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September 2, 1983

Re: Pennsylvania Public Utility Commission
et al., v. Pennsylvania Power & Light Company
Docket No. R-822169

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SEP 6 1983
SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
New Filing Section
P. O. Box 3265
Harrisburg, PA 17120

Dear Secretary Rich:

Enclosed for filing with the Commission please find the original and three (3) copies of the Petition for Reconsideration On Behalf Of Lehigh Valley Power Committee to the Commission's Order of August 19, 1983 in the above captioned proceeding.

We have provided all active parties of record with copies of this Petition as evidenced by the attached Certificate of Service.

Very truly yours,

McNEES, WALLACE & NURICK

By [signature]
Henry R. MacNicholas

HRM/jf
Enclosure
cc: See Certificate of Service
(w/encl.)

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SEP6 1983

SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION et al.	:	
v.	:	Docket No. R-822169
PENNSYLVANIA POWER & LIGHT COMPANY	:	

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SEP 6 - 1983

DOCUMENT FOLDER

PETITION FOR RECONSIDERATION ON BEHALF OF LEHIGH VALLEY POWER COMMITTEE

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Counsel to LEHIGH VALLEY POWER COMMITTEE

Dated: September 6, 1983

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION et al.,	:	
v.	:	Docket No. R-822169
PENNSYLVANIA POWER & LIGHT COMPANY	:	

PETITION FOR RECONSIDERATION ON BEHALF OF LEHIGH VALLEY POWER COMMITTEE

Pursuant to the provisions of 1. Pa. Code §35.241 and 52 Pa. Code §3.291, the Lehigh Valley Power Committee (LVPC) hereby Petitions this Commission for Reconsideration of its Order adopted in the above captioned proceeding August 19, 1983 and entered August 22, 1983. The findings and conclusions made by the Commission at pp. 90-94, constitute summary dismissals of the Recommended Decision by the Administrative Law Judge (ALJ) and have no basis in the extensive record developed in this proceeding. Specifically, LVPC requests the Commission to reconsider:

A. "We conclude that the Company's cost-of-service study is acceptable in the context of this proceeding." Order at p. 92.

1. The Commission provides no record references to support its conclusions on the acceptability of the Company's cost-of-service study. This conclusion directly contradicts the result reached by the presiding Administrative Law Judge, Joseph J. Klovekorn.

2. Judge Klovekorn found "serious infirmities" with the PP&L study and "considerable merit" in the criticisms leveled on that study by Trial Staff and LVPC. ALJ Rec.Dec. p. 168. Furthermore, Judge Klovekorn found the Company's suggestion that customers with loads during off-peak periods are responsible for PP&L's cost incurrence as "simply ridiculous" and concluded that the allocation methodology advocated by the Company "hardly promotes anything." Id. at p. 168-170.

3. By accepting the Company's cost of service study, the Commission effectively ignored the substantial evidence presented in this case which rebutted the appropriateness of the Company's cost of service study. <u>See</u>, <u>e.g.</u>, Testimony of Maurice E. Brubaker, pp. 10-11; St. Regis Statement No. 1, p. 18; Medium

Industrial Statement No. 1, p. 10. The Commission cannot continue to ignore the factual evidence presented to the ALJ and summarily reject his conclusions without any explanation as to the factual bases for that rejection.

4. The Commission's failure to justify the cost-of-service study conclusion with factual evidence of record requires them to reconsider this conclusion and reinstate the Recommended Decision of the ALJ regarding the cost-of-service study.

B. "We find most reasonable the Company's proposal to distribute the increase on a fairly uniform across-the-board basis." Order at p. 93.

1. The Commission reached this conclusion in its Order without <u>any</u> reference to the testimony presented by the Company and merely stated that it disagreed with the ALJ's Recommendation to apply a 20% tolerance band on class rates of return and a limitation on the percentage increase to 150% and 50% of the system average increase.

2. The Commission's Order fails to address the ALJ's conclusion that the Company's approach "increases in magnitude the inter-class subsidization which is now occurring." ALJ Rec. Dec. at p. 176. The Commission's reliance on narrowing of indexed rates of return is misplaced as explained by Judge Klovekorn with the simple statement that, "the dollar differences would increase considerably and, in the real world, it is dollars not percentages which are important." The LVPC respectfully requests this Commission to recognize real world conditions and reject the Company's allocation methodology.

3. Even if the Commission decides to maintain its "fairly uniform across-the-board basis" for the revenue allocation, the Company's compliance filing to this Order is incorrect both on a total company basis and on an individual class basis. Utilizing the Company's own scale-back method, the Company should have a total increase in annual revenue of 17.14%. However, the compliance filing reflects an increase of 17.26%. On an individual class basis, not all classes receive a percentage increase

close to the 17.26%. For example, Rate LP-6, the rate schedule on which all LVPC members are served, receives an increase of 17.65%. In contrast, other customer classes receive increases as low as 16.83%. While the LVPC disagrees with the fairly uniform across-the-board basis for the revenue allocation, if the Commission should decide to maintain its Order on this issue, it should require the Company to develop rates which result in each class of service receiving an increase equal to the system average of 17.14%.

C. "The Company's design of its commercial and industrial rate schedules controls the effect of the rate increase upon individual customers. We find the Company's proposal more reasonable for the purposes of this rate proceeding." Order at p. 93.

1. Again, the Commission failed to justify its disagreement with the ALJ's Recommendation on the rate design of Rate LP-6 with any substantive references to the record presented in this proceeding. This habitual pattern of providing no evidentiary references for

its conclusions does not comport with accepted principles of appellate review which require the Commission to base its findings and conclusions on substantial evidence of record. If the Commission could expound upon what it means by the "purposes" of this rate proceeding, the LVPC may better understand why the Commission believes the Company's rate design proposals are "more reasonable." Prior to this Order, the LVPC was under the distinct impression that the purpose of rate proceedings was to develop just, reasonable, non-discriminatory rates. This result has not been obtained. Nonetheless, the Commission chose to reject the ALJ's conclusion that, "PP&L has proposed what might be characterized as a 'excess burden' on customers - in addition to the financial burden of the rate increase, customers are also forced to bear an externally imposed distortion of their private consumption choices." ALJ Rec. Dec., p. 179.

2. The Commission must explain its rationale with supporting documentary evidence which

will justify its rejection of the ALJ's Recommendation in spite of the fact the ALJ extensively discussed the rate design proposals in this proceeding. ALJ Rec. Dec., p. 178-183.

3. If the Commission refuses to reconsider its rate design decision, it should reject the Company's compliance filing in that the Company methodology dictates a tailblock charge for LP-6 of 3.185¢/kwh but the Company's compliance filing utilizes a 3.2¢/kwh tail-block charge. This "rounding-up" results in an additional increase of $400,000 to the LP-6 class. The fact that the "rounding-up" is totally unnecessary can be seen from the Company's existing LP-6 tariff which has energy charges extrapolated to the fourth decimal place.

4. The Commission's rate design decision on LP-6 constitutes a philosophical decision between the points advocated by the LVPC and those advocated by the Company. The Commission should reconsider this Decision

in light of the fact that the Company received only 68.7% of its requested increase, but the demand and energy charges on LP-6 are approximately 94% of the charges which would have resulted had the Company received 100% of the rate relief requested. The chart below depicts this phenomenon:

	Existing Rate LP-6	Proposed Rate LP-6	Compliance Filing Rate LP-6	Compliance Rate As A Percent Of Proposed Rate
Demand Charge	\$ 2.70/kw	\$ 3.50/kw	\$ 3.30/kw	94%
1st Energy Blk.	3.1028¢/kwh	4.3¢/kwh	4.0¢/kwh	93%
2nd Energy Blk.	2.5028¢/kwh	3.8¢/kwh	3.6¢/kwh	95%
3rd Energy Blk.	2.4028¢/kwh	3.4¢/kwh	3.2¢/kwh	94%

The above chart demonstrates that the Company, despite only obtaining 68.7% of its rate relief, has LP-6 charges at levels 94% of what they would have been had the Company received full rate relief. Therefore, the "excess burden" alluded to by the presiding ALJ is prevelant on Rate LP-6. The LVPC urges the Commission to reconsider this rate design decision in light of the evidence presented in this case and the ALJ's discussion thereof.

CONCLUSION

The LVPC is appalled at the cursory treatment provided in the rate structure/rate design portions of the Commission's Order in this proceeding. Well over ten parties to this case spent considerable time and effort in developing an extensive evidentiary record for the purpose of arguing their respective positions on cost-of-service, revenue allocation, and rate design. While the ALJ discussed in considerable detail each party's position and the reasoning behind his final results, the Commission has cavalierly rejected those recommendations in favor of the Company's position. The Commission's failure to recognize the substantial evidence of record which rebuts the Company position warrants an extensive reconsideration of its Decision. Without reconsideration and explanation, the existing final Order in this proceeding violates the standards for appellate review by not basing its reasoning on substantial evidence.

WHEREFORE, the Lehigh Valley Power Committee respectfully requests this Commission to reconsider its Decision at Pennsylvania Public Utility Commission et al., v. Pennsylvania Power & Light Company, Docket No. R-822169 in accordance with the above recommendations.

Respectfully submitted,

LEHIGH VALLEY POWER COMMITTEE

By David M. Kleppinger

Henry R. MacNicholas
David M. Kleppinger
Its Counsel
McNEES, WALLACE & NURICK
100 Pine Street - P. O. Box 1166
Harrisburg, PA 17108
Telephone: (717-232-8000

Dated: September 6, 1983

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document by first-class mail upon the persons listed below:

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Nancy Hill
119 South Sixth Street
Emmaus, Pennsylvania 18049

By Henry R. MacNicholas
Henry R. MacNicholas

Harrisburg, PA 17108
Dated this 2nd day of September, 1983

R-822169

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Chairman Taliaferro's Office

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SEP 13 1983
SECRETARY'S OFFICE
Public Utility Commission

August 29, 1983

Pennsylvania Utility Commission
Harrisburg, PA

Dear Sirs:

The Electric Company did it again. Our electric bills went up again. We try to conserve, but the bills are bigger all the time. If we make a business or personal error, we must pay for it out of our own pockets. P.P.& L. gets us helpless customers to pay for their mistakes. It's time that the P.U.C. takes the part of the customers and not of the utility companies. We have other expenses not only the electric bill, our families must also eat.

Yours truly, Cesario Bravo Jr.

Katherine Finstermaker
Joyce Bennett
Deborah Stephen
Sharon Reis
Linda French
Leonard Starr
Pamela Rodgers
Richene Riccaboni
Linda Moran
Linda Hummel 3415 Coliman St Beth Pa
Kathy McGovern 757 Flint Hill Rd
Greg Klovach
Michele Hannis 2934 Northampton St.
Phyllis Weber 1935-A Valley Park E.
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Kathleen Alexander 824 Kieffer St. Beth. Pa.
Marie Strong 2156 Main Blvd Allentown PA 18104
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Irene Forment (Mayer) 452 Ostrum St. Beth, Pa 18015

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Hellertown
Pa. 18055

Janice Gosling
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Bethlehem Pa. 18015

DOCUMENT FOLDER

August 29, 1983

Pennsylvania Utility Commission
Harrisburg, PA

Dear Sirs:

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Yours truly, Cessario Bianco

Mr & Mrs Charles [illegible] — 1523 [illegible] Hellertown, Pa. 18055
Mrs. Cynthia A. Kugler — 1613 Zimpfer Lane, Hellertown, Pa. 18055
Mr. Edward M. Musko Sr. — 1135 Main St. Hellertown PA 18055
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Ronald D. Nicholas
Keith A. Fox
Floyd V Holmes — 1105 Main St Hellertown
John + Evelyn Vesely — 205 High St. Hellertown
Bob + Betty Targuin — 120 Durham St. Hellertown
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Eileen Stroll — 2905 26th St. SW Allentown
Donna Musgnung — 1241 Broad St Apt 11 Whitehall
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Lois Muffle — 2083 Baker Dr., Zelentown
[illegible] — 920 Hellertown Rd Beth. Pa
Patricia Ford — 1027 Seneca St. Bethlehem, Pa
LeRoy Jones — 511 Seneca St. Beth Pa.
Joyce Brauchle — 1515 Calypso Ave. Beth. 18018
[illegible] Achmanuson — R.D. 5 Helert. Pa.

August 29, 1983

Pennsylvania Utility Commission
Harrisburg, PA

Dear Sirs:

The Electric Company did it again. Our electric bills went up again. We try to conserve, but the bills are bigger all the time. If we make a business or personal error, we must pay for it out of our own pockets. P.P.&L. gets us helpless customers to pay for their mistakes. It's time that the P.U.C. takes the part of the customers and not of the utility companies. We have other expenses not only the electric bill, our families must also eat.

Yours truly, Cesario Briones Jr.

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Leon E Irvin — R.D. 5. Bethlehem, Pa
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[illegible] — 505 5th Whitehall pa 1805[illegible]

August 29, 1983

Pennsylvania Utility Commission
Harrisburg, PA

Over →

Dear Sirs:

The Electric Company did it again. Our electric bills went up again. We try to conserve, but the bills are bigger all the time. If we make a business or personal error, we must pay for it out of our own pockets. P.P.&L. gets us helpless customers to pay for their mistakes. It's time that the P.U.C. takes the part of the customers and not of the utility companies. We have other expenses not only the electric bill, our families must also eat.

Yours truly, Cesario Pramello Jr.

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James A. Ruth R.F.D. #3 Bethlehem, Pa.

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LONDON

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

September 14, 1983

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SEP 14 1983

SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
North Office Building
Commonwealth & North Streets
Harrisburg, Pennsylvania 17120

RE: Pennsylvania Public Utility Commission
v.
Pennsylvania Power & Light Company
Docket No. R-822169

Dear Secretary Rich:

Enclosed for filing on behalf of Pennsylvania Power & Light Company, Respondent in the above-captioned proceeding, are the original and three copies of a Motion to Dismiss the Petition for Reconsideration of the Lehigh Valley Power Committee.

As evidenced below, a copy of the enclosed Motion has been served on the Petitioner and all active parties of record.

Sincerely,

Thomas P. Gadsden

Thomas P. Gadsden
Counsel for Pennsylvania Power & Light Company

TPG/baw
cc: Hon. Linda C. Taliaferro
Hon. Michael Johnson
Hon. James H. Cawley
Hon. Joseph J. Klovekorn
David M. Kleppinger, Esquire
All Active Parties of Record

DOCUMENT FOLDER

RECEIVED

SEP 14 1983

SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	:	
v.	:	DOCKET NO. R-822169 (1982)
PENNSYLVANIA POWER & LIGHT COMPANY	:	

MOTION TO DISMISS PETITION
FOR RECONSIDERATION OF
LEHIGH VALLEY POWER COMMITTEE

NOW COMES Pennsylvania Power & Light Company ("PP&L" or the "Company"), by its attorneys, and moves to dismiss the Petition for Reconsideration (the "Petition") filed on behalf of the Lehigh Valley Power Committee ("LVPC") as follows:

1. On August 22, 1983, the Pennsylvania Public Utility Commission (the "Commission") entered its final Order at Docket No. R-822169, thereby concluding its investigation of the Company's 1982 rate application. In its Order, the Commission determined that PP&L was entitled to recover from its customers additional annual operating revenues, excluding tax surcharge revenues, of $203,346,000, or approximately 68.7% of the increase requested by the Company. In addition, the Commission reviewed at length the rate structure evidence submitted by the various parties (Order, pp. 77-90) and expressly found that (a) PP&L's

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cost of service study was "acceptable...in the context of this proceeding" (Order, p. 92), (b) its proposal to distribute the revenue increase on a fairly uniform across-the-board basis was "most reasonable" (Order, p. 93) and (c) the Company's recommended design of its commercial and industrial rate schedules was "more reasonable" for purposes of this case than alternative proposals (Order, p. 93).

2. On August 22, 1983, the Company filed Supplement No. 6 to its Tariff Electric - Pa. P.U.C. No. 199 in compliance with the Commission's final Order. In accordance with Ordering Paragraph No. 5 (Order, p.95), Supplement No. 6 was specifically designed to allocate the allowed increase in operating revenues to each customer class and rate schedule within each customer class in a manner which maintained the "relative percentage increase relationships" and which utilized "the criteria referenced in PP&L Stmt. 5 at 10-11."

3. On September 6, 1983, the Company was served with a copy of the Petition. In the Petition, the LVPC, which previously filed Exceptions to the Administrative Law Judge's cost of service, revenue allocation and rate design recommendations, now contends that the Commission erred in not adopting his findings. Alternatively, the LVPC asserts that the rate levels contained in Supplement No. 6 fail to comply with the Commission's August 22 Order. For the reasons set forth

below, the Petition should be dismissed.

A. The Petition Fails to State a Legally Sufficient Ground Upon Which Reconsideration Could Be Granted.

This Commission has only such authority as is conferred upon it by the General Assembly in the Public Utility Code. See, e.g., Western Pennsylvania Water Co. v. Pa. P. U. C., 10 Pa. Cmwlth. 533, 311 A. 2d 370 (1973); N.A.A.C.P., Inc. v. Pa. P. U. C., 5 Pa. Cmwlth. 312, 290 A. 2d 704 (1972). With respect to the reconsideration and/or modification of a duly adopted Order, the Commission has been empowered to grant "rehearing" (66 Pa. C. S. §703(f)) and to "rescind or amend" any Order made by it "after notice and after opportunity to be heard" (66 Pa. C. S. §703(g)).

In its Petition, the LVPC neither seeks additional hearings nor requests that the record be reopened for the presentation of additional evidence. Rather, it merely asks the Commission to "reconsider" its August 22 Order. As the Commonwealth Court has repeatedly held, such requests, without more, do not provide any basis for granting rehearing under Section 703(f) of the Code:

> "It is clear that the basis for a Petition for Rehearing is an allegation that there is new or further cumulative evidence to present." In Re Application of PennDot, 29 Pa. Cmwlth. 368, 371, 370 A. 2d 1257 (1977).

> "The Petition in question does not allege that there is new or even further cumulative evidence to present and, of course, could not allege why it was not available at the time of the hearing. A Petition for Rehearing presupposes the offering of additional testimony of some sort." Pa. P. U. C. v. Reading Co., 21 Pa. Cmwlth. 334, 336-37, 345 A. 2d 311 (1975).

Accord Abramson v. Pa. P. U. C., 29 Pa. Cmwlth. 511, 371 A. 2d 576 (1977); Mobilfone v. Pa. P. U. C., 24 Pa. Cmwlth. 243, 355 A. 2d 611 (1976).

The Petition similarly fails to state any ground which could possibly justify rescission or amendment of the Commission's Order under Section 703(g) of the Code. As stated by the Commonwealth Court in Brinks, Inc. v. Pa. P.U.C., 16 Pa. Cmwlth. 300, 328 A. 2d 582 (1974), "the proper function of a Section 1007 (recodified as Section 703 (g)) Petition is to allow the PUC to reconsider a previous Order in light of newly discovered evidence or a change in circumstances". The Court further noted:

> "In reviewing appellant's Petition for Modification or Rescission, we find no allegation of the presence of new evidence or of a change in circumstances which would justify modification. Instead appellant alleged in its Petition that the short form Order was arbitrary and capricious, and unsupported by the evidence - all contentions which could and should properly be made in a Section 1006 rehearing or an appeal to this Court." 16 Pa. Cmwlth. at 305.

The Petitioner does not present or allege the existence of new evidence or evidence of changed circumstances. As noted in Pa. P.U.C. v. Reading Co., 21 Pa. Cmwlth. 334, 338, 345 A. 2d 311 (1975), "[L]acking that new evidence, the alleged arbitrary and capricious nature of the Order... must be raised on appeal..."

This Commission was presented with a similar Petition in Application of Bernard O. Bowser, 43 Pa. P. U. C. 32 (1966). In granting a Motion to Dismiss the Petition this Commission stated as follows:

> "The effect of the Petition, therefore, is that applicant having failed to request rehearing, his Petition is but a method which seeks another opportunity to convince the Commission that its Order should be revised. The Petition is essentially a second Brief presenting the same arguments in language similar to that presented previously to the Commission. This method and procedure were neither contemplated nor intended by the Public Utility Law. The Petition stated simply, seeks revision and amendment of our Order by reargument without averring legally sufficient grounds therefore. To hold otherwise would, as a practical matter, permit revision of our Order without appeal to the Superior Court.
>
> Finally, not withstanding the fact that our Rule 54 (Rules of Practice and Procedure before the Pennsylvania Public Utility Commission) (now 52 Pa. Code §3.291) refers, inter alia, to Petitions for "....rescission or modification after decision", such Petition is reserved for situations

> in which the Order as promulgated would operate upon facts and circumstances different than those upon which the Order was based." (at p. 37).1/

Simply stated, neither Section 703(f) nor Section 703(g) of the Code was designed to provide a disappointed party a "second bite at the apple". Rather, they were intended to enable the Commission, under appropriate circumstances, to reconsider a prior Order in light of new evidence or a change in conditions. The Petition does not set forth such new evidence or changed circumstances, but merely restates the same arguments which were previously presented to and rejected by the Commission. Inasmuch as the Petition does no more than seek the relitigation of issues which have already been addressed and resolved, it must be dismissed.

1/ See Jay H. Eiseman and Louis J. Carter, Pennsylvania Public Utility Commission Procedure - The Guidelines, 36 Temple L.Q. 500, 513 (1962), in which it is stated:

> "It might be well to note at this point, that the grounds for a rehearing are limited and that the Commission will not grant a rehearing in circumstances where the purpose of rehearing is merely to have another bite at the apple.
>
> Grounds for reconsideration are restricted to new matters or new or changed conditions, which had arisen since the Order was issued by the Commission, or were not previously available. It is not a substitute for appeal."

B. The Rate Levels Set Forth In Supplement No. 6 <u>Fully Comply With The Commission's Final Order.</u>

In its Petition, the LVPC further asserts that the rate levels contained in Supplement No. 6 do not comply with the Commission's final Order. Even if such were the case, that fact alone would obviously not warrant reconsideration but instead could be resolved by the Commission Staff responsible for reviewing that filing. However, as discussed below, the Petition's allegations of non-compliance are completely without merit.

In Paragraph B. 3 of the Petition, the LVPC contends that the Company erred in not applying an equal 17.14% increase to all classes of service. In fact, the Commission specifically directed PP&L to scale back its requested rate levels "by maintaining the relative percentage increase relationships" proposed (Order, p. 95). Since the Company's original filing contained slight differences in the percentage increases to be received by its various customer classes, it necessarily follows that Supplement No. 6 would similarly reflect such minor variations.

In Paragraph B.3 of the Petition, the LVPC further contends that the Company erred in applying a total increase of 17.26% rather than 17.14%. In fact, Supplement No. 6, Exhibit A, Tab V, Column 4, Line 28, discloses that the total jurisdictional increase, excluding any increase in "Other Electric Revenue" is 17.14%, the correct bring down level. Inasmuch as the "Other Electric Revenue" account consists primarily of rental fees and other fixed-contract obligations, it properly is not affected by either the Company's original filing or Supplement No. 6.

Similarly, in Paragraph C.3 the LVPC asserts that PP&L has overstated the tailblock energy charge for Rate LP-6 by failing to extrapolate to the fourth decimal place. As the Commission is well aware, the design of utility rates is an extremely complex undertaking which invariably requires that some numerical rounding, both higher and lower, be employed. In fact, the Company's compliance filing is replete with adjustments of this nature as evidenced by the development of General Service Rate Schedule GS-3:

Original Proposal	Exact Scale Down	Adopted for Compliance	Percent Adjustment
\$7.10/KW First 125 KW	\$6.651	\$6.65	.02%
\$4.75/KW Remaining	\$4.449	\$4.45	.02%
5.3¢/KWH First 150 Hours Use	4.965¢	5.0¢	.70%
4.7¢/KWH Next 100 Hours Use	4.403¢	4.4¢	.07%
4.1¢/KWH Remaining	3.841¢	3.8¢	1.07%

In any event, the adjustment to which the LVPC takes issue equals $0.00015 per KWH, or a change of less than 1/2 of 1%, and must be regarded as de minimus.

Finally, in Paragraph C. 4 of the Petition the LVPC purports to attach significance to the fact that although the Company was only granted 68.7% of its requested increase, the LP-6 rates set forth in Supplement No. 6 approximate 94% of the levels which would have gone into effect if the Company's rate increase request had been approved in its entirety. LVPC further argues that this condition imposes an "excess burden" on the customers served on Rate LP-6. Obviously LVPC fails to realize that this "phenomenon" exists throughout all of Supplement No. 6. It is not limited to just one rate but is common to all, as illustrated in the example below:

Residential Service Rate RS

	Proposed Rate RS	Compliance Rate RS	Compliance Rate As a Percent of Proposed Rate
Monthly Minimum	$4.75/Bill	$4.40/Bill	93%
First Energy Block	8.0¢/KWH	7.6¢/KWH	95%
Second Energy Block	6.0¢/KWH	5.6¢/KWH	93%

What the LVPC fails to recognize is the distinction between the percentage of the increase granted and the percentage of the total annual revenues requested which was allowed. In this proceeding, the Company requested that it be permitted to recover total annual revenues, exclusive of tax surcharge revenues, of $1,451,087, 938 (Supplement No.6, Exhibit A, Tab II, Column 12, Line 21). In compliance with the Commission's final Order, the Company filed a tariff designed to produce annual revenues of $1,359,746,631 (Supplement No. 6, Exhibit A, Tab IV, Column 12, Line 21), or 93.7% of its original request. Since the compliance rates were scaled back proportionately, the relationship of all charges to those initially proposed is approximately 94%.

WHEREFORE, for the reasons set forth above, Pennsylvania Power and Light Company respectfully requests that the Petition for Reconsideration filed on behalf of the Lehigh Valley Power Committee be dismissed.

Respectfully submitted,

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DATED: September 14, 1983

COMMONWEALTH OF PENNSYLVANIA

ORIGINAL

OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

DAVID M. BARASCH
Acting Consumer Advocate

(717) 783-5048

September 14, 1983

RECEIVED
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION
SEP 14 12 47 PM '83

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Room G-18, North Office Building
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
Pennsylvania Power & Light Company,
Docket No. R-822169

Dear Secretary Rich:

Enclosed please find for filing an original and three (3) copies of the Petition Of The Office of Consumer Advocate For Reconsideration of the Commission's August 22, 1983 Order in the above-captioned proceeding. Copies have been Express Mailed to the Company and served upon all other active parties as indicated on the attached Certificate of Service. Copies are also being hand-delivered today to each Commissioner and the Office of Special Assistants.

As any Petitions for Review from the Commission Order would have to be filed no later than September 21, 1983, the OCA respectfully requests that the Commission preliminarily rule on this Petition at its Public Meeting of September 16 or September 20.

Sincerely,

David M. Barasch
Acting Consumer Advocate

DOCUMENT FOLDER

Enclosures
cc: All active parties
Hon. Linda C. Taliaferro, Chairman
Hon. Michael Johnson, Commissioner
Hon. James Cawley, Commissioner
Office of Special Assistants

ORIGINAL

CERTIFICATE OF SERVICE

SEP 14 12 47 PM '83
RECEIVED
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

Pennsylvania Public Utility
Commission
v.
Pennsylvania Power & Light Company,
Docket No. R-822169

I hereby certify that I am, this 14th day of September, 1983 serving either in person or by first class mail the foregoing document, Petition Of The Office Of Consumer Advocate For Reconsideration, upon the persons indicated below:

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION :
:
v. : R-822169
:
PENNSYLVANIA POWER & LIGHT COMPANY :

PETITION OF THE OFFICE OF CONSUMER ADVOCATE
FOR RECONSIDERATION

I. INTRODUCTION

1. The Office of Consumer Advocate (OCA), a party to the above-captioned rate proceeding, hereby petitions the Pennsylvania Public Utility Commission (Commission or PUC), pursuant to 66 Pa. C.S. §703(g), to reconsider its Order entered August 22, 1983 in this proceeding.

2. The PUC set forth the standards for reconsideration of a Commission Order in Philip Duick v. Pennsylvania Gas and Water Company, C-R0597001, Order Entered Jan. 4, 1983, as follows:

> A petition for reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that "[p]arties..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...." What we expect to see raised in petitions

are new and novel arguments, not previously heard, <u>or considerations which appear to have been overlooked or not addressed by the Commission</u>.

Order at 6 (Emphasis added).

3. In the present proceeding, the OCA respectfully avers that the Commission Order either overlooked or failed to address certain legal and/or factual arguments raised by parties below which, if accepted, would require the Commission to rescind or amend its August 22, 1983, Order in several respects. As more fully set forth below, the specific aspects of the Commission Order on which the OCA seeks reconsideration are: 1) the cost of constructing Susquehanna Steam Electric Station, Unit 1 (Order at 22-27); 2) the disposition of Susquehanna "energy savings" in light of the Commission's inclusion of the great majority of Susquehanna's capital costs in rate base (Order at 74-76); 3) the reversal of the Commission's prior rate case decision with regard to the amortization of consolidated tax savings generated by the Oneida Mining Company (Order at 67-68); and 4) the failure of the Commission to apply the provisions of 66 Pa. C.S. §1315 and §102, to the Company's claims for plant held for future use and the amortization of abandonment losses on the Stony Creek project (Order at 8-9, 50-51). The grounds for the present Petition are as follows:

II. THE COMMISSION ORDER WITH RESPECT TO THE COST OF CONSTRUCTING SUSQUEHANNA UNIT 1 DISREGARDS AN ESTABLISHED LINE OF COMMISSION PRECEDENT, IMPOSES AN INAPPROPRIATE LEGAL STANDARD IN DETERMINING THE INCLUSION OF CONSTRUCTION COSTS IN RATES, AND REPRESENTS A DEPARTURE FROM PROPER RATEMAKING PRINCIPLES WITH RESPECT TO CONSTRUCTION COST CLAIMS.

A. <u>Introduction</u>.

1. The PUC in its Order in the above case made various decisions concerning the cost of constructing the Susquehanna Steam

Electric Station, Unit 1 (hereinafter Unit 1). Order at 22-27. The Commission denied each construction cost adjustment proposed by the OCA and the Trial Staff, except for a minor reallocation of certain hydrodynamic load studies between Units 1 and 2. Order at 26. The OCA avers that in making these determinations the Commission erred as follows:

B. The PUC's Disposition Of The Construction Cost Adjustments Proposed By OCA And Staff Is Inconsistent With The Standards Previously Developed By The Commission.

1. The PUC states with respect to the OCA's proposed adjustments concerning hydrodynamic loads: "In the final analysis, the ALJ's disposition of these adjustments is consistent with the standards heretofore developed by the Commission." Order at 23.

2. The OCA submits that, to the extent the PUC concluded that any rate base adjustment caused by construction deficiencies must await some determination of responsibility among PP&L and its contractors, such policy clearly conflicts with the decisions of this Commission in the prior cases in which this issue was addressed.

In prior cases, the Commission has never held that an adjustment to rate base must be predicated on a finding of direct fault by the utility itself or that such an adjustment must await the outcome of litigation between a utility and its contractors. Rather, as the Commission stated in ordering a rate base adjustment as a result of faulty construction at TMI Unit 1:

> Regardless of subsequent litigation which may determine responsibility for the faulty concrete pour at TMI we are of the opinion that respondents' ratepayers should not be made to bear this burden.

Pa. PUC v. Metropolitan Edison, R.I.D. 170, 50 Pa. PUC 82, 102 (June 22, 1976). Similarly, in a later case with respect to TMI Unit 2, the Commission held:

> [W]hile Respondent asserts that it should not bear any costs that are not recovered in its pending suit against Lonergan & Company, we believe that this situation is analogous to that of the TMI-I girder ring, (R.I.D. 170-171, 50 Pa. PUC 77, 102) and as there, we are of the opinion that Respondent's ratepayers should not be made to bear the burden of the costs of replacing the malfunctioning steam valves, for it was the Respondent not its ratepayers which selected the contractor to provide the valves and Respondent and its stockholders should bear the risk of performance failure.

Pa. PUC v. Metropolitan Edison Co., R.I.D. 626, at 14, 28 PUC 4th 555, 563 (March 22, 1979).

3. The OCA submits that by proposing that all resolution of these construction cost adjustments must await a determination of fault among PP&L and its contractors, the PUC has apparently overlooked or disregarded the standards set forth above, and its Order thus runs directly contrary to an established line of precedent.

4. As in the case of TMI, the OCA submits that ratepayers should not bear the cost of construction deficiencies whether they are caused by the utility or its contractors. By this Petition for Reconsideration, the OCA respectfully requests that the Commission reconfirm the standard set forth in the TMI cases quoted above and reject any intimations that ratepayers must bear the cost of faulty construction work unless and until the specific party at fault can be identified.

C. The PUC Must Not Defer Any Ratemaking Adjustment To The Cost Of Constructing Unit 1 Until All Contractual Litigation Is Resolved.

1. During the course of contructing Unit 1, as in any large utility construction project, PP&L, the architect/engineer (Bechtel), and the other contractors involved in the project (e.g. General Electric), entered into various agreements which control and limit the

rights and obligations of these parties during the course of the project and afterwards. In this case, the terms and conditions of these contracts control and limit to some extent the rights of the parties to recover from each other through subsequent litigation and related negotiation the costs of correcting certain construction deficiencies.

2. In rejecting the OCA adjustment concerning intergranular stress corrosion cracking, the Commission quoted the Recommended Decision as follows:

> These claims will someday be litigated. In that forum it might be shown that PP&L is right. On the other hand, GE might be right that it has no responsibility for this problem. When this is litigated, after completion of Susquehanna Unit 2 in 1984, the appropriate rate base treatment can be determined.
>
> (R.D., p. 66). We agree. As further noted by the ALJ, any adjustment at this time could act as a disincentive to a utility to contest what it considers to be improper charges.
>
> The ALJ's recommendation is adopted, and PP&L is directed to report in its next rate case as to the status of its claim against GE.

Order at 24. In the discussion of various other construction cost adjustments, the Commission similarly directs PP&L to report back as to the progress which it has made in litigating or negotiating further claims.

3. By this Order the PUC has implied that just as a utility is restricted in the damages it may collect against its contractors by the terms of its agreements with its contractors, so shall the PUC be restricted from reducing the rate base of the utility by these same terms of agreement. The OCA submits that whether "PP&L is right" or "GE is right" concerning various contractual claims, ratepayers should not be held responsible for excessive construction costs.

4. Currently, PP&L has under construction the Susquehanna Steam Electric Station, Unit No. 2. Other nuclear units currently planned or under construction, which are at least partially owned by Pennsylvania utilities, include Limerick Units 1 & 2, Perry Units 1 & 2, and Beaver Valley Unit 2. The various contractual terms and conditions entered into by the parties to these contruction projects are not filed as a matter of record with this Commission and have certainly not been approved as a matter of ratemaking policy.

5. The OCA submits that it would be inappropriate to establish a policy of allowing the private contracts of the parties to a large utility construction project to control the decisions of this Commission in this, as well as future cases. This Commission does not control these contractual terms and conditions, and, in the present case, these contractual terms and conditions were not even made a part of the record.

6. Such a policy effectively places the ratemaking duty of valuing the used and useful property of a utility under 66 Pa. C.S. §1311 on the contracting parties. Such deference to the "unsupervised contracts of unregulated third parties" is inconsistent with the PUC's duty to establish reasonable rates. National Fuel Gas Distribution Corporation v. Pa. PUC, No. 11 C.D. 1982, issued August 4, 1983, n.8.

7. Such a policy also effectively removes from the utility any financial incentive to actively pursue the contractors responsibile for these identified deficiencies and aggressively bring to completion the ensuing litigation or negotiation. As long as ratepayers are to be charged for every dollar spent unless and until the utility and its contractors come to some resolution of the dispute through litigation or

some other process, the utility has no incentive to seek prompt or complete satisfaction of its claims. Such a process is nothing short of a surrender of the Commission's power to assess the proper level of construction costs to be included within rates.

8. By this Petition, the OCA therefore respectfully requests that the Commission reject any intimation that its power to make ratemaking adjustments with regard to construction costs can or should be limited by the contractual rights of the parties. Rather, the Commission should make it clear that it will disallow any construction costs that are unnecessarily or imprudently incurred and that it will disallow costs for faulty construction work which does not prove to be used and useful to ratepayers. Applying that standard to the evidence in this case, the OCA submits that the Commission's Order with regard to Susquehanna Unit 1 construction costs must be rescinded, and that the OCA's proposed adjustments must be adopted.

D. PP&L May Not Escape Liability For Its Contractors' Actions Simply By Delegating Its Duties To Those Contractors.

1. In the PUC's discussion of the OCA proposed adjustment related to hydrodynamic loads, the Commission states as follows:

> Moreover, there is absolutely no evidentiary support for the proposition that the level of control which PP&L exercised over General Electric was such as to impute imprudence to PP&L or to result in a direct act of imprudence on the part of PP&L.

Order at 23.

2. OCA submits that PP&L, or any other utility engaged in a major construction project, cannot avoid responsibility for any errors occurring in the construction project by simply avoiding a close level of control over the contractor which has committed these construction errors.

3. The OCA submits that PP&L, or any other utility which constructs a major generating facility, has a special obligation to closely supervise those parties actually constructing the project whose costs the ratepayers will later be asked to bear.

4. Moreover, the result of the Commission's standard as proposed here would be to charge ratepayers for the faulty work of PP&L's contractors simply because their imprudence could not be directly attributed to PP&L. As noted above, such a standard is contrary to Commission precedent and constitutes inappropriate ratemaking policy for this and future cases.

E. Construction Cost Adjustments May Not Be Denied Merely Because Construction Deficiencies Are Safety Related Or Are Common In The Nuclear Industry.

1. In discussing the OCA adjustments related to expansion anchors and the advanced control room, the PUC notes that the errors related to this equipment were not unique to PP&L but were industry-wide in nature. Order at 25.

2. The OCA submits that the mere fact that many other utilities and their contractors made the same errors as PP&L in installing nuclear equipment does not justify imposing upon PP&L ratepayers the full costs of these errors. Such a policy would only insulate the nuclear industry from the costs of its most frequent mistakes and allow the failures of the nuclear industry to control PUC ratemaking.

3. In discussing the adjustments proposed by the OCA related to the reconstruction of the containment caused by a reassessment of hydrodynamic loads and the rework of certain expansion anchors, the PUC concluded that any adjustments in these areas would be improper, as the

costs related to the construction rework in these areas were necessary to ensure the safety and licensability of the plant. Order at 23, 25.

4. OCA submits that merely because the correction of a deficiency in the construction of a nuclear plant is necessary to ensure its safe operation does not necessarily preclude any ratemaking adjustment which is associated with these various safety related deficiencies. Moreover, the fact that the error is so significant that the safety and licensability of the plant is called into question should not mean that the cost of correcting these errors must necessarily be borne by the ratepayer.

5. The OCA submits that in considering a rate base adjustment for construction of a nuclear unit, the inquiry should not be confined to whether or not the identified error was common to all similar facilities or whether it concerned the safety and licensability of the plant. Rather, the Commission must consider whether construction expenditures were prudent and reasonable and whether the expenditures produced facilities which are used and useful to the ratepayers. Just as Met-Ed ratepayers were not required to pay for the original faulty concrete pour at TMI-1, PP&L ratepayers should not have to pay for the original faulty containment design at Susquehanna 1.

F. <u>PP&L's Failure To Quantify The Cost Of Construction Deficiencies May Not Be Permitted To Form The Basis For A Denial Of Any Related Ratemaking Adjustments</u>.

1. In the discussion of the OCA contruction cost adjustments related to hydrodynamic loads and electrical equipment, and the comparable Trial Staff adjustments, the PUC cites as a justification for its rejection of these ratemaking adjustments the contention that the amount of the adjustment has not been properly quantified. Order at 23, 25, 26.

2. In each of these instances the adjustment proposed was based upon a deficiency in the contruction of Unit 1 which PP&L itself had identified.

3. Despite the efforts of OCA and Trial Staff, PP&L refused to quantify the cost of correcting these deficiencies.

4. OCA submits that it is unfair to allow PP&L to avoid such ratemaking adjustments merely by refusing to provide a quantification of the costs related to these deficiencies. By accepting the utility's unwillingness to produce a quantification of the costs of errors in its own construction project, the PUC allows the utility to avoid any ratemaking adjustment even when the errors are admitted. The PUC thus improperly shifts the burden of proof with regard to the reasonableness of construction costs from the utility to its ratepayers.

G. <u>Conclusion</u>.

1. As demonstrated by the above arguments, the OCA is concerned that the Commission in this Order not only has rejected any construction adjustments in this case, but has set forth a series of standards under which it may be virtually impossible to establish the propriety of such adjustments in the future. If this Order is permitted to stand as is, it may be construed to stand for the proposition that a construction adjustment will only be permitted if the party proposing the adjustment can perfectly quantify any cost overruns, and prove that these excessive costs were caused by an imprudent act of the utility (as opposed to its contractor); that responsibility for the cost had been established in any pending or proposed civil litigation; and that the construction deficiency was not safety-related or common to other similar plants.

2. The OCA respectfully asks the Commission to reconsider and modify the standards which were apparently applied in this case. Rather, the Commission should make it clear that it will disallow any construction costs that are unnecessary or imprudently incurred, and that it will disallow costs for any faulty construction work which does not prove to be used and useful to the ratepayers.

Applying that standard to the evidence in this case, the Commission must therefore modify its order with respect to Susquehanna Unit 1 construction costs and grant the specific adjustments proposed by the OCA.

III. THE COMMISSION ORDER WITH RESPECT TO SUSQUEHANNA ENERGY SAVINGS IS INCONSISTENT WITH ITS EXCESS CAPACITY ADJUSTMENT AND IS CONTRARY TO SOUND RATEMAKING POLICY.

A. The Commission Order Fails To Recognize The Explicit Link Between The OCA Excess Capacity Adjustment And The OCA Recommendation That Ratepayers Actually Receive The Pro Forma Energy Savings Used By The Company To Justify The Inclusion Of Any Part Of Susquehanna In Rate Base.

1. At page 20-21 of its Order, the Commission correctly noted that:

> In the instant proceeding, the OCA advanced three alternative methods of quantifying the excess capacity to be removed from rate base.... After a thorough analysis of the methods advanced for making the excess capacity adjustment (R.D., pp. 45-48), ALJ Klovekorn found most reasonable one of the methods advanced by the OCA. We agree that the method recommended by the ALJ, which utilizes a cross section of the net depreciated value of all of PP&L's plant, is clearly supported by the record.

2. As shown on Table III of the Commission's Order, the effect of this adjustment was to reduce the Company's net plant in service by $287,189,000. The bulk of the Company's $1.5 billion

investment in Susquehanna Unit 1 was permitted into PP&L's jurisdictional rate base, however, and the Company was also permitted to collect nearly all its claimed operating, maintenance and depreciation expense for Susquehanna on an annualized basis for the future test year.

3. While the OCA did present three alternative methods of calculating the value of the Company's 945 megawatts of excess capacity, it premised the third--and least costly to the Company--of these methods on the assumption that the $186 million in pro forma energy savings (which had been utilized by the Company to reduce its proposed rate increase from $501 million to $315 million) would actually be realized by the Company's ratepayers. As stated by the OCA in its Main Brief at 160:

> In recommending that the Commission adopt the lowest of the three excess capacity adjustments suggested by its witness Dr. Rosen, the OCA has considered the fact that both the Company and the OCA have incorporated $186 million of energy savings in our respective pro forma revenue requirements. Given the nature of this recommendation, the OCA submits that even if ratepayers do not pay a return on a portion of PP&L's installed capacity, the Company should not be permitted to deprive ratepayers of any of the energy savings which the Company has incorporated in its pro forma revenue requirement in this case.

As stated by OCA's excess capacity witness, Dr. Rosen, with regard to this issue:

> Q. If an excess capacity adjustment is made, should ratepayers be precluded from benefitting from the energy savings for the PP&L system attributable to this amount of capacity?
>
> A. Definitely not. There is no basis for removing any system energy savings due to the exclusion of PP&L's excess capacity from rate base. Especially if only a small part of Susquehanna #1 is included in an excess capacity adjustment in this case, as set forth in my third approach suggested above, the full net $186 million reduction in rates projected on an annual basis by PP&L

> due to Susquehanna #1 must remain. The reason is simple. If some of these energy savings due to excess capacity were removed, the net costs to ratepayers of having Susquehanna #1 in rates would further increase and would involve even higher losses than indicated in the cost/benefit analysis of Susquehanna that I provided earlier. Removing some of these energy savings would then strengthen the argument in favor of including all of Susquehanna in the capacity mix considered excess capacity, since it would make it much less likely that Susquehanna would ever pay its own way. The more any energy savings due to excess capacity are excluded from rates, the stronger the argument becomes to increase the average cost of the capacity mix considered to be excess, and thus the dollar value of the excess capacity adjustment via the rate treatment of fixed costs rather than energy costs.

OCA St. No. 4 at 49-50.

4. Recognizing the link between the OCA excess capacity adjustment and the Company's own reduction in overall revenue requirement ostensibly produced by the energy savings from Susquehanna, the ALJ agreed that the Company should not be permitted to deprive ratepayers of those pro forma energy savings through a subsequent change in its Energy Cost Rate. As stated by the ALJ at R.D. 128:

> [Q]uite simply, at this time there is excess capacity on the PP&L system and current ratepayers would be better off without the plant. They should not be deprived of the anticipated energy savings from this plant.

5. In adopting the least costly OCA excess capacity rate base adjustment, but refusing to tie down the $186 million in energy savings, the Commission failed to recognize the inextricable link between these two proposals.

While the Company disavowed its $186 million figure for ECR purposes, it consistently used these energy savings as a primary justification for inclusion of Susquehanna in rates. Thus, for example, at pages 54-55 of its Main Brief, the Company argued:

> Susquehanna Unit 1 is clearly used and useful. Unit 1 is expected to generate approximately 1.25 million mwh of electricity in the future test year and approximately 6 million mwh on an annualized basis. The electricity generated by Susquehanna Unit 1 will be used to serve PP&L customers and is expected to produce approximately $106 million in fuel cost savings in the pro forma future test year (PP&L St. 12, p. 11).
>
> ***
>
> The additional interchange sales made possible by the operation of Unit 1 are expected to produce $80 million in savings during the test year (PP&L St. 12, p. 11). These savings will be flowed directly through to ratepayers.

Even in its Exceptions, the Company continued to argue that:

> [T]he Company's evidence in this proceeding indicates that during the first year of commercial operation of Unit 1, it <u>will produce</u> approximately $186 million in savings to PP&L's customers--$106 million in direct fuel savings and $80 million in additional PJM "split savings."

PP&L Exceptions at 4. (Emphasis added).

6. To the extent that <u>any</u> portion of Susquehanna Unit 1 is allowed to be recognized in rates, the OCA submits that the energy savings used to justify this inclusion must be retained in rates as well. As argued by the OCA in its Main Brief at 163:

> Unless the Commission makes a larger excess capacity adjustment than that recommended by the OCA--i.e. excludes a greater portion of Susquehanna itself from rate base--the Commission must reject any attempt to deprive ratepayers of the energy savings which have been incorporated in this case.

7. Having rejected the request of various parties to remove Susquehanna as a whole from rate base, it is respectfully submitted that the Commission must reconsider its refusal to adopt even the least costly OCA excess capacity adjustment in its entirety. That adjustment, as noted above, had two parts: a reduction in rate base, based on the

average depreciated cost of all PP&L capacity rather than the cost of Susquehanna; and an assurance that the pro forma energy savings used by the Company to justify inclusion of <u>any</u> of Susquehanna in rates would actually be received by ratepayers. Without that latter assurance, the OCA submits that none of PP&L's investment in Susquehanna can be deemed used and useful at this time.

B. <u>The Basis For The Commission Decision With Regard To ECR Benefits Should Be Reexamined</u>.

1. The Commission cited two reasons for rejecting the ALJ's recommendation with regard to energy savings. These reasons were: first, that a requirement that PP&L guarantee its projected energy savings would "abrogat[e] the ECR mechanism for PP&L"; and second, that this assurance would "create the potential of an economic incentive for the continued operation of what might be an unsafe nuclear plant by PP&L." Order at 76.

2. With regard to the impact of its proposal on nuclear safety, the OCA would note that this argument was not raised at any time by PP&L. Moreover, these same concerns about plant safety would apply in other jurisdictions which either have no energy clause or which attach objective efficiency standards or capacity factor standards to their energy clauses. Finally, to the extent that PP&L's failure to meet its pro forma energy savings projection results from NRC-mandated safety modifications, the Company could petition the Commission for a further modification to its ECR in the future.

As presently constituted, however, the Company's ECR mechanism could permit it to pass through any shortfall in energy savings without hearings, subject only to Commission audit and, in extraordinary cases such as the Beaver Valley Investigation, I-79070314, potential eventual refunds. Under the present Commission Order, the Company will not even be required to specially account for its prospective energy savings, nor will it be required to justify or explain any shortfalls in those projected savings when the next ECR goes into effect.

3. With respect to the contention that the proposals of the OCA, Trial Staff and the ALJ would "abrogate" the Company's ECR, it is certainly within the Commission's power to amend or modify a utility's ECR in appropriate circumstances. Moreover, it must be noted that it was PP&L itself which injected the energy savings issue into this case by filing a "net" increase of $315 million. As the Commission noted at page 74 of its Order:

> PP&L's $315 million rate increase request actually contains three components: (1) a $101 million increase to recover increased costs unrelated to Susquehanna Unit 1; (2) a $400 million increase to reflect the additional cost of Susquehanna Unit 1; and (3) a $186 million offset to reflect "a reduction in (PP&L's) annual energy costs... which is the direct result of the operation of Susquehanna Unit 1." PP&L Exh. Future 1, Sch. A-1, p. 2, 8.

4. While the base rate increases permitted by the Commission in this case went into effect on August 22, 1983 and will remain in effect throughout the life of these rates, the same cannot be said of the energy savings. Rather, those savings can be reduced, or eliminated in their entirety, by the normal workings of PP&L's Energy Cost Rate. This type of "business as usual" is not appropriate where the Company itself has included these energy savings as a pro forma offset to what otherwise would have been a $186 million greater rate increase request.

5. The OCA therefore respectfully requests that the Commission reconsider its refusal to adopt any of the OCA, Trial Staff or ALJ proposals regarding PP&L's pro forma energy savings. At a

minimum, the OCA submits that the Company must be required to account for the energy savings it actually obtains from Susquehanna and justify any shortfall in those savings before it is permitted to pass any additional costs on to ratepayers through its next ECR.

IV. THE COMMISSION ORDER CUTTING OFF THE CONTINUED AMORTIZATION OF CONSOLIDATED TAX SAVINGS ORDERED IN THE LAST CASE IS IMPROPER RATEMAKING AND VIOLATIVE OF PRINCIPLES OF RES JUDICATA.

1. In its Order in the last PP&L rate case at R-80031114, the Commission specifically approved a Trial Staff proposal to amortize over five years, $2,624,357 in consolidated tax savings associated with the Oneida Mining Company, an unregulated PP&L subsidiary. Order Entered January 31, 1981 at 30-32. As stated by the Commission in rejecting PP&L's arguments against this amortization:

> We do not doubt PP&L's arguments that the expenses incurred are borned by its shareholders; however, we cannot ignore the basic fact that if it were not for the taxable income generated by PP&L, the tax losses of Oneida would not be available as an offset to the taxable profits of the operating subsidiaries. As we stated in Pa. P.U.C. v. West Penn Power Co., 32 PUR 4th 245 (1980):
>
>> These losses of the chronic loss companies are unusable by them because the tax savings benefits of the losses would have been lost forever had each member in the system filed tax returns separately. The chronic loss companies, because of the constant losses, cannot take advantage of the carry-back and carry-forward tax provisions of the Internal Revenue Code.
>
> * * *
>
> Acceptance of PP&L's argument would result in having ratepayers pay the full amount of an expense never in fact incurred by PP&L because it does not file a separate tax return. United Gas properly recognized that actual taxes paid should be used in determining the income tax allowance, rather than the hypothetical tax advocated by PP&L. Further, support for our conclusion, that PP&L's federal income taxes should reflect an allocable portion of the tax savings, is found in

Western Pa. Water Co. v. Pa. P.U.C., ____ Pa. Commonwealth Ct. ____, 422 A. 2d 906 (1980), wherein the Court held:

> [T]hat the Commission may properly exclude a portion of a utility's tax expense where there is evidence that the utility has not been afforded its fair share of benefits from filing a consolidated tax return with a parent corporation.
>
> We cannot condone a plea which would allow a parent company to collect a "phantom tax." In reality, it is never paid to the government, but passed on as a profit to the shareholder by way of a subsidiary--claimed non-existant tax expenses.

> The fact that Respondent makes payments to Oneida equal to the tax savings derived from Oneida's losses does not alter our reasoning, but rather reinforces it. This payment does not alter the amount of taxable income reported on the consolidated return. Further, although not addressed, it is possible that the funds utilized to pay Oneida were ratepayer supplied through payments made in prior years for a level of income taxes offset by the Oneida loss. Accordingly, we shall grant Staff's exception and reduce Respondent's claim for income taxes by $525,000.

Order at 31-32 (Emphasis in the Original).

2. In the present proceeding, without citing any change in the facts or law since its order in the last case, the Commission reversed its prior determination and thus halted the previously ordered amortization. The Commission ordered this reversal despite the fact that, as noted by the ALJ, "PP&L did not appeal the prior determination; nor did the Company attempt to refute through cross-examination or rebuttal the adjustment when it was offered in the present case." Order at 68 (Emphasis added).

3. The Commission Order at 68 apparently adopts the position of the Company that "it is clearly permissible to relitigate this issue" in the present case.

4. In arriving at this decision, however, the Commission did not discuss the criteria for application of res judicata set forth in the case of Philadelphia Electric Company v. Pa. PUC, 61 Pa. Commw. 325,

335, 433 A.2d 620, 624-26 (1981), which was cited by the OCA in its Main Brief at 136 and Reply Exceptions at 34. Given the fact that the Commission was dealing with the continued amortization of an adjustment ordered in a prior case which was not appealed, the question of res judicata is certainly a relevant one. With respect to this particular amortization, the OCA submits that "the facts necessary to resolve this issue in question" have not "change[d] with time " 433 A.2d at 624-25. Nor have there been any other changes which would permit a different result in this case. The doctrine of res judicata thus applies.

5. Moreover, as noted in the OCA Reply Exceptions at 34, the Company did not "relitigate" the consolidated tax amortization in the present case. Rather, the Company simply disregarded it. The Company presented no direct testimony challenging the continued amortization. Nor did the Company present any rebuttal testimony when the continuation of the amortization was proposed by expert witnesses for the OCA and Staff. As such, there is no justification for the suggestion that this issue either was "relitigated" by the Company, or, if it had been, that such relitigation would have been proper under principles of res judicata.

6. Finally, the OCA would note that, in contrast to the Commission's decision in the last PP&L case, the decision in the present case runs directly counter to the consolidated tax doctrine as set forth by the appellate courts. Thus, in City of Pittsburgh v. Pa. PUC, 182 Pa. Super. 551, 581, 128 A.2d 372, 386 (1956), the Court stated:

> In computing the cost of operation and service, the Commission considers evidence of the actual expenses, properly adjusted when the evidence warrants; there is no legal or equitable reason for a supplemental return in the guise of allowances for taxes or other expenses which are not incurred.

Similarly, in the case of Riverton Consolidated Water Company v. Pa. PUC, 186 Pa. Super. 1, 20, 140 A.2d 114, 123 (1958), the Court stated:

> The fact that Riverton actually pays to Northeastern [its parent company] an amount for taxes greater than its proper proportionate share of the consolidated tax liability merely accomplishes in fact that which it is forbidden to do. The making of an improper payment does not eliminate its impropriety. The only proper tax expense which Riverton may pass on to its customers is its proportionate share after the consolidated return is filed and the actual tax paid.
>
> Riverton contended that the savings under the consolidated return results from operations and transactions of Northeastern which are "totally unrelated to Riverton or the income from its investment in Riverton." Riverton however fails to recognize that the savings actually result from the use of the holding company system. We pointed out in the City of Pittsburgh v. Pennsylvania Public Utility Commission, 182 Pa. Super. 551, 583, 128 A.2d 372, 387, that:
>
>> "the use of a consolidated tax return, the same as the use of the holding system of investment, is of mutual benefit to the ...[parent] and its subsidiaries. Advantages which result from tis system should benefit the consuming public as well as the utility and the parent company."

Most recently, although the Commonwealth Court rejected the argument of OCA that deferred tax benefits must be flowed through to ratepayers, the Court stated:

> In advancing this argument, reliance is placed on a number of cases which include: Riverton Consolidated Water Co. v. Pennslvania Public Utility Commission, 186 Pa. Superior Ct. 1, 140 A.2d 114 (1958); Chambersburg Gas Co. v. Public Service Commission, 116 Pa. Superior Ct. 196, 176 A. 794 (1935); and Western Pennsylvania Water. Reliance on these cases is misplaced, however. In each, the utility had shared in taxes paid according to a consolidated return filed with its parent company, but had computed its tax expense for ratemaking purposes as though it had filed and paid taxes as an individual corporation. The result was a claimed tax expense greater than the utility's actual tax liability under the consolidated return. The PUC and the Courts found rates based on this tax expense to be unreasonable because the tax expense claimed bore no

relationship whatsoever to the actual tax liability of the utility.

Cohen v. Pa. P.U.C., No. 362 C.D. 1982, issued August 15, 1983 at 3. Thus, while holding that the "actual taxes" doctrine did not require the immediate flow through of deferred tax benefits in the test year, the Commonwealth Court continued to apply this doctrine with respect to consolidated tax savings.

The Commission Order in the present case is violative of this appellate precedent and must therefore be reversed.

V. THE COMMISSION SHOULD RECONSIDER ITS DECISION WITH REGARD TO LAND HELD FOR FUTURE USE AND THE STONY CREEK AMORTIZATION.

A. Land Held For Future Use Is Encompassed In The Definition Of "Facilities" In The Public Utility Code.

1. At pages 8-9 of its Order, the Commission considered and rejected the OCA's argument that 66 Pa.C.S. §1315 precludes the inclusion in rate base of land held for future use. The Commission reiterated its view that this amendment to the Public Utility Code was merely "an endorsement of past Commission regulatory treatment of construction work in progress and a prescription of the continuation of that practice." Pa. PUC V. Duquesne Light Co., R-821945, Order on Reconsideration, Entered April 18, 1983, at 10.

2. The Commission, however, did not address the contention raised by the OCA, that 66 Pa. C.S. §1315 applies by its own terms to all electric utility facilities, and not just construction work in progress. OCA Main Brief at 99-100.

3. 66 Pa. C.S. §1315 states in pertinent part that with certain specified exceptions:

> [T]he cost of construction or expansion of a <u>facility</u> undertaken by a public utility producing, generating, transmitting, distributing or furnishing electricity shall not be made a part of the rate base nor otherwise included in the rates charged by the electric utility until such time as the facility is used and useful in service to the public. Except as stated in this section, no electric utility property shall be deemed used and useful until it is presently providing actual utility service to the customers.

(Emphasis added.) Of paramount importance here--and not discussed by the Commission in its order--is the fact that the term "facilities," as used in 66 Pa. C.S. §1315, was already defined in 66 Pa. C.S. §102 as follows:

> All the plant and equipment of a public utility, <u>including all tangible and intangible real and personal property without limitation</u>, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility.

4. The OCA respectfully submits that a reading of these statutory provisions leads inexorably to the conclusion that 66 Pa. C.S. §1315 is <u>not</u> limited to construction work in progress, but refers to all electric utility facilities, including land held for future use.

B. <u>The Commission Should Also Reconsider Its Ruling With Regard To The Amortization Of Costs For Stony Creek.</u>

1. For the same reasons set forth in Section A above, as well as those set forth in the OCA Main Brief at 142-144, the OCA also respectfully requests reconsideration of the Commission Order with respect to the amortization of the Company's investment in the Stony Creek project. Order at 50-51. This investment is not now, and never will be, used and useful to PP&L ratepayers. Its inclusion in rates is therefore precluded under 66 Pa.C.S. §1315.

VI. CONCLUSION

The OCA, therefore, requests that the Commission reconsider and modify its Order of August 22, 1983, with respect to the issues set forth above.

Respectfully submitted,

Philip McClelland

Philip McClelland
Assistant Consumer Advocate

Irwin A. Popowsky

Irwin A. Popowsky
Assistant Consumer Advocate

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Acting Consumer Advocate

DATED: September 14, 1983

September 14, 1983

Dimitra I. Kachiroubas, Assistant
Vice President
Commerce Clearing House, Inc.
4025 W. Peterson Avenue
Chicago, Illinois 60646

Dear Ms. Kachiroubas:

Receipt is acknowledged of your letter requesting a copy of the Commission's recent decision concerning Pennsylvania Power & Light Company.

A copy of the Order is enclosed for your use and there is no charge for this service.

Very truly yours,

for Jerry Rich, Secretary

JZ
Enc.

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Ms. Linda C. Taliaferro
Chairman
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, Pennsylvania 17120

Dear Ms. Taliaferro:

We are interested in obtaining a recent decision of the Commission in a Pennsylvania Power & Light Co. rate case wherein the Commission reaffirmed its rule that excess generating capacity should be excluded from an electric utility's rate base even without evidence that plant construction was imprudent, but that depreciation and other operating costs associated with excess capacity may still be recovered.

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Very truly yours,

COMMERCE CLEARING HOUSE, Inc.

Dimitra I. Kachiroubas

Dimitra I. Kachiroubas
Assistant Vice President

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