate increase because they should pay rates that are below cost of service. PLUG Exc., p. 4. PPL Electric disagrees with this premise but, as a matter of undisputed fact, street lighting rates are already well below cost of service under PPL Electric's proposal. PPL Electric Ex. JMK 2, p. 11. See PPL Electric's IB, p. 173. PLUG's assertion in its Exceptions, *unsupported by any record citation, that its rates are in excess of cost of service are simply wrong and should be disregarded.* Additionally, PLUG's assertion that because street lights burn out from time to time, it is receiving the equivalent of "interruptible service" is in error. Interruptible service and correspondingly lower rates are provided when customers can interrupt on short notice during periods of peak demand, generally during summer afternoons. The fact that some street lights may be out at night during off peak periods provides no benefit to the utility or its other customers and no basis for establishing an interruptible rate schedule. In addition, PLUG's allegations regarding the lack of reasonable service by PPL Electric are fully refuted in PPL Electric's IB, pp. 172-76 and RB, pp. 96-100. Notably, only one of PLUG's six members presented any complaints about the quality of PPL Electric's service.

provisions of its existing Commission-approved tariff and are fully consistent with the Commission's regulations and the Public Utility Code. There is no change in policy or liability contemplated by this provision, and it should be approved.

### III. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Exceptions of other parties be denied.

Respectfully submitted,



David B. MacGregor  
Kenneth M. Kulak  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Voice: 215-963-5000  
Fax: 215-963-5001  
E-mail: dmacgregor@morganlewis.com  
kkulak@morganlewis.com

Paul E. Russell  
Associate General Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
Voice: 610-774-4254  
Fax: 610-774-6726  
E-mail: perussell@pplweb.com

Of Counsel:

Morgan, Lewis & Bockius LLP

Date: November 22, 2004

Michael W. Gang  
John H. Isom  
Morgan, Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904  
Voice: 717-237-4000  
Fax: 717-237-4001  
E-mail: mgang@morganlewis.com  
jisom@morganlewis.com

PPL Electric Utilities Corporation  
**TABLE I**  
**PUC JURISDICTONAL**  
**INCOME SUMMARY**  
Docket No. R-00049255

	<u>Pro Forma at Present Rates (1)</u>	<u>Company Adjustments (1)</u>	<u>Pro Forma at Present Rates (1)</u>	<u>PPUC Jurisdictional Pro Forma at Present Rates</u>	<u>ALJ Adjustments</u>	<u>ALJ Pro Forma at Present Rates</u>	<u>ALJ Revenue Increase</u>	<u>Total Allowable Revenues</u>
Operating Revenue	\$523,544,000	\$0	\$523,544,000	\$523,544,000	\$1,129,000	\$524,673,000	\$131,198,547	\$655,871,547
Expenses:								
O & M Expense	306,991,000	0	306,991,000	306,991,000	(5,644,500)	301,346,500	859,350	302,205,850
Depreciation/Amortization	93,464,000	0	93,464,000	93,464,000	0	93,464,000	0	93,464,000
Taxes, Other	44,608,000	0	44,608,000	44,608,000	(1,200,813)	43,407,187	7,923,840	51,331,027
Income Taxes:								
State	165,000	0	165,000	165,000	771,547	936,547	12,229,294	13,165,841
Federal	(24,446,000)	0	(24,446,000)	(24,446,000)	2,433,075	(22,012,925)	38,565,122	16,552,197
Deferred	30,425,000	0	30,425,000	30,425,000	0	30,425,000	0	30,425,000
Investment Tax Credit	(1,913,000)	0	(1,913,000)	(1,913,000)	0	(1,913,000)	0	(1,913,000)
Total Expenses	<u>449,294,000</u>	<u>0</u>	<u>449,294,000</u>	<u>449,294,000</u>	<u>(3,640,691)</u>	<u>445,653,309</u>	<u>59,577,606</u>	<u>505,230,915</u>
Net Income Available for Return	<u>\$74,250,000</u>	<u>\$0</u>	<u>\$74,250,000</u>	<u>\$74,250,000</u>	<u>\$4,769,691</u>	<u>\$79,019,691</u>	<u>\$71,620,941</u>	<u>\$150,640,632</u>
Rate Base	<u>\$1,837,003,000</u>	<u>\$0</u>	<u>\$1,837,003,000</u>	<u>\$1,837,003,000</u>	<u>\$77,874</u>	<u>\$1,837,080,874</u>		<u>\$1,837,080,874</u>
Rate of Return	<u>4.04%</u>		<u>4.04%</u>	<u>4.04%</u>		<u>4.30%</u>		<u>8.20%</u>

(1) Company Main Brief

**PPL Electric Utilities Corporation**  
**TABLE I(A)**  
**PUC JURISDICTIONAL**  
**RATE OF RETURN**  
**Docket No. R-00049255**

	<u>Capital Structure</u>	<u>Cost</u>	<u>After-Tax Weighted Cost</u>	<u>Effective Tax Rate Complement</u>	<u>Pre-Tax Weighted Cost Rate</u>
Total Cost of Debt:			3.32%		
Long-term Debt	51.59%	6.43%	3.32%		3.32%
Short-term Debt	0.00%	0.00%	0.00%		
Preferred Stock	1.85%	6.19%	0.11%	0.585065	0.20%
Common Equity	<u>46.56%</u>	10.25%	<u>4.77%</u>	0.585065	<u>8.16%</u>
	<u>100.00%</u>		<u>8.20%</u>		<u>11.68%</u>
			8.20%		
Pre-Tax Interest Coverage	3.52 x				
After-Tax Interest Coverage	2.47 x				

**PPL Electric Utilities Corporation**  
**TABLE I(B)**  
**PUC JURISDICTIONAL**  
**REVENUE FACTOR**  
**Docket No. R-00049255**

100%	<u>1.00000000</u>
Less:	
Uncollectible Accounts Factor (*)	0.00655000
PUC, OCA, OSBA Assessment Factors (**)	0.00139579
Gross Receipts Tax (*)	0.05900000
Other Tax Factors	<u>0.00000000</u>
	0.93305421
State Income Tax Rate (*)	<u>0.09990000</u>
Effective State Income Tax Rate	<u>0.09321212</u>
Factor After Local and State Taxes	0.83984209
Federal Income Tax Rate (*)	<u>0.35000000</u>
Effective Federal Income Tax Rate	<u>0.29394473</u>
Revenue Factor (100% - Effective Tax Rates)	<u><u>0.54589736</u></u>

(\*) Company Main Brief

(\*\*) Current Assessment Rates

PPL Electric Utilities Corporation  
 TABLE II  
 PUC JURISDICTIONAL  
 SUMMARY OF ADJUSTMENTS  
Docket No. R-00049255

<u>Adjustments</u>	<u>Rate Base</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Depreciation</u>	<u>Taxes-Other</u>	<u>State Income Tax</u>	<u>Federal Income Tax</u>
RATE BASE:							
CWC:							
Interest & Dividends (Table IV)	(\$66,648)						
Taxes (Table V)	208,368						
O & M (Table VI)	(63,846)						
REVENUES:							
Late Payment Fees		\$1,129,000			\$68,187	\$105,975	\$334,193
O&M EXPENSES:							
Hurricane Isabel			(\$1,850,500)			184,865	582,972
Employee Severance resulting from AMR program			(1,764,000)			0	0
WRAP/OnTrack			(1,900,000)			176,224	555,722
Service Corp. Charges			(130,000)			189,810	598,567
			0			12,987	40,955
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
			0			0	0
DEPRECIATION:				\$0			
TAXES:							
Capital Stock Tax					(1,269,000)	126,773	399,779
Interest Synchronization (Table III)						(25,087)	(79,113)
TOTAL	<u>\$77,874</u>	<u>\$1,129,000</u>	<u>(\$5,644,500)</u>	<u>\$0</u>	<u>(\$1,200,813)</u>	<u>\$771,547</u>	<u>\$2,433,075</u>

**PPL Electric Utilities Corporation**  
**TABLE III**  
**PUC JURISDICTIONAL**  
**INTEREST EXPENSE SYNCHRONIZATION**  
Docket No. R-00049255

	<u>Amount</u>
Company Rate Base Claim	\$1,837,003,000
ALJ Rate Base Adjustments	<u>77,874</u>
ALJ Rate Base	1,837,080,874
Weighted Cost of Debt	<u>3.317237%</u>
ALJ Interest Expense	60,940,326
Company Claim (1)	<u>60,689,201</u>
Total ALJ Adjustment	(251,125)
Company Adjustment	<u>0</u>
Net ALJ Interest Adjustment	(251,125)
State Income Tax Rate	<u>9.99%</u>
State Income Tax Adjustment	<u>(25,087)</u>
Net ALJ Interest Adjustment	(251,125)
State Income Tax Adjustment	<u>(25,087)</u>
Net ALJ Adjustment for F.I.T.	(226,038)
Federal Income Tax Rate	<u>35.00%</u>
Federal Income Tax Adjustment	<u><u>(\$79,113)</u></u>

(1) PUC Jurisdictional amount is Total Interest Expense of \$79,182,000 (Schedule D-13, page 3, line 4 of Exhibit Future 1-Revised) times the ratio of Total Rate Base to claimed PUC Jurisdictional Rate Base (0.76645198814) on Schedule C-1, page 1, line 12 of Exhibit Future 1-Revised.

**PPL Electric Utilities Corporation**  
**TABLE IV**  
**PUC JURISDICTIONAL**  
**WORKING CASH - INTEREST AND PREFERRED DIVIDEND PAYMENTS**  
**Docket No. R-00049255**

	Interest		Preferred Stock Dividends	
	Long-Term Debt	Short-Term Debt		
Company Rate Base Claim	\$1,837,003,000	\$1,837,003,000	Company Rate Base Claim	\$1,837,003,000
ALJ Rate Base Adjustments	<u>\$77,874</u>	<u>\$77,874</u>	ALJ Rate Base Adjustments	<u>\$77,874</u>
ALJ Rate Base	1,837,080,874	1,837,080,874	ALJ Rate Base	1,837,080,874
Weighted Cost of Debt	<u>3.317237%</u>	<u>0.00%</u>	Weighted Cost Pref. Stock	<u>0.114515%</u>
ALJ Annual Interest Expense	<u>\$60,940,326</u>	<u>\$0</u>	ALJ Preferred Dividends	<u>\$2,103,733</u>
Average Revenue Lag Days	45.5	45.5	Average Revenue Lag Days	45.5
Average Expense Lag Days	<u>90.0</u>	<u>90.0</u>	Average Expense Lag Days	<u>45.0</u>
Net Lag Days	<u>-44.5</u>	<u>-44.5</u>	Net Lag Days	<u>0.5</u>
Working Capital Adjustment				
ALJ Daily Interest Expense	\$166,960	\$0	ALJ Daily Dividends	\$5,764
Net Lag Days	<u>-44.5</u>	<u>-44.5</u>	Net Lag Days	<u>0.5</u>
ALJ Working Capital	(7,429,720)	0		2,882
Company Claim (1)	<u>(7,363,190)</u>	<u>0</u>	Company Claim (1)	<u>3,000</u>
ALJ Adjustment	<u>(\$66,530)</u>	<u>\$0</u>		<u>(\$118)</u>
Total Interest & Dividend Adjustment	<u>(\$66,648)</u>			

(1) PUC Jurisdictional amount is Total Interest and Dividend Payments of \$9,657,000 and (\$4,000,000) (Schedule C-4, pages 5 and 6, line 9) of Exhibit Future 1-Revised) times Interest and Dividend Payments allocation factors of 0.76247177171 and 0.750000, respectively (Exhibit JMK 2, page 17, lines 9 and 10, respectively).

PPL Electric Utilities Corporation  
**TABLE V**  
**PUC JURISDICTIONAL**  
**WORKING CASH - ACCRUED TAXES**  
Docket No. R-00049255

Description	Company Proforma Tax Expense at Present Rates	ALJ Adjustments	ALJ Pro forma Tax Expense at Present Rates	ALJ Allowance	ALJ Adjusted Taxes at Recommended Rates	12-Month Accrued Factor	Accrued Tax Adjustment
Pa Gross Receipts *	\$29,840,000	\$0	\$29,840,000	\$7,923,840	\$37,763,840	0.3606	\$13,617,641
Public Utility Realty	2,563,000	0	2,563,000		2,563,000	0.2356	603,843
Capital Stock Tax	5,567,000	(1,269,000)	4,298,000		4,298,000	-0.0144	(61,891)
	0	0	0		0	0.00	0
	0	0	0		0	0.00	0
	0	0	0		0	0.00	0
	0	0	0		0	0.00	0
	0	0	0		0	0.00	0
	0	0	0		0	0.00	0
	0	0	0		0	0.00	0
State Income Tax	165,000	771,547	936,547	12,229,294	13,165,841	-0.0144	(189,588)
Federal Income Tax	(24,446,000)	2,433,075	(22,012,925)	38,565,122	16,552,197	-0.0352	(582,637)
	<u>\$13,689,000</u>	<u>\$1,935,622</u>	<u>\$15,624,622</u>	<u>\$58,718,256</u>	<u>\$74,342,878</u>		

ALJ Allowance	13,387,368
Company Claim (1)	<u>13,179,000</u>
ALJ Adjustment	<u>\$208,368</u>

\* ALJ allowance includes assessments of \$183,124

(1) PUC Jurisdictional amount is Total Acrued Taxes of \$16,714,000 (Schedule C-4, page 4, line 6 of Exhibit Future 1-Revised) times Accrued Taxes allocation factor of 0.78850065813 (Exhibit JMK 2, page 17, line 7).



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served two copies of the foregoing **“Replies of PPL Electric Utilities Corporation to Exceptions of Other Parties”** upon the participant(s), listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

**VIA HAND DELIVERY ON NOVEMBER 22, 2004**

Cheryl Walker Davis  
Pennsylvania Public Utility Commission  
Office of Special Assistants  
Commonwealth Keystone Building  
400 North Street, 3rd Floor East  
Harrisburg, PA 17105-3265

RECEIVED  
2004 NOV 22 PM 1:28  
SECRETARY'S BUREAU

**VIA E-MAIL AND FIRST CLASS MAIL**

Honorable Susan Colwell  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
PO Box 3265  
Harrisburg, PA 17105

Tanya J. McCloskey, Esquire  
James A. Mullins, Esquire  
Lori A. Herman, Esquire  
Aron J. Beatty, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

Honorable Allison K. Turner  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Philadelphia State Office Building  
1400 West Spring Garden Street  
Room 1302  
Philadelphia, PA 19130

Richard A. Kanaskie, Esquire  
Office of Trial Staff  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265

Honorable Ember Jandebaur  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
100 Lackawanna Avenue  
State Office Building Room 317  
Scranton, PA 18503

David M. Kleppinger, Esquire  
Pamela C. Polacek, Esquire  
Karen S. Miller, Esquire  
McNees Wallace & Nurick  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 71108

William R. Lloyd, Jr., Esquire  
Steven C. Gray, Esquire  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357

Patricia Armstrong  
Thomas Niesen  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Kevin J. Moody  
Wolf, Block, Schorr and Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

James P. Melia  
Kirkpatrick & Lockhart LLP  
Payne Shoemaker Building  
240 North Third Street  
Harrisburg, PA 17101-1507

Louise A. Knight, Esquire  
Joseph J. Malatesta, Esquire  
David P. Zambito, Esquire  
Saul Ewing LLP  
2 North Second Street, 7th Floor  
Harrisburg, PA 17101

Kent D. Murphy, Esquire  
Legal Department  
Exelon Business Services Company  
2301 Market Street/23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Peter Adels, General Counsel  
Charles McPhedran, Senior Attorney  
PennFuture  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102

Eugene M. Brady  
Commission on Economic Opportunity  
165 Amber Lane  
P.O. Box 1127  
Wilkes-Barre, PA 18703

David A. McCormick, Esquire  
US Army Legal Services Agency  
901 North Stuart Street, Room 713  
Arlington, VA 22203-1837

Stephen J. Baron, President  
J. Kennedy & Associates Inc.  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075-3770

Joseph L. Vullo, Esquire  
Attorney at Law  
1460 Wyoming Avenue  
Forty Fort, PA 18704

John L. Munsch  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Roger E. Clark  
Sustainable Development Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591

Richard S. Herskovitz  
Duquesne Light  
411 Seventh Avenue, 8th Floor  
Pittsburgh, PA 15219

Michael Fiorentino  
Joseph Otis Minott  
135 S. 19th Street, Suite 300  
Philadelphia, PA 19103

Robert D. Knecht  
Mark Ewen  
Andrew Schwarz  
Industrial Economics Incorporated  
2067 Massachusetts Avenue  
Cambridge, MA 02140

Honorable Phyllis Mundy, Chair  
Northeast Delegation  
House Box 202020  
Harrisburg, PA 17120-2020

# ORIGINAL

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served two copies of the foregoing "**Replies of PPL Electric Utilities Corporation to Exceptions of Other Parties**" upon the participant(s), listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

### VIA HAND DELIVERY ON NOVEMBER 22, 2004

Cheryl Walker Davis  
Pennsylvania Public Utility Commission  
Office of Special Assistants  
Commonwealth Keystone Building  
400 North Street, 3rd Floor East  
Harrisburg, PA 17105-3265

SECRETARIAT BUREAU

2004 NOV 22 PM 12:46

RECEIVED

### VIA E-MAIL AND FIRST CLASS MAIL

Honorable Susan Colwell  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
PO Box 3265  
Harrisburg, PA 17105

Tanya J. McCloskey, Esquire  
James A. Mullins, Esquire  
Lori A. Herman, Esquire  
Aron J. Beatty, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

Honorable Allison K. Turner  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Philadelphia State Office Building  
1400 West Spring Garden Street  
Room 1302  
Philadelphia, PA 19130

Richard A. Kanaskie, Esquire  
Office of Trial Staff  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265

Honorable Ember Jandebaur  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
100 Lackawanna Avenue  
State Office Building Room 317  
Scranton, PA 18503

David M. Kleppinger, Esquire  
Pamela C. Polacek, Esquire  
Karen S. Miller, Esquire  
McNees Wallace & Nurick  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 71108

William R. Lloyd, Jr., Esquire  
Steven C. Gray, Esquire  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357

Patricia Armstrong  
Thomas Niesen  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Kevin J. Moody  
Wolf, Block, Schorr and Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

James P. Melia  
Kirkpatrick & Lockhart LLP  
Payne Shoemaker Building  
240 North Third Street  
Harrisburg, PA 17101-1507

Louise A. Knight, Esquire  
Joseph J. Malatesta, Esquire  
David P. Zambito, Esquire  
Saul Ewing LLP  
2 North Second Street, 7th Floor  
Harrisburg, PA 17101

Kent D. Murphy, Esquire  
Legal Department  
Exelon Business Services Company  
2301 Market Street/23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Peter Adels, General Counsel  
Charles McPhedran, Senior Attorney  
PennFuture  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102

Eugene M. Brady  
Commission on Economic Opportunity  
165 Amber Lane  
P.O. Box 1127  
Wilkes-Barre, PA 18703

David A. McCormick, Esquire  
US Army Legal Services Agency  
901 North Stuart Street, Room 713  
Arlington, VA 22203-1837

Stephen J. Baron, President  
J. Kennedy & Associates Inc.  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075-3770

Joseph L. Vullo, Esquire  
Attorney at Law  
1460 Wyoming Avenue  
Forty Fort, PA 18704

John L. Munsch  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Roger E. Clark  
Sustainable Development Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591

Richard S. Herskovitz  
Duquesne Light  
411 Seventh Avenue, 8th Floor  
Pittsburgh, PA 15219

Michael Fiorentino  
Joseph Otis Minott  
135 S. 19th Street, Suite 300  
Philadelphia, PA 19103

Robert D. Knecht  
Mark Ewen  
Andrew Schwarz  
Industrial Economics Incorporated  
2067 Massachusetts Avenue  
Cambridge, MA 02140

Honorable Phyllis Mundy, Chair  
Northeast Delegation  
House Box 202020  
Harrisburg, PA 17120-2020

James P. McCormick  
Manager, Market Development for  
Pennsylvania & New Jersey  
Strategic Energy, LLC  
1940 Robert Road  
Meadowbrook, PA 19046

Michael G. Wolfe, Esquire  
FirstEnergy  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Mark C. Morrow  
460 Gulph Road  
King of Prussia, PA 19406

Lafayette Morgan  
Richard Galligan  
Thomas Catlin  
Matthew Kahal  
Exeter Associates Inc.  
5565 Sterrett Place, Suite 310  
Columbia, MD 21044

Roger Colton  
Fisher, Sheehan and Colton  
34 Warwick Road  
Belmont, MA 02478

**VIA FEDERAL EXPRESS**

Anthony J. Graziano  
640 Westwood Lane  
Frackville, PA 17931

Brenda Hoover  
630 N. Jefferson Street  
Allentown, PA 18102

Victoria K. Mackin  
One Green Acres  
McAdoo, PA 18237

Cheryl & Jeremy Ebert  
2820 Mosser Street  
Allentown, PA 18103

William J. Junkin III  
438 South 25th Street  
Harrisburg, PA 17104

Margaret M. Stuski  
908 Walnut Street  
Wormleysburg, PA 17043

Donald E. McGarrigle  
34 Larchwood Road  
Wyomissing, PA 19610

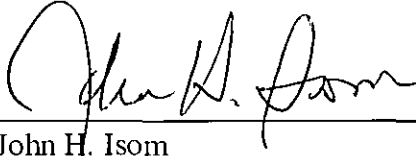
Curvin L. Snyder  
1390 Valley Road  
Etters, PA 17319

Philip A. Trump  
3229 Carbon Street  
Whitehall, PA 18052

**VIA OVERNIGHT MAIL**

Martha Wells  
P.O. Box 212  
Wiconisco, PA 17097

Date: November 22, 2004



---

John H. Isom

James P. McCormick  
Manager, Market Development for  
Pennsylvania & New Jersey  
Strategic Energy, LLC  
1940 Robert Road  
Meadowbrook, PA 19046

Michael G. Wolfe, Esquire  
FirstEnergy  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Mark C. Morrow  
460 Gulph Road  
King of Prussia, PA 19406

Lafayette Morgan  
Richard Galligan  
Thomas Catlin  
Matthew Kahal  
Exeter Associates Inc.  
5565 Sterrett Place, Suite 310  
Columbia, MD 21044

Roger Colton  
Fisher, Sheehan and Colton  
34 Warwick Road  
Belmont, MA 02478

Anthony J. Graziano  
640 Westwood Lane  
Frackville, PA 17931

Brenda Hoover  
630 N. Jefferson Street  
Allentown, PA 18102

Victoria K. Mackin  
One Green Acres  
McAdoo, PA 18237

Cheryl & Jeremy Ebert  
2820 Mosser Street  
Allentown, PA 18103

William J. Junkin III  
438 South 25th Street  
Harrisburg, PA 17104

Margaret M. Stuski  
908 Walnut Street  
Wormleysburg, PA 17043

Donald E. McGarrigle  
34 Larchwood Road  
Wyomissing, PA 19610

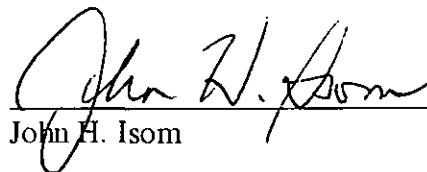
Curvin L. Snyder  
1390 Valley Road  
Etters, PA 17319

Philip A. Trump  
3229 Carbon Street  
Whitehall, PA 18052

**VIA FIRST CLASS MAIL**

Martha Wells  
P.O. Box 212  
Wiconisco, PA 17097

Date: November 22, 2004

  
John H. Isom

MWN

McNees Wallace & Nurick LLC  
attorneys at law

ORIGINAL

DOCUMENT

November 22, 2004

VASILIKI KARANDRIKAS  
DIRECT DIAL: (717) 237-5274  
E-MAIL ADDRESS: VKARANDRIKAS@MWN.COM

VIA HAND DELIVERY

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
The Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

RECEIVED  
2004 NOV 22 PM 1:50  
SECRETARY'S BUREAU

**RE: Pennsylvania Public Utility Commission, et al., v. PPL Electric Utilities Corporation; Docket No. R-00049255 C0001-0015**

Dear Secretary McNulty:

Enclosed please find the original and nine (9) copies of the Reply Exceptions of the PP&L Industrial Customer Alliance ("PPLICA") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this filing. Please date stamp the extra copy of this transmittal letter and kindly return it to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Vasiliki Karandrikas*  
David M. Kleppinger  
Pamela C. Polacek  
Charis Mincavage  
Vasiliki Karandrikas

Counsel for the PP&L Industrial Customer Alliance

VK/lmc  
Enclosures

c: Administrative Law Judge Allison K. Turner (via E-mail and First Class Mail)  
Cheryl Walker Davis, Esq., Office of Special Assistants (via Hand Delivery) (with diskette in Word 6.0 format)  
Certificate of Service

69

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission,  
*et al.*,

Complainants,

v.

PPL Electric Utilities Corporation,

Respondent.

Docket No. R-00049255 C0001-0015

SECRETARY BUREAU

2004 NOV 22 PM 1:50

RECEIVED

REPLY EXCEPTIONS OF THE  
PP&L INDUSTRIAL CUSTOMER ALLIANCE-COMPLAINANT

Agere Systems, Inc.  
Air Products and Chemicals, Inc.  
ALCOA, Inc.  
Anvil International, Inc.  
Armstrong World Industries  
Binkley & Ober, Inc.  
BOC Gases  
Certainteed Corporation  
Cinram Manufacturing  
Hercules Cement Co. LP,  
d/b/a Buzzi-Unicem USA

Hershey Foods Corporation  
Lafarge North America  
Magee Rieter Automotive Systems  
Nestlé Waters North America and Nestlé  
Purina Pet Care  
Praxair, Inc.  
RR Donnelley & Sons Company  
Stroehmann Bakeries  
Timet, Inc.  
Wegmans Food Markets, Inc.

DOCUMENT

DOCKETED

NOV 23 2004

David M. Kleppinger  
Pamela C. Polacek  
Charis Mincavage  
Vasiliki Karandrikas  
McNEES WALLACE & NURICK LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone (717) 232-8000  
Fax (717) 237-5300

Counsel for the PP&L Industrial Customer  
Alliance

Dated: November 22, 2004

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF CONTENTS.....	i
I. INTRODUCTION .....	1
II. SUMMARY.....	2
III. REPLY EXCEPTIONS .....	3
A. <u>Reply to OSBA Exception No. 3</u> : Although PPLICA Agrees With OSBA That PPL's TSC Proposals Should Be Rejected, the Appropriate TSC Proposal for Adoption in This Proceeding Is PPLICA's, not the OSBA's .....	3
B. <u>Reply to PennFuture Parties Exception No. 1</u> : The ALJ Properly Disregarded PennFuture Parties' Request to Double the Rate of SEF Funding.....	5
C. <u>Reply to PLUG Exception No. 3</u> : The ALJ Properly Rejected PLUG's Request for Special Ratemaking Treatment for Street Lighting Rates .....	7
D. <u>Reply to OCA Exception No. 7</u> : The ALJ Correctly Affirmed the Commission's Long-Standing Allocation of Universal Service Program Costs to Residential Customers .....	8
1. USPs Are Not Public Goods Whose Costs Should Be Shared by all Customers .....	9
2. The Public Utility Code Does Not Require USP Costs To Be Allocated to all Customer Classes.....	10
3. Because Only Residential Customers Can Use USPs and any USP benefits Flow to the Residential Class, USP Costs Must Be Allocated Only To Residential Customers .....	11
E. <u>Reply to PPL Exceptions No. 3</u> : The ALJ Correctly Determined That PPL's DSIC Proposal Should be Rejected .....	12
1. Implementation of PPL's Proposed DSIC Would Contravene Statutory Requirements .....	12
2. The DSIC Must Be Rejected Because It Would Result in Single-Issue Ratemaking and Eliminate Regulatory Review .....	16
IV. CONCLUSION.....	19

## I. INTRODUCTION

On March 29, 2004, PPL Electric Utilities Corporation ("PPL" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") Supplement No. 38 to Tariff Electric-Pa. P.U.C. No. 201 ("Supplement No. 38") to become effective on June 1, 2004. Supplement No. 38 proposed to increase PPL's retail distribution rates by \$164.6 million. PPL also informed the Commission that the transmission costs reflected in retail rates are likely to increase by approximately \$57.2 million as of January 1, 2005, and requested to institute a reconcilable, uniform cents per kilowatt-hour ("kWh") Transmission Service Charge ("TSC") to collect transmission and ancillary service charges from retail customers. The combination of proposed distribution and projected transmission rate increases would generate an overall increase of approximately \$221.6 million.

On October 21, 2004, Administrative Law Judge ("ALJ") Allison K. Turner issued her Recommended Decision in this proceeding. On November 12, 2004, the PP&L Industrial Customer Alliance ("PPLICA") filed Exceptions ("PPLICA Exc.") in order to except to: (1) the ALJ's erroneous finding that the rate cap provisions provided under Section 2804(4) of the Competition Act do not bar the Company's claim for deferred, amortized Hurricane Isabel costs and Automatic Meter Reading ("AMR") displacement costs; (2) the ALJ's erroneous recommendation that PPL distribution ratepayers should fund the Sustainable Energy Fund ("SEF"); (3) the ALJ's erroneous recommendation that the Company be permitted a return on equity ("ROE") of 10.25%; (4) the ALJ's erroneous recommendation that the Commission adopt PPL's TSC proposal; (5) the ALJ's erroneous recommendation that the Commission adopt PPL's distribution revenue increase allocation proposal; and (6) the ALJ's failure to address PPLICA's objection to the Company's proposed revisions to PPL Tariff Rule 5A. PPLICA received Exceptions from PPL, Office of Small Business Advocate ("OSBA"), Sustainable Energy Fund of Central Eastern Pennsylvania, Commercial Customer Consortium, PPL Public Lighting Users

Group ("PLUG"), Office of Trail Staff ("OTS"), Eric Joseph Epstein ("Mr. Epstein"), Commission on Economic Opportunity of Luzerne County, Office of Consumer Advocate ("OCA"), and PennFuture Parties.

PPLICA's Reply Exceptions address exceptions raised by PPL ("PPL Exc."), OCA ("OCA Exc."), PLUG ("PLUG Exc."), PennFuture Parties ("PennFuture Exc."), and OSBA ("OSBA Exc.>").

## II. SUMMARY

PPLICA files these Reply Exceptions to respond to Exceptions raised by the OSBA, PennFuture Parties, PLUG, OCA, and the Company. Specifically, PPLICA submits:

- Although PPLICA agrees with OSBA that the ALJ erred in recommending PPL's TSC proposals, PPLICA's alternative TSC proposal is the superior option for recovering the Company's transmission-related costs. See infra Section III.A
- Contrary to PennFuture Parties' claims, the ALJ properly disregarded PennFuture Parties' request to double SEF funding. Funding the SEF by imposing an adder of 0.01 or 0.02 cents per kWh on distribution rates is unjust and unreasonable and must be rejected. See infra Section III.B.
- Contrary to PLUG's allegations, the ALJ properly rejected PLUG's proposal for affording street lighting customers special ratemaking treatment. Street lighting is not a public good and is not entitled to special ratemaking treatment. See infra Section III.C.
- Contrary to OCA's claims, the ALJ correctly affirmed the Commission's long-standing policy of allocating Universal Service Program ("USP") costs to residential customers when she recommended adoption of PPL's USP cost allocation proposal. See infra Section III.D.
- Contrary to the Company's assertions, the ALJ correctly recommended that the Commission reject PPL's Distribution System Improvement Charge ("DSIC") proposal. See infra Section III.E.

### III. REPLY EXCEPTIONS

A. **Reply to OSBA Exception No. 3: Although PPLICA Agrees With OSBA That PPL's TSC Proposals Should Be Rejected, the Appropriate TSC Proposal for Adoption in This Proceeding Is PPLICA's, not the OSBA's.**

The OSBA excepts to the ALJ's recommendation that, to the extent that PPL's TSC proposal is rejected, the Commission should adopt PPL's Alternative 2 TSC proposal. See OSBA Exc. at 9-12; RD at 139-140. The OSBA claims that its proposal is the better alternative because it allegedly "mirrors the design of the PJM transmission charges, and reduces the volatility of those charges." OSBA Exc. at 11. Although PPLICA agrees that the ALJ erred in recommending that the Commission adopt PPL's TSC proposals, PPLICA respectfully submits that PPLICA's TSC proposal is the superior option for recovering the Company's transmission-related costs. Therefore, the Commission should adopt PPLICA's alternative TSC proposal over PPL's TSC proposal, PPL's Alternative 2 proposal, and the OSBA's TSC proposal.

PPLICA agrees with the OSBA that the Commission should adopt a TSC proposal that adheres to cost causation principles and promotes rate stability. See OSBA Exc. at 12. PPLICA respectfully submits that its alternative TSC proposal satisfies both objectives. As PPLICA demonstrated in its Main Brief ("MB"), its alternative TSC proposal is not only an accurate application of PJM Interconnection, L.L.C.'s ("PJM") allocation methodology, but also consistent with cost causation principles. See PPLICA MB at 76-77. No party in this proceeding disputes this fact. Id. In fact, the ALJ recognized that PPLICA's alternative TSC proposal ranked first among all TSC proposals proposed in this proceeding. See RD at 138.

In its Main Brief, PPLICA explained how its alternative TSC proposal achieved such unparalleled accuracy and, thus, yielded a just and reasonable result:

A TSC that is allocated (and ultimately recovered) consistent with the cost basis associated with each of the transmission-related charges PPL incurs pursuant to the PJM OATT would produce a

just and reasonable allocation of the Company's transmission costs. To that end, PPLICA proposes to directly allocate demand- and energy-related transmission charges from PJM to individual PPL rate schedules. PPLICA Statement No. 1 at 18, 22. Pursuant to PPLICA's alternative TSC proposal, the Company's transmission revenue requirement must first be classified into demand and energy components. Second, a demand-related TSC ("TSC-D") and an energy-related TSC ("TSC-E") must be developed to distinguish transmission costs on an energy and demand basis. Third, the TSC-E and the TSC-D charges must be applied to each rate schedule to determine each rate schedule's share of transmission costs. Thereafter, individual rate schedule transmission revenue requirements can be calculated on both an energy and demand basis and a corresponding TSC rate can be computed for each rate schedule. For customer classes billed on interval demand meters such as Rate Schedules LP-4, LP-5, IS-P, IS-T and LP-6 customers can be charged directly based on customers' allocated zonal coincident peak demand responsibility and actual kWh consumption (adjusted for any applicable losses).

See PPLICA MB at 22-23. Importantly, PPLICA's alternative TSC proposal does not result in inappropriate cost shifting and competitive distortion. PPLICA's alternative TSC proposal is consistent with the manner in which PPL incurs costs for transmission and ancillary services provided by PJM and, consequently, with cost causation principles. Therefore, the Commission should adopt PPLICA's alternative TSC proposal, which is undisputedly consistent with cost causation principles and minimizes cost shifting.

In addition to following cost causation, PPLICA's alternative TSC proposal accommodates concerns for rate stability. As PPLICA explained in its Reply Brief ("RB"), any variability reflected in the allocation of transmission-related costs among PPL's rate classes reflects variations in the different consumption decisions made by PPL's rate classes and encourages PPL customers to make more efficient consumption decisions. See PPLICA Exc. at 22; PPLICA RB at 22. PPLICA recognized the need for certain customers to alleviate the potential impact of any rate variability and expressed support for the Commission's adoption of "smoothing" proposals:

The impact of the potential annual variability in TSC rates obviously is a more important issue for the smaller customers than

it is for larger customers. To resolve the competing concerns, the Commission clearly could adopt one of the "smoothing" proposals advanced by the Company or the OSBA for the residential and small commercial customers, while ensuring that the TSC allocation and rate design for large customers accurately tracks the annual changes in transmission and ancillary service cost obligation as proposed by Mr. Baron. This is the appropriate "middle ground" to accommodate all of the concerns expressed by the parties in this matter.

RB at 21-22; PPLICA Exc. at 22-23. After the transmission costs are properly allocated among rate schedules each year, then the OSBA's approach may be appropriate to provide residential and small commercial customers with rate stability; however, PPLICA respectfully submits that Large C&I customers should not be subjected to any TSC mechanism that distorts annual transmission cost allocation.

For the reasons set forth herein and in PPLICA's previous pleadings, PPLICA's alternative TSC proposal is the best available methodology for allocating transmission and ancillary service cost responsibility to rate schedules and customers. Thus, the Commission should adopt PPLICA's alternative TSC proposal.

**B. Reply to PennFuture Parties Exception No. 1: The ALJ Properly Disregarded PennFuture Parties' Request to Double the Rate of SEF Funding.**

PennFuture Parties criticize the Recommended Decision for failing to consider their proposal to double SEF funding levels. See PennFuture Exc. at 5-6. Despite the ALJ's erroneous recommendation that PPL distribution customers fund the SEF via 0.01 cent per kWh adder, PennFuture Parties improperly seek a 0.02 cent per kWh adder to PPL distribution rates. Id. As PPLICA argued throughout this proceeding, PPL's SEF proposal for a 0.01 cent per kWh adder – much less PennFuture Parties' desired 0.02 cent per kWh adder – is unjust and unreasonable and must be rejected by the Commission, for the reasons set forth below.

As PPLICA explained in full in its Exceptions, applicable precedent provides that ratepayers' dollars can only be used for social programs that produce "demonstrable benefits" for

such ratepayers and the SEF does not provide "demonstrable benefits" for distribution ratepayers. See PPLICA Exc. at 9-11. PennFuture Parties' request to double funding provides an example of why the Commission must strictly adhere to the ratemaking precedent regarding this issue. Departing from this sound precedent will result in endless requests to further increase funding without proponents demonstrating the benefits of the projects. PennFuture Parties' witness Mr. Hanger admitted as much, when he testified:

There is no requirement to demonstrate these reliability benefits from SEF programs specifically for PPL customers or to any class of PPL customers, any more than the 'public goods' doctrine (see OCA Statement No. 5 at 27-28) or other general principles need to be re-proven for PPL customers.

PennFuture Parties Statement No. 1-S at 2. At the funding level that the ALJ wrongly recommended, the SEF funding represents an annual cost of approximately \$223,000 for the entire PPLICA membership. See PPLICA Statement No. 1 at 53. As Mr. Baron explained:

For Rate Schedule IS-T, for example, PPL has included \$196,000 of SEF expenses in the revenue requirement supporting its proposed distribution rate, out of total IS-T distribution revenues (at proposed rates) of \$1,150,000. This amounts to over 17% of total IS-T distribution charges at PPL's proposed rates. If all of the subsidies are removed from PPL's proposed rates (i.e., rates are set equal to cost of service), the SEF expenses would comprise over 28% of IS-T distribution charges. The inclusion of the SEF funding increases the IS-T distribution rate by \$0.21 per kW per month, compared to the total proposed IS-T distribution rate (with SEF) of \$0.932 per kW or the cost based rate (with SEF) of \$0.453 per kW. If the SEF funding is removed, the distribution rate for IS-T decreases to \$0.712 per kW per month (under PPL's proposal) and \$0.243 per kW per month under PPLICA's cost-based rate. This is hardly an insignificant charge.

Id. To keep Pennsylvania's businesses competitive, the Commission must move Large C&I rates to actual distribution cost of service and should not begin using captive distribution customers as a funding source for private organizations such as the SEF. Funding of

organizations such as SEF, at whatever level, is the prerogative of the General Assembly, not the PUC.<sup>1</sup>

Therefore, the Commission must not only reject PennFuture Parties' unreasonable and unjust proposal to impose a 0.02 cent per kWh adder on distribution rates, it must also reject the ALJ's *equally unjust and unreasonable recommendation to adopt the Company's proposal to impose a 0.01 cent per kWh adder on PPL ratepayers' distribution rates in order to fund the SEF.*

**C. Reply to PLUG Exception No. 3: The ALJ Properly Rejected PLUG's Request for Special Ratemaking Treatment for Street Lighting Rates.**

PLUG challenges the ALJ's recommendation that the Commission should not afford street lighting rates special ratemaking treatment. See PLUG Exc. at 3-6. Although the ALJ erroneously opines that street lighting is a "public good," she properly rejects PLUG's request for special ratemaking treatment for street lighting customers. See RD at 158-160.

As PPLICA argued in its Main Brief, a public good is "a good the consumption of which by one customer does not reduce the consumption by the other." See PPLICA MB at 41. Although PLUG attempts to place street lighting in the same category as police, fire protection or the military, such categorization is inappropriate:

The General Assembly enacted a specific statutory provision authorizing the Commission to approve discounted water rates for public fire hydrants. See 66 Pa.C.S. § 1328. The General Assembly has not enacted a similar provision authorizing a discount to electric distribution service rates for street lighting customers. Under principles of statutory interpretation, when an exception to generally applicable law is created in the statute for a particular type of situation or customer, the General Assembly did not intend to provide the same exceptions to other types of services or customers not enumerated. See PPLICA M.B., pp. 52-57.

---

<sup>1</sup> The General Assembly addresses SEF funding in Senate Bill 1030, which passed both houses of the General Assembly on November 20, 2004 and is awaiting the Governor's signature. The SEF will receive funding from the alternative compliance payments contained in the legislation. See S.B. 1030, Gen. Assem., 2004 Sess. (Pa. 2004) (Section 3(g)(1) provides: "alternative compliance payments imposed pursuant to this act shall be paid into Pennsylvania's Sustainable Energy Funds...").

PLUG is free to lobby the Legislature for specific statutory subsidization of its service, just like the Legislature provided for fire hydrants in Section 1328. Until that statutory provision is enacted, street lighting rates should be treated like any other distribution service rate and be moved to full cost of service.

See PPLICA RB at 28. Moreover, the use of non-quantified social benefits as a rationale for cost-allocation could lead to a slippery slope:

The testimony in this proceeding demonstrates how opening the lid of the "public goods" cookie jar will quickly attract the attention of parties arguing, by analogy or extension, that they provide a "public good" and should be subsidized. For example, PLUG has represented that street lighting provides a "public good" for the customers in PPL's service territory. See Direct Testimony of John E. Bradley at 2 (hereinafter, "PLUG Statement 1"); Rebuttal Testimony of John E. Bradley at 3-4 (hereinafter, "PLUG Statement 1-R"). Taken to [its] conclusion, all of PPL's customers could be allocated the costs of street lighting rather than having the municipalities pay for these costs because of the indirect social benefit involved....

PPLICA MB at 42.

Despite PLUG's assertions, and the ALJ's erroneous opinion, there is no legal basis for finding that street lighting is a public good. Absent such a legal basis, the Commission cannot reasonably accept PLUG's proposal for special ratemaking treatment for street lighting customers nor affirm the ALJ's unfounded conclusion that street lighting is a public good. Accordingly, PPLICA respectfully requests that the Commission reject PLUG's proposal and reverse the ALJ's erroneous conclusion.

**D. Reply to OCA Exception No. 7: The ALJ Correctly Affirmed the Commission's Long-Standing Allocation of Universal Service Program Costs to Residential Customers.**

In the Recommended Decision, the ALJ properly found that the "OCA has not presented sufficient basis to change the Commission's policy to allocate universal service costs across all customer classes." RD at 176. To this end, the ALJ recommended that the Commission adopt PPL's Universal Service Program ("USP") cost allocation proposal, which properly allocates these costs to residential customers. Id. OCA excepts to the ALJ's well-reasoned

recommendation, erroneously claiming that USPs are "public goods" that benefit all customers, the costs of which should be shared by all customer classes. See OCA Exc. at 29. As argued in briefs, USPs are not public goods and the OCA's proposal contravenes legislative intent and the Competition Act and flies in the face of just and reasonable ratemaking. See PPLICA MB at 39-48; PPLICA RB at 32-34. Accordingly, the Commission should reject the OCA's flawed arguments and accept the ALJ's sound recommendation to adopt PPL's proposed allocation of USP costs.

**1. USPs Are Not Public Goods Whose Costs Should Be Shared by all Customers.**

The OCA cites to Section 2802(17) in an effort to support its allegation that USPs are public goods. See OCA Exc. at 29-30. As PPLICA argued in its Reply Brief:

[C]ontrary to the OCA's belief, the statement in Section 2802(17) that programs for providing low-income assistance are "public purpose costs" does not equate to a finding that PPL's USPs are "public goods." See OCA M.B., pp. 181-183. If the General Assembly intended to invoke the "public goods" doctrine, as OCA alleges, then the statute would explicitly do so. In fact, the General Assembly did specifically enact special ratemaking treatments for some utility services provided to programs that Mr. Colton and Mr. Baron appear to agree are public goods – fire hydrants and volunteer fire companies. The General Assembly has not done so for USPs.

PPLICA RB at 34.

Moreover, this Commission has never reached the conclusion that USPs are public goods. A public good is "a good the consumption of which by one customer does not reduce the consumption by the other." PPLICA MB at 41. With respect to PPL's USPs, use by one customer may foreclose others from participating. See id. By way of illustration, large customers cannot even "consume" USPs by obtaining funding. Id. In light of the fact that neither the General Assembly nor this Commission has deemed USPs "public goods," the OCA's argument is moot and must be rejected.

**2. The Public Utility Code Does Not Require USP Costs To Be Allocated to all Customer Classes.**

The OCA claims that the use of the term "nonbypassable" in Section 2804(9) of the Public Utility Code incorporates the concept that all customer classes must absorb USP costs. See OCA Exc. at 30. As PPLICA explained in its Reply Brief, this Section of the Public Utility Code does not require allocation to all customer classes. See PPLICA RB at 32. Specifically, PPLICA argued that:

[I]n an industry structure where customers have the opportunity to access competitive supply, the term "non-bypassable" means a charge that applies to both shopping and non-shopping customers. See PPLICA Statement No. 1-R at 5. Read in conjunction with Section 2803(17), it is clear that the Legislature's intention was to continue, at a minimum, the programs that have been supported by bundled rates and to ensure that customer classes which were already responsible for universal service costs in their bundled rates would pay those costs regardless of whether they purchase POLR supply or shop for competitive supply from an EGS. Id. The Competition Act did not change traditional ratemaking principles that costs should be allocated based on cost causation (which, as explained subsequently, requires that only residential ratepayers pay USP costs).

Id. at 32-33. Contrary to the OCA's assertions, the Public Utility Code does not support the allocation in which costs are assigned to all rate schedules. See PPLICA MB at 46. In this case, the Public Utility Code requires that USP costs that were in bundled rates for a particular customer class should be continued after rate unbundling. By logical extension, if USP costs are recovered only from residential customers, then all residential customers should pay the costs. Id.

The OCA has failed to provide any binding statutory provision or other legal precedent to support its proposed USP cost allocation. Therefore, the OCA's proposal must be rejected.

**3. Because Only Residential Customers Can Use USPs and any USP Benefits Flow to the Residential Class, USP Costs Must Be Allocated Only To Residential Customers.**

The OCA argues that the purported benefits of PPL's USPs extend to all customer classes and society in general and, therefore, all ratepayers should absorb USP costs. See OCA Exc. at 22-23. The OCA's argument intends to circumvent cost causation principles by suggesting that USPs are "public goods" from which all customers receive an indirect benefit. Pursuant to cost causation principles, the basic standard for allocating costs is that costs should be attributable to customers based upon how customers cause costs to be incurred. See PPLICIA MB at 40. As PPLICIA addressed fully in its Main Brief, any benefits of USPs flow solely to the residential class:

The general commonality of these programs is that they are designed to help low-income, payment-troubled residential customers. See PPL Statement No. 7-R at 25. In other words, if a residential customer, at some point in time, meets the income eligibility standards required by these programs, the customer is eligible to receive the benefits of these programs. Conversely, commercial and industrial customers, regardless of their financial status, are not and will never be eligible to receive assistance under these programs.

Id. Moreover, only residential customers are eligible to participate in these programs and increasing the number of residential customers will increase USP costs. See id. By contrast, commercial and industrial customers do not cause the Company to incur USP costs; increasing the number of PPL's commercial and industrial customers will have no impact on PPL's USP costs. Therefore, because only residential customers cause PPL to incur USP costs, only residential customers should be allocated these costs. This result is not only consistent with cost causation principles, but also current Commission policy providing that USP costs should be allocated only to residential customers.

USPs are not public goods and do not benefit all customer classes. In fact, PPL's residential customer class is the only class eligible to benefit from PPL's USPs. According to the

principles of cost causation, only the residential customer class should be allocated these costs. Any other result would cause improper subsidization of the residential class and represent an impermissible, unjustified departure from Commission's policy requiring that USP costs be allocated to residential customers in the post-restructuring period in order to avoid any cost shifting. Therefore, the Commission must reject the OCA's arguments and approve PPL's proposed allocation of USP costs.

**E. Reply to PPL Exceptions No. 3: The ALJ Correctly Determined That PPL's Distribution System Improvement Charge Proposal Should be Rejected.**

The ALJ properly recommended that the PUC reject PPL's proposal to establish a DSIC, in light of the fact that the Commission lacks the legal authority to do so. See RD at 39-43; id. at 47. The ALJ concluded that the Legislature's amendments to Section 1307 make it clear "that it has not entirely delegated the power and authority to fashion such rate mechanisms to the Commission. In fact, it appears that the Legislature has circumscribed the Commission's jurisdiction in these matters." Id. at 43. PPL excepts to the ALJ's recommendation, disputing her accurate interpretation of Section 1307 of the Public Utility Code and proper deference to the underlying legislative intent. See PPL Exc. at 15-24. Contrary to PPL's assertions, the Company's DSIC proposal would not only contravene statutory requirements, but also result in single-issue ratemaking and undermine cost-causation principles. See PPLICA MB at 49-57; PPLICA RB at 29.

**1. Implementation of PPL's Proposed DSIC Would Contravene Statutory Requirements.**

PPL claims that Section 1307(a) of the Public Utility Code authorizes the Commission to approve PPL's proposed DSIC. See PPL Exc. at 17. As PPLICA argued in detail in its briefs, a fair reading of Section 1307, coupled with the legislative intent underlying this section,

demonstrates that automatic adjustment mechanisms such as the DSIC are not available to electric utilities. See PPLICA MB at 52-53.

The costs of providing public utility services are generally recovered by utilities through base rate filings under Section 1308; however, in limited circumstances, utilities have been permitted to establish automatic adjustment clauses pursuant to Section 1307. Id. at 53. Section 1307 allows utilities to bill customers for increases or decreases in specific costs without having to submit a general rate filing. Id. The automatic adjustment clause flows through only specified expenses and changes to those expenses without including any profit or other recovery. Id.

Section 1307(a), which addresses the general rule regarding these automatic adjustment mechanisms, provides:

*Any public utility, except a common carrier...may establish a sliding scale of rates or such other method for the automatic adjustment of the rates of the public utility as shall provide a just and reasonable return on the rate base of such public utility, to be determined upon such equitable or reasonable basis as shall provide such fair return. A tariff showing the scale of rates under such arrangement shall be first filed with the commission, and such tariff, and each rate set out therein, approved by it. The commission may revoke its approval at any time and fix other rates for any such public utility if, after notice and hearing, the commission finds the existing rates unjust and unreasonable.*

66 Pa.C.S. § 1307(a); see also PPLICA MB at 53. In 1996, the General Assembly amended Section 1307(a) when it implemented Section 1307(g), which allows a surcharge for certain system improvement projects undertaken by water utilities. Section 1307(g) provides:

**(g) Recovery of costs related to distribution system improvement projects designed to enhance water quality, fire protection reliability and long-term system viability.** – Water utilities may file tariffs establishing a sliding scale of rates or other method for the automatic adjustment of the rates of the water utility as shall provide for recovery of the fixed costs (depreciation and pretax return) of certain distribution system improvement projects, as approved by the commission, that are completed and placed in service between base rate proceedings. The commission, by regulation or order, shall prescribe the specific procedures to be followed in establishing the sliding scale or other automatic adjustment method.

66 Pa.C.S. § 1307(g). A plain reading of Sections 1307(a) and 1307(g) indicates that the Commission may approve automatic adjustment clauses for utilities under the circumstances illustrated in Sections 1307(b) through 1307(g).

PPLICA's interpretation of Section 1307, is consistent with legislative intent. As PPLICA argued in its Main Brief, the Legislature did not intend to extend Section 1307(g) beyond water utilities:

Pursuant to the Pennsylvania Rules of Statutory Construction, "[e]xceptions expressed in a statute shall be construed to exclude all others." 1 Pa.C.S. § 1924. Thus, the correct interpretation is that Section 1307(g) provides the necessary statutory authority to implement a system improvement surcharge for water companies and excludes any other utilities from implementing such a mechanism. See OTS Statement No. 5 at 8-9. In other words, had the Pennsylvania Legislature intended to grant authority to electric utilities to implement such a surcharge, it would have specifically identified electric utilities in a subsection of Section 1307. Since electric utilities are not specifically identified, the appropriate statutory presumption is that the Legislature did not intend to grant the same automatic adjustment to these utilities. Id. at 9.

The Legislature's intent is further evidenced by its recent actions in 2002, at which time a House of Representatives bill was drafted to add subsection 1307(g.1) to Section 1307(g), which would have authorized a DSIC-type mechanism for natural gas utilities. Although this bill never became a law, if the House of Representatives deemed it necessary to have a specific statutory subsection added to provide a DSIC-type surcharge for gas utilities, a similar subsection would have to be enacted as a prerequisite to a DSIC-type surcharge for electric utilities. Id. Moreover, during testimony at a public input hearing, representatives for State Legislators specifically noted that "it was not the intent of the Legislature in 1996 to give broad authority to the PUC to authorize DSIC for all utilities but rather limit the DSIC to water companies." See OTS Statement No. 5-S at 4-5 (quoting the testimony of Nikki Lopez, Executive Director of the Northwest Democratic Delegation). Thus, if Section 1307(a) was intended to be all inclusive, enactment of Section 1307(g) or the proposal to enact Section 1307(g.1) would not have been necessary. Id. at 4.

Based upon the aforementioned, Section 1308 provides the general basis for a public utility to recover costs through a base rate increase. Although Section 1307(a) allows for automatic adjustment clauses to be implemented by the PUC, the PUC only

maintains the ability to implement the types of automatic adjustment clauses enumerated in Sections 1307(c), (d), (f), and (g). With respect to a DSIC, the Pennsylvania Legislature has already indicated that the PUC has the authority to implement such a mechanism for water utilities; other utilities must seek specific approval through legislative action in order to implement a DSIC. Because electric utilities do not fall within the ambit of Section 1307(g), PPL's request for a DSIC must be denied as contrary to statutory precedent.

PPLICA MB at 54-56.

PPL cites the Commission's Decision in the CSIC Order in an attempt to support its claim that the Commission should adopt the Company's DSIC proposal, despite a lack of legislative authority. See PPL Exc. at 16-17. However, as PPLICA argued in its Main Brief, PPL's DSIC proposal does not meet the burden of proof required under Section 1307(a), can be distinguished from Pennsylvania-American Water Company's ("PAWC") CSIC, and should have limited presidential value, as PAWC's CSIC is on appeal before the Commonwealth Court of Pennsylvania. See PPLICA MB at 56. Specifically, PPLICA argued:

In the instant proceeding, PPL has not provided evidence that the DSIC "shall provide a just and reasonable return on the rate base of such public utility, to be determined upon such equitable or reasonable basis as shall provide such fair return." 66 Pa.C.S. § 1307(a). PPL has failed to provide any evidence in this proceeding that the implementation of a DSIC is necessary in order for the Company to earn a fair rate of return. Rather, PPL can continue to seek base rate relief similar to that of any other public utility, and as PPL has done in the past, in order to recoup any plant investment.

In addition, Section 1307(g) allows for a DSIC exception for water utilities. PAWC is a water utility that also provides a limited amount of customers with wastewater service. Accordingly, the CSIC proposed by PAWC is more analogous to the DSIC that PAWC currently has in place. Conversely, the DSIC proposed by PPL is more analogous to a natural gas DSIC, which the Legislature determined required passage of a bill for implementation.

Finally, PAWC's CSIC is currently on appeal before the Commonwealth Court. Upon entry of the PUC's Opinion and Order approving the CSIC, the OCA filed a Petition for Review of that Final Order with the Commonwealth Court. To date, briefs

have been filed in this proceeding and the matter is still under review by the Court. See generally Popowsky v. Pa. Pub. Util. Comm'n, Docket No. 2497 C.D. 2003.

Id. at 56-57.

As demonstrated above and in PPLICA's briefs, the Commission lacks statutory authority to adopt and implement PPL's proposed DSIC mechanism. Therefore, the Commission should accept the ALJ's recommendation and reject PPL's DSIC proposal.

## **2. The DSIC Must Be Rejected Because it Would Result in Single-Issue Ratemaking and Eliminate Regulatory Review.**

PPL contends that approval of a DSIC mechanism is necessary to maintain PPL's financial condition, particularly in light of the Company's plan to upgrade distribution system infrastructure. See PPL Exc. at 16. However, PPL's contention lacks merit.

As a threshold matter, PPLICA noted that:

In previous years, however, PPL has made plant investments and has had the opportunity to recover these costs, including a fair rate of return, by filing for a base rate increase. PPL boasts of its improved reliability since 1998 as evidenced by various indicies. See Direct Testimony of John F. Sipics at 5-6 (hereinafter, "PPL Statement No. 1"). PPL accomplished this during a rate cap period that prevented the Company from filing a base rate case (until now). Nothing has modified PPL's future ability to request a rate increase under Section 1308 of the Public Utility Code, and the Company can file such a request any time PPL deems it necessary. See PPLICA Statement No. 1 at 46-47.

PPLICA MB at 50. PPL's claim that its distribution infrastructure is aging is insufficient to warrant this implementation and must be rejected.

Next, PPLICA argued that PPL's proposed DSIC mechanism would result in single-issue ratemaking that would largely insulate the Company from the effects of regulatory lag.

*Specifically, PPL's DSIC includes provisions designed to reflect only cost increases without any provisions to reflect potential cost decreases. See PPLICA Statement No. 1 at 47; OCA Statement No. 2 at 6-8; OSBA Statement No. 1 at 4. Conversely, a base rate proceeding allows regulators and ratepayers to address all areas of a utility's costs for setting just and reasonable rates and does not allow a utility to "pick and choose" certain cost items to address.*

See OSBA Statement No. 1 at 4. For example, the DSIC would not reflect potential productivity increases due to the addition of more modern distribution facilities. Under the DSIC, customers would be charged the cost of new investments while the Company's shareholders would receive the benefit of any productivity increases. Thus, by failing to provide ratepayers with offsetting cost savings or revenue increases, the potential for the Company to earn an excess on its returns via the DSIC exists. See PPLICA Statement No. 1 at 48.

Similarly, under the DSIC, PPL would determine which distribution projects should be included in the cost-recovery. Because it would be difficult for the State Advocates or other interested parties to review the eligibility of these projects, PPL would maintain inappropriate discretion regarding the projects and the resulting costs to be recovered in the DSIC. See OCA Statement No. 2 at 8-9. Although, as Mr. Krall recognizes, any party could file a complaint after the DSIC takes effect, it appears that the burden of proof would shift to the complaining party, which is a substantial change from traditional rate making. See PPLICA Statement No. 1-S at 7-8.

Id. at 51-52.

Finally, DSIC implementation would increase the time between distribution rate cases.

PPLICA illustrated this point as follows:

If PPL is recovering its fixed costs associated with certain incremental distribution investments on an automatic basis, while retaining potential offsetting savings, the Company will file less frequent base cases. In addition to the lost opportunity for the Commission to evaluate the overall distribution revenue requirement, the DSIC also precludes the opportunity of the State Advocates and other interested parties to evaluate the reasonableness of the underlying allocation of distribution revenue requirements to rate classes. See PPLICA Statement No. 1 at 48. As discussed in other portions of this Main Brief, the distribution COSS identified significant cross-subsidies among rate schedules that must be eliminated. See infra Section X. If the Commission is not willing to adopt PPLICA's scheduled phase down of those subsidies, then a series of rate cases will be needed to eliminate this subsidization. See PPLICA Statement No. 1-S at 13. Any delay caused by DSIC implementation will inappropriately perpetuate the unjust and unreasonable distribution rates being charged to customers in excess of cost of service.

Id. at 52.

Given that DSIC implementation would result in single-issue ratemaking that could result in a potential over earning for the Company by insulating PPL from necessary regulatory review, the Commission must accept the ALJ's recommendation and reject PPL's DSIC proposal.

IV. CONCLUSION

WHEREFORE, PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of the Office of Small Business Advocate, PennFuture Parties, PPL Public Lighting Users Group, Office of Consumer Advocate, and PPL, and adopt the relevant portions of Administrative Law Judge Turner's Recommended Decision, consistent with PPLICA's Exceptions and Reply Exceptions, and the relevant positions set forth in PPLICA's Main and Reply Briefs.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By Vasiliki Karandrikas

David M. Kleppinger

Pamela C. Polacek

Charis Mincavage

Vasiliki Karandrikas

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone (717) 232-8000

Fax (717) 237-5300

Counsel to the PP&L Industrial Customer  
Alliance

Dated: November 22, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

**VIA E-MAIL AND FIRST CLASS MAIL**

Steven C. Gray, Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

David A. McCormick, Esq.  
The Department of Defense and Federal  
Executive Agencies  
Regulatory Law Office  
U.S. Army Legal Services Agency  
Department of the Army (DAJA-RL 4120)  
901 North Stuart Street, Room 713  
Arlington, VA 22203-1837

Tanya J. McCloskey, Esq.  
James A. Mullins, Esq.  
Lori A. Herman, Esq.  
Aron J. Beatty, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

David B. MacGregor, Esq.  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Joseph L. Vullo, Esq.  
1460 Wyoming Avenue  
Forty Fort, PA 18704-4224

Michael W. Gang, Esq.  
John H. Isom, Esq.  
Morgan, Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904

Richard A. Kanaskie, Esq.  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor West  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Eric Joseph Epstein  
4100 Hillside Road  
Harrisburg, PA 17112

Scott J. Rubin, Esq.  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357

Mark C. Morrow, Esq.  
UGI Utilities, Inc.  
460 North Gulph Road  
King of Prussia, PA 19406

Charles McPhedran, Esq.  
Citizens for Pennsylvania's Future  
117 S. 17<sup>th</sup> St., Suite 1801  
Philadelphia, PA 19103

SECRETARY'S BUREAU

2004 NOV 22 PM 1:50

RECEIVED

Mr. Eugene M. Brady  
Commission on Economic Opportunity  
165 Amber Lane  
P.O. Box 1127  
Wilkes-Barre, PA 18703-1127

Patricia Armstrong, Esq.  
Thomas T. Niesen, Esq.  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Kent D. Murphy, Esq.  
Exelon Business Services Co.  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

John L. Munsch, Esq.  
Allegheny Energy  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Michael Fiorentino, Esq.  
Joseph Otis Minott, Esq.  
Clean Air Council  
135 S. 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103

Louise A. Knight, Esq.  
Joseph J. Malatesta, Esq.  
Saul Ewing LLP  
2 North Second Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101

Paul E. Russell, Assoc. General Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179

Roger E. Clark, Esq.  
Sustainable Development Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591

Daniel Clearfield, Esq.  
Kevin J. Moody, Esq.  
Wolf Block Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17036

Richard S. Herskovitz, Esq.  
Vice President, Rates  
Duquesne Light Company  
411 Seventh Avenue, 8-2  
Pittsburgh, PA 15219

Honorable Ember S. Jandebour  
Pennsylvania Public Utility Commission  
Scranton State Office Bldg., Room 318  
100 Lackawanna Avenue  
Scranton, PA 18503

Honorable Susan Colwell  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Certificate of Service  
Page 3  
Docket No. R-00049255

Michael G. Wolfe, Esq.  
FirstEnergy Corp.  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001

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

  
Vasiliki Karandrikas

Counsel for the PP&L Industrial  
Customer Alliance

Dated this 22nd day of November, 2004, at Harrisburg, Pennsylvania.

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

**v.**

**PPL ELECTRIC UTILITIES  
CORPORATION**

:  
:  
:  
:  
:  
:  
:

**Docket No. R-00049255**

**REPLY EXCEPTIONS  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

**DOCUMENT**

**DOCKETED**  
NOV 23 2004

**Steven C. Gray  
Assistant Small Business Advocate**

**For:**

**William R. Lloyd, Jr.  
Small Business Advocate**

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

**Dated: November 22, 2004**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. SPECIFIC REPLIES TO EXCEPTIONS ..... 3

    1. The ALJ was not in error when she refused to recommend the approval of the Company’s Distribution System Improvement Charge mechanism ..... 3

    2. The PennFuture proposal to place candidates on the Sustainable Energy Fund Board of Directors would not solve the governance issues ..... 7

    3. The ALJ was not in error when she recommended the approval of the Company’s original transmission service charge proposal rather than PPLICCA’s alternative ..... 8

    4. CCC’s proposal to allocate the PJM transmission charges on a demand-only basis should not be approved by the Commission ..... 11

    5. The ALJ was not in error when she refused to recognize that Universal Service Programs benefit all customers and refused to recommend that the costs of these Programs should be allocated to all customer classes ..... 12

III. CONCLUSION ..... 17

## I. INTRODUCTION

On March 29, 2004, the PPL Electric Utilities Corporation (“PPL” or the “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) a request for additional annual distribution revenues of \$164.4 million. The PPL filing also included a notice that transmission service charges were expected to increase by \$57.2 million, a proposal for recovering transmission charges from ratepayers on a reconcilable basis, a request for the implementation of a distribution system improvement charge (“DSIC”), and a request for ratepayer funding for the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”).

On April 8, 2004, the Office of Small Business Advocate (“OSBA”) filed a complaint against the PPL filing. On May 7, 2004, the Commission suspended the proposed effective date of PPL’s filing and instituted an investigation into the justness and reasonableness of PPL’s proposals.

On May 19, 2004, a prehearing conference was held before Administrative Law Judge (“ALJ”) Allison K. Turner, ALJ Susan D. Colwell, and Chief ALJ Robert A. Christianson.

Public input hearings were held throughout the PPL service territory during the week of June 28, 2004.

On June 29, 2004, the OSBA submitted the direct testimony of Robert D. Knecht and Mark D. Ewen and, in a separate document, the direct testimony of Andrew M. Schwarz. On July 27, 2004, the OSBA submitted the rebuttal testimony of Messrs. Knecht and Ewen. On August 5, 2004, the OSBA submitted the surrebuttal testimony of Messrs. Knecht and Ewen.

Evidentiary hearings were held in Harrisburg beginning August 9, 2004, and concluding August 12, 2004. An additional telephonic public input hearing was conducted on August 13, 2004.

On September 2, 2004, the OSBA submitted a main brief.

On September 13, 2004, the OSBA submitted a reply brief.

On October 22, 2004, ALJ Turner issued a recommended decision ("RD").

On October 25, 2004, the Commission issued an errata sheet to the RD.

On November 12, 2004, the OSBA submitted its exceptions to the RD.

On November 12, 2004, exceptions to the RD were also filed by PPL, the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), the PP&L Industrial Customer Alliance ("PPLICA"), Eric Epstein, the Commission on Economic Opportunity ("CEO"), Citizens for Pennsylvania's Future ("PennFuture"), the Public Lighting Users Group ("PLUG"), the Commercial Customer Consortium ("CCC"), and the SEF.

The OSBA submits these reply exceptions in response to the exceptions submitted by the other parties.

## II. SPECIFIC REPLIES TO EXCEPTIONS

1. **The ALJ was not in error when she refused to recommend the approval of the Company's Distribution System Improvement Charge mechanism.**

The ALJ recommended that the Distribution System Improvement Charge ("DSIC") mechanism proposed by PPL in its original filing should be denied.<sup>1</sup> In its exceptions, the Company argued that the Commission should set aside the ALJ's recommendation and approve the DSIC mechanism as originally proposed.

Specifically, the Company cited 66 Pa. C.S. § 1307(a) for the proposition that the Public Utility Code "authorizes the Commission to approve PPL Electric's proposed DSIC."<sup>2</sup> However, PPL misinterpreted the language of Section 1307(a) and ignored the case law that has set the limits of Section 1307(a). Contrary to PPL's argument, the Commission has no authority to grant the Company's proposed DSIC mechanism.

The proposed DSIC mechanism is designed to "allow the Company to recover, between formal rate cases, the carrying costs [depreciation, a return on investment, and income taxes associated with new projects placed in service each year] on certain capital investments in distribution facilities."<sup>3</sup> Normally, those costs would be claimed by PPL in a base rate proceeding under Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d). The DSIC's focus on certain rate base additions without any consideration of other changes in PPL's revenues, expenses, rate base, and cost of capital would constitute single-issue ratemaking and would "disassemble the traditional rate-making process."

---

<sup>1</sup> RD, at 47.

<sup>2</sup> PPL Exceptions, at 17-18.

<sup>3</sup> PPL Statement No. 4-R, at 2-3.

According to the Commonwealth Court, “[s]ingle issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case.”<sup>4</sup> Furthermore, “the PUC should not use . . . [Section 1307] to disassemble the traditional rate-making process.”<sup>5</sup> Therefore, approval of the proposed DSIC would be contrary to *PIEC*.

Furthermore, there is no language in Section 1307(a) that expressly authorizes the recovery of electric distribution system improvement costs through a DSIC. Although the Company claimed that there are no “limits on the kinds of costs that may be recovered” under Section 1307(a),<sup>6</sup> PPL’s opinion conflicts with *PIEC*. In *PIEC*, the Commonwealth Court held that certain demand side management (“DSM”) costs could be recovered under Section 1307(a). However, the Court emphasized that the recovery of those costs was expressly authorized by Section 1319 of the Public Utility Code, 66 Pa.

C.S. § 1319:

Because Section 1319 directs the PUC to allow recovery of all prudent and reasonable costs for developing, managing, financing and operating DSM programs and because Section 1307 gives the PUC the discretion to establish by either regulation or order the manner in which automatic adjustment recovery may be instituted and when such automatic adjustment of rates should be mandated, the surcharge method is permitted.

*PIEC*, at 1349. In contrast to Section 1319, no section of the Public Utility Code gives special emphasis to the recovery of costs for electric distribution system improvements or singles out such costs for special ratemaking treatment.

---

<sup>4</sup> *Pennsylvania Industrial Energy Coalition v. Pennsylvania Public Utility Commission*, 653 A.2d 1336, 1350 (Pa. Cmwlth. 1995) (“*PIEC*”).

<sup>5</sup> *PIEC*, at 1349.

<sup>6</sup> PPL Exceptions, at 17.

In 1996 the General Assembly did single out the collection of water system improvement costs for special treatment when it enacted 66 Pa. C.S. § 1307(g). Section 1307(g) authorizes the collection of those costs through a mechanism similar to the Company's proposed DSIC. However, the General Assembly limited Section 1307(g) to water utilities, and has never expanded the Section 1307(g) mechanism to include other types of utilities.

PPL attempted to portray the enactment of Section 1307(g) as a legal non-event:

By enacting Section 1307(g), the Legislature did not give the Commission a power it did not already possess. Instead, it reaffirmed the Commission's pre-existing authority and emphasized the importance of exercising that power to achieve the stated goal of 'distribution system improvement . . . designed to enhance water quality, fire protection reliability and long-term system viability.' The fact that Section 1307(g) mentions only water utilities is not surprising because only the application of Section 1307 to water utilities was at issue in the [*Petition of Pennsylvania-American Water Co.*, 86 Pa. PUC 415 (1996)].

PPL Exceptions, at 20. However, PPL identified no language in Section 1307(g) to support its position. Furthermore, PPL identified no language in the legislative history of Section 1307(g) which suggests that the General Assembly thought that the Commission already had the authority specified in Section 1307(g). In fact, contrary to PPL's argument, the General Assembly approved Section 1307(g) only after the OCA had appealed the Commission's decision to grant the water DSIC.

In its exceptions, the Company suggested a way around the absence of statutory authority for its proposed DSIC:

If the Commission wishes further guidance from the General Assembly on whether a DSIC is appropriate for PPL Electric, the Commission should follow the same procedures that it employed with regard to DSICs for water companies. In that instance, the Commission approved a DSIC for water companies, and shortly thereafter, the General Assembly adopted Section 1307(g) of the Public Utility Code, thereby removing any argument concerning the Commission's authority to approve DSICs for water companies. *If the Commission were to approve a DSIC for PPL Electric, there is little reason to doubt that, if the General Assembly felt strongly that such a DSIC were either appropriate or inappropriate, it would enact legislation to address these issues.*

PPL Exceptions, at 21-22 (emphasis added). Contrary to PPL's suggestion, the Commission has only those powers granted by the General Assembly.<sup>7</sup> The Commission's duty is to follow the law – not to exercise non-existent power and shift the burden to the General Assembly to intercede to force the Commission to obey the law. PPL's ill-advised suggestion would stand the rule of law on its head.

---

<sup>7</sup> *Process Gas Consumers Group v. Pa. PUC*, 511 Pa. 88, 96 (Pa. 1986) (“The power and authority to be exercised by administrative commissions must be conferred by legislative language clear and unmistakable. . . . They should act within the strict and exact limits defined.”).

**2. The PennFuture proposal to place candidates on the Sustainable Energy Fund Board of Directors would not solve the governance issues.**

In its exceptions, PennFuture correctly observed that the ALJ did not make any specific recommendation on the governance of the SEF.<sup>8</sup> Although the ALJ did take note of the SEF operational problems identified by the OSBA, and quoted the PPL suggestion for a separate proceeding on the operation of the SEF, the ALJ concluded the SEF section of the RD without further discussion or recommendation.<sup>9</sup>

In response to the lack of guidance in the RD, PennFuture stated:

As noted in our testimony and Main Brief, the PennFuture Parties believe that the SEF Board of Directors should include the most qualified candidates without strict requirements of stakeholder representation. This approach is consistent with draft best practices regarding nomination, election, and approval of directors of sustainable energy funds under consideration by the Pennsylvania Sustainable Energy Board and the Commission.

PennFuture Exceptions, at 7.

The OSBA agrees with PennFuture that there are problems with the operation of the SEF, and has addressed those problems in detail throughout this proceeding.<sup>10</sup> However, the OSBA strongly disagrees with PennFuture as to the appropriate solution for those problems. Specifically, the OSBA recommends that if the Commission decides that sustainable energy funding should be provided by ratepayers, the revenue generated by the 0.01 cents per kWh surcharge should be directed to the Pennsylvania Energy Development Authority (“PEDA”) rather than to the SEF. PEDA should control the

---

<sup>8</sup> PennFuture Exceptions, at 7.

<sup>9</sup> See RD, at 81-21; 87-88.

<sup>10</sup> See, e.g., OSBA Main Brief, at 27-34.

surcharge revenue in order to assure that the money is spent in a manner consistent with Pennsylvania's statewide energy goals.<sup>11</sup> Although PennFuture's proposal is a small step in the right direction, it falls far short of providing the type of accountability ratepayers have a right to expect when *their* electric rates are being used for something other than generating, transmitting, and distributing electrical energy. Unlike the inadequate PennFuture proposal, the OSBA proposal puts the control of the SEF funds into the hands of a government agency that is appropriate to the task.

**3. The ALJ was not in error when she recommended the approval of the Company's original transmission service charge proposal rather than PPLICA's alternative.**

In its exceptions, PPLICA advocated its transmission service charge ("TSC") proposal (which utilizes the peak demand and energy components employed by PJM in its transmission service rate design) as the best methodology for allocating the PJM transmission charges among the customer classes.<sup>12</sup>

PPLICA correctly argued that its proposal would closely parallel the PJM transmission rate design, and would pass through the costs to rate classes using both a peak demand and energy component. It is fair to conclude that PPLICA's proposal is "an accurate application of PJM's allocation methodology and consistent with cost causation principles."<sup>13</sup>

---

<sup>11</sup> PEDA could, in its sole discretion, utilize the SEF in a review or advisory capacity. See OSBA Statement No. 2, at 9.

<sup>12</sup> See PPLICA Exceptions, at 15-25.

<sup>13</sup> PPLICA Exceptions, at 17.

However, the PPLICA proposal would create transmission charges that are highly volatile from year to year. The volatility is simply the result of the inclusion of a peak demand component in the design of the PPLICA mechanism. Because the PPL service territory randomly fluctuates between a summer and winter peak, and because the various customer classes peak at different times of the year, any proposal that includes a demand component in the allocation of transmission costs will create a rate that will vary (sometimes wildly) on a yearly basis.<sup>14</sup> Therefore, the Commission should uphold the ALJ's recommendation and adopt PPL's original TSC proposal. In the alternative, if the Commission decides not to approve the Company's original proposal, then the Commission should approve the OSBA proposal.<sup>15</sup>

The OSBA proposal to allocate the PJM transmission charges is to simply take the PPLICA proposal and place a five-year rolling average on the peak demand component. By modifying the PPLICA proposal in this way, the OSBA alternative will reduce the volatility of the transmission charge to the customer classes while still keeping the underlying rate design close to what PJM employs.<sup>16</sup>

To clarify its position, PPLICA, under a section entitled "Other Parties' Objections to PPLICA's Alternative TSC Proposal are without Merit," stated:

Contrary to the ALJ's indications and other parties' assertions, PPLICA is *not* opposed to adopting measures to smooth out any rate variations that may be attributable to the allocation of the Company's transmission costs according to cost causation principles.

---

<sup>14</sup> See OSBA Main Brief, at 16-21, for a discussion of this issue.

<sup>15</sup> See OSBA Exceptions, at 9-12.

<sup>16</sup> See OSBA Statement No. 3, at 8-9.

PPLICA Exceptions, at 22 (emphasis in original). PPLICA then continued its argument by expressing support for certain alternative TSC proposals, including the OSBA's:

*To resolve the competing concerns, the Commission clearly could adopt one of the 'smoothing' proposals advanced by the Company or the OSBA for the residential and small commercial customers, while ensuring that the TSC allocation and rate design for large customers accurately tracks the annual changes in transmission and ancillary service cost obligation as proposed by Mr. Baron. This is the appropriate 'middle ground' to accommodate all of the concerns expressed by the parties in this matter.*

PPLICA Exceptions, at 23 (emphasis in original). PPLICA concluded:

Thus, PPLICA does not oppose modifying its alternative TSC proposal to address certain customers' need for rate stability.

PPLICA Exceptions, at 23.

Based upon PPLICA's complimentary words about the OSBA proposal, the OSBA respectfully suggests that PPLICA made an error when it stated:

PPLICA does oppose as unduly discriminatory TSC proposals (such as the ones propounded by PPL *and the OSBA*) that charge one customer group (i.e., Large C&I customers) a disproportionately high rate unrelated to that customer group's usage characteristics or costs of service in order to accommodate the 'stability' concerns of another group.

PPLICA Exceptions, at 23 (emphasis added). The OSBA made no such proposal. As Messrs. Knecht and Ewen testified, the five-year rolling average can be applied on an individual rate class basis.<sup>17</sup> The TSC proposals to which PPLICA referred in this last

---

<sup>17</sup> See OSBA Statement No. 4, at 9.

citation are PPL's Alternatives 1 and 2, which place individual customer classes into generalized customer groups.<sup>18</sup>

Consequently, the PPLICA exception supports the OSBA proposal to smooth out the volatility of the transmission rates. The PPLICA comment about the "discriminatory" OSBA proposal is simply a mistake.

**4. CCC's proposal to allocate the PJM transmission charges on a demand-only basis should not be approved by the Commission.**

In its exceptions, CCC advocated that the Commission should reject both the ALJ recommendation to adopt the Company's original energy-only TSC proposal, and the two alternative TSC proposals submitted by PPL. CCC argued for rejection because the proposals are based upon a methodology that "fails to reflect cost causation and ignores the reality that these costs are generally demand-related as opposed to energy-related."<sup>19</sup>

PJM's underlying rate design for its transmission service charge uses both peak demand and energy components. Approximately 70 percent of the transmission charge is created by the peak demand component, with the remaining 30 percent created by the energy component.<sup>20</sup> Thus, while CCC may be correct that the PJM transmission service charge is "*generally* demand-related," it is more accurate to say that the transmission service charge contains both components.<sup>21</sup>

---

<sup>18</sup> See PPL Statement No. 4-R, at 28-33.

<sup>19</sup> CCC Exceptions, at 3.

<sup>20</sup> See PPL Statement No. 4-R, at 28-29.

<sup>21</sup> CCC Exceptions, at 3 (emphasis added).

Furthermore, CCC's solution is to allocate PJM's transmission service charges "using transmission level demand allocators" only.<sup>22</sup> However, CCC's proposal is subject to the same criticism that CCC makes of the original PPL TSC proposal: it entirely ignores one component of the PJM rate design. Consequently, CCC's concerns about "cost causation" are not resolved since the CCC proposal does not mirror the rate design used by PJM to construct its transmission service charge.

**5. The ALJ was not in error when she refused to recognize that Universal Service Programs benefit all customers and refused to recommend that the costs of these Programs should be allocated to all customer classes.**

In its exceptions, the OCA continued its advocacy for the allocation of universal service program costs to all customer classes.<sup>23</sup> The OCA argued that universal service is a "public good" for which all customers are mandated by statute to pay. The OCA also argued that since all classes "benefit" from residential-only customer assistance programs, all classes should pay for those programs.<sup>24</sup>

The OCA mischaracterized the ALJ's recommendation on this matter. The OCA stated:

At page 176 of her R.D., the ALJ concludes that the OCA has not presented a sufficient basis to change the Commission's policy on this issue. The policy the ALJ refers to is the Commission's determination that the prior allocation of these costs to residential customers before restructuring would continue as rates were unbundled to avoid any cost shifting during this unbundling process.

---

<sup>22</sup> Id.

<sup>23</sup> See OCA Exceptions, at 28-34.

<sup>24</sup> Id.

OCA Exceptions, at 28-29. The OCA is incorrect about “the policy” to which the ALJ referred. The ALJ was not referring to “the policy” that would prohibit the shifting of costs during the “unbundling process.” Instead, the ALJ was referring to the “Commission policy to allocate costs of universal service programs to residential customers who may benefit directly from the programs.”<sup>25</sup>

The OCA continued its argument:

The OCA submits, however, that the concerns against changing cost allocations while rates are unbundled no longer serves as a bar to determining the proper allocation of these costs under the Act. In this case, the OCA submits that there has been sufficient evidence presented to demonstrate that PPL’s universal service programs should be reflected as a cost to all customers as a matter of law and a matter of sound public policy.

OCA Exceptions, at 29. It is curious that the OCA argued for changing the cost allocation of the Company’s universal service programs, while at the same time it has steadfastly argued that the reallocation of distribution service costs (from over-paying business classes to under-paying residential classes) is entirely inappropriate in this proceeding.<sup>26</sup>

In addition, the OCA made a significant error of statutory construction when it claimed that universal service programs are recognized as a “public good.” The OCA stated that in the Electricity Generation Customer Choice and Competition Act (“Act”), “the General Assembly has declared these programs to be a public good.”<sup>27</sup> The General Assembly made no such declaration. Rather, the General Assembly stated:

---

<sup>25</sup> RD, at 174.

<sup>26</sup> See, e.g., OCA Main Brief, at 121-125.

<sup>27</sup> OCA Exceptions, at 30.

There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

66 Pa. C.S. § 2802(17). The language of Section 2802(17) mentions the “public purpose” of certain policies and services, but nowhere in the statute is the phrase “public good” to be found. The plain language of the General Assembly should not be misconstrued in pursuit of some alleged underlying “spirit.”<sup>28</sup>

Although the OCA claimed that “the benefits of universal service programs are not limited to residential customers,”<sup>29</sup> the OCA did not provide any evidence which quantified the alleged “benefits” that each class or each customer would receive. Furthermore, the OCA offered no evidence whatsoever that any such alleged “benefits” are proportional to (or even related to) the costs that small businesses would pay. There is no such evidence, because the only customer class that benefits from PPL’s universal service programs is the residential class – the only class whose customers are eligible to participate.

The OCA notion that “all customer classes” should pay for residential-only customer assistance programs also disregards the heavy burden that funding those programs would place upon PPL’s small business customers.

---

<sup>28</sup> 1 Pa. C.S. § 1921(b).

<sup>29</sup> OCA Exceptions, at 31.

As OCA witness Colton stated:

As elsewhere, small business fills a unique role in the Pennsylvania economy. Small business disproportionately offers employment opportunities to Pennsylvania residents who have limited employment skills.

OCA Statement No. 5, at 30. Mr. Colton continued his reasoning:

[W]ithout small business offering low-wage employment, many of the persons who are employed in such establishments would not find job opportunities.

Id., at 30-31. Mr. Colton concluded:

The small business establishments providing low-wage employment would not be able to survive if they were required to pay higher wages.

Id.

Despite Mr. Colton's acknowledgement of the importance of small businesses, the OCA continued to advocate its proposal to require Pennsylvania's small businesses to pay for the PPL universal service programs – a proposal that would place an additional financial burden upon those small businesses. Every dollar that one of PPL's small business customers would pay for residential-only universal service programs would be a dollar that would not go to hire a new employee.<sup>30</sup> Every dollar taken away from that small business would be another dollar that would not go to expand the business, or to pay for employee health care.

Ultimately, the OCA argument on this issue is moot. No cost allocation study filed in this proceeding incorporated the OCA recommendation, and the OCA made no proposal for a universal service surcharge that would span the Company's customer

---

<sup>30</sup> The OCA acknowledged this point in its exceptions by observing that "without small business offering low-wage employment, many of the persons who are employed in such establishments would not find job opportunities." OCA Exceptions, at 32.

classes.<sup>31</sup> In fact, while the OCA did submit the results of its cost of service study, that study failed to quantify the OCA “all classes pay” recommendation. The current Commission precedent (which requires that all universal service costs shall be allocated to the classes that cause those costs) should be retained.

---

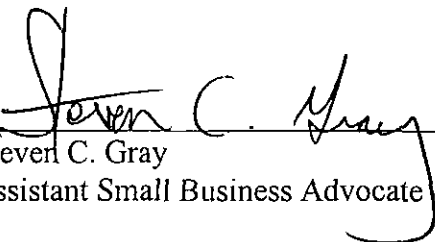
<sup>31</sup> OCA witness Galligan did throw out some suggestions, but he did not take a specific position or attempt to defend allocating universal service costs to all customer classes. See OCA Statement No. 4, at 21.

### III. CONCLUSION

Wherefore, the OSBA requests that the Commission:

1. Grant the exceptions filed by the OSBA on November 12, 2004;
2. Deny PPL's exception to the ALJ's rejection of the Company's proposed DSIC mechanism;
3. Grant PennFuture's exception regarding SEF's board of directors only if the OSBA's proposal to redirect the SEF surcharge funding to PEDA is denied;
4. Deny PPLICA's exception to the ALJ's approval of the Company's original TSC proposal;
5. Disregard the mistake made by PPLICA in its section on the design of the TSC;
6. Deny CCC's exception to the ALJ's approval of the Company's original TSC proposal; and
7. Deny OCA's exception to the ALJ's refusal to allocate universal service program costs to all customer rate classes.

Respectfully submitted,

  
Steven C. Gray  
Assistant Small Business Advocate

For:

William R. Lloyd, Jr.  
Small Business Advocate

Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831

Dated: November 22, 2004

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

v.

Docket No. R-00049255

PPL ELECTRIC UTILITIES CORPORATION :

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Reply Exceptions on behalf of the Office of Small Business Advocate, by e-mail and first class mail (unless otherwise indicated) upon the persons addressed below:

Cheryl Walker Davis, Director  
Office of Special Assistants  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-1827  
(717) 783-6324 (fax)  
[cwalkerdav@state.pa.us](mailto:cwalkerdav@state.pa.us)  
**(hand delivered w/disk)**

Hon. Allison K. Turner  
Administrative Law Judge  
Pa. Public Utility Commission  
Rm. 1302 Philadelphia State Office Building  
1400 West Spring Garden Streets  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 (fax)  
[akturner@state.pa.us](mailto:akturner@state.pa.us)

Hon. Susan D. Colwell  
Administrative Law Judge  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[scolwell@state.pa.us](mailto:scolwell@state.pa.us)

Tanya McCloskey, Esquire  
James A. Mullins, Esquire  
Office of Consumer Advocate  
555 Walnut Street 5th FL Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
(717) 783-7152 (fax)  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Richard A. Kanaskie, Esquire  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105  
(717) 787-1976  
(717) 772-2677 (fax)  
[rkanaskie@state.pa.us](mailto:rkanaskie@state.pa.us)

David M. Kleppinger, Esquire  
Pamela C. Polacek, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000  
(717) 236-2665 (fax)  
[dkleppinger@mwn.com](mailto:dkleppinger@mwn.com)  
[ppolacek@mwn.com](mailto:ppolacek@mwn.com)

Hon. Ember Jandebeur  
Administrative Law Judge  
Pa. Public Utility Commission  
Scranton State Office Building  
100 Lackawanna Avenue, Room 317  
Scranton, PA 18503  
(570) 963-4814  
(570) 963-3310 (fax)  
[ejandebeur@state.pa.us](mailto:ejandebeur@state.pa.us)

Paul E. Russell, Esquire  
Corporate Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
(610) 774-4254  
(610) 774-6726 (fax)  
[perussell@pplweb.com](mailto:perussell@pplweb.com)

John H. Isom, Esquire  
Michael W. Gang, Esquire  
Morgan, Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904  
(717) 237-4000  
(717) 237-4001 (fax)  
[jisom@morganlewis.com](mailto:jisom@morganlewis.com)  
[mgang@morganlewis.com](mailto:mgang@morganlewis.com)

David B MacGregor, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
(215) 963-5448  
(215) 963-5001 (fax)  
[dmacgregor@morganlewis.com](mailto:dmacgregor@morganlewis.com)

David A. McCormick, General Attorney  
Regulatory Law Office  
Department of the Army (DAJA-RL-4120)  
United States Army Legal Services  
901 North Stuart Street, Room 713  
Arlington, VA 22203-1837  
(703) 696-1646  
(703) 696-2960 (fax)  
[David.Mccormick@hqda.army.mil](mailto:David.Mccormick@hqda.army.mil)

Mr. Eric Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
(717) 541-1101  
(717) 541-5487 (fax)  
[ericepstein@comcast.net](mailto:ericepstein@comcast.net)

Stephen J. Baron  
J. Kennedy and Associates, Inc.  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075  
[sbaron@jkenn.com](mailto:sbaron@jkenn.com)

Joseph L. Vullo, Esquire  
1460 Wyoming Avenue  
Forty Fort, PA 18704-4237  
(570) 288-0700  
(570) 288-4598 (fax)  
[jlvullo@aol.com](mailto:jlvullo@aol.com)

Eugene M. Brady  
Commission on Economic Opportunity  
165 Amber Lane  
P.O. Box 1127  
Wilkes-Barre, PA 18703-1127  
(570) 826-1127  
(570) 829-1665 (fax)  
[hebegebe@sunlink.net](mailto:hebegebe@sunlink.net)

Kent D. Murphy, Esquire  
Legal Department  
Exelon Business Services Company  
2301 Market Street/23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-4941  
(215) 568-3389 (fax)  
[kent.murphy@exeloncorp.com](mailto:kent.murphy@exeloncorp.com)

Daniel Clearfield, Esquire  
Kevin J. Moody, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17036  
(717) 237-7160  
(717) 237-2767 (fax)  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)  
[kmoody@wolfblock.com](mailto:kmoody@wolfblock.com)

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357  
(570) 743-2233  
(570) 743-8145 (fax)  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Patricia Armstrong, Esquire  
Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
(717) 255-7600  
(717) 236-8278 (fax)  
[parmstrong@ttanlaw.com](mailto:parmstrong@ttanlaw.com)  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)

Michael Fiorentino, Esquire  
Joseph Otis Minott, Esquire  
Clean Air Council  
135 S. 19<sup>th</sup> St., Suite 300  
Philadelphia, PA 19103  
(215) 567-4004  
(215) 567-5791 (fax)  
[mfiorentino@cleanair.org](mailto:mfiorentino@cleanair.org)

Hon. Phyllis Mundy, Chair  
Northeast Delegation  
House of Representatives  
House Box 202020  
Harrisburg, PA 17120-2020  
(717) 783-1614  
[pmundy@pahouse.net](mailto:pmundy@pahouse.net)  
[nlopez@pahouse.net](mailto:nlopez@pahouse.net)

Mark C. Morrow, Esquire  
UGI Utilities, Inc  
460 North Gulph Road  
King of Prussia, PA 19406  
(610) 337-1000  
(610) 992-3258 (fax)  
[morrowm@ugicorp.com](mailto:morrowm@ugicorp.com)

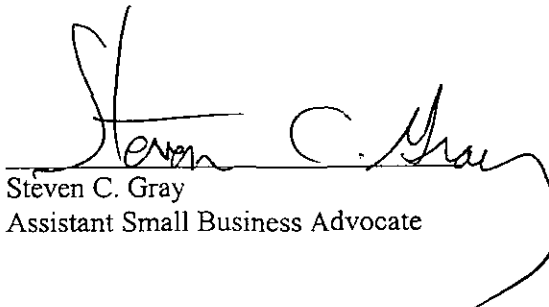
John L. Munsch, Esquire  
Allegheny Energy  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(724) 837-3000  
(724) 838-6177 (fax)  
[jmunsch@alleghenyenergy.com](mailto:jmunsch@alleghenyenergy.com)

Peter Adels, General Counsel  
Charles McPhedran, Senior Attorney  
Citizens for Pennsylvania's Future  
117 S. 17<sup>th</sup> St., Suite 1801  
Philadelphia, PA 19103  
(215) 569-9695  
(215) 569-9637 (fax)  
[adels@pennfuture.org](mailto:adels@pennfuture.org)  
[mcphedran@pennfuture.org](mailto:mcphedran@pennfuture.org)

James P. Melia, Esquire  
Kirkpatrick & Lockhart LLP  
240 North Third Street  
Harrisburg, PA 17101-1507  
(717) 231-4500  
(717) 231-4501 (fax)  
[jmelia@kl.com](mailto:jmelia@kl.com)

Louise A. Knight, Esquire  
Saul Ewing, LLP  
2 North Second Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101-1604  
(717) 257-7500  
(717) 238-4622 (fax)  
[lknight@saul.com](mailto:lknight@saul.com)

Richard Galligan  
Exeter Associates, Inc.  
5565 Sterrett Place, Suite 310  
Columbia, MD 21044  
(410) 992-7500  
(410) 992-3445 (fax)  
[rgalligan@exeterassociates.com](mailto:rgalligan@exeterassociates.com)



Steven C. Gray  
Assistant Small Business Advocate

Date: November 22, 2004

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :  
COMMISSION :

v. :

Docket No. R-00049255

PPL ELECTRIC UTILITIES CORPORATION :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Exceptions on behalf of the Office of Small Business Advocate, by e-mail and first class mail (unless otherwise indicated) upon the persons addressed below:

Cheryl Walker Davis, Director  
Office of Special Assistants  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-1827  
(717) 783-6324 (fax)  
[cwalkerdav@state.pa.us](mailto:cwalkerdav@state.pa.us)  
**(hand delivered w/disk)**

Hon. Allison K. Turner  
Administrative Law Judge  
Pa. Public Utility Commission  
Rm. 1302 Philadelphia State Office Building  
1400 West Spring Garden Streets  
Philadelphia, PA 19130  
(215) 560-2105  
(215) 560-3133 (fax)  
[akturner@state.pa.us](mailto:akturner@state.pa.us)

Hon. Susan D. Colwell  
Administrative Law Judge  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[scolwell@state.pa.us](mailto:scolwell@state.pa.us)

Tanya McCloskey, Esquire  
James A. Mullins, Esquire  
Office of Consumer Advocate  
555 Walnut Street 5th FL Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
(717) 783-7152 (fax)  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[jmullins@paoca.org](mailto:jmullins@paoca.org)

Richard A. Kanaskie, Esquire  
Office of Trial Staff  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105  
(717) 787-1976  
(717) 772-2677 (fax)  
[rkanaskie@state.pa.us](mailto:rkanaskie@state.pa.us)

David M. Kleppinger, Esquire  
Pamela C. Polacek, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000  
(717) 236-2665 (fax)  
[dkleppinger@mwn.com](mailto:dkleppinger@mwn.com)  
[ppolacek@mwn.com](mailto:ppolacek@mwn.com)

SECRETARY'S BUREAU

2004 NOV 22 AM 11:47

RECEIVED

Hon. Ember Jandebaur  
Administrative Law Judge  
Pa. Public Utility Commission  
Scranton State Office Building  
100 Lackawanna Avenue, Room 317  
Scranton, PA 18503  
(570) 963-4814  
(570) 963-3310 (fax)  
[ejandebaur@state.pa.us](mailto:ejandebaur@state.pa.us)

Paul E. Russell, Esquire  
Corporate Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179  
(610) 774-4254  
(610) 774-6726 (fax)  
[perussell@ppiweb.com](mailto:perussell@ppiweb.com)

John H. Isom, Esquire  
Michael W. Gang, Esquire  
Morgan, Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904  
(717) 237-4000  
(717) 237-4001 (fax)  
[jisom@morganlewis.com](mailto:jisom@morganlewis.com)  
[mgang@morganlewis.com](mailto:mgang@morganlewis.com)

David B MacGregor, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
(215) 963-5448  
(215) 963-5001 (fax)  
[dmacgregor@morganlewis.com](mailto:dmacgregor@morganlewis.com)

David A. McCormick, General Attorney  
Regulatory Law Office  
Department of the Army (DAJA-RL-4120)  
United States Army Legal Services  
901 North Stuart Street, Room 713  
Arlington, VA 22203-1837  
(703) 696-1646  
(703) 696-2960 (fax)  
[David.Mccormick@hqda.army.mil](mailto:David.Mccormick@hqda.army.mil)

Mr. Eric Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
(717) 541-1101  
(717) 541-5487 (fax)  
[ericepstein@comcast.net](mailto:ericepstein@comcast.net)

Stephen J. Baron  
J. Kennedy and Associates, Inc.  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075  
[sbaron@jkenn.com](mailto:sbaron@jkenn.com)

Joseph L. Vullo, Esquire  
1460 Wyoming Avenue  
Forty Fort, PA 18704-4237  
(570) 288-0700  
(570) 288-4598 (fax)  
[jlvullo@aol.com](mailto:jlvullo@aol.com)

Eugene M. Brady  
Commission on Economic Opportunity  
165 Amber Lane  
P.O. Box 1127  
Wilkes-Barre, PA 18703-1127  
(570) 826-1127  
(570) 829-1665 (fax)  
[hebegebe@sunlink.net](mailto:hebegebe@sunlink.net)

Kent D. Murphy, Esquire  
Legal Department  
Exelon Business Services Company  
2301 Market Street/23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-4941  
(215) 568-3389 (fax)  
[kent.murphy@exeloncorp.com](mailto:kent.murphy@exeloncorp.com)

Daniel Clearfield, Esquire  
Kevin J. Moody, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17036  
(717) 237-7160  
(717) 237-2767 (fax)  
[dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)  
[kmoody@wolfblock.com](mailto:kmoody@wolfblock.com)

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357  
(570) 743-2233  
(570) 743-8145 (fax)  
[scott@publicutilityhome.com](mailto:scott@publicutilityhome.com)

Patricia Armstrong, Esquire  
Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
(717) 255-7600  
(717) 236-8278 (fax)  
[parmstrong@ttanlaw.com](mailto:parmstrong@ttanlaw.com)  
[tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)

Michael Fiorentino, Esquire  
Joseph Otis Minott, Esquire  
Clean Air Council  
135 S. 19<sup>th</sup> St., Suite 300  
Philadelphia, PA 19103  
(215) 567-4004  
(215) 567-5791 (fax)  
[mfiorentino@cleanair.org](mailto:mfiorentino@cleanair.org)

Hon. Phyllis Mundy, Chair  
Northeast Delegation  
House of Representatives  
House Box 202020  
Harrisburg, PA 17120-2020  
(717) 783-1614  
[pmundy@pahouse.net](mailto:pmundy@pahouse.net)  
[nlopez@pahouse.net](mailto:nlopez@pahouse.net)

Mark C. Morrow, Esquire  
UGI Utilities, Inc  
460 North Gulph Road  
King of Prussia, PA 19406  
(610) 337-1000  
(610) 992-3258 (fax)  
[morrowm@ugicorp.com](mailto:morrowm@ugicorp.com)

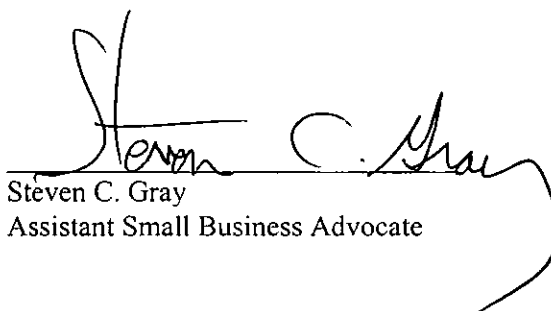
John L. Munsch, Esquire  
Allegheny Energy  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689  
(724) 837-3000  
(724) 838-6177 (fax)  
[jmunsch@alleghenenergy.com](mailto:jmunsch@alleghenenergy.com)

Peter Adels, General Counsel  
Charles McPhedran, Senior Attorney  
Citizens for Pennsylvania's Future  
117 S. 17<sup>th</sup> St., Suite 1801  
Philadelphia, PA 19103  
(215) 569-9695  
(215) 569-9637 (fax)  
[adels@pennfuture.org](mailto:adels@pennfuture.org)  
[mcphehdran@pennfuture.org](mailto:mcphehdran@pennfuture.org)

James P. Melia, Esquire  
Kirkpatrick & Lockhart LLP  
240 North Third Street  
Harrisburg, PA 17101-1507  
(717) 231-4500  
(717) 231-4501 (fax)  
[jmelia@kl.com](mailto:jmelia@kl.com)

Louise A. Knight, Esquire  
Saul Ewing, LLP  
2 North Second Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101-1604  
(717) 257-7500  
(717) 238-4622 (fax)  
[lknight@saul.com](mailto:lknight@saul.com)

Richard Galligan  
Exeter Associates, Inc.  
5565 Sterrett Place, Suite 310  
Columbia, MD 21044  
(410) 992-7500  
(410) 992-3445 (fax)  
[rgalligan@exeterassociates.com](mailto:rgalligan@exeterassociates.com)



Steven C. Gray  
Assistant Small Business Advocate

Date: November 22, 2004

RECEIVED  
2004 NOV 22 AM 11:47  
SECRETARY'S BUREAU



ORIGINAL

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

William R. Lloyd, Jr.  
Small Business Advocate

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

November 22, 2004

**HAND DELIVERED**

James J. McNulty, Secretary  
Pa. Public Utility Commission  
Commonwealth Keystone Building  
P. O. Box 3265  
Harrisburg, PA 17105

DOCUMENT

**Re: Pennsylvania Public Utility Commission v.  
PPL Electric Utilities Corporation  
Docket No. R-00049255**

Dear Secretary McNulty:

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

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

Sincerely,

  
Steven C. Gray  
Assistant Small Business Advocate

Enclosures

cc: Cheryl Walker Davis, Director  
Office of Special Assistants  
(w/disk)

Parties of Record

Robert D. Knecht

RECEIVED  
2004 NOV 22 AM 11:46  
SECRETARY'S BUREAU  
73

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission, et al :  
:  
v. :  
:  
PPL Electric Utilities Corporation :

Docket No. R-00049255

---

OFFICE OF CONSUMER ADVOCATE'S  
REPLY EXCEPTIONS

---

DOCUMENT

DOCKETED  
NOV 22 2004

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
James A. Mullins  
Lori A. Herman  
Aron J. Beatty  
Shaun A. Sparks  
Assistant Consumer Advocates

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street, Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
(717) 783-5048

Dated: November 22, 2004

RECEIVED  
2004 NOV 22 PM 12: 24  
SECRETARY'S BUREAU

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	REPLY EXCEPTIONS .....	1
A.	RATE BASE, REVENUES, EXPENSES, TAXES.....	1
	OCA Reply to PPL Exc. 4: The Commission Should Reject PPL's Proposed Calculation Of The Capital Stock Tax .....	1
	OCA Reply to PPL Exc. 7: PPL's Hurricane Isabel Expense Claim Should Be Denied In Its Entirety .....	2
	OCA Reply to PPL Exc. 6: The R.D.'s Recommendation That PPL's AMR Expense Severance Claim Be Denied Is Correct And Should Not Be Disturbed...	3
B.	COST OF CAPITAL.....	4
	OCA Reply to PPL Exc. 1: The Return On Equity Requested By The Company Is Excessive; The Appropriate Return On Equity Is 9.50%.....	4
	1. Introduction .....	4
	2. A 9.50% ROE Is Appropriate Here Because That Is The Return Required By The Market.....	5
	3. The 9.50% ROE Recommendation Of The OCA Properly Reflects PPL's Lower Business Risk Profile As A Wires-Only Company...	6
	4. The 9.50% DCF-Derived Return On Equity Requires No Further Adjustment .....	8
	5. Conclusion.....	10
	OCA Reply to PPL Exc. 2: PPL Should Not Receive An additional \$15 Million In Retained Earnings In Its Capital Structure .....	10
C.	RATE STRUCTURE .....	11
	OCA Reply to OTS Exc. G, OSBA Exc. 5, and PPLICA Exc. 5: The Revenue Allocation Adopted By The ALJ Properly Reflects Cost Causation While Incorporating The Principle of Gradualism In Rates, Producing A Fair and Reasonable Result .....	11

	OCA Reply to OSBA Exc. 4: The Company's Objective Of Capping Each Class' Rate Increase In Proportion To The Overall Increase Is An Appropriate Measure Of Gradualism .....	15
	OCA Reply to OSBA Exc. 6: A Proportional Scale Back Is Appropriate In This Proceeding.....	16
D.	TRANSMISSION SERVICE CHARGE .....	17
	OCA Reply To PPLICA Exc. 4 and CCC Exc.1: A Uniform Transmission Service Charge Fairly Recovers Transmission Costs During The Continuing Transition Period.....	17
E.	UNIVERSAL SERVICE ISSUES .....	20
	OCA Reply to PPL Exc. 9: The ALJ Correctly Found That A Normal Level of Universal Service Costs Based on PPL's Stated Budgets For 2005 and 2006 Should Be Included In Rates.....	20
F.	DISTRIBUTION SYSTEM IMPROVEMENT CHARGE .....	21
	OCA Reply to PPL Exc. 3: The ALJ Correctly Rejected PPL's Proposal For Implementation Of A Distribution System Improvement Charge.....	21
III.	CONCLUSION .....	25

TABLE OF AUTHORITIES

CASES

ARIPPA et al. v. Pennsylvania Public Utility Commission, 792 A.2d 636 (Pa. Commw. Ct. 2002) ..... 2

Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679 (1923)..... 4

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944)..... 4

Pennsylvania Indus. Energy Coalition v. Pa. P.U.C., 653 A.2d 1336 (Pa. Commw. 1995), *aff'd per curiam*, 543 Pa. 307, 670 A.2d 1152 (Pa. 1996) ..... 23

ADMINISTRATIVE DECISIONS

Application Of The Connecticut Light And Power Company To Amend Its Rate Schedules, 229 PUR 4th 380 (December 17, 2003)..... 7, 8

Pa P.U.C. v. Pennsylvania American Water Company, 231 PUR 4th 277 (2004)..... 8

Pa. P.U.C. v. Aqua Pennsylvania, Inc., Docket No. R-00038805, Opinion and Order (August 5, 2004) ..... 8, 10

Petition of Metropolitan Edison Company and Pennsylvania Electric Company For Interim Relief Pursuant To Section F.2 Of Their Approved Restructuring Plan, Docket Nos. P-00001860 and P-00001861 (Reconsideration Order of February 21, 2001) ..... 2

STATUTES

66 Pa.C.S. §1307(g) ..... 23

66 Pa.C.S. §2804(6) ..... 19

REGULATIONS

52 Pa. Code §69.55 ..... 1

I. INTRODUCTION

The Office of Consumer Advocate (“OCA”) files this Reply to the Exceptions of PPL Electric Utilities Corporation (“PPL” or “Company”), as well as other parties in this proceeding. The OCA urges the Commission to adopt the position of the OCA, as set forth herein, and in the OCA’s Exceptions to the Recommended Decision.

II. REPLY EXCEPTIONS

A. RATE BASE, REVENUES, EXPENSES, TAXES

**OCA Reply to PPL Exc. 4: The Commission Should Reject PPL's Proposed Calculation Of The Capital Stock Tax.**

The ALJ recommended that the Company's capital stock tax be calculated based on the net income of the Company for 2001 through 2005 since revenues from 2000 include net income from the Company's generation operations. R.D. at 93. The ALJ further recommended that the capital stock tax be calculated using 5.99 mills, the tax rate that will be in effect when the Company's rates go into effect on January 1, 2005, instead of the 6.99 mills that was in effect for the year 2004. *Id.* The Company disagrees with the ALJ's recommendation and argues for a capital stock tax based on net income from 2000 through 2004 and for the use of a 6.99 mill tax rate, to be adjusted to the lower rate through the STAS. PPL Exc. at 25.

First, the Company's capital stock tax should be based on the 5.99 mill rate because that is the statutory tax rate that will be in effect on January 1, 2005, the date the Company's rates go into effect. OCA M.B. at 41; OCA R.B. 19-20. The Commission's regulations relating to payment of state taxes provides that the STAS must be zeroed and rolled into base rates in a company's base rate filing. OCA M.B. at 20 (citing 52 Pa. Code §69.55). Second, the ALJ properly excluded 2000 net income data from the capital stock tax calculation because that data included income from generation operations. OCA M.B. at 40, 42; OCA R.B. at 18; OCA Exc.

at 16-17. Generation operations should not be reflected in distribution rates. The Commission should adopt the ALJ's recommendation, but also exclude 2001 net income based on the OCA's Exceptions.<sup>1</sup>

**OCA Reply to PPL Exc. 7: PPL's Hurricane Isabel Expense Claim Should Be Denied In Its Entirety.**

In this proceeding, PPL requested amortization of \$15 million in costs related to storm damage related to Hurricane Isabel. PPL St. 4 at 40. The \$15 million in expense-related items includes expenditures for various items, e.g., wages, expenses for outside crews, expenses for customer outreach. In the R.D., ALJ Turner recommended that the Company be allowed to recover this expense--minus the amounts for regular wages and benefits—over a period of 10 years. The Company has excepted to this recommendation.

As set forth in its Exceptions, the OCA submits that the entire Hurricane Isabel expense claim should be rejected, since recovery would constitute a violation of the rate caps. See, e.g., ARIPPA et al. v. Pennsylvania Public Utility Commission, 792 A.2d 636 (Pa. Commw. Ct. 2002) (ARIPPA) and Petition of Metropolitan Edison Company and Pennsylvania Electric Company For Interim Relief Pursuant To Section F.2 Of Their Approved Restructuring Plan, Docket Nos. P-00001860 and P-00001861, (Reconsideration Order of February 21, 2001), p. 4-5. The costs that PPL seeks to recover were incurred during 2003, prior to the expiration on December 31, 2004 of the transmission and distribution rate caps agreed to by PPL in the Company's Restructuring Settlement at Docket No. R-00973954. OCA St. 2 at 11. Simply deferring these costs and then seeking to recover them *after* the expiration of the rate caps would defeat the very purpose of the rate caps.

---

<sup>1</sup> In its Exceptions, the OCA explained that 2001 income data should also be excluded because it included income from generation operations. OCA Exc. at 16-17.

If, however, recovery is considered, the ALJ properly rejected amounts for regular wages and benefits. As set forth by OCA witness Catlin, a significant portion of the \$15 million of expenses which PPL deferred for Hurricane Isabel were for regular and overtime salaries and wages and related benefits. OCA St. 2 at 12. The regular salaries, wages and benefits would have been incurred regardless of whether or not Hurricane Isabel occurred. As such, these costs were not even incremental costs that would be eligible for deferral and recovery in rates even if the rate cap did not exist. Id. Additionally, some portion of the overtime may also have been incurred in the absence of Hurricane Isabel and would not qualify as incremental costs eligible for deferral. OCA St. 2 at 12. PPL's claim for recovery, if permitted at all, should be modified as recommended by the ALJ.

**OCA Reply to PPL Exc. 6: The R.D.'s Recommendation That PPL's AMR Expense Severance Claim Be Denied Is Correct And Should Not Be Disturbed.**

At pages 58-62, the R.D. addresses PPL's claim for recovery of employee severance costs resulting from implementation of the Company's automated meter reading ("AMR") program. Specifically, PPL requested amortization of an \$8.8 million pension termination benefit charge (over a 5-year period) related to the estimated costs of enhanced benefits for 94 employees to be separated as part of the AMR project. OCA M.B. at 30. The ALJ correctly denied this claim because the Company has made no payment and may not have to make a payment in the future. In its Exceptions, PPL argues that the expense is large, appropriate for amortization and based upon accrual accounting. PPL Exc. at 30. However, the Company's arguments are unpersuasive. PPL may never have to make a cash outlay for the pension termination benefit charge because the \$8.8 million was an expense accrual and did not require a cash outlay by PPL. OCA St. 2 at 14. Therefore, depending on the performance of the pension trust fund, it is possible that the Company may never be required to make a cash contribution to

fund this expense. Id. Consequently, allowance of this recovery may result in ratepayers paying rates for payments that PPL may never actually have to make. Therefore, PPL's accrual basis argument should be rejected. As to PPL's arguments that the expense is large or "substantial" and appropriate for amortization, these arguments also ignore the fact that there has been no cash outlay and there may never be such an outlay. Therefore, the OCA submits that the R.D.'s determination that PPL should not be allowed to recover the \$8.8 million should be upheld.<sup>2</sup>

## B. COST OF CAPITAL

### **OCA Reply to PPL Exc. 1: The Return On Equity Requested By The Company Is Excessive; The Appropriate Return On Equity Is 9.50%**

#### 1. Introduction.

The Company states in its Exceptions that the "Commission should not, and cannot, make its [return on equity] determinations solely to satisfy the expectations of capital markets." PPL Exc. at 9. The OCA agrees. Along this same line, both Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944) (Hope) and Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679 (1923) (Bluefield) provide it would be improper for this Commission to provide PPL with a return on equity ("ROE") exceeding capital market requirements. Nevertheless, PPL's Exceptions ask the Commission to provide it with an 11.50% ROE that is well in excess of market requirements or market expectations.<sup>3</sup>

The OCA's 9.50% ROE recommendation is a market-based return derived from well-

---

<sup>2</sup> Although the OCA agrees with the determination to reject this claim, as explained in the OCA's Exceptions, another key reason for such rejection is applicability of Section 2804(4)(iii)—dealing with rate cap exceptions, as well as, the Pennsylvania Commonwealth Court's holding in ARIPPA.

<sup>3</sup> The OCA objects to PPL's use of extra-record evidence in its Exceptions at page 8 regarding interest rates. PPL Exc. 8. The Commission's rules prohibit the use of extra-record matter, and the Commission should disregard this evidence, and the arguments that it supports. In addition, the extra-record evidence concerns short term debt, which is not at issue in this proceeding.

accepted financial principles and methods approved by this Commission. OCA M.B. at 51-52. PPL's own evidence shows that the OCA's market-derived 9.50% ROE is within market analysts' expectations. In addition, PPL's arguments that it experiences more risk as a wires-only company are simply incorrect and contradicted by PPL's own statements to this Commission. Lastly, the ALJ is correct that PPL's request for an increase for management efficiency is likewise unwarranted because PPL provided no amount for the award, and because PPL provided no evidence of superior performance. Any additional upward adjustment to the 9.50% ROE recommended by the OCA will conflict with Hope and Bluefield.<sup>4</sup>

2. A 9.50% ROE Is Appropriate Here Because That Is The Return Required By The Market.

PPL devotes a great deal of argument in its Exceptions to the "perception" of the capital markets, and how those markets expect more than the OCA's 9.50% ROE, and more than the 10.25% recommended by the ALJ. PPL Exc. at 6-9. PPL is incorrect, but more to the point, PPL tries to ignore the evidence of the market required return that results from the application of well-accepted financial theory and principles.

First, PPL's own witness Cannell quoted a June 30, 2004 Morgan Stanley report expressly addressing the OCA and OTS recommendations. Morgan Stanley wrote that the rate increases proposed by the OCA and OTS were "more supportive than expected" and that those recommendations implied incremental earnings per share of \$0.43 - \$0.53, which was "right around our estimate." PPL St.No. 10-R at 2-3. Indeed, the earnings per share estimate here shows that a market-based 9.50% ROE will produce exactly what all PPL's quoted market analysts expect -- earnings in the range of \$0.43 to \$0.53 per share. PPL St. No. 10 at 16. PPL's

---

<sup>4</sup> PPL's Exceptions portray the OCA's 9.50% ROE as being out of step with other 2003 ROE decisions. PPL Exc. at 8. Recent state commission ROE determinations, like the recent award to Connecticut Power and Light Company of a 9.85% ROE discussed herein, show that the OCA's 9.50% ROE is very much in step with other state ROE determinations for electric distribution utilities.

evidence supports the conclusion that the OCA's market-derived 9.50% ROE recommendation is right on target.

OCA witness Kahal performed an ROE analysis that comports with this Commission's requirements and the requirements of Hope and Bluefield. Mr. Kahal's DCF analysis used widely available market data to develop an ROE of 9.50%, and then checked that analysis with his CAPM model. It is no coincidence that the analysis of the OTS, the corrected DOD and PPL DCF analyses, and the projections of leading market analysts all show that a 9.50% ROE recommendation is sound. Given the requirements of Hope and Bluefield, it is clear that Mr. Kahal's 9.50% ROE result provides a fair and reasonable rate of return for PPL.<sup>5</sup>

3. The 9.50% ROE Recommendation Of The OCA Properly Reflects PPL's Lower Business Risk Profile As A Wires-Only Company.

PPL also argues that the Commission should raise its ROE because it has more risk than other utilities.<sup>6</sup> PPL Exc. at 7-8. The evidence here shows that PPL is a reduced-risk, wires-only distribution company. OCA St. No. 3 at 6; OCA Cross Exam. Exh. No. 1 at 3, 5. Indeed, in an application to the Commission for approval to issue additional debt, PPL acknowledged this point:

the current capital structure of PPL Electric Utilities continues to reflect its prior

---

<sup>5</sup> The OCA reiterates that the PEPCO Holdings data underlying the 10.25% ROE developed by the Department of Defense ("DOD"), and adopted by the ALJ, contains serious errors. OCA Exc. at 19-22. When corrected, the DOD's market-based recommendation falls within the 8.50 to 9.50% range supporting the OCA's 9.50% ROE, and is also in the range of the OTS' 8.76 to 9.07% recommendation. R.D. at 102. The unadjusted 10.25% DCF result of PPL witness Moul also relies on the same erroneous PEPCO Holdings growth rate data. OCA Exc. at 19-22

<sup>6</sup> To support this point, PPL compares its bond rating to companies outside the proxy group advanced by PPL in support of its main case. Specifically, PPL makes a comparison with a company it identifies as Pennsylvania American Water Company ("PAWC"), but which is actually American Water Capital Corporation ("AWCC"), a non-utility financing vehicle used by PAWC. PPL Exc. at 7-8; PPL M.B. at 62. It also makes a comparison to Aqua Pennsylvania ("Aqua PA"), a regulated water utility that is not a part of any proxy group in this proceeding. Id. It is incorrect for PPL to compare itself with the unregulated AWCC. Not only is AWCC not a utility, but it is also definitely not PAWC. The appropriate bond rating comparisons in this proceeding are between PPL and the companies in the adopted proxy group. Clearly, Aqua PA and AWCC have nothing to do with any proxy group in this proceeding.

role as the owner of generating assets. In order to more accurately reflect the lower business risk of a wires company, and to reduce its overall cost of capital, PPL Electric Utilities has decided to increase the amount of debt in its capital structure.

Id. The Company's own words show that it has lower business risk and it would be unfair to consumers not to recognize this reality.

OCA Witness Kahal discussed the issue of PPL's risk at length in his testimony, and the OCA discussed how Mr. Kahal's 9.50% ROE recommendation captured all PPL's risk in its Main Brief and Reply Brief. OCA M.B. at 63; OCA R.B. at 25-27. Regarding this issue Mr. Kahal testified:

At issue is whether the business risks discussed by Ms. Cannell are greater for PPLEU than for these proxy companies. This is the crucial question because the DCF method automatically captures all business risks perceived by investors. Ms. Cannell attempts to show that risks exist, but there is nothing in her rebuttal testimony stating or implying that these risks are greater for PPLEU than for the ten proxy companies used in this case. Whatever one's opinions regarding the significance of these risks, they are accounted for in my DCF results.

A secondary but less important question is whether PPLEU's distribution operations are less risky than the Company's fully integrated operations in 1995 when the Company faced an uncertain future of state and federal restructuring. This is clearly the case. In 1995, the Company faced an assortment of risks and uncertainties related to its generation assets including its massive investment in the Susquehanna Nuclear Station. Again, these risks were accounted for in the DCF studies done at that time.

OCA St. No. 3-S at 8.

Other Commissions recognize that wires-only distribution companies are less risky than integrated electric utilities. In the case of the Connecticut Power and Light Company's ("CPL") recent rate proceeding, the Connecticut Department of Public Utility Control determined that by selling off its generation assets, CPL's risks "declined significantly." Application Of The Connecticut Light And Power Company To Amend Its Rate Schedules, 229 PUR 4th 380, 506 (December 17, 2003). Part of CPL's generation assets included a nuclear power plant. Id. The

final ROE in that case was 9.85%. Id. at 507. It is clear that, like other non-integrated distribution companies, PPL experiences lower risk as a wires-only company. The OCA's 9.50% ROE recommendation properly captures PPL's lower risk profile as a wires-only distribution company.

4. The 9.50% DCF-Derived Return On Equity Requires No Further Adjustment.

PPL accepts the ALJ's adoption of DOD witness Kincel's DCF analysis resulting in a 10.25% ROE.<sup>7</sup> PPL Exc. at 14. PPL argues, however, that the ALJ should not have stopped at an ROE of 10.25% but should have increased this amount through the application of several adjustments or through the use of a blended ROE rate. PPL's arguments are without merit.

First, PPL argues that the ALJ should have applied its unsupported financial risk, or leverage, adjustment to the ALJ's recommended 10.25% ROE. PPL Exc. at 13. PPL makes this argument in spite of the fact that PPL states that DOD witness Kincel's "analysis is consistent with the Commission's recent decisions in Pa. P.U.C. v. Aqua Pennsylvania, Inc., Docket No. R-00038805, Opinion and Order (August 5, 2004) (Aqua PA) and Pa P.U.C. v. Pennsylvania American Water Company, 231 PUR 4th 277 (2004) (PAWC 2004) even though it does not specifically adopt a financial risk adjustment." PPL Exc. at 14. Mr. Kincel specifically rejected PPL's request for a financial risk adjustment in the strongest terms.<sup>8</sup> DOD Dir. at 18. Mr. Kincel testified:

I do not agree with the use of the "Leverage Adjustment" applied by Mr. Moul to both the DCF test and the betas used in the CAPM model test of ROE.

\*\*\*

---

<sup>7</sup> When corrected for errors in its underlying growth rate, the DOD's DCF recommendation falls within the 8.50 to 9.50% range supporting the OCA's 9.50% ROE.

<sup>8</sup> In its Main Brief, DOD wrote: "the Commission should include in its final order in this proceeding a statement that in future rate cases brought before it, the application of such 'leverage' adjustments in any ROE analysis will be rejected." DOD M.B. at 13. The OCA, OTS, and DOD agree. OCA St. No. 3 at 39; OTS St. No.1 at 25; DOD St. at 18.

There is no need for a further adjustment, as if the market value of a stock was determined with no recognition of its relationship to book value, the leverage of the company, of the manner in which state commissions set ROE for purposes of computing rates during regulatory treatment

DOD Dir. at 18. As Mr. Kincel makes clear, the DCF model captures all the risk present.

In addition, putting aside the validity of the leverage adjustment, PPL's witness, Mr. Moul miscalculated his leverage adjustment. He significantly overstated the difference between market and book capital structure by calculating a market equity ratio for his proxy group of about 50 percent and then comparing it to the proxy group book equity ratio of 43 percent rather than the Company book values.<sup>9</sup> OCA M.B. at 89-90; OCA St. No. 3 at 43. This is an incorrect comparison and is not the same comparison performed in PAWC 2004 or Aqua PA. In addition, Mr. Kahal pointed out that Mr. Moul over-stated his adjustment by erroneously omitting short-term debt from all the proxy companies. Id.; Tr. at 571; OCA St. No. 3-S at 17-18. Mr. Moul also over-stated his adjustment by erroneously omitting all state taxes. Id. Thus, Mr. Moul's calculation of the leverage adjustment (44 basis points) would be at least three to four times too large even if such an adjustment were appropriate, which it is not. OCA M.B. at 89-90; OCA St. No. 3 at 43. Based on Mr. Moul's testimony, it is not clear what award the Commission would provide if it were inclined to adopt the Company's reasoning on this matter. The Commission can have no way of knowing if Mr. Moul's calculations are complete and the results accurate. Therefore, the Commission should reject this proposed adjustment.

Also, the ALJ correctly concluded that PPL's mixing of its management efficiency adjustment with its ROE results was improper. R.D. at 113. PPL argues that it should receive this bonus based on its ability to provide reliable and efficient service at reasonable rates. The OCA replies, however, that this is the minimum statutory requirement for all public utilities.

---

<sup>9</sup> The Company's claimed book equity ratio is only 3 points different from the proxy group market ratio. OCA M.B. at 89-90.

There is nothing extraordinary or exceptional about a utility meeting its statutory requirements. Boosting PPL's return on equity award for "management efficiency" has no basis, and is even more inappropriate while ratepayers continue to pay billions of dollars in stranded costs that resulted from PPL management's decisions.<sup>10</sup>

PPL also argues that its methods are supported by recent Commission decisions. PPL's Exceptions misconstrue the Commission's reasoning in Aqua PA and in PAWC 2004. The ALJ correctly determined that these cases do not stand for the propositions that 1) a multi-model averaging technique is now accepted Commission practice to determine cost of equity, and 2) DCF models are to be automatically adjusted when equity book values are less than market values. R.D. at 113. Aqua PA simply states that other models may be used as a *check* on the DCF model. Aqua PA at 61-62. This is exactly how Mr. Kahal used his CAPM model here, in accord with Commission precedent. OCA St. No. 3 at 32.

5. Conclusion.

For the reasons set forth herein, and in the OCA's Main Brief at 50-98, Reply Brief at 21-40, and Exceptions at 18-24, the Commission should reject the Company's request for an increase in its ROE and adopt the 9.50% ROE recommendation of the OCA.

**OCA Reply to PPL Exc. 2: PPL Should Not Receive An Additional \$15 Million In Retained Earnings In Its Capital Structure.**

In Exception 2, PPL argues that its proposed \$15 million increase to the retained earnings portion of its capital structure is justified. PPL Exc. at 11. The ALJ correctly recognized that there is no historical precedent to PPL's claim, and reasoned that there is most likely no rationale

---

<sup>10</sup> In the R.D., the ALJ pointed out the OCA's argument that PPL received a large stranded cost recovery in its last rate proceeding to account for the fact that the market value of its generation assets was less than the book value. Here, the Company is turning that concept on its head by seeking an ROE adjustment to recognize that the market value of its equity exceeds the book value. The Company benefits either way under this claim.

for increasing PPL's retained earnings in the future. R.D. at 100. As Mr. Kahal explained:

The Company's own cash flow statements show the projected retained earnings accumulation for 2004 to be unrealistic. In 2003, PPLEU earnings were \$25 million compared to dividend payments of \$29 million, and in 2002, earnings were \$39 million compared with dividend payments of \$63 million. Hence, retained earnings actually declined during both of the last two years. There is no convincing basis to accept the proposed 2004 retained earnings increase, and I have reversed that adjustment. Instead, I have adopted the reported actual common equity balance at year-end 2003.

OCA St. 1 at 13 (emphasis in original). PPL argues that its retained earnings will increase because the rate increase it obtains from this proceeding will allow it to increase retained earnings. PPL Exc. at 12. This is incorrect because PPL's retained earnings from this year have no relationship to retained earnings in 2005. Nevertheless, the fact that PPL's rates are increasing is not a valid reason to provide PPL with an even larger rate of return through this type of adjustment. The Commission should adopt the well-reasoned conclusion of the ALJ and decrease the retained earnings portion of PPL's capital structure by \$15 million to eliminate this unwarranted increase.

For the reasons set forth above, in the OCA's Main Brief at 47-49 and Reply Brief at 40-41, the Commission should adopt the capital structure recommended by the ALJ.

### C. RATE STRUCTURE

#### **OCA Reply to OTS Exc. G, OSBA Exc. 5, and PPLICA Exc. 5: The Revenue Allocation Adopted By The ALJ Properly Reflects Cost Causation While Incorporating The Principle of Gradualism In Rates, Producing A Fair and Reasonable Result.**

The ALJ provided a well-reasoned analysis of the differing revenue allocations in her Recommended Decision. R.D. at 145-151. After balancing the proposed revenue allocations, the ALJ determined that the Company's overall allocation followed appropriate ratemaking standards. R.D. at 140-151. The ALJ adopted the proposed revenue allocation of the Company, supported by the OCA, as producing a fair and reasonable result. R.D. at 151. The OCA

submits that the ALJ correctly recognized that the Company's revenue allocation, supported by the OCA, produces a fair and reasonable result, and that a proportional scale back of this allocation maintains the essential fairness of PPL's approach. The exceptions of OTS, OSBA, and PPLICA to the allocation of the Company's distribution revenue increase do not overcome this basic conclusion and should be rejected.

The parties excepting to the ALJ's recommended allocation of the distribution revenue increase seek to move each customer class to cost-based rates based on the Company's cost of service study, in a very rapid manner. These parties, however, fail to recognize that the cost of service study is not precise, but a guide and that other factors must be considered. In this case, a key factor is the transition that PPL has undergone from bundled to unbundled rates.

Initially, the OCA would note that OTS, OSBA, and PPLICA except to the ALJ's adoption of the Company's proposed allocation of the distribution revenue increase on the grounds that "subsidies" exist as determined by the Company's cost of service study. OTS Exc. at 30; OSBA Exc. at 18; PPLICA Exc. at 25. These parties place complete emphasis on the Company's cost study for proof that certain rate schedules are over-paying for distribution service. The OCA submits that OTS, OSBA, and PPLICA place too much emphasis on the Company's study. R.D. at 144. Importantly, the ALJ correctly captured the purpose of cost studies in her R.D. as follows:

Moreover, as stated by PPLEU, the Commission has repeatedly recognized that the cost of service study is only a guide to designing rates and is only one factor, albeit an important one, to be considered in the rate setting process. (citations omitted). Moreover, cost of service analysis is not an exact science, and there is no single, absolutely correct method. PPL Electric St. 5-R at 2.

R.D. at 123.

As stated by the ALJ, a cost study is a guide for the Commission to use when allocating any distribution rate increase. The ALJ did not adopt the Company's study in this proceeding. R.D. at 144. Instead, the ALJ recommended that the Commission rely primarily on the Company's study for guidance in this case but recognize the OCA's cost study, a study that more accurately captured how PPL incurs costs to build and maintain its distribution system, and other factors. R.D. at 144. Under the OCA's study, residential rate schedules are considerably closer to the system average rate of return than they are under the Company's study.<sup>11</sup> See, OCA M.B. at 111-114, OCA St. 4; Sch. RAG-1 pp. 3-4; PPL Exh. JMK-7.

The ALJ balanced the different cost studies in this proceeding and did not adopt the Company's cost study that is relied upon by the parties that object to the adopted revenue allocation. The ALJ adopted an allocation that used the Company's study as a guide but considered other important factors, including the OCA's study, principles of gradualism, and the fact that PPL is continuing the transition from bundled rates to unbundled rates at a time when some rate components are capped, and others are not.

The fact that PPL is in a transition from bundled rates to unbundled rates is particularly important here. Prior cost studies reflected all costs of service, including generation, transmission and distribution. See OCA M.B. at 122-123. Overall class rates of return were the prior guides used to set rates. The ALJ recognized how the current transition affects rates in this proceeding, quoting PPL witness Kleha on this key consideration:

*PPL Electric's current rate structure is a product of the rate unbundling process which occurred in its electric restructuring proceeding. The unbundling of rates in that proceeding was based on the cost allocation study from PPL Electric's 1995 base rate proceeding which reflects the Company's operation as a vertically integrated electric company. Thus, PPL Electric's current rate structure contains vestiges of its prior vertical integration. The rate cap on PPL Electric's*

---

<sup>11</sup> Under the OCA's Cost Study, for example, Rate Schedule RS has an indexed rate of return of 82% at originally proposed rates, compared to 60% under PPL's study.

transmission and distribution rates ends on December 31, 2004, but the cap on generation rates extends through 2009.

R.D. at 148. In other words, it is not possible to achieve rates that rely solely on cost of service study results in this case, even if a cost of service study exactly identified how all of PPL's distribution costs were incurred, because distribution rates in past cases were not separated out to reflect those same principles. As Company witness Krall stated in his direct testimony:

Q. Please describe the principles that guided PPL Electric in the allocation of revenue requirements to customers.

A. The fundamental principle that PPL Electric employed to guide the allocation of revenue requirements to customers was that the allocation of revenue requirements among classes of customers should reflect the cost of providing service to those classes.

Q. Do the resultant allocations conform exactly to this principle?

A. No, they do not. If prior allocations had conformed to the principle, then the answer could be "yes"; however, those prior allocations date back to 1995 when rates were fully bundled and included significant cross-subsidies among customer classes. Those cross-subsidies were further compounded by the unbundling of bills that took place with deregulation that had the effect of driving the cross-subsidies into the unbundled components. While it is PPL Electric's goal to eliminate these cross-subsidies, we recognize that this cannot be achieved all at once without significant disruption.

PPL St. 4 at 26-27.<sup>12</sup>

The ALJ properly recognized that PPL is in a transitional period. R.D. at 148. The allocation of the distribution rate increase proposed by the Company and supported by the OCA recognizes the transition that PPL continues to undertake while making progress in moving classes closer to the overall system rate of return of both the OCA and PPL cost studies. OCA St. 4 at 21. It is not reasonable to rapidly move distribution rates in line with costs, as

---

<sup>12</sup> Under PPL's last cost study as an integrated utility, residential Rate RS generated, an 80 percent indexed rate of return. Under PPL's distribution-only study presented in this proceeding, the Residential RS indexed rate of return dropped to 41% at present rates. See OCA M.B. at 123-124; OCA St. 4 at 22. This suggests higher rates of return for unbundled rate components that are not being considered as part of this distribution only rate case. *Id.*

determined by either the Company's or the OCA's study, when other elements of service continue to reflect vestiges of an integrated utility. The Company's revenue allocation produces a fair and reasonable sharing of the burden of this rate increase. R.D. at 148. The OCA submits that the allocations proposed by OTS, OSBA, and PPLICA do not recognize this transition, demonstrating a fundamental flaw in each of their approaches to this issue, and their Exceptions should be rejected.<sup>13</sup>

When all of the issues are properly balanced, the OCA submits that the Company's distribution revenue increase allocation produces a reasonable result. The ALJ recognized that the Company's proposed allocation incorporated traditional rate making principles of cost causation, gradualism, avoidance of rate shock, as well as recognizing the transition that the Company is undergoing in this, its first distribution-only rate proceeding. For these reasons, and the reasons set forth in the OCA's Main Brief at 121-134 and Reply Brief at 46-50, the OCA submits that OTS Exc. G, OSBA Exc. 5, and PPLICA Exc. 5 should be rejected and that the well-reasoned R.D. be adopted.

**OCA Reply to OSBA Exc. 4: The Company's Objective Of Capping Each Class' Rate Increase In Proportion To The Overall Increase Is An Appropriate Measure Of Gradualism.**

The OSBA argues in its Exceptions that the Company's benchmark method of limiting the increase to each rate schedule is not an appropriate means of achieving gradualism. OSBA Exc. at 13. Instead, OSBA advocates allowing each rate schedule's overall increase to be as much as twice the system average rate increase. OSBA Exc. at 13.

---

<sup>13</sup> OSBA argues that the Company's revenue allocation, when looked at in isolation, provides distribution increases that are unreasonable. OSBA Exc. at 16. The ALJ's allocation, however, must be viewed on a total bill basis. OSBA ignores the fact that PPL proposed to increase residential Rate RS transmission rates by 48% while reducing the transmission rates of the small business rate schedule, GS-1. OCA St. 4-R at 13-14. The OCA submits that the ALJ's recommendation is reasonable, especially when viewed on a total bill basis.

The OCA submits that this Exception should be denied because it would result in rate shock and it relies in its entirety on adherence to the Company's cost study – a study that was not adopted by the ALJ and that produces unreliable results regarding the residential rate schedules. *See*, OCA M.B. at 102-110, OCA R.B. at 42-43. The ALJ properly analyzed the principles of gradualism as applied by the Company, providing an allocation that moves each class closer to the system average rate of return in a manner that is fair and reasonable given all of the circumstances in this case. The OCA submits that OSBA Exception 4 should be rejected.

**OCA Reply to OSBA Exc. 6: A Proportional Scale Back Is Appropriate In This Proceeding.**

In her R.D., the ALJ considered the CCC's proposal to allocate any scale back of the Company's revenue request in favor of those classes with rates of return higher than the overall rate of return, as determined by the Company's cost of service study. R.D. at 148. OSBA proposes a similar re-allocation in its Exceptions.<sup>14</sup> OSBA Exc. At 21-22. Under a disproportional scale back, rate classes RS and RTS would receive the full increase contained in the Company's original filing, while other classes could receive little or no increase in distribution rates. The OCA submits, however, that the Company's proposed allocation at its full request is fair, and there is no reason to change the proportionate increases to rates in a way that distorts that fair allocation should a scale back be necessary.

As recognized by the ALJ, a disproportional scale back of the Company's initial revenue request would result in an overall allocation that disregards fundamental principles of fairness. R.D. at 148-149. The ALJ also accurately captured the transitional period that the Company is undergoing, and how that consideration of the current transition was captured in the distribution

---

<sup>14</sup> OSBA did not argue in favor of a disproportional scale back in its Briefs submitted to the ALJ. The arguments raised by the OCA in opposition to CCC's proposed scale back apply equally to OSBA's exceptions on this issue. *See* OCA M.B. at 125-126.

revenue allocation. R.D. at 147-148. Taken together, these considerations weigh in favor of accepting the Company's allocation of any increase awarded in this proceeding, including a proportional scale back that would not distort the reasoning behind the initial allocation. For these reasons, the OCA submits that the ALJ's recommendation on this issue be adopted, and that the OSBA's Exception number 6 be denied.

D. TRANSMISSION SERVICE CHARGE

**OCA Reply To PPLICA Exc. 4 and CCC Exc. 1: A Uniform Transmission Service Charge Fairly Recovers Transmission Costs During The Continuing Transition Period.**

In the Recommended Decision, the ALJ adopted the Company's original proposal to develop a reconcilable, uniform rate Transmission Service Charge ("TSC"), to be set at 0.564 cents per kwh. R.D. at 126, 139. The ALJ accepted the uniform TSC proposal, recognizing the Company's overall objective of limiting each rate schedule's allocated increase on a total-bill basis and finding that the uniform rate will be easier for customers to understand and the Company to administer. R.D. at 139.

PPLICA objects to the use of a uniform rate in this proceeding on many grounds that were addressed in the OCA's Main and Reply Briefs.<sup>15</sup> See, OCA M.B. at 143-151, OCA R.B. at 54-57. PPLICA argues in its Exceptions that the ALJ's acceptance of the uniform TSC "reflects a mistaken belief that adherence to cost causation principles must be sacrificed in the name of rate stability." PPLICA Exc. at 12. However, the ALJ did not view rate stability as the only concern for adopting the uniform TSC. The ALJ clearly viewed the adoption of the uniform TSC as part of the overall rate proceeding before her and she weighed the proposals based on

---

<sup>15</sup> CCC also objects to a uniform transmission rate based on usage. Instead they would have transmission charges allocated on a purely demand basis. CCC Exc. at 3. Such an approach would also produce volatile transmission rates that could result in excessive overall rate increases.

several factors, including rate stability, cost causation, and customer understanding. R.D. at 137-138.

Importantly, the ALJ properly viewed the overall rate impact resulting from this proceeding as the proper measure for applying traditional ratemaking principles, such as gradualism, to design appropriate rates during this transition period. Rather than being a simplistic, stable rate formula, the uniform TSC proposal is entirely appropriate in the context of this proceeding. OCA witness Galligan addressed the impact that PPLICA witness Baron's TSC proposal would have on overall rates as follows:

...over 90 percent of PPL's current energy requirements continue to be provided for by PPL. During this transition generation rate cap period, the reality is that the vast majority of the PPL load continues to be served by PPL. We should not ignore the adequacy of Residential RS revenues on a total service basis and fixate selectively on the unbundled distribution or transmission components of PPL's provision of service. Residential customers are already slated for a 48 percent transmission service rate increase under PPL's proposed rate spread, compared to a 40 percent PPL transmission service expected transmission rate increase. Considering the most recent information available on PPL's overall service operations, and the already greater than system average transmission rate increase under PPL's proposed rates, the Commission should reject Mr. Baron's proposed transmission revenue spread that would further increase Residential RS transmission revenue responsibility by \$19,000,000 in addition to PPL's proposed Residential RS increase of \$23,505,000.

OCA St. 4-R at 15-16. The OCA submits that the overall impact of PPL's revenue allocation must be looked at when setting TSC rates. Reviewing the proposed TSC in the context of the overall rate impacts that will result from this proceeding effectively reduces rate shock, incorporates the principle of gradualism, and recognizes the transitional period in which PPL continues to operate.

PPLICA proposed a TSC rate design that attempts to pass wholesale transmission costs on to PPL's individual retail customers and rate schedules in the same manner that PPL is billed for these costs by PJM for its total system load. Unfortunately, this attempt is not a "middle

ground" as PPLICA argues in its Exceptions. PPLICA Exc. at 13, 29. PPLICA's proposal produces the most volatile transmission rates of any proposal offered in this proceeding. R.D. at 137-138, OCA M.B. at 147.<sup>16</sup>

Additionally, PPLICA's proposal fails to acknowledge that, for non-interval metered customers, PPL's transmission charges are determined through load profiles. OCA M.B. at 143-146. Moreover, as PPL witness Krall testified, fundamentally, the customer's level of kilowatt-hour usage has a substantial impact on the customer's ultimate burden on the system. Tr. at 145. The OCA submits that a uniform TSC, as proposed by PPL, recognizes this reality. The Commission should adopt the PPL proposal for a uniform TSC.

The OCA submits that the ALJ accurately captured the importance of a uniform TSC in the context of this proceeding by rejecting volatile TSC proposals in favor of the Company's original proposal. The uniform TSC also provides an easier to understand price to compare.<sup>17</sup> For these reasons and the reasons detailed in the OCA's Main Brief at 141-153 and Reply Brief at 53-58, PPLICA's Exception 4 and CCC Exception 2 should be rejected.

---

<sup>16</sup> PPLICA argues that the Choice Act recognized the importance of adopting transmission rates that are comparable with how PJM bills an Electric Distribution Company. PPLICA cites 66 Pa.C.S. §2804(6) to support this argument. PPLICA Exc. at 13-14, 19-20. However, the Act does not support this contention. Section 2804(6) requires that:

*a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers...on rates, terms of access and conditions that are comparable to the utility's own use of its system.*

66 Pa.C.S. §2804(6). The passage is designed to prohibit discrimination, not to track wholesale transmission rates into retail rate design. In addition, it is entirely unclear how an EGS bills a shopping customer for transmission service. As the Company pointed out in its Main Brief, there is no evidence as to how an EGS prices transmission service for its customers. PPL M.B. at 103. PPLICA's assertion that customers must be indifferent with regard to transmission service as provided by PJM and billed to each load serving entity is not required under the Choice Act, and should be rejected.

<sup>17</sup> MAPSA, the only party in this proceeding representing the interests of competitive suppliers, supports the Company's uniform transmission rate proposal. MAPSA M.B. at 1-3.

E. UNIVERSAL SERVICE ISSUES

**OCA Reply to PPL Exc. 9: The ALJ Correctly Found That A Normal Level of Universal Service Costs Based on PPL's Stated Budgets For 2005 and 2006 Should Be Included In Rates.**

PPL has excepted to the ALJ's determination that a normalized level of expense for PPL's On Track program based on 2005 and 2006 projections be included in PPL's rates. PPL Exc. at 34-35. PPL seeks to include a higher amount, based on the normalization of expenses over the time period of 2005 through 2010. Under PPL's proposal, PPL will underspend the amount included in rates between 2005 and 2007, and then it proposes to spend more than included in current rates from 2008 through 2010. The problem with PPL's proposal, however, is that PPL itself has testified in this proceeding that it intends to file another base rate case within two years. OCA St. 5 at 37.

The OCA submits that the ALJ was correct when she stated: "[I]t does not make sense to allow the Company to collect now monies that it knows it will not be able to expend in the next two years." R.D. at 70. The effect of the ALJ's recommendation is to provide PPL with full recovery of the amount of universal service costs that PPL has said it will expend in 2005 and 2006, the period of time that PPL itself anticipates that rates will be in effect. The need for future funding should then be addressed in the next base rate proceeding. For the reasons set forth by the ALJ, and for the reasons set forth in the OCA's M.B. at 173 and R.B. at 65-66, the ALJ correctly concluded that PPL's universal service expense included in rates should be based on PPL's stated budgets for 2005 and 2006.<sup>18</sup>

---

<sup>18</sup> PPL argues at page 35 of its Exceptions that if it does not return for a base rate case in two years, that low-income customers would not receive the benefits of the program. PPL is obligated, however, to provide universal service programs that are available and in accord with Commission requirements. If provision of those programs at appropriate levels has a financial impact that is not offset by other savings or reductions in expenses, PPL always has open to it the course of pursuing a base rate case. PPL cannot unilaterally restrict the universal service programs as it implies in its Exception.

F. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

**OCA Reply to PPL Exc. 3: The ALJ Correctly Rejected PPL's Proposal For Implementation Of A Distribution System Improvement Charge.**

At pages 43 and 47 of the R.D., ALJ Turner recommends that PPL's proposal for implementation of a DSIC be denied. ALJ Turner supports this recommendation with several underlying facts and premises. In particular, the R.D. states that PPL: 1) has not demonstrated a need to repair and replace its facilities equivalent to the need found to be facing certain water and waste water utilities in Pennsylvania, and 2) has not established any financial circumstances which would necessitate an automatic adjustment clause such as a DSIC. R.D. at 36-37. ALJ Turner further determined that the Pennsylvania General Assembly has passed substantive and procedural amendments to Section 1307 which make clear that it has not entirely delegated the power and authority to fashion such rate mechanisms as the DSIC to the Commission. R.D. at 43. Additionally, the R.D. takes issue with various other shortcomings of the Company's proposal, *e.g.*, the proposed time period for review of the previous year's DSIC additions. R.D. at 45. Consequently, after careful analysis, ALJ Turner correctly rejected PPL's DSIC proposal. The OCA submits that the Commission should also reject PPL's DSIC proposal.

In its Exceptions, PPL first argues that from 2004-2008, it plans to invest \$987 million in its distribution system and that a DSIC is, therefore, necessary. PPL Exc. at 16. PPL's argument is extremely one-sided and incomplete. The capital investment figure that PPL cites is the total company budgeted capital investment, including all investment associated with growth and expansion. PPL. Exh. DAK-1. This is not the amount that would even be eligible for the DSIC as proposed by the Company. The Company has analyzed a typical year's worth of property additions that qualify for the DSIC and estimated about \$28 million per year in plant additions that would be eligible for inclusion in the DSIC having a revenue requirement effect of \$3.3

million in the first year. PPL St. 4 at 38; PPL St. 4 at 20; OCA St. 2 at 6. PPL then assumes that its total net distribution plant will grow by this amount each year. As OCA witness Catlin testified, however, this assumption is not consistent with PPL's experience:

[S]ince December 31, 1995 (which roughly corresponds to the end of the future test year in PPL's last rate case on September 30, 1995), net distribution plant has increased by only \$13.4 million per year. Moreover, subsequent to restructuring, PPL Electric's net distribution plant has declined, from \$1,920.6 million as of January 1, 2000 to \$1,861.2 million as of December 31, 2003. This represents a reduction of over \$14.8 million per year. This has occurred because depreciation accruals on distribution plant have exceeded distribution plant additions. That is, since restructuring, the capital investment which PPL Electric has recovered through the depreciation of existing distribution plant has exceeded the amount which the company has reinvested in its distribution system.

OCA St. 2 at 6. Therefore, the OCA submits that the Company's argument as to the need for a DSIC to reflect increased distribution plant stands reality on its head.

PPL's proposed DSIC would increase rates each year to reflect new distribution plant, while ignoring other reductions and offsets. Importantly, as set forth by OCA witness Catlin:

PPL Electric's proposed DSIC ignores several offsets which would cause the charge under the DSIC to be overstated. The offsets include:

- The rate base deduction for accumulated deferred income taxes (ADIT).
- The elimination of depreciation expense on existing plant replaced by DSIC eligible projects.
- The reduction in maintenance costs resulting from the replacement of existing facilities that are worn out or deteriorated.
- The contribution which new customers make to system costs.

OCA St. 2 at 7. PPL's proposal is simply improper, single-issue ratemaking that would overcharge customers due to its focus on one component of plant addition. Consequently, PPL's DSIC proposal overstates charges to the detriment of the Company's ratepayers.

PPL next argues that Section 1307(a) of the Public Utility Code provides the Commission with the authority to approve the Company's DSIC proposal. PPL Exc. at 17. While the OCA

agrees that Section 1307(a) is an exception to the traditional, Section 1308 base rate proceeding, PPL fails to recognize that the Courts have found Section 1307(a) to be limited to the recovery of expenses, not the fixed costs that PPL seeks to include in its DSIC. Specifically, in Pennsylvania Indus. Energy Coalition v. Pa. P.U.C., 653 A.2d 1336 (Pa. Commw. 1995), *aff'd per curiam*, 543 Pa. 307, 670 A.2d 1152 (Pa. 1996) (PIEC), the Commonwealth Court held that Section 1307(a) recovery was limited to the recovery of expenses and may not be used to recover the costs of physical facilities, return or incentives. PIEC Id. at 1353. The Court emphasized that an automatic adjustment clause typically “flows through only *expenses* and *changes to those expenses* without including any profit or other recovery.” PIEC, Id. at 1341. PIEC is clear that the costs of physical facilities and the return that PPL seeks to recover through its DSIC cannot be included in a Section 1307(a) surcharge mechanism. See OCA M.B. at 194.

PPL further argues that the broad authority of the Commission to allow recovery under Section 1307(a) was not limited by Section 1307(g). PPL Exc. at 18. Section 1307(g) provides for “recovery of costs related to distribution system improvement projects designed to enhance water quality, fire protection reliability and long-term system viability”. See 66 Pa. C.S. §1307(g). The clear and unambiguous intent of this statutory provision is to permit *water* utilities to recover certain capital costs through an automatic adjustment clause mechanism. Section 1307(g) was added to the Public Utility Code after the Pennsylvania Commonwealth Court’s decision in PIEC, thus, allowing water utilities a departure from existing law. No comparable provision exists for electric distribution companies such as PPL.

Moreover, testimony at the public input hearing on behalf of the Northeast Democratic Delegation, which includes Representative Phyllis Mundy, Representative Kevin Blaum,

Representative Todd Eachus, Representative Jim Wansacz, Representative, Tom Tigue, and Representative Bob Belfanti is enlightening on this point. The testimony provided:

We believe the DSIC that PPL is proposing is unlawful. While water companies are permitted by law to impose a DSIC, electric and gas companies have not been authorized by the State Legislature to impose such a charge.

\* \* \*

[A]s State Legislators, stress that it was not the intent of the Legislature in 1996 to give broad authority to the PUC to authorize a DSIC for all utilities but rather limit the DSIC to water companies.

Consistent with this is the fact that the House of Representatives has twice rejected the legislation that would impose a DSIC for gas companies. Not only do we believe that a DSIC approved only by the PUC is unlawful, we think it is bad public policy.

Tr. at 254. The OCA submits that PPL has failed to identify any provision of the Public Utility Code that supports its request for a DSIC. In fact, a fair reading of the Public Utility Code, and Court decisions interpreting the Code, clearly demonstrate that PPL's DSIC runs afoul of the law.

For the reasons set forth above, and in the Main and Reply Briefs of the OCA, it is clear that PPL's proposal fails on numerous grounds. The DSIC proposal is inconsistent with the Public Utility Code, constitutes impermissible single-issue ratemaking and is technically, as well as practically, flawed.<sup>19</sup> There is no basis to approve a DSIC mechanism for PPL.

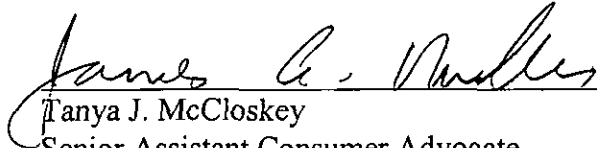
---

<sup>19</sup> In its M.B. at 202-204, the OCA identifies numerous procedural and technical flaws with PPL's proposal including the difficulties in performing an adequate review in the time periods between filing and approval of the rates each year and the lack of oversight over the process. The proposal fails to provide any reasonable review or Commission oversight.


III. CONCLUSION

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


Respectfully submitted,

  
\_\_\_\_\_


Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
James A. Mullins  
Assistant Consumer Advocate

  
\_\_\_\_\_

Lori A. Herman  
Assistant Consumer Advocate

  
\_\_\_\_\_

Aron J. Beatty  
Assistant Consumer Advocate

  
\_\_\_\_\_

Shaun A. Sparks  
Assistant Consumer Advocate

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

DATED: November 22, 2004  
81711



ORIGINAL

LOUISE A. KNIGHT  
Phone: (717) 238-7655  
Fax: (717) 257-7580  
lknight@saull.com  
www.saul.com

DOCUMENT

November 22, 2004

RECEIVED  
2004 NOV 22 PM 1:12  
SECRETARY'S BUREAU

VIA HAND DELIVERY

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation;  
Docket No. R-00049255; **PPL PUBLIC LIGHTING USER GROUP'S  
REPLY EXCEPTIONS**

Dear Mr. McNulty:

Enclosed for filing please find an original and nine (9) copies of PPL Public Lighting User Group's Reply Exceptions in the above-referenced proceeding.

A copy of the Exceptions have been provided to the Commission's Office of Special Assistants on a 3 1/2 computer disk in Microsoft Word 6.0 format.

Please date-stamp the extra copy and return with our messenger service. Please feel free to call the undersigned with any questions regarding this filing. Thank you in advance for your cooperation.

Sincerely,

*Louise A. Knight*  
Louise A. Knight

LAZ:clj  
Enclosure

c: Per Certificate of Service

68

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission  
*et al.*,

Complainants

v.

PPL Electric Utilities Corporation,  
Respondent

Docket No. R-00049255 *et al.*

SECRETARY'S BUREAU

2004 NOV 22 PM 1:42

RECEIVED

DOCUMENT

---

REPLY EXCEPTIONS  
OF PPL PUBLIC LIGHTING USERS GROUP (PPL PLUG)

---

Louise A. Knight, Esquire  
Joseph J. Malatesta, Jr., Esquire  
David P. Zambito, Esquire  
Attorney ID Nos. 26167, 20404, 80017  
Saul Ewing LLP  
2 North Second Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101  
Tel: (717) 238-7655  
Fax: (717) 257-7580

Dated: November 22, 2004

Counsel for PPL Public Lighting Users Group

DOCKETED

NOV 23 2004

**TABLE OF CONTENTS**

	<u>Page(s)</u>
I. <b>PPL's Exceptions Regarding Traffic Lighting Should Be Rejected (PPL Exceptions, pp. 31-33)</b> .....	1
II. <b>The Commission Should Not Adopt The Exceptions of PPLICA, The OSBA, or The OTS With Respect To Revenue Allocation (PPLICA Exceptions, pp. 25-27; OTS Exceptions, pp. 29-31; OSBA Exceptions, pp. 14-22)</b> .....	2
III. <b>Conclusion</b> .....	7

**TABLE OF AUTHORITIES**

**CASES**

**Page(s)**

Pa. Pub. Util. Comm'n v. Pa. Power & Light Company,  
Docket No. R-00943081 (1995 Pa. PUC Lexis 8)..... 5

**STATUTES AND REGULATIONS**

66 Pa. C.S. § 1505(b) ..... 2  
52 Pa. Code § 63.24 ..... 4

The PPL Public Lighting Users Group (“PPL PLUG”) hereby replies to portions of the exceptions filed by PPLEU, PPLICA, the OSBA, and the OTS, with respect to traffic lighting (PPLEU exceptions) and revenue allocation (PPLICA, OSBA, and OTS exceptions) as follows:

**I. PPL’s Exceptions Regarding Traffic Lighting  
Should Be Rejected (PPL Exceptions, pp. 31-33)**

PPLEU excepts to ALJ Turner’s statement that she “favors PLUG’s intention to expand the use of LED traffic signals in this area as energy saving and efficient and recommends that the Commission encourage PPLEU to cooperate with this effort may have real consequences.” (R.D, p. 159). In its exceptions, PPL PLUG requested that the Commission further ALJ Turner’s directive that PPL cooperate with efforts to encourage LED traffic light proliferation by establishing a working group, including the City of Harrisburg and the Sustainable Energy Fund (“SEF”) as an invited member with Commission oversight. The working group would have as its first priority developing a rebate program for LED traffic lights. The second agenda item for the working group would be the development of a non-measured LED traffic signal system for a pilot program. PPL PLUG requested that a schedule be mandated so that the working group would complete its evaluation within twelve (12) months of the Commission’s final order in this proceeding and the rebate program should be in place within eighteen (18) months.

PPLEU resists any effort to have it cooperate in a pilot program and suggests, as an alternative, that it would be willing to cooperate with PPL PLUG to examine the possibility of a program funded by the SEF to expand the use of LEDs in PPLEU’s service territory.

PPLEU’s exceptions clearly aim to pull the teeth of any proposal whereby it would be expected to act proactively with respect to LED traffic lighting by suggesting that it should not be directed to be the first (and only) Pennsylvania utility to offer LED rebates. It contends that PPL

PLUG did not justify either the benefit of LED lights or justify why PPLEU's customers should subsidize LED rebates.

PPL PLUG's reply is simple on both counts. PPL PLUG demonstrated without contradiction that LED lights reduce energy consumption by at least 85% in traffic signals. The technology is mature, the energy savings are substantial, but as Mr. Link testified, the capital costs of implementation are daunting for municipalities. PPLEU ignores Section 1505(b) of the Public Utility Code, 66 Pa. C.S. §1505(b) which gives the Commission the power to direct any utility to institute a conservation program, so long as it is "prudent" and "cost effective." There can be no argument that installing technology to reduce usage by 85% or more in a particular targeted area is both *prudent* and *cost effective*. Furthermore, it is no surprise that PPLEU would be the first utility to institute such a program because it is the first utility since electric restructuring to file a rate case, but it should not be the last.

Establishment of the working group, as suggested by PPL PLUG, clearly is a measured but forward-looking step to take at this time. Therefore, PPL PLUG submits that PPLEU's exceptions should be denied and the Commission should proceed with a working group established to develop a rebate program for LED traffic signals and to investigate the development of a non-measured LED traffic signal system for a pilot program.

**II. The Commission Should Not Adopt The Exceptions of PPLICA, The OSBA, or The OTS With Respect To Revenue Allocation (PPLICA Exceptions, pp. 25-27; OTS Exceptions, pp. 29-31; OSBA Exceptions, pp. 14-22)**

Revenue allocation is an issue which pits various customer classes against not only the utility, but also each other. One group cannot prevail without causing an adverse consequence to others. In this case, PPLICA, the OSBA, and OTS, all contend that PPL's rate allocation proposal was manifestly unfair to their constituencies because ALJ Turner's Recommended Decision

approved PPLEU's proposal for revenue allocation. That proposal contemplated increases of no more than 10% (on a total basis, i.e., distribution and transmission) to any rate class.

Street light traffic group (SL/AL) received a 9.9% total increase in its rates under PPL's proposal. Under the Recommended Decision, it received a scale back (based on the decrease in overall revenue increase) premised on PPL's original proposal to increase SL/AL rates by 9.9%. According to PPLICA, the OSBA, and OTS, that result is unsatisfactory because of the alleged subsidies flowing to the SL/AL class.

But PPL PLUG contends that all parties, as well as ALJ Turner in her Recommended Decision, ignored several factors in approving the Company's proposed rate increase with respect to the SL/AL class: specifically, (1) the fact that street lighting is a public good, and (2) the quality of service should justify reduced SL/AL rates. ALJ Turner did find street lighting service to be a public good, but did not give recognition to that fact in establishing rates.<sup>1</sup> Street lighting is a public good because street lighting customers do not consume electricity for their own benefit – they consume it to provide lighting for citizens on the streets and public areas and to assist the police, fire fighters, and other emergency responders in the performance of their duties to the public. This service is similar to fire hydrant service or volunteer fire company service. Street lighting is also highly supportive of basic domestic security.

Furthermore, PPL established the following facts, without any contradictory evidence being adduced, concerning the quality of street lighting service (except for energy-only customers):<sup>2</sup>

---

<sup>1</sup> PPL PLUG discussed justification for recognizing or in rates that our services provided for "public good" may be subsidized. (PPL PLUG Main Brief, pp. 6-9).

<sup>2</sup> Energy-only street lighting customers (customers taking service under Rate SE) own their street lights. Therefore, PPLEU does not have the responsibility for maintaining those lights. These exceptions do not relate to energy-only, or Rate SE, customers.

- PPLEU is responsible for maintaining street lights under Rates SA, SHS, SM, and SR-1.
- PPLEU provides no service or manpower to identify when its own equipment (street lights) are not working.
- Municipal customers are forced to send out their staff (often the police) to monitor the condition of PPLEU facilities. Street light customers must patrol PPL's facilities 365 days a year, as a condition of service, to assure that they have continuous service.
- PPLEU street lighting service has deteriorated, such that PPLEU cannot be relied upon to replace burnt-out lights in a timely manner. PPLEU's own witness, Mr. Kasper, testified that the number of bulb outages were "increasing dramatically" after PPL decided to repair lights on an as needed basis, as did customer complaints. (N.T. 1000, 1005).
- PPLEU changes its repair forms frequently, as well as its points of contact, thereby frustrating expeditious repairs.
- PPLEU refuses to give customers feedback as to requests for repairs.
- PPLEU has no agreement with the municipalities it serves to patrol street lights.
- Street light customers receive absolutely no monetary credit for the time their lights are non-functional.<sup>3</sup>

In other words, street lighting customers are expected to pay for firm service, even though they are subject to routine and regular interruptions. Furthermore, they have to dedicate significant

---

<sup>3</sup> Unlike telephone customers, which do receive credit for every 24-hour period they are out of service, 52 Pa. Code § 63.24 (service interruptions).

resources to assure a reasonable quality of service.<sup>4</sup> The revenue allocation proposals of PPLICA, OSBA, and OTS collectively disregard these facts in favor of a robotic approach.

Furthermore, PPL PLUG contends that the service rendered to street lighting customers, with the exception of customers taking service under Rate SE, are essentially being provided with interruptible utility service. They further contend that their rates should reflect the uncertainties of interruptible service. As the Commission noted in Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company, Docket No. R-00943081 (1995 Pa. PUC Lexis 8):

To the extent that customers who may be interrupted, for whatever reason, take lower reliability service, the cost of providing the service is lower than the equivalent amount of firm service. This difference between firm rates and interruptible rates is typically in the form of an “interruptible credit” or “interruptible discount.”

In this case, PPLEU acknowledges that street light customers currently receive absolutely no monetary recognition that PPLEU owns street lights that may go out at any time and stay out for an indeterminate period. PPL PLUG Exh. No. 1. Furthermore, PPLEU’s cost of service study does not at any point give recognition to the interruptible nature of street lighting service.

PPL PLUG contends that the rates determined for the SL/AL class determined by ALJ Turner in the Recommended Decision are not too low, but rather too high, because ALJ Turner did not take into account quality of service or the fact that street lighting is a public good. The same must be said for the positions evidenced by PPLICA, the OSBA, and the OTS in their exceptions. Given the nature of street lighting customers’ usage of electricity, the Commission may and should, within a sound discretion, determine that street lighting rates must not recover

---

<sup>4</sup> PPL PLUG Main Brief, pp. 6-13.

any more than the full cost of service.<sup>5</sup> Street lighting customers already pay that and more. Street lighting rates may remain as they currently exist, that is, paying full cost of service plus making a contribution to system-average rate of return. The exceptions of PPLICA, OTS, and OSBA ignore these factors in favor of theories which accrue to their constituencies. They argue for a strictly cost based approach as they rush to eliminate cross-subsidies.

The goal of ratemaking is to produce rates that are “just” and “reasonable.” “Just and reasonable” rates are in the eye of the beholder. Just and reasonable rates, in the case of SL/AL rates, must not and should not be determined on the basis of slavish adherence to cost of service studies, but rather should be determined only after recognizing that the nature of street lighting and the quality of service argue for maintaining existing rates. But if any rate increase is allocated, it should be no more than PPLEU’s proposal, with the across-the-board reduction for the decrease in overall revenues granted to PPLEU.

---

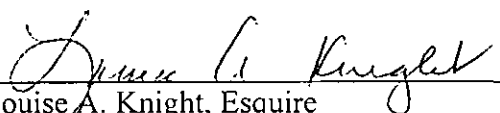
<sup>5</sup> For example, public fire protection service, also a “public good,” is allowed to pay only 25% of the cost of service and makes no contribution to a utility’s return.

### III. Conclusion

WHEREFORE, PPL PLUG asserts that its street lighting rates are already at an appropriate level, considering that its service has a lower reliability, that street lighting customers must expend substantial resources in assuring that PPLEU is rendering adequate and continuous service and that street lighting service is a public good. Its rates simply should not be increased. Furthermore, PPLEU should be directed to take into account the interruptibility of this service and the public good provided in its next distribution rate case. The exceptions of PPLICA, the OSBA, and OTS should be rejected insofar as they strive to allocate additional revenue responsibility to the SL/AL class.

With respect to traffic lighting, the Commission should take tangible concrete steps via instituting a pilot program – to develop an unmeasured traffic signal system tariff and to develop a rebate program for LED traffic signals. The exceptions of PPLEU should be rejected insofar as they contest the Commission's discretion and the wisdom of implementing such a pilot program.

Respectfully submitted,

  
Louise A. Knight, Esquire  
Joseph J. Malatesta, Jr., Esquire  
David P. Zambito, Esquire  
Attorney ID Nos. 26167, 20404, 80017  
Saul Ewing LLP  
2 North Second Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101  
Tel: (717) 238-7655  
Fax: (717) 257-7580

Dated: November 22, 2004

Counsel for PPL Public Lighting Users Group

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving a copy of PPL PUBLIC LIGHTING USERS GROUP REPLY EXCEPTIONS upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA HAND DELIVERY**

Cheryl Walker Davis  
Pennsylvania Public Utility Commission  
Office of Special Assistants  
Commonwealth Keystone Building  
400 North Street, 3<sup>rd</sup> Floor East  
Harrisburg, PA 17105-3265

**VIA E-MAIL and FIRST CLASS MAIL**

Honorable Allison K. Turner  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Philadelphia State Office Building  
1400 West Spring Garden St., Rm. 1302  
Philadelphia, PA 19130

Michael W. Gang, Esquire  
John H. Isom, Esquire  
Morgan Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street, 4<sup>th</sup> Flr.  
Harrisburg, PA 17101-1904

Honorable Ember Jandebaur  
Administrative Law Judge  
Pa. Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

David MacGregor, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Honorable Susan D. Colwell  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
2nd Floor, L-M West, 400 North Street  
Harrisburg, PA 17120

Richard A. Kanaskie, Esquire  
Pa. Public Utility Commission  
Office of Trial Staff  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selingsgrove, PA 17870-9357

Paul E. Russell, Esquire  
PPL  
2 North Ninth Street  
Allentown, PA 18101-1179

RECEIVED  
2004 NOV 22 PM 1:42  
SECRETARY'S BUREAU

William R. Lloyd, Jr., Esquire  
Steven C. Gray, Esquire  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

Tanya J. McCloskey, Esquire  
James A. Mullins, Esquire  
Lori A. Herman, Esquire  
Aron J. Beatty, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

John L. Munsch  
Allegheny Power  
800 Cabin Hill Drive  
Greensburg, PA 15601

Mark C. Morrow, Esquire  
UGI Utilities, Inc.  
460 North Gulph Road  
King of Prussia, PA 19406

Patricia Armstrong, Esquire  
Thomas Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Kent D. Murphy, Esquire  
Legal Department  
Exelon Business Services Co.  
2301 Market Street S23-1  
PO Box 8699  
Philadelphia, PA 19101-8699

David M. Kleppinger, Esquire  
Pamela C. Polacek, Esquire  
Karen S. Miller, Esquire  
McNees Wallace & Nurick  
100 Pine Street, PO Box 1166  
Harrisburg, PA 17108

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

Honorable Phyllis Mundy, Chair  
Northeast Delegation  
House Box 202020  
Harrisburg, PA 17120-2020

Richard S. Herskovitz  
Duquesne Light  
411 Seventh Avenue, 8th Floor  
Pittsburgh, PA 15219

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Joseph L. Vullo, Esquire  
Attorney at Law  
1460 Wyoming Avenue  
Forty Fort, PA 18704-4237

Thomas Catlin  
Exeter Associates, Inc  
5565 Sterrett Place, Suite 310  
Columbia, MD 21044

Michael Fiorentino, Esquire  
Joseph Otis Minott, Esquire  
Clean Air Council  
135 S. 19th Street, Suite 300  
Philadelphia, PA 19103

Kevin J. Moody  
Wolf, Block, Schorr and Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

Stephen J. Baron, President  
J. Kennedy & Associates Inc.  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075-3770

Eugene M. Brady  
Commission on Economic Opportunity  
165 Amber Lane  
P.O. Box 1127  
Wilkes-Barre, PA 18703

Roger E. Clark  
Sustainable Development Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591

Peter Adels, General Counsel  
Charley McPhedran, Sr. Attorney  
PennFuture  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102

Mr. John Hanger  
Penn Future  
610 North Third Street  
Harrisburg, PA 17101

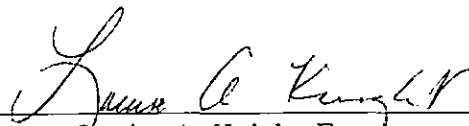
Roger D. Colton  
Fisher, Sheehan and Colton  
34 Warwick Road, Suite 310  
Belmont, Ma 02478

Michael G. Wolfe, Esquire  
FirstEnergy Corp.  
2800 Pottsville Pike  
PO Box 16001  
Reading, PA 19612-6001

Daniel Clearfield  
Wolf, Block, Schorr and Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

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

Dated: November 22, 2004

  
\_\_\_\_\_  
Louise A. Knight, Esquire

**Kirkpatrick & Lockhart LLP**

Payne Shoemaker Building  
240 North Third Street  
Harrisburg, PA 17101-1507  
717.231.4500  
www.kl.com

November 22, 2004

ORIGINAL

JAMES P. MELIA  
717.231.5842  
FAX: 717.231.4501  
JMELIA@KL.COM

**Via Hand Delivery**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2nd Floor  
400 North Street  
Harrisburg, PA 17120

DOCUMENT

Re: Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation  
Docket No. R-00049255

Dear Secretary McNulty:

Enclosed for filing please find an original and nine copies of the Reply Exceptions of the Commercial Customer Consortium in this matter.

Copies of this document are being served on all parties of record.

Very truly yours,

  
James P. Melia  
Counsel for Commercial Customer Consortium

JPM/cem  
Enclosures

cc: Hon. Allison K. Turner, ALJ (w/Enclosures)  
Service List (w/Enclosures)

RECEIVED  
2004 NOV 22 PM 12:56  
SECRETARY'S BUREAU



BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION  
ADMINISTRATIVE LAW JUDGE ALLISON K. TURNER PRESIDING

ORIGINAL

Pennsylvania Public Utility Commission

v.

PPL Electric Utilities Corporation

Docket No. R-00049255

---

REPLY EXCEPTIONS OF  
COMMERCIAL CUSTOMER CONSORTIUM

---

DOCUMENT

SECRETARY'S BUREAU

2004 NOV 22 PM 12:58

RECEIVED

Kirkpatrick & Lockhart LLP  
240 North Third Street  
Harrisburg, PA 17101-1507  
(717) 231-4500  
(717) 231-4501 (Fax)  
jmelia@kl.com

James P. Melia

DOCKETED

NOV 23 2004

Counsel for Commercial Customer  
Consortium

Dated: November 22, 2004

TABLE OF CONTENTS

	Page No.
SUMMARY OF REPLY EXCEPTIONS.....	1
ARGUMENT	
I. REPLY EXCEPTION NO. 1 – CCC SUPPORTS PPLICA'S POSITION FOR RECOVERY OF THE TSC IN RATES.....	2
II. REPLY EXCEPTION NO. 2 – CCC SUPPORTS OSBA'S POSITION FOR RECOVERY OF THE TSC IN RATES.....	3
CONCLUSION.....	4

## **SUMMARY OF REPLY EXCEPTIONS**

CCC recommended, in its Exceptions, that any TSC charge reflect cost causation and the reality that these costs are generally demand-related and not energy-related. CCC recommended that recovery of any TSC be done utilizing demand allocators sponsored by Mr. Selecky. Both the PPL Industrial Customer Alliance ("PPLICA") and the Office of Small Business Advocate ("OSBA") recommended recovery of the TSC on a demand-related basis as well. PPLICA and OSBA put forth convincing arguments for recovery of the TSC on a demand-only basis. While CCC continues to recommend adoption of its position, CCC files these brief Reply Exceptions for purposes of supporting the methodologies advanced by both PPLICA and OSBA on this issue as acceptable alternatives.

## REPLY EXCEPTIONS

### **I. REPLY EXCEPTION NO. 1 – CCC SUPPORTS PPLICA’S POSITION FOR RECOVERY OF THE TSC IN RATES.**

CCC recommends recovery of the TSC on a demand basis not on an energy-related basis as recommended by PPL. PPLICA advances several arguments that this Commission should carefully consider if it decides to adopt PPL’s proposed method for recovery of the TSC. The reason why great care should be exercised is once the TSC is adopted and a methodology is in place, it will be difficult to implement a change in that methodology after the “mold” has been cast. As such, the Commission should carefully consider the points raised by PPLICA for recovery of the TSC on a demand-related basis. CCC supports the following arguments raised by PPLICA as follows:

- (i) *PPL’s proposed recovery of the TSC is neither just nor reasonable since it falls disproportionately on large customers and is inconsistent with costs incurred by PPL from PJM for transmission service to larger customers. As such, PPL’s proposed recovery of the TSC, as pointed out by PPLICA, results in disparate and discriminatory treatment to large customers.*
- (ii) *PPL’s proposed recovery of TSC charges ignore cost-causation principles and would result in exacerbation of interclass and intraclass subsidization of the residential class by the larger industrial and commercial classes. PPLICA’s alternative TSC proposal reflects a more fair transmission cost allocation methodology.*
- (iii) *PPLICA’s demand-related allocation of the TSC will promote demand-side response, reliability and encourage efficiency among large users.*

*(PPLICA Main Brief at pp. 12-24).*

CCC’s Direct Testimony argued forcefully for adoption of a demand-based allocation methodology for the TSC. PPLICA’s proposal provides additional reasons for modification of PPL’s proposed TSC to a demand-related allocation methodology.

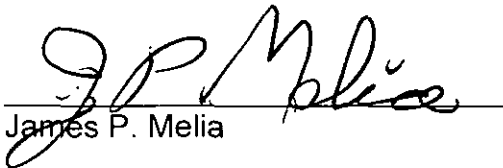
**II. REPLY EXCEPTION NO. 2 – CCC SUPPORTS OSBA'S POSITION FOR RECOVERY OF THE TSC IN RATES.**

OSBA proposed an alternative methodology for recovery of the TSC charge which, although somewhat different from PPLICA's proposal, is still an improvement over PPL's *energy-only recommendation for TSC recovery*. (OSBA Main Brief at pp. 9-12). CCC acknowledges that OSBA's proposed methodology for recovery of the TSC is acceptable and certainly better than the methodology advocated by PPL and supported by the OCA. CCC would recommend adoption of OSBA's proposal in the alternative if PPLICA's proposal was not adopted. CCC does view both recovery methodologies advocated by PPLICA and OSBA as being more reasonable than the ALJ's (and PPL's) recommendation for recovery of the TSC.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the Commercial Customer Consortium respectfully requests that its Reply Exceptions in this matter be considered and adopted.

Respectfully submitted,

  
James P. Melia

Kirkpatrick & Lockhart LLP  
240 North Third Street  
Harrisburg, PA 17101-1507  
(717) 231-4500  
(717) 231-4501 (Fax)  
jmelia@kl.com

Counsel for Commercial Customer Consortium

Dated: November 22, 2004

RECEIVED  
2004 NOV 22 PM 12:56  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility  
Commission

v.

PPL Electric Utilities, Inc.

Docket No. R-00049255

---

CERTIFICATE OF SERVICE

---

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

Via First Class Mail

Tanya McCloskey, Esquire  
James A. Mullins, Esquire  
Office of Consumer Advocate  
Forum Place, 5<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101-1923

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

Steven C. Gray, Esquire  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870

Michael W. Gang, Esquire  
John H. Isom, Esquire  
Morgan Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904

Kent D. Murphy, Esquire  
Exelon Business Services Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Paul E. Russell, Esquire  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179

SECRETARY'S BUREAU

2004 NOV 22 PM 12:56

RECEIVED

Joseph L. Vullo, Esquire  
1460 Wyoming Avenue  
Forty Fort, PA 18704-4237

David A. McCormick, Esquire  
U.S. Army Legal Services Agency  
901 North Stuart Street, Room 713  
Arlington, VA 22203-1837

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

Louise A. Knight, Esquire  
Saul Ewing LLP  
2 North Second Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101-1604

Roger E. Clark, Esquire  
Sustainable Development Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19105-1591

Richard S. Herskovitz, Esquire  
Duquesne Light Company  
411 Seventh Avenue, 8<sup>th</sup> Floor  
Pittsburgh, PA 15219

Hon. Phyllis Mundy, Chair  
Northeast Delegation  
House Box 202020  
Harrisburg, PA 17120-2020

John L. Munsch, Esquire  
Allegheny Energy  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Michael Fiorentino, Esquire  
Clean Air Council  
135 S. 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103

David MacGregor, Esquire  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Peter Adels, General Counsel  
Citizens for Pennsylvania's Future  
117 S. 17<sup>th</sup> Street, Suite 1801  
Philadelphia, PA 19103

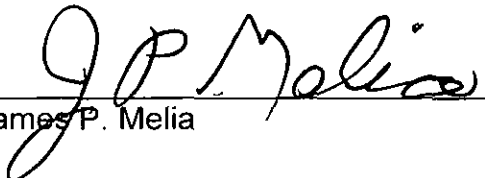
Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Daniel Clearfield, Esquire  
Kevin J. Moody, Esquire  
Wolf Block Schorr & Solis-Cohen  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

Patricia Armstrong, Esquire  
Thomas T. Niesen, Esquire  
Thomas Thomas Armstrong & Niesen  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Mark C. Morrow, Esquire  
460 North Gulph Road  
King of Prussia, PA 19406

Kirkpatrick & Lockhart LLP  
240 North Third Street  
Harrisburg, PA 17101-1507  
(717) 231-4500  
(717) 231-4501 (Fax)  
jmelia@kl.com

  
James P. Melia

Counsel for the Commercial Customer  
Consortium

Dated: November 22, 2004

RECEIVED  
2004 NOV 22 PM 12:56  
SECRETARY'S BUREAU



ORIGINAL

November 22, 2004

RECEIVED  
2004 NOV 22 PM 1:19  
SECRETARY'S BUREAU

**By Hand Delivery**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Pennsylvania PUC v. PPL Electric Utilities Corporation  
Docket No. R-00049255

Dear Mr. McNulty:

Enclosed please find an original and nine copies of the Reply Exceptions of the PennFuture Parties in the above-captioned matter. Copies have been served upon all parties of record as indicated on the attached Certificate of Service.

If you have any questions, please contact me at (215) 545-9693.

Sincerely,

Charles McPhedran  
Senior Attorney

cc: Hon. Allison Turner  
Hon. Susan D. Colwell  
Hon. Ember S. Jandebaur

DOCUMENT  
FOLD 7

74

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission**

**v.**

**PPL Electric Utilities Corporation**

:  
:  
:  
:  
:

**Docket No. R-00049255**

**REPLY EXCEPTIONS OF THE PENNFUTURE PARTIES**

SECRETARY'S BUREAU

2004 NOV 22 PM 1:19

RECEIVED

**DOCUMENT  
FOLDER**

**DOCKETED**  
DEC 15 2004

**Charles McPhedran, Senior Attorney  
PennFuture  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
(215) 545-9693  
[mcphedran@pennfuture.org](mailto:mcphedran@pennfuture.org)**

**Date: November 22, 2004**

TABLE OF CONTENTS

I. Introduction..... 1

II. Reply Exceptions..... 1

**Reply Exception No. 1: The PennFuture Parties urge continued and increased funding for SEF. RD at 87-88; PPLICA Exceptions at 7-12..... 1**

**Reply Exception No. 2: While the PennFuture Parties support changes in the governance structure of SEF, PEDA should not control future funding of SEF. RD at 81-82, 88; OSBA Exceptions at 6-9..... 3**

IV. Conclusion..... 5

## **I. Introduction**

This proceeding involves a request for approval of an overall annual net increase in distribution revenues by PPL Electric Utilities Corporation (PPL or PPLEU). The Recommended Decision (RD), issued on October 22, 2004, would continue funding for the Sustainable Energy Fund (SEF), with a suggestion of declining amounts of funding. RD at 87-88. Several parties filed exceptions to the Recommended Decision. Citizens for Pennsylvania's Future (PennFuture) Char Magaro, and Edward M. McGovern (collectively, the PennFuture Parties or PF) filed exceptions regarding SEF issues and hereby file Reply Exceptions on these issues.

## **II. Reply Exceptions**

### **Reply Exception No. 1: The PennFuture Parties urge continued and increased funding for SEF. RD at 87-88; PPLICA Exceptions at 7-12.**

As summarized in our Exceptions, the Recommended Decision reviewed the history and purposes of SEF, its project evaluation methods, and examples of SEF projects. RD at 77-85. Finding that "the Commission has long recognized that reductions in demand and energy efficiency benefits customers, and has encouraged EDCs [electric distribution companies] to establish programs that pursue these goals," the Administrative Law Judge "posits that there should be a place and a role for organizations like SEF in the new market place, to market efficiency and demand reductions to all EDCs, not only PPLEU" (RD at 87) and concluded:

Therefore, the ALJ recommends that the Commission approve funding of SEF as part of PPLEU's rates in the proceeding. However, consideration could be given to setting declining amounts, so that at the end of 5 years, or by December 31, 2009, funding will have ended.

RD at 87-88.

Exceptions filed by the PPL Industrial Customer Alliance (PPLICA) object to this conclusion and the funding of SEF from distribution rates. PPLICA objects that SEF funding is a tax that is "not related to PPL's provision of distribution service to customers." PPLICA Exceptions at 8. PPLICA also claims that SEF is a social program that produces no demonstrable benefits, and that any benefits of SEF relate to generation service, not distribution. PPLICA Exceptions at 9-12; see also Office of Trial Staff Exceptions at 20.<sup>1</sup>

The PennFuture Parties disagree with these exceptions, which are at odds with evidence submitted into the record of this proceeding showing that SEF provides substantial benefits to distribution service. Energy efficiency, demand management and conservation relieve load and congestion on the distribution system, "extending its life and ending or delaying the need for expensive distribution system upgrades." SEF Statement No. 1 at 13-14; SEF MB at 20. Distributed generation projects supported by SEF similarly reduce stress on the distribution system, relieving the need to expand or improve distribution and producing "a reliability and distribution cost of service benefit to all customers." PF Parties Statement No. 1-R at 2-3, PF MB at 3; see also SEF Statement No. 1 at 16-17 and PPL Statement No. 7-R at 36. Examples of SEF projects in the record of this proceeding include green buildings, installations of photovoltaic systems, the use of energy-saving technology, the construction of energy-efficient buildings, and the development of wind farms. RD at 85, 87; SEF Statement No. 1, Attachment A at 10-12; SEF MB at 7-13; see also PPL Statement No. 7, Exhibit TRD-3.

---

<sup>1</sup> On the issue of declining amounts of SEF funding, the Office of Trial Staff (OTS) states: "...the ALJ's declining amount recommendation must be dismissed as it represents a new position in this proceeding that no party has had an opportunity to explore and it is inconsistent with her findings." OTS Exceptions at 21. The PennFuture Parties agree with OTS on this issue. PF Exceptions at 6.

Further, renewable energy and energy efficiency provide utility and ratepayer benefits as part of a balanced energy supply that provides a hedge against fluctuations in natural gas prices or the market price of electricity. PF Statement No. 1 at 6; PF MB at 3. Therefore, evidence offered in this proceeding supports a finding that that SEF's programs and projects offer benefits to distribution service, contrary to the claims made by PPLICIA, and supports the ALJ's recommendation of continued funding for SEF.

**Reply Exception No. 2: While the PennFuture Parties support changes in the governance structure of SEF, PEDA should not control future funding of SEF. RD at 81-82, 88; OSBA Exceptions at 6-9.**

The Recommended Decision noted the issues of SEF governance raised by the Office of Small Business Advocate (OSBA, RD at 81-82) and a recommendation by PPLEU that, if the Commission had concerns regarding governance or management issues at SEF, the Commission initiate a separate proceeding to address these issues (RD at 88).

In its Exceptions, OSBA notes that the Administrative Law Judge (ALJ) summarizes its arguments about governance and other management problems at SEF, then claims that the ALJ has made an "implicit finding" about these issues. OSBA Exceptions at 6-8. OSBA further claims that the ALJ's characterization of PEDA as inactive "ignores the importance the Governor has assigned to PEDA and to renewable energy." OSBA Exceptions at 8. OSBA suggests that the Commission require that SEF revenue be placed under the control of PEDA or, in the alternative, conduct a separate proceeding on SEF management issues. OSBA Exceptions at 9.

On the issue of governance, the PennFuture Parties submit that the SEF Board of Directors should include the most qualified candidates without strict requirements of

stakeholder representation. This approach is consistent with draft best practices regarding nomination, election, and approval of directors of sustainable energy funds under consideration by the Pennsylvania Sustainable Energy Board and the Commission. PF Statement No. 1-R at 7; PF MB at 9-10. In general, the PennFuture Parties do not oppose better coordination and communication between the various sustainable energy funds and PEDDA, as long as SEF and the other funds maintain independence and flexibility in grant-making. PF Parties Statement No. 1-R at 6. See also PPL Statement No. 7-R at 41 (encouraging collaboration, coordination, and sharing of best practices).

However, OSBA's claims regarding governance are not supported by the evidence submitted in this proceeding. First, as stated elsewhere in OSBA's own Exceptions, the Recommended Decision does not resolve governance issues. OSBA Exceptions at 6; see also PF Exceptions at 7. The PennFuture Parties therefore disagree that the Recommended Decision contains any "implicit finding" on these issues, as claimed by OSBA.

Second, evidence in this proceeding called into question PEDDA's ability to manage SEF funds. OSBA's own witness conceded that PEDDA is only now getting "up and running", OSBA Statement No. 2 at 6, and another party offered testimony that we do not yet know how PEDDA will operate. PF Parties Statement No. 1-R at 6. PPL noted in its testimony that PEDDA "has not yet developed its procedures for selecting and funding projects" and "it seems premature to consider an expanded role for PEDDA" as to SEF. PPL Statement No. 7-R at 40. As to its possible future operations, PEDDA might only issue bonds to projects with a proven ability to repay debt, a different business

model than SEF's grant-making and investment strategy. PF Parties Statement No. 1-R at 6-7.

Third, PEDDA is a state agency under the management of the Pennsylvania Department of Environmental Protection, a large regulatory agency with different skill sets, core capabilities, and primary focus than SEF. SEF Statement No. 1 at 33. PPL shares these concerns, citing "another layer of bureaucracy and control." PPL Statement No. 7-R at 41. In fact, testimony offered in this proceeding suggests that the OSBA proposal for PEDDA management appears to be unnecessary, as the current management of SEF is already implementing many of OSBA's best practices for management and grant-making. SEF Statement No. 1 at 31-32.

Finally, the PennFuture Parties do not agree that any characterization of PEDDA by the ALJ ignores the Governor's emphasis on renewable energy. In fact, the Recommended Decision continues funding for SEF, albeit at levels below those sought by the PennFuture Parties. RD at 87-88; PF MB at 4; PF Exceptions at 3-6. Continuation of SEF funding is consistent with and does not ignore the Governor's goals for renewable energy.

### **III. Conclusion**

For the reasons set forth herein, in our Main Brief and Reply Brief, and in our Exceptions, and based on evidence admitted at the evidentiary hearing in this matter, the PennFuture Parties urge the Commission:

- to double funding for SEF to provide increased benefits to distribution and ratepayers;
- not to consider declining levels of funding for SEF;

- to include the most qualified candidates on SEF's Board of Directors without regard to stakeholder representation;
- not to place SEF funding under the management of PEDDA.

Respectfully submitted,

FOR THE PENNFUTURE PARTIES



Charles McPhedran, Senior Attorney  
Pennsylvania ID No. 60123  
PennFuture  
1518 Walnut Street, Suite 1100  
Philadelphia, PA 19102  
(215) 545-9693  
[mcphebran@pennfuture.org](mailto:mcphebran@pennfuture.org)

Dated: November 22, 2004

CERTIFICATE OF SERVICE

PA PUC v. PPL Electric Utilities Co.

Docket No. R-00049255

I hereby certify that I have this day served a true copy of the Reply Exceptions of the PennFuture Parties upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Date: November 22, 2004

Charles McPhedran met  
Charles McPhedran, Esq.  
Counsel for the PennFuture Parties

Paul Russell, Esquire  
PPL Electric Utilities Co.  
Two North Ninth Street  
Allentown, PA 18101-1179

Irwin A. Popowsky, Esquire  
Tanya J. McCloskey, Esquire  
James A. Mullins, Esquire  
Office of Consumer Advocate  
Forum Place, 5th Floor  
555 Walnut Street  
Harrisburg, PA 17101-1923  
*(Office of Consumer Advocate)*

William R. Lloyd, Jr., Esquire  
Steven C. Gray, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
*(Office of Small Business Advocate)*

Kenneth L. Mickens, Esquire  
Johnnie E. Simms, Esquire  
Richard A. Kanaskie, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
*(Office of Trial Staff)*

David M. Kleppinger, Esquire  
Pamela C. Polacek, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
*(PPL Industrial Intervenors)*

Scott J. Rubin, Esquire  
Three Lost Creek Drive  
Selinsgrove, PA 17870

Michael W. Gang, Esquire  
John H. Isom, Esquire  
Morgan Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904

Kent D. Murphy, Esquire  
Exelon Business Services Company  
2301 Market Street, S23-1  
PO Box 8699  
Philadelphia, PA 19101-8699

RECEIVED  
2004 NOV 22 PM 1:19  
SECRETARY'S BUREAU

Joseph L. Vullo, Esquire  
1460 Wyoming Avenue  
Forty Four, PA 18704-4237

David A. McCormick, Esquire  
US Army Legal Services Agency  
901 North Stuart Street, Room 713  
Arlington, VA 22203-1837

Louise A. Knight, Esquire  
Saul Ewing LLP  
2 North Second Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101-1604

Roger E. Clark, Esquire  
Sustainable Development Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19105-1591

Richard S. Herskovitz, Esquire  
Duquesne Light Company  
411 Seventh Avenue  
8<sup>th</sup> Floor  
Pittsburgh, PA 15219

Honorable Phyllis Mundy, Chair  
Northeast Delegation  
House Box 202020  
Harrisburg, PA 17120-2020

John L. Munsch, Esquire  
Allegheny Energy  
800 Cabin Hill Drive  
Greensburg, PA 15601-1689

Michael Fiorentino, Esquire  
Clean Air Council  
135 S. 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103

David MacGregor, Esquire  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Daniel Clearfield, Esquire  
Kevin J. Moody, Esquire  
Wolf, Black, Schorr & Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101

Patricia Armstrong, Esquire  
Thomas T. Niesen, Esquire  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street, Suite 500  
PO Box 9500  
Harrisburg, PA 17108-9500

Mark C. Morrow, Esquire  
460 North Gulph Road  
King of Prussia, PA 19406

Michael G. Wolfe, Esquire  
Metropolitan Edison Company, Pennsylvania  
Power Company & Pennsylvania Electric  
Company  
2800 Pottsville Pike  
PO Box 16001  
Reading, PA 19612-6001

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

*Thomas, Thomas, Armstrong & Niesen*  
*Attorneys and Counsellors at Law*

SUITE 500  
212 LOCUST STREET  
P. O. BOX 9500  
HARRISBURG, PA 17108-9500

ORIGINAL

THOMAS T. NIESEN  
Direct Dial: (717) 255-7641  
E-Mail: [tniesen@ttanlaw.com](mailto:tniesen@ttanlaw.com)

[www.ttanlaw.com](http://www.ttanlaw.com)  
FIRM (717) 255-7600  
FAX (717) 236-8278

CHARLES E. THOMAS  
(1913 - 1998)

November 22, 2004

**BY HAND DELIVERY**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P. O. Box 3265  
Harrisburg, PA 17105-3265

DOCUMENT

In re: Docket No. R-00049255, et al.  
Pa. P.U.C., et al. v. PPL Electric Utilities Corporation

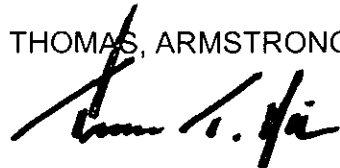
Dear Secretary McNulty:

Enclosed for filing on behalf of The Sustainable Energy Fund of Central Eastern Pennsylvania are an original and nine (9) copies of its Replies to Exceptions of Other Participants concerning the Recommended Decision of Administrative Law Judge Turner in the above referenced matter. Copies of the Replies to Exceptions are being served upon the persons and in the manner set forth on the certificate of service attached to them.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Thomas T. Niesen

Encl.  
cc: Certificate of Service (w/encl.)  
Office of Special Assistants (w/encl. and disc)  
Michael McFadden (w/encl.)

041122McNulty.wpd

SECRETARY'S BUREAU  
2004 NOV 22 PM 12:26  
RECEIVED

70

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility  
Commission

: Docket No. R-00049255

v.

PPL Electric Utilities Corporation

SECRETARY'S BUREAU

2004 NOV 22 PM 12:26

RECEIVED

DOCUMENT

REPLIES OF THE SUSTAINABLE ENERGY FUND OF  
CENTRAL EASTERN PENNSYLVANIA  
TO THE EXCEPTIONS OF OTHER PARTICIPANTS

AND NOW, comes The Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), by its attorneys, and files the following Replies to the Exceptions of Other Participants concerning the Recommended Decision of Administrative Law Judge Allison K. Turner.

DOCKETED

NOV 23 2004

I. BACKGROUND

This proceeding concerns PPL Electric Utilities Corporation's ("PPLEU") Supplement No. 38 to Tariff Electric-Pa. P.U.C. No. 201 ("Supplement No. 38"). Background information concerning Supplement No. 38, PPLEU's proposal for continued SEF funding, SEF and the Recommended Decision is presented in SEF's Exceptions filed November 12, 2004. SEF respectfully incorporates that background information herein by reference.

As explained in its Exceptions, SEF takes no exception to the recommended adoption of PPLEU's SEF funding proposal. SEF did except, however, to the language in the Recommended Decision that states that "consideration *could* be given to setting declining amounts, so that at the end of 5 years, or by December 31, 2009, funding will have ended." Rec. Dec. at 87-88 (emphasis added).

Exceptions concerning SEF and/or SEF funding were also filed by the Office of Trial Staff (“OTS”), the Office of Small Business Advocate (“OSBA”), the PPL Industrial Customer Alliance (“PPLICA”) and Citizens for Pennsylvania’s Future (“PennFuture”). SEF submits the following replies in opposition to the exceptions of these other participants.<sup>1</sup>

## **II. REPLIES TO EXCEPTIONS**

### **1. REPLY TO OTS EXCEPTION NO. D3**

Although it supports the overall objectives of SEF, OTS argues that funding of SEF as proposed in Supplement No. 38 is improper. The issue of SEF funding is significant as noted by OTS. This is the first post-restructuring electric distribution rate proceeding and the first such proceeding concerning funding for renewal energy programs during the Rendell Administration. SEF believes and submits to the Commission that the continued funding of SEF as proposed in Supplement No. 38 is consistent with the efforts of the Administration as explained further in the reply to OSBA Exception No. 2, *infra*, and fully supported by the evidence of record.

OTS argues that approval of continued funding for SEF requires a demonstration that ratepayers will receive a demonstrable benefit from the funding. See OTS Exception No. D3 at 19-20. SEF explained in its Main Brief, pages 6 through 9, how it uses a metrics analysis to identify and quantify the “demonstrable benefits” of SEF funded projects. As explained there, SEF evaluates each funding application and quantifies the benefit to PPL ratepayers using the following mission metrics (SEF St. No. 1 at 10):

---

<sup>1</sup> In footnote 1 of its Exceptions, SEF also addressed language at page 88 of the Recommended Decision which appears misplaced, noting that that language is presented as a *restatement of the recommendations or positions of other parties and not as a recommendation of Judge Turner*. In spite of the clear language to the contrary, other parties in their exceptions suggest that the language at page 88 reflects “implicit” findings of Judge Turner. See, *for example*, OSBA Exception No. 2 at 8. SEF also replies herein to these suggestions of implicit findings.

- KWHs renewable or clean energy generated;
- KWHs conventional energy saved;
- jobs created;
- money leveraged;
- environmental benefit, and
- people educated

Using three examples, SEF witness Tuffey explained how these mission metrics are used to evaluate projects to assure demonstrable benefits to the PPLEU ratepayer (SEF St. No. 1 at 10-13):

Below I illustrate with three examples: two program related investments and one grant; how the SEF uses performance metrics to assure benefits to the PPL ratepayer.

Bear Creek Wind Farm

- |                                      |   |
|--------------------------------------|---|
| • Kwhs renewable energy generated/yr | 55,000,000  |
| • Kwhs convention energy saved/yr    | N/A   |
| • Jobs created                       | 397 job years over 20 year life   |
| • Money leveraged                    | \$30,500,000  |
| • Environmental Benefit              | 30,195 tons/year CO <sup>2</sup> avoided<br>7,590 homes equivalent<br>209 tons/year SO <sup>2</sup> avoided |
| • People educated                    | Unknown   |

Bear Creek is a wind farm sited within the PPL territory with 20.5 MW nameplate capacity and .36 capacity factor. The SEF commitment of \$1,500,000 in debt leverages an additional \$3,000,000 from the other Pennsylvania funds, \$2,000,000 in production rebates from the PECO settlement funds managed by the Sustainable Development Fund, and \$24,000,000 from private sources including the developer, institutions that can utilize the tax credit, and an investment bank.

The estimate of job years is over the projected 20 year life of the project. Several sources were considered including, FPL experiences, Lawrence Livermore National Laboratory, and the March 2004 report by Black & Veatch entitled *Economic Impact on Renewable Energy in Pennsylvania* (available at: [www.cfalleghenies.org/images/EnergyStudy1.pdf](http://www.cfalleghenies.org/images/EnergyStudy1.pdf)). The Black & Veatch Report was ultimately relied on to estimate job years due to its currency and Pennsylvania specificity. The years estimated are for manufacture, construction, and operation, the latter two hopefully provided within the PPL territory. The environmental benefit is estimated based on pollution avoided from the Pennsylvania source generation mix of fossil, nuclear and other. Homes equivalent is the estimate of the number of average residences within the PPL territory that would have full consumption provided by the project.

### Londonderry School

• Kwhs renewable energy generated/yr	N/A
• Kwhs conventional energy saved/yr	67,860
• Jobs created	not estimated
• Money leveraged	\$2,100,000
• Environmental Benefit	37 tons/yr. CO2 avoided 9 houses
• People educated	850 students

Londonderry School is a private school in Harrisburg that has built a new Leadership in Energy and Environmental Design ("LEED") Silver school. SEF agreed to take \$500,000 debt subordinated to Waypoint Bank. Waypoint was not familiar with LEED construction standards and the associated energy and environmental benefits. By subordinating to Waypoint, SEF took on the "green" risk and Waypoint made the greater loan. The estimate of students is over the projected 20 year life of a school with a capacity for just over 200 students.

### Clean Energy Expo- Penn State Convention Center

• Kwhs renewable energy generated/yr	N/A
• Kwhs conventional energy saved/yr	N/A
• Job created	Not estimated
• Money leverage	\$120,000
• Environmental Benefit	N/A
• People educated	10,000 to 11,000

SEF provided a \$10,000 grant to the West Penn SEF to sponsor The Clean Energy Expo which was held approximately 6 months ago. SEF made the commitment early to provide support for the first Expo. The West Penn SEF, as host, granted \$25,000. Each of the other Pennsylvania funds also provided \$10,000, and other grants were made by public and private sources. The two-day Expo was very successful. Over 150 exhibits were presented and close to 11,000 people visited the exhibit area and attended workshops.

The testimony of Dr. Tuffey reproduced above was cited by Judge Turner in summary form at page 80 of the Recommended Decision in support of her recommendation at page 77 that the Commission adopt PPLEU's SEF proposal and reject the OTS analysis of the record evidence. OTS insists that a "standard" of "demonstrable benefits" must be applied. The standard was applied and determined to have been met. There is substantial evidence of record demonstrating the demonstrable benefits associated with SEF funded projects from which Judge Turner was able to recommend and the Commission can approve continued SEF funding as

proposed in Supplement No. 38. OTS makes no response to the clear, direct and specific testimony reproduced above, simply arguing, instead, in its Exceptions No. D3, that no "demonstrable benefits" were shown to exist.<sup>2</sup> Its argument is not supported by the evidence of record.

OTS argues further that SEF funding is a tax. See OTS Exception No. D3 at 20-21. Characterization of SEF funding as a "tax" suggests a connection with government which SEF simply does not have. SEF is a private organization. Its staff is made up of people with private sector, business experience. Its Board does not have governmental officials on it. It invests in projects, including Demand Side Management projects, that reduce base load and benefit the transmission and distribution system. SEF St. No. 1 at 7.

OTS then suggests that there is no need for ratepayer funding because SEF is well run and has a strong balance sheet as noted by Judge Turner. See OTS Exception No. D3 at 20-21. A strong balance sheet, however, does not obviate the need for continued funding. As explained at pages 26 and 27 of SEF's Main Brief, SEF, since inception, has always had a goal of maintaining two years of disbursements, approximately \$6.5 Million budget as a reserve. As of June 30, 2003, SEF had available its forecast two year reserve and approximately one half year of funds to satisfy its current year disbursement plan, including expected volatility in requests. These are the appropriate reserves to support SEF's business plan but it will not support the current rate of operations beyond 2 to 3 years. SEF St. No. 1 at 22.

---

<sup>2</sup> At page 20 of its Exception No. D3, OTS seems to suggest that only evidence submitted by PPLEU can be considered in support of SEF funding. This suggestion allows OTS to slide by the substantial evidence of "demonstrable benefits" submitted by SEF without addressing its substance. SEF submits that the Commission may freely rely on evidence of record regardless of the party submitting it. Substantial evidence of record supports the continued funding of SEF.

Finally, OTS expresses concern that continued funding, if approved here, will result in ratepayers of different utilities being treated differently. See OTS Exception NO. D3 at 22-23. This concern has not been raised heretofore, but it is easily answered. This proceeding concerns SEF and a specific proposal for continued funding of SEF. Neither Judge Turner's recommendation nor this Commission's final Order will have direct application to other sustainable energy funds operating in the service territories of other electric distribution companies when or if those companies come before the Commission with other funding proposals. Whatever may be presented on the record in other proceedings remains to be seen. Here, the evidence of record demonstrates that continued funding for SEF as proposed at Third Revised Page No. 19K of Supplement No. 38 is just and reasonable and consistent with the public interest.

OTS Exception No. D3 should be denied.

**2. REPLY TO OSBA EXCEPTION NO. 2**

In its Exception No. 2, OSBA argues that Judge Turner should have directed new SEF funding to the Pennsylvania Energy Development Authority. ("PEDA"). OSBA's attempt to identify PEDA as the recipient for new funding is misguided.

PEDA is an inactive state agency that the Rendell Administration is trying to revive. Rec. Dec. at 81. The Administration's effort has, however, never included a suggestion that the revival of PEDA is to result in the replacement of SEF. On the contrary, the effort of the Administration is intended to complement SEF (and its companion funds) and the significant accomplishments SEF has made to date to establish a renewable energy footprint in Pennsylvania.

PEDA is a state agency under the management of DEP. In the past, PEDA principally funded projects that were large scale waste coal to power projects, characterized by secure revenue streams, associated with PURPA pricing requirements.

SEF, on the other hand, has funded local projects and will continue to consider such projects with continued funding. SEF St. No. 1 at 9 and 17. A list demonstrating SEF's overwhelming commitment to projects local to the PPLEU service territory is presented in OSBA Cross Examination Exhibit No. 4.

OSBA's criticisms concerning project selection, selection process, the spending of money already received, and so forth as listed at pages 6 and 7 of its Exception No. 2 were not supported on the record and appropriately not given any weight in the Recommended Decision.<sup>3</sup> OSBA, for example, wrongly criticized SEF for a lack of project selection criteria. OSBA witness Schwarz acknowledged that he "was not as clear" in his testimony as he should have been concerning the existence of selection criteria; that selection criteria, in fact, existed; and that his testimony "***wasn't correct.***"<sup>4</sup>

In addition to being contrary to the ***incorrect*** testimony of its witness, the argument of the OSBA that SEF has no selection criteria is contrary to the substantial

---

<sup>3</sup> At page 8 of its Exception No. 2, OSBA further states that it agrees with Judge Turner's "implicit finding" that there are program management, project evaluation, project selection, and governance problems with the SEF. The "implicit finding" is apparently in reference to the language at page 88 of the Recommended Decision discussed in footnote 1 *supra* and in footnote 1 of SEF's Exceptions. The language at page 88 of the Recommended Decision is not a finding either implicit or explicit. It appears to be a misplaced reproduction of recommendations and positions of other parties. These "implicit findings" as the OSBA characterizes them are not supported by the evidence of record as explained hereinafter in the body of the text of these Replies to Exceptions.

<sup>4</sup> Mr. Schwarz' response to cross examination was as follows (N.T. 883-884):

Q. ... [L]et me ask you to turn to page 10 of Appendix A to Dr. Tuffey's testimony ... In the first paragraph under section 2.1, it reads, I'll read it, "We received close to 200 inquiries and/or financing requests during the subject period. Each financing request was reviewed by staff against the Board-approved investment criteria. The investment criteria guidelines are presented in our Annual Plan and on the web site [www.SustainableEnergyFund.org](http://www.SustainableEnergyFund.org)." Now, are those the investment criteria that you're looking for and you said in your testimony are not available?

\* \* \*

THE WITNESS: Yes, but I guess I would just want to clarify that I was not as clear as I should have been in the written testimony, but referring primarily to criteria concerning the relationship, as I say in that sentence, to how the projects being funded support the long-term and short-term goals of the SEF. So to the degree that those criteria existed otherwise, ***I wasn't correct.***

evidence provided by SEF concerning selection criteria and the metrics analysis through which SEF quantifies the benefits of projects to PPLEU ratepayers. See Reply to OTS Exception No. D3, *supra*.

Although it presented no witness concerning SEF's fiscal operations, OSBA presents several comments in its Exception No. 2, pages 6 and 7, as it did in its Main Brief, pages 30 and 31, concerning SEF's fiscal results. We reply to those comments below noting preliminarily that, contrary to the position of the OSBA, those parties that did testify about SEF's fiscal operations testified that SEF has a strong balance sheet. PPL St. No. 7 at 24.

First, OSBA claims that SEF is not using the money it receives. SEF uses its metrics analysis to fund projects that benefit the PPLEU ratepayer. The reserves it maintains are appropriate for an organization with limited funding. See SEF Main Brief at 26-27. Funding commitments of approximately \$8,450,000 as of June 2004, with grants totaling an additional \$748,202, (See OSBA Cross Examination Exhibit No. 4) are representative of a careful and expert administration of funding consistent with SEF's Mission Statement and not a failure to use available funding.

Second, OSBA states that SEF has lost money in the stock market. Its argument is based on a line entry in the SEF Audit for 2002/2003. When asked about the entry, Dr. Tuffey explained that he was not an accountant and could not confirm for the OSBA if the number was solely investment gain/loss (N.T. 829). The investment vehicles include U.S. Government Obligations, Corporate Bonds and Equity

Securities. SEF St. No. 1 at Attachment A, Audit Report at 9. These are not "dubious investments."<sup>5</sup>

Third, OSBA states that SEF has high administrative costs. It does not. The total expenses cited by OSBA in its Main Brief in support of this argument of \$1,700,000 (since inception) includes *all* SEF expenses, not just "administrative overhead." N.T. 836. "Administrative overhead" is, in effect, Management & General Expenses as shown at page 4 of the SEF Audit Report for the 2002/2003 Fiscal Year (SEF St. No. 1, Attachment A, Audit Report at 4). Management & General Expenses for the 2002/2003 Fiscal Year were just \$191,114. The conventional measure of overhead is the ratio of administrative expenses to total assets. With Management & General Expenses of \$191,114 and total assets of \$12,306,851 at 2002/2003 Fiscal Year end, SEF's overhead is extremely low at less than 1%.

OSBA claims, further, at page 7 of its Exception No. 2, about the selection of directors. The current SEF Board members and the interests they represent, if any, were addressed on the record at transcript pages 823 through 825. The Board represents many stakeholders. SEF, in addition, has a written conflicts of interest policy that was provided to OSBA in response to an on-the-record data request and admitted into the record as OSBA Cross Examination Exhibit No. 3.

Finally, if the Commission does not redirect further funding to PEDDA, OSBA proposes as an alternative that the Commission make it clear that parties may challenge

---

<sup>5</sup> As one would expect, the value of investments fluctuates with the market. Had investment results been raised in the testimony of the OSBA witness, those results could have been addressed fully on the record. An argument based on a single line entry should be given no weight.

SEF in the next PPLEU rate case even if that case occurs before December 31, 2009.<sup>6</sup> The alternative is based on the assumption that OSBA supported its criticisms of SEF. It did not as set forth above. Clarification of the language for SEF funding proposed in Supplement No. 38 is not necessary.

OSBA Exception No. 2 should be denied.

**3. REPLY TO PPLICA EXCEPTION NO. 2**

PPLICA characterizes SEF's Briefs in support of continued funding as merely providing examples of SEF funded projects and unsubstantiated policy arguments. PPLICA Exception No. 2 at 7-8. As a characterization of SEF's Briefs, nothing could be more inaccurate. SEF's Briefs discuss at length and in detail the clear, direct and specific testimony of its witness Tuffey who explained the metrics analysis used to evaluate and quantify the demonstrable benefits of SEF funded projects and how SEF projects benefit the distribution system. Continued funding for SEF as proposed at Third Revised Page No. 19K of Supplement No. 38 is supported by the evidence of record, just and reasonable and consistent with the public interest.

PPLICA argues, first, that SEF funding is unrelated to PPLEU's provision of distribution service and, thus, is an impermissible tax. PPLICA Exception No. 2 at 8. As addressed at length *infra*, the evidence of record demonstrates that SEF projects benefit the distribution system. SEF funding, thus, is not a tax. In addition, characterization of SEF funding as a "tax" suggests a connection with government which SEF simply does not have. See Reply to OTS Exception No. D3, *supra*.

---

<sup>6</sup> OSBA also states as an alternative that it agrees with PPLEU's suggestion of a separate proceeding on operation, management and fiscal responsibility if further funds are not directed to PEDDA. PPLEU never suggested that such a proceeding would be appropriate as intimated by OSBA. At page 82 of its Reply Brief, PPLEU stated that the Commission can initiate a separate proceeding *if it has concerns regarding issues of program management, project selection or governance*. A record was created here demonstrating that the Commission should have no concerns about operation, management or fiscal responsibility. A separately initiated new proceeding would be redundant and unnecessary.

PPLICA argues further that Judge Turner erred by not applying a “demonstrable benefits” standard. As discussed at length *supra* in reply to OTS Exception D3, a “standard” of “demonstrable benefits” was applied and determined to have been met. There is substantial evidence of record demonstrating the demonstrable benefits associated with SEF funded projects from which Judge Turner was able to recommend and the Commission can approve continued SEF funding as proposed in Supplement No. 38.

Like OTS, PPLICA makes no response to the clear, direct and specific testimony submitted by SEF arguing instead that Judge Turner “appears to find that the SEF has benefitted PPL’s distribution customers without referencing the record evidence supporting this finding. *Id.* at 77.” Record evidence is, however, referenced throughout Judge Turner’s discussion in support of continued SEF funding.<sup>7</sup> Judge Turner referred directly to the testimony of SEF as follows (Rec. Dec. at 80):

SEF has testified to its sound business and management practices, and to its careful metrics system used to evaluate and select projects according to a list of key factors.

SEF evaluates each proposal and quantifies the benefit to PPL ratepayers using the following mission metrics (SEF St. No. 1 at 10):

KWHs renewable or clean energy generated; KWHs conventional energy saved; jobs created; money leveraged; environmental benefit, and people educated.

SEF explains how these mission metrics are used to evaluate projects, and to assure demonstrable benefits by providing three examples. See, SEF MB at 7; SEF St 1 at 10-13.

---

<sup>7</sup> At page 77 of the Recommended Decision at the outset of her discussion of SEF funding, Judge Turner states that OTS asserts that there is no substantial evidence that SEF will provide a benefit to distribution system ratepayers; that she disagrees with OTS; and that “as shown by the discussion below,” she recommends that the Commission adopt PPLEU’s SEF proposal. The “discussion below” includes a direct reference to the testimony of Dr. Tuffey and the metrics analysis of demonstrable benefits. See Rec. Dec. at 80.

The case of *U.S. Steel Corp. v. Pa. P.U.C.*, 37 Pa. Commonwealth Ct. 173, 185, 390 A. 2d 865 (1978), cited at page 9 of PPLICA Exception No. 2, does not support PPLICA's position. In *U.S. Steel*, the Court affirmed a Commission Order exempting the first 500 KWH of residential usage from a PECO rate increase. The Court concluded that the Commission's action was "a proper exercise of the Commission's flexible limit of judgment in fixing rates." This same flexibility in ratemaking supports continued SEF funding as addressed in SEF's Main Brief, pages 14 through 16. Indeed, paraphrasing the opinion of the Court, there is no reason, given the Rendell Administration's emphasis on renewable energy, why the Commission might not approve continued SEF funding in this rate proceeding. *Also see* SEF Reply Brief at 9-10.

PPLICA's final argument is that projects funded by SEF dollars benefit generation service and not distribution service. PPLICA Exception No. 2 at 11-12. This argument was addressed at length on the record. SEF funding belongs in the distribution tariff for several reasons. First, SEF's energy conservation and demand management projects have undeniable distribution benefits. The reduction of customer load, or the shifting of that load to lower-peak periods, reduces the loading and stress on the distribution system, extending its life and ending or delaying the need for expensive distribution system upgrades. SEF St. No. 1 at 13.

The distribution benefits of energy conservation and demand management are widely recognized. A good summary of these benefits is presented in an October 2003 report prepared for the Regulatory Assistance Project by Synapse Energy entitled *Portfolio Management: How to Procure Electricity Resources to Provide Reliable, Low-Cost, and Efficient Electricity Services to All Retail Customers* as follows (SEF St. No. 1 at 14-15):

Many efficiency measures cost significantly less than generating, transmitting and distributing electricity. Thus, energy efficiency programs

offer a huge potential for lowering system-wide electricity costs and reducing customers' electricity bills ...

In addition to lowering electricity costs and customers' bills, energy efficiency offers a variety of benefits to utilities, their customers, and society in general.

- Energy efficiency can help reduce the risks associated with fossil fuels and their inherently unstable price and supply characteristics and avoid the costs of unanticipated increases in future fuel prices.
- Energy efficiency can reduce the risks associated with environmental impacts. By reducing a utility's environmental impacts, energy efficiency programs can help utilities and their ratepayers avoid the hard to predict costs of complying with potential future environmental regulations, such as CO2 regulation.
- Energy efficiency can improve the overall reliability of the electricity system. *First, efficiency programs can have a substantial impact on peak demand, during those times when reliability is most at risk. Second, by slowing the rate of growth of electricity peak and energy demands, energy efficiency can provide utilities and generation companies more time and flexibility to respond to changing market conditions, while moderating the "boom-and-bust" effect of competitive market forces on generation supply.*
- Since efficiency programs have a substantial impact on peak demand, they help reduce the stress on local *transmission and distribution systems, potentially deferring expensive T&D upgrades or mitigating local transmission congestion problems.*
- Energy efficiency can result in significant benefits to the environment. Every kWh saved through efficiency results in less electricity generation, and thus less pollution.
- Energy efficiency can also promote local economic development and job creation by increasing the disposable income of citizens and making businesses and industries *more competitive, compared to importation of power plant equipment, fuel, or purchased power from outside the utility service territory.*
- Energy efficiency can help a utility, state and region increase its energy independence, by reducing the amount of fuels (coal, gas, oil, nuclear) and electricity that are imported from other regions or even from other countries.

SEF provided the following several examples of its energy conservation and demand management projects (SEF St. No. 1 at 15-16):

- PowerWeb, debt with payback via royalty payments on products sold, and warrants for stock purchase. PowerWeb "Omni Link" software is a Demand Side Management application that allows large, complex industrial users to manage their load demand during peak periods. During the 2003 SEF reporting period, in the Middle Atlantic Region, PowerWeb had 770 MW of load potential under contract. This is equivalent to a nuclear power plant of power that can be adjusted during critical peaking periods, clearly, a system benefit.
- The Twin Valley School Districts green, Leadership in Energy and Environmental Design ("LEED") silver school will save 172,200 kWhs per year of base load.
- The advanced energy control system for Allentown Technology Center, an in town business incubator, is saving 1,325,050 kWhs per year of energy, and creating much needed jobs in a critical urban renewal zone.
- Grant support for the Green Building Association of Central Pennsylvania is designed to build capacity of professionals and building owners to upgrade beyond current building code to the advanced energy standards of the US Building Association Leadership in Energy and Environmental Designer, typically a 30-40% improvement. It has been highly successful as evidenced by the growth in green buildings in PPL territory, including PPL headquarters as one of the few Gold LEED standard commercial buildings in the country.

Second, distributed generation projects funded by SEF also provide direct benefit to the distribution system.<sup>8</sup> Just like energy conservation, distributed generation projects reduce the loading and stress on the distribution system, extending its life and ending or delaying the need for expensive distribution system upgrades. The distribution benefits of distributed generation projects are widely recognized. An A.D. Little whitepaper entitled *Reliability and Distributed Generation* notes (SEF St. No. 1 at 16-17):

DG can provide policymakers, regulators, wires companies, and customers with multiple options to increase reliability. The potential benefits of DG in

---

<sup>8</sup> Distributed generation facilities are small, modular electric generation facilities, constructed on an integrated or stand-alone basis near the point of consumption. There are many types of distributed generation technologies. N.T. 796.

addressing reliability concerns were specifically recognized in the DOE POST study as a way to "respond more rapidly to an increased demand for electricity in areas where demand is already high. DG can be installed within the distribution system or at a customer's site, as a separate solution or in combination with market-driven incentives such as interruptible programs, to improve reliability by:

- Adding generation capacity at the customer site for continuous power and backup supply
- Adding system generation capacity
- Freeing up additional system generation, transmission and distribution capacity
- Relieve a transmission and distribution bottlenecks
- Supporting power system maintenance or restoration operations with generation of temporary backup power. (*Reliability and Distributed Generation* at 16).<sup>9</sup>

A good example of SEF's smaller distributed generation projects is the Oregon Farm biomass digester and power generation project which is projected to both save system demand and put excess power on the grid of 960,000 Kwhs per year. SEF St. No. 1 at 17.

Third, the Commission has the ability to exercise flexibility in the ratemaking function. That flexibility has allowed it, in the past, to include economic policy objectives in the ratemaking function in the form of economic development riders. These riders, typically, increase demand and stress on the distribution company's distribution system. If the Commission has the flexibility to factor economic policy objectives into the ratemaking function, it certainly has the flexibility to factor a distribution tariff rider, such as the Sustainable Energy Fund Rider, that relieves stress on the distribution system into the ratemaking function. SEF St. No. 1 at 18; N.T. 810.

---

<sup>9</sup> Also see the US DOE Power Outage Study Team (POST) entitled *Findings and Recommendations to Enhance Reliability from the Summer of 1999*, referenced in the preceding cite, particularly the third recommendation concerning the removal of barriers to distributed generation. SEF St. No. 1 at 17; SEF Main Brief at 23-24.

Fourth, the Systems Benefits Charges that finance the clean energy funds around the country are part of the distribution company's tariff. If Pennsylvania were to adopt the position of PPLICA and conclude that SEF funding should not be part of the distribution company tariff, it would stand alone. The benefits of SEF funded projects in the form of job creation, clean air, less emissions and more, flow to all PPL ratepayers. It is appropriate that all ratepayers contribute to funding of these projects through the proposed Rider. SEF St. No. 1 at 18.

Fifth, as explained in SEF's Exceptions and in Section C, of SEF's Main Brief, the promotion of renewable energy technologies is occurring throughout the nation. The position of PPLICA is inconsistent with the funding that is taking place in other states.

Concluding its Exception No. 2, PPLICA attempts to belittle the substantial accomplishments of SEF. PPLICA Exception No. 2 at 10-11.<sup>10</sup> SEF, however, has made substantial progress and had substantial accomplishments since its inception as shown in the following excerpt from the Overview on Mission Progress Section of SEF's 2002/2003 Annual Report (SEF St. No. 1, Attachment A):

#### **1.0 OVERVIEW ON MISSION PROGRESS**

\* \* \*

[SEF's] principal measure of impact relates to mission accomplishment, what we are doing to promote, research, and invest in clean and renewable energy technologies, energy conservation, energy efficiency, and sustainable energy enterprises that provide opportunities and

---

<sup>10</sup> At page 10 of its Exception No. 2, PPLICA argues that wind generation has yielded no benefits. The reference there to SEF evidence "effectively demolished" by PPLICA is a reference to four lines at page 18 of Dr. Tuffey's testimony that PPLICA moved to strike on hearsay bases. See N.T. 804-807. Given the controversy associated with that testimony, SEF did not cite those four lines in support of its position. We note, however, that PPLICA, in contrast, at pages 25 through 27, of its Main Brief, cited extensively from a non-record study prepared by GE Power Systems Energy Consulting for NYSERDA. At page 10 of its Exception No. 2, PPLICA refers to those pages of its Main Brief in support of its position that wind farm projects produce no demonstrable benefits to PPLICA distribution ratepayers. The hearsay objection, of course, goes both ways and PPLICA's reference to this study is certainly no less objectionable than was the material concerning the PJM bottleneck that PPLICA objected to at page 18 of Dr. Tuffey's testimony. The Commission should give no weight to the non-record study cited by PPLICA. See SEF Reply Brief at 10-11.

benefits for PPL ratepayers. As we complete our third year of operation, we can report that we are making significant progress.

Several specific areas are noteworthy:

- Wind power development in Pennsylvania and elsewhere in PPL territory
- Significant growth in Leadership in Energy and Environmental Design (LEED)-certified green buildings
- Emerging electric technologies
- Community economic development
- Sustainable energy education

### **Wind Powering Pennsylvania**

Encouragement and support of wind power development has been a major theme for SEF. We believe we are a key factor in Pennsylvania's emergence as the major wind power state east of the Mississippi, and in PPL's having the highest concentration of wind farms in the state. Our wind power strategy has been comprehensive, involving financial support on both the supply and demand sides, leadership in organizing public/private partnering, creative structuring to address financial risk sharing (particularly relative to green certificates), and education.

We are pleased to have been singularly recognized for our role in furthering wind power in Pennsylvania at the Penn Future "Getting to 10 Percent" annual conference of sector leaders.

\* \* \*

### **Growth in LEED-Certified Green Buildings**

Pennsylvania has the second highest number of LEED-certified buildings in the country. We are supporting an abundance of activity in PPL territory in various ways, as follows:

- \$500,000 loan to the Londonderry School, Harrisburg, toward construction of a new LEED Silver school ...
- \$25,000 grant to St. Stephens Cathedral School, Harrisburg, toward construction of a LEED Silver school addition ...
- \$19,510 grant to Eastern York School District toward construction of a LEED-certified school and a PV installation.
- Disbursed an additional \$25,000 grant to the Green Building Association of Central Pennsylvania as a result of its significant progress in educating professionals and building owners in green building design.
- PPL has opened a new company headquarters building that we hope will win LEED Gold certification, which would make it one of only two such commercial buildings in the U.S. ...

- \$1,060 grant to SEDA-COG, an 11-county community development organization in Lewisburg, to explore green building options. This grant has contributed to SEDA-COG's decision to build an Energy Resources Center, a LEED Silver office building. It is through this energy center that SEDA-COG delivers energy audit and other services to the residential and small business sectors ...

### Emerging Technologies

- Our financing of PowerWeb, in collaboration with SDF as the lead, has produced valuable products. PowerWeb designed the technology for the new Westinghouse Lighting Retrolux t-5 wireless light bulb. This highly efficient technology is a 30% improvement over current state-of-the-art commercial lighting and is the first of a class of *smart building* lighting technologies. It is progressing through UL approval, and a contract for the first 10,000 units has been awarded. PowerWeb load management software, a separate business line focused on demand side management, was installed in over 100 major industrial sites in PJM Territory, covering some 800 mW of contracted controllable load during times of peak demand.

\* \* \*

- The promotion of light-emitting diode (LED) technology in traffic signal applications has begun. Such applications have been found to result in 80 to 90% energy savings, reduced maintenance, enhanced safety benefits, and a 2- to 3-year payback time. We have committed to a \$21,000 grant to the City of Lancaster, Department of Public Works to conduct a demonstration project and associated technology transfer assistance to encourage the adoption of LED technology throughout central Pennsylvania.
- We have been an early member and financial supporter of the Alternative Fuels Council as it seeks to further the Commonwealth's position to reduce dependency on foreign fuel. SEF is a sponsor of the Alternative Fuels Council's first conference.
- We are committed to wind power next-generation blade technology, through Advantek, as mentioned previously.
- We are encouraging photovoltaic power generation for appropriate applications. Our HersheyPark project has a strong PV footprint. SEF has entered into another cooperative agreement with the Sustainable Development Fund, our long-term partner on several activities, to co-fund several PV demonstration projects. SEF has made commitments for PV demonstration grants to Illicks Mills in Bethlehem, Souderton Area School District, Eastern York School District, and St. Stephen's Cathedral School in Harrisburg.

\* \* \*

## Community Economic Development

Our financing of the following projects is representative of our progress in community economic development, and a further means to benefit the residential community:

- The SEDA-COG financing activity, a \$2.1 million syndication being developed, supports community economic development in eight counties in the northwest sector of our territory ...
- We provided an \$180,000 loan to the Allentown Technology Center, a business incubator anchoring a critical boundary to the downtown Allentown revitalization effort, to improve energy efficiency with a state-of-the-art computerized energy control system.
- In Lower Windsor Township, we assisted with a grant for a new LEED-certified township building.
- In Lancaster, we are providing grant funding to Community Basics, Inc. (Lancaster Housing and Community Development) to evaluate the use of deep quarry water as a specialized heat exchange medium for a 300-unit residential housing project that the city has committed to make as green as possible.
- In Hazelton, we are providing grant funding to the Pine Street Project, which consists of 24 units of residential housing built to Energy Star standards.
- We have been very active in Scranton. Last year we reported on our success in recruiting and relocating an emerging electric vehicle company, Nova Cruz LLC, from New Hampshire to Scranton. Unfortunately, the company's new product did not achieve the market acceptance hoped for and the company discontinued operations. SEF was the largest secured creditor with fiduciary responsibility of recovering funds on behalf of all creditors and shareholders.

We were equally committed to make every effort to recruit a new electric vehicle company to the area, to preserve both jobs and the technology footprint. We are pleased to report that with participation from Scranton Chamber of Commerce, DCED, and Ben Franklin Technology Partners, we were able to recruit Oxygen SpA, a leading electric vehicle manufacturer in Italy, to Scranton. Although Oxygen SpA is still in its early stages, it has selected Scranton as its North American headquarters. (The sale of

assets was completed in August 2003; beyond this reporting period, however, it is appropriate to note that we were also instrumental in the development of a new entity, Xootr LLC, that purchased assets of the company and has also indicated its intention to remain in Scranton.)

### Education

SEF has a significant commitment to sustainable energy education in PPL territory and Pennsylvania. We believe our current portfolio upon fulfillment will result in over 10,000 student-learning experiences per year. We have determined, however, that a far greater need must be addressed, which involves opportunities to educate tomorrow's consumers and decision\_makers. We intend to continue our education program, as evidenced by the following.

- \$84,000 grant to HersheyPark for wind energy and photovoltaic exhibits and associated sustainable energy theater production. The family theme and clean environment focus of the park, coupled with its high-volume exposure, provide a wonderful opportunity to educate ...
- Wilson College has an existing environmental focus, The Fulton Center for Sustainable Development. ... We have committed to a \$25,000 grant, which will allow Wilson College to include sustainable energy topics in all of its programs, particularly those addressing residential consumers ...

Every rate charged by a public utility must be "just and reasonable." 66 Pa. C.S.

§1301. The Commission has broad discretion in determining whether rates are reasonable. *City of Pittsburgh v. Pa. P.U.C.*, 400 A.2d 672 (Pa. Cmwlth. 1979); *Popowsky v. Pa. P.U.C.*, 683 A. 2d 958, 961 (Pa. Cmwlth. 1996). In *Pa. P.U.C. v. Pennsylvania Gas and Water Company (Water Division)*, 424 A. 2d 1213, 492 Pa. 326, 337 (1980), the Pennsylvania Supreme Court explained that the phrase "just and reasonable" imports flexibility in the exercise of the ratemaking function.

Here, the evidence of record demonstrates that SEF expertly administers its funding. It uses an Enterprise Business Model and mission metrics to analyze and evaluate investment opportunities consistent with its Mission Statement. The evidence of record further demonstrates that SEF funded projects provide direct benefit to the

distribution system. Continued funding is an appropriate factor to reflect in the rates which will be set in this proceeding.

PPLICA Exception No. 2 should be denied.

**4. REPLY TO PENNFUTURE EXCEPTION NO. 3**

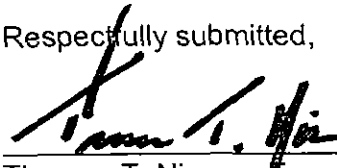
In its Exception No. 3, PennFuture argues that, going forward, SEF Board members should be appointed from “the most qualified candidates without strict requirements of stakeholder representation.” It states that this position is consistent with draft best practices soon to be considered by PASEB and the Commission. See PennFuture Main Brief at 9-10. The Settlement Agreement in PPLEU’s Restructuring Proceeding requires that nominations for SEF Board of Directors come from the Joint Petitioners in that Proceeding. The Board of SEF is following the intent of that Agreement. When reviewing nominations for Director positions, the Board seeks the most qualified candidate but also seeks diversity of skills and representation of various rate payer segments. The currently drafted best practices of PASEB regarding nomination, election, and approval of directors of sustainable energy funds have not been finalized or submitted to the Commission. The SEF does not believe it is appropriate for the Commission to consider the director nomination procedure or any of the other PASEB best practices until the entire document, still in draft form, has been fully vetted.

PennFuture Exception No. 3 should be denied.

### III. CONCLUSION

Continued funding for SEF as proposed at Third Revised Page No. 19K of PPLEU's Supplement No. 38 at a rate of 0.01cents per KWH is just and reasonable and consistent with the public interest. Judge Turner's recommendation that the "Commission adopt the Company's SEF proposal" should be approved. No consideration should, however, be given to the setting of declining funding levels. SEF's Exception No. 1 should be granted. The Exceptions of OTS, OSBA, PPLICA and PennFuture should be denied as set forth above.

Respectfully submitted,



Thomas T. Niesen, Esquire  
Patricia Armstrong, Esquire  
THOMAS, THOMAS, ARMSTRONG & NIESEN  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Attorneys for  
The Sustainable Energy Fund of  
Central Eastern Pennsylvania

DATED: November 22, 2004  
SEF Reply Exceptions.wpd

RECEIVED  
2004 NOV 22 PM 12:27  
SECRETARY'S BUREAU

**Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

<b>Pennsylvania Public Utility Commission</b>	:	<b>Docket No. R-00049255</b>
	:	
<b>v.</b>	:	
	:	
<b>PPL Electric Utilities Corporation</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 22<sup>nd</sup> day of November, 2004, served a true and correct copy of the Replies of The Sustainable Energy Fund of Central Eastern Pennsylvania to the Exceptions of the Other Participants, upon the persons and in the manner set forth below:

**VIA FIRST CLASS MAIL, POSTAGE PREPAID**

Honorable Susan D. Colwell  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
2<sup>nd</sup> Floor West  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Irwin A. Popowsky, Esquire  
James A. Mullins, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor Forum Place  
Harrisburg, PA 17101-1926

William Lloyd, Esquire  
Steven C. Gray, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Johnnie Simms, Esquire  
Richard A. Kanaskie, Esquire  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 3<sup>rd</sup> Floor West  
Harrisburg, PA 17120

David M. Kleppinger, Esquire  
Pamela Polacek, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
Harrisburg, PA 17108

Kevin J. Moody, Esquire  
Wolf, Block, Schorr and Solis-Cohen,  
LLP  
212 Locust Street  
Harrisburg, PA 17101

RECEIVED  
GENERAL S BUREAU

2004 NOV 22 PM 12:27

RECEIVED

James P. Melia, Esquire  
Kirkpatrick & Lockhart LLP  
240 North Third Street  
Harrisburg, PA 17101-1507

Michael W. Gang, Esquire  
John H. Isom, Esquire  
Morgan Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101-1904

Honorable Allison K. Turner  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130

David A. McCormick, Esquire  
Regulatory Law Office (JALS-RL)  
US Army Legal Services Agency  
901 North Stuart Street, Room 713  
Arlington, VA 22203-1837

Scott Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357

Joseph L. Vullo, Esquire  
Attorney At Law  
1460 Wyoming Avenue  
Forty Fort, PA 18704-4237

John L. Munsch, Senior Attorney  
Allegheny Energy  
800 Cabin Hill Drive  
Greensburg, PA 15601

Mark C. Morrow, Esquire  
UGI Utilities, Inc.  
460 North Gulph Road  
King of Prussia, PA 19406

Louise Knight, Esquire  
David P. Zambito, Esquire  
Saul Ewing  
2 North Second Street  
7<sup>th</sup> Floor  
Harrisburg, PA 17101-1604

Honorable Phyllis Mundy, Chair  
Northeast Delegation  
House Box 202020  
Harrisburg, PA 17120

Honorable Ember Jandebaur  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
317 State Office Building  
100 Lackawanna Ave.  
Scranton, PA 18503

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Kent Murphy, Esquire  
Legal Division  
Exelon Business Services Company  
2301 Market Street/23-1  
Philadelphia, PA 19103

David MacGregor, Esquire  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Roger E. Clark, Esquire  
Sustainable Development Fund  
718 Arch Street, Suite 300 North  
Philadelphia, PA 19106-1591

Michael Fiorentino, Esquire  
Clean Air Council  
135 S. 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103

Charles McPhedran  
Senior Attorney  
Citizens for Pennsylvania's Future  
117 S. 17<sup>th</sup> Street, Suite 1801  
Philadelphia, PA 19103

Michael G. Wolfe, Esquire  
FirstEnergy Corp.  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001

Richard S. Herskovitz, Esquire  
Duquesne Light  
411 Seventh Avenue, 9<sup>th</sup> Floor  
Pittsburgh, PA 15219

Paul E. Russell, Esquire  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179



Thomas Niesen



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

IRWIN A. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
consumer@paoca.org

November 22, 2004

VIA HAND DELIVERY PRIOR TO 2:00 P.M.

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17120

DOCUMENT

Re: Pennsylvania Public Utility Commission  
v.  
PPL Electric Utilities Corporation  
Docket No. R-00049255

Dear Secretary McNulty:

Enclosed for filing, please find an original and nine (9) copies of the Office of Consumer Advocate's Reply Exceptions, in the above-referenced case.

Copies have been served to the parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

James A. Mullins  
Assistant Consumer Advocate

Enclosures

- cc: All Parties of Record
- Honorable Allison Turner (VIA OVERNIGHT DELIVERY)
- Honorable Susan D. Colwell (VIA HAND DELIVERY)
- Honorable Ember S. Jandebaur (VIA OVERNIGHT MAIL)
- Office of Special Assistants (w/diskette) (VIA HAND DELIVERY)

80924.doc

SECRETARIAT BUREAU

2004 NOV 22 PM 12:22

RECEIVED

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission, et al  
v.  
PPL Electric Utilities Corporation  
Docket No. R-00049255

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

Dated this 22<sup>nd</sup> day of November, 2004.

SERVICE BY E-MAIL and HAND DELIVERY

Richard A. Kanaskie, Esq.  
PA Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
For: Trial Staff

SECRETARY'S BUREAU

2004 NOV 22 PM 12: 22

RECEIVED

SERVICE BY E-MAIL AND OVERNIGHT DELIVERY

Paul E. Russell, Esquire  
Associate General Counsel  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179

David B. MacGregor, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103

SERVICE BY E-MAIL AND FIRST CLASS DELIVERY

Michael Gang, Esquire  
John H. Isom, Esquire  
Morgan, Lewis & Bockius LLP  
One Commerce Square  
417 Walnut Street  
Harrisburg, PA 17101

Thomas Niesen, Esquire  
Patricia Armstrong, Esquire  
Thomas, Thomas, Armstrong & Niesen  
212 Locust Street  
Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108

Steven Gray, Esq.  
William Lloyd, Jr., Esq.  
Office of Small Business Advocate  
Suite 1102 Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[ams@indecon.com](mailto:ams@indecon.com) (e-mail only)  
[mde@indecon.com](mailto:mde@indecon.com) (e-mail only)

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

Daniel Clearfield, Esq.  
Kevin J. Moody, Esq.  
Wolf, Block, Schorr, and Solis-Cohen LLP  
212 Locust Street  
Suite 300  
Harrisburg, PA 17101

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

Mark C. Morrow  
Counsel for UGI Utilities, Inc.  
460 North Gulph Road  
King of Prussia, PA 19406

David A. McCormick, Esquire  
Regulatory Law Office  
U.S. Army Legal Services  
DAJA-RL 4120  
901 N. Stuart Street, Room 713  
Arlington, VA 22203

Scott Rubin  
Counsel  
International Brotherhood Electric Works  
Three Lost Creek Drive  
Selingsgrove, PA 17870

Mr. Eric Epstein  
4100 Hilsdale Road  
Harrisburg, PA 17112

Mr. Stephen J. Baron  
J. Kennedy and Associates, Inc.  
570 Colonial Park Drive  
Suite 305  
Roswell, GA 30075

Michael Fiorentino, Esq.  
Attorney for Clean Air Counsel  
135 S. 19<sup>th</sup> Street  
Suite 300  
Philadelphia, PA 19103

Kent D. Murphy, Esq.  
Exelon Business Services Company  
PECO Energy Company  
2301 Market Street S23-1  
PO Box 8699  
Philadelphia, PA 19101

Peter Adels, General Counsel  
Charley McPhedran, Senior Attorney  
PennFuture  
1518 Walnut Street  
Suite 1100  
Philadelphia, PA 17102

Roger E. Clark, Esq.  
Sustainable Development Fund  
718 Arch Street  
Suite 300N  
Philadelphia, PA 19106

Joseph L. Vullo, Esq.  
Commission on Economic Opportunity  
1460 Wyoming Avenue  
Forty Fort, PA 18704

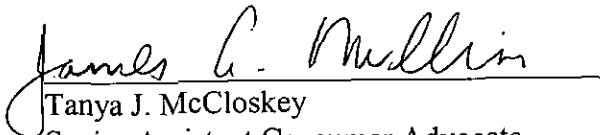
Michael G. Wolfe, Esq.  
Attorney for FirstEnergy  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612

James P. Melia, Esquire  
Kirpatrick & Lockhart, LLP  
240 North Third Street  
Harrisburg, PA 17101

Eugene M. Brady  
Commission on Economic Opportunity  
165 Amber Lane  
P.O. Box 1127  
Wilkes-Barre, PA 18703

Louise A. Knight, Esq.  
Joseph J. Malatesta, Esq.  
David P. Zambito, Esq.  
PPL Public Lighting User Group  
2 North Second Street  
Harrisburg, PA 17101

Richard S. Herskovitz, Esquire  
Duquesne Light Company  
411 Seventh Avenue  
8<sup>th</sup> Floor  
Pittsburgh, PA 15219



Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
James A. Mullins  
Lori A. Herman  
Shaun A. Sparks  
Aron J. Beatty  
Assistant Consumer Advocates

Counsel For:  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place - 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
(717) 783-5048  
79537

RECEIVED  
2004 NOV 22 PM 12: 22  
SECRETARY'S BUREAU