



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 P.O. BOX 3265, HARRISBURG, PA 17105-3265
 ISSUED: AUGUST 21, 2001

IN REPLY PLEASE
 REFER TO OUR FILE

C-00967749

STEPHEN YAKOPEC JR ESQUIRE
 1715 5TH AVENUE
 ARNOLD PA 15068

Township of Springdale
 V.
 Duquesne Light Company and
 West Penn Power Company

DOCUMENT
 FOLDER

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge James D. Porterfield. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
 Secretary

Encls.
 Certified Mail
 Receipt Requested
 FG

LARRY R CRAYNE ASST GENL CNSL
 RICHARD S HERSKOVITZ ESQUIRE
 DUQUESNE LIGHT COMPANY
 CHERRINGTON CORP CTR
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 CORAPOLIS PA 15108

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 WEST PENN POWER COMPANY
 800 CABIN HILL DRIVE
 GREENSBURG PA 15601-1689

the Commission for the orderly transfer of the customers, along with the associated distribution facilities at DLC's book investment value.

While settlement discussions continued throughout this proceeding and mediation was rejected, two significant events have occurred: the failed merger attempt by the utilities' parent companies and the utilities' restructuring proceedings before the Commission, under the Electricity Generation Customer Choice and Competition Act.¹ As a result of its restructuring proceeding, WPPC has lodged a late objection to the transfer. WPPC contends that it did not foresee the addition of 200 customers. Consequently, WPPC's stranded costs and provider of last resort (PLR) obligation were determined without considering these customers. WPPC argues, in testimony, that as the electric distribution company of these customers, it becomes the PLR, and constrained, as it is, by PLR price caps, the added customers may require it to purchase more power making its service noncompensatory.² Thus, if the transfer is ordered, WPPC believes it should receive additional compensation.

A short history of the proceeding follows.

In response to the formal complaint, both DLC and WPPC filed answers, with new matter. These pleadings expressed the continued positions of the parties: DLC is seeking stranded costs for the involved distribution facilities and WPPC is only willing to pay, as it has in the past under similar circumstances, book investment value or trended original cost minus depreciation. WPPC replied to DLC's new matter by stating that the recovery of stranded costs based on investments made outside of DLC's service territory should not be recoverable. Springdale Township (Township) filed responses to the new matters of the utilities.

¹ See 66 Pa.C.S. §2801 *et seq.*

² See WPPC St. No. 3, at 8-13.

On July 25 1996, ALJ James D. Porterfield presided over the prehearing conference. Stephen Yakopec, Jr., Esquire, entered an appearance on behalf of the Township of Springdale. John L. Munsch, Esquire, entered an appearance on behalf of West Penn Power Company. Richard S. Herskovitz, Esquire, entered an appearance on behalf of Duquesne Light Company. And as scheduled, Charles Hilmer, Jr., Mediator (Office of Administrative Law Judge) participated in the prehearing conference as a possible mediator.

After Interim Order One issued and prepared written testimony was submitted, the evidentiary hearing was held on December 10 and 11, 1996, in Pittsburgh, Pa. Donna M. Diehm testified in behalf of the Township. Richard S. Bower, James M. Coulter, and James Lahtinen testified in behalf of DLC. Alexander Galatic testified in behalf of WPPC. The prepared written statements of these witnesses, who were subject to cross-examination, are listed below. In addition, the prepared written testimony of William D. Garland (DLC), Richard A. Phillips (WPPC), and David L. Schroeder (WPPC) were admitted into the record without cross-examination.

Counsel submitted various substantive letters following the evidentiary hearing. By letter dated January 25, 2000, counsel for DLC advised the parties that the current net investment in the involved facilities was \$132,224.52, and that the customer transition charge recovery associated with the involved customers was \$95,503; a letter dated January 28, 2000, stated, however, that the \$95,503 figure was subject to adjustment. The letter of Township's counsel dated October 10, 2000, which comments on WPPC St. No. 3—concerning WPPC's restructuring, etc.—was admitted into the record as ALJ Exh. No. 2. WPPC's counsel responded to the Township's comments by letter dated October 26, 2000.

Post hearing conferences were held on June 12, 1998, and January 30, 2001.

The record in this proceeding closed on April 30, 2001, and includes the following identified and described items.

- DLC's main and reply briefs—referenced, respectively, as DLCMB and DLCRB.
- WPPC's main and reply briefs—referenced, respectively, as WPPCMB and WPPCRB.
- Township's reply brief—referenced as TRB.
- Transcript of notes from the prehearing conference, which is 25 pages in length and numbered 1–25.
- The transcript of notes from the evidentiary hearing, which is 235 pages in length and numbered 1–235.
- The transcript of notes from the post-hearing conferences, which is 17 pages in length and numbered 276–292.³
- Interim Order One issued on September 6, 1996, and pertained to both prehearing and post-hearing matters.
- Interim Order Two issued on June 2, 1997, stayed the proceeding for 12 months, and admitted into the record, on Township's motion, ALJ Exh. No. 1, the Commission's "Report and Recommendation to the Governor and General Assembly on Electric Competition" from the Investigation into Retail Competition, Docket No. I-940032.
- Interim Order Three issued December 10, 1999, and reopened the record for additional filings by counsel and further settlement discussions; it also lifted the stay and prospectively closed the record on April 28, 2000.
- Interim Order Four issued May 15, 2000, and granted the unopposed motion of the utilities to have the reopened record remain open until July 30, 2000.
- Interim Order Five issued August 3, 2000, and granted the unopposed motion of Allegheny Power to extend the open

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There are no transcript pages numbered 236–275.

date of the record until October 31, 2000, to facilitate further settlement discussions.

- Interim Order Six issued on January 18, 2001, and reopened the record until April 30, 2001, for the admission of WPPC's Statement No. 3 and to facilitate further settlement discussions.
- ALJ Exh. No. 1 is The Pennsylvania Public Utility Commission's "Report and Recommendation to the Governor and General Assembly on Electric Competition" (from the Investigation into Retail Competition at Docket No. I-940032).
- ALJ Exh. No. 2 is a letter from Springdale's counsel dated October 10, 2000, making argument and objecting to WPPC St. No. 3. (The letter was initially misidentified (NT, at 290) as ALJ Exh. No. 1).
- Springdale Prehearing Exh. No. 1—Complainant's Prehearing Memorandum.
- WPPC Prehearing Exh. No. 1—Respondent's Prehearing Memorandum.
- DLC Prehearing Exh. No. 1—Respondent's Prehearing Memorandum.
- Springdale Statement No. 1—Donna M. Diehm, Secretary for Springdale Twp.; attached is Springdale Exh. No. 1, a DLC bill.
- Springdale Exh. No. 2— official minutes of township meetings.
- DLC Statement No. 1—James N. Coulter, Supervisor of Distribution and Planning Engineering, Duquesne Light Company.
- DLC Statement No. 2 (including Exh. WDG-1)— William D. Garland, Manager, Valuation and Property Records Dept., Duquesne Light Company.
- DLC Statement No. 3 (including Exhs. JAL-1, JAL-2, and JAL-3)—James A. Lahtinen, General Manager,

Regulatory and Economic Analysis Unit, Duquesne Light Company.

- DLC Statement No. 1R (including Exh. JAL-1R)—James A. Lahtinen, General Manager, Regulatory and Economic Analysis Unit, Duquesne Light Company.
- DLC Statement No. 1S (including Exh. RSB-1)—Richard S. Bower, Bower Rohr & Associates.
- DLC Statement No. 2S (including Exh. JAL-2S)—James A. Lahtinen, General Manager, Regulatory and Economic Analysis Unit, Duquesne Light Company.
- WPPC Statement No. 1 (including Exhs. RAP-1, RAP-2, RAP-3, and RAP-4)—Richard A. Phillips, Staff Assistant, Operations Services, Allegheny Power Service Corp.
- WPPC Statement No. 2 (including Exhs. X1 and X2)—Alexander Galatic, Senior Energy Consultant, Strategic Energy Ltd. (Also referred to as WPPC Rebuttal Statement No. 1, but see NT, at 132–133.)
- WPPC Statement No. 3—David L. Schroeder, Allegheny Energy Service Corp., Engineer, Financial and Risk Analysis Section of the Asset Management Dept., Allegheny Power. (Admitted into the record by Interim Order Six, dated January 18, 2001.)
- Galatic Exh. X3—Estimate of Stranded Cost of Generation for DLC.

II. Findings of Fact

1. Harwick Village is an unincorporated community in Springdale Township, Allegheny County, Pennsylvania. (Springdale St. No. 1.)

2. The Township of Springdale is a First Class Township, subject to The First Class Township Code, and a political subdivision of the Commonwealth of Pennsylvania. (NT, at 72; Springdale St. No. 1; 53 P.S. §55101 *et seq.*)

3. Duquesne Light Company and West Penn Power Company are authorized by the Pennsylvania Public Utility Commission to furnish electric utility service in and around Springdale Township; the area in the township known as Harwick Village is in the service territory of WPPC, but DLC has served Harwick—with Commission approval—since 1917; the entire area immediately surrounding Harwick is served by WPPC. (NT, at 97, 222–223; WPPC St. No. 3, pp. 3–4; DLC St. No. 3, Exh. JAL-1.)

4. In the early 1900s, many residents of Harwick worked in a local coal mine, owned by DLC or its predecessor; the coal was used at DLC's nearby power station. (WPPC St. No. 1, p. 4.)

5. Beginning in the early 1900s, DLC furnished the Harwick residents with electric utility service—even though they were located in WPPC's service territory—because DLC had facilities in place to serve its coal mine and the area generally. (WPPC St. No. 1, p. 4.)

6. Under Articles of Agreement (Articles) dated April 16, 1917, between DLC and WPPC, the parties agreed to exchange certain service territories and described those territories. (DLC St. No. 3, p. 3 and Exh. JAL-1.)

7. By Report and Order, dated June 27, 1923, the Pennsylvania Public Service Commission issued a Certificate of Public Convenience approving certain amendments to the Articles; DLC could not find the Commission's order approving the 1917 Articles. (DLC St. No. 3, Exh. JAL-2.; DLCRB, at 6, fn. 1)

8. Under Par. 15th of the Articles, DLC reserved the right to furnish electric service to certain coal mining properties, including one property in the area now known as Harwick Village. (NT, at 97, 124–127; DLC St. No. 3, p. 3 and Exh. JAL-1.)

9. Par. 15th of the Articles provides "that the Duquesne Light Company shall have the right to furnish electric current for light, heat and power to coal mining properties now or hereafter owned or controlled by it..." (DLC St. No. 3, p. 3 and JAL-1.)

10. In 1957, DLC's president confirmed an understanding with WPPC that, subject to regulatory approval and on termination of mining operations, WPPC had the right, at any time, to purchase DLC's facilities and begin serving the residents of Harwick. (WPPC St. No. 1, p. 2 and Exh. RAP-1.)

11. In 1958 and 1959, DLC sold the mining properties in the Harwick vicinity, but continued to furnish electric service to the residents of Harwick. (DLC St. No. 3, p. 3.)

12. Between the late 1950s and 1994, DLC's generation and transmission planning took the Harwick load into account. (DLC St. No. 1R, pp. 1-2; DLC St. No. 1S, pp. 12-14.)

13. In 1993, on the joint petition of DLC and WPPC, 19 customers in Harwick had their electric service transferred from DLC to WPPC, under the Commission's Order, at A-111250, F0049, dated June 3, 1993; WPPC's cost of the transaction was DLC's book investment in the facilities, determined as the trended original cost minus depreciation. (WPPC St. No. 1 and Exh. RAP-3.)

14. The Commission's 1993 Order noted as follows: "Due to the location of its distribution facilities [*sic*] Duquesne constructed facilities and served customers in the village [*sic*] of Harwick area...which is in West Penn's service area, on a temporary basis until West Penn had distribution lines in the area." (WPPC St. No. 1 and Exh. RAP-3; Order, at A-111250, F0049, p. 1.)

15. In another instance in 1993, on the joint petition of DLC and WPPC, a group of customers in Harwick had their electric service transferred from DLC to WPPC; WPPC's cost of the transaction, again, was developed using DLC's book investment in the facilities, determined as the trended original cost minus depreciation. (WPPC St. No. 1, p. 7 and Exh. RAP-4; Order at A-111250, F0054.)

16. In early 1994, DLC's remaining Harwick customers asked WPPC to begin furnishing them with electric service; of these customers, DLC determined that 221 of them were outside of DLC's service area. (WPPC St. No. 1, p. 5; DLC St. No. 3, pp. 2, 4; see also DLC's Answer and New Matter, at Par. No. 3b.)

17. In mid-1995, DLC informed WPPC that it would include stranded costs in the purchase price of the facilities associated with serving the Harwick customers. (DLC St. No. 1R and Exh. JAL-1R.)

18. In early 1996, Springdale Township filed a formal complaint in its own behalf and on behalf of the other DLC customers in Harwick; the complaint asks the Commission to order DLC to transfer customers in WPPC's service territory to WPPC and to order WPPC to accept the transfer. (Springdale St. No. 1; see also the Formal Complaint.)

19. DLC furnishes service for street lighting in Harwick, and the Township is the billing-responsible party. (NT, at 69; Springdale St. No. 1; see also the Formal Complaint.)

20. WPPC is willing and able to furnish electric service to the Harwick customers: it has a substation near Harwick, with two 138 kV lines and two 138-12 kV transformer banks supporting its distribution load in the area surrounding Harwick; WPPC estimates that the exchange of customers could be completed within three months, with limited or no outage. (WPPC St. No. 1, pp. 6-8.)

21. In the present instance, DLC has computed the depreciated book value—or trended original cost minus depreciation—of the involved facilities as \$149,774; WPPC has offered to pay this amount for the transfer of the facilities associated with the remaining Harwick customers; DLC has rejected this offer, and insists that not only should the depreciated book value of the facilities be included in the transfer price but also associated stranded costs. (NT, at 104; WPPC St. No. 1, pp. 7–8; DLC St. No. 2, Exh. WDG-1; DLC St. No. 3, p. 4.)

22. DLC proposes to transfer the following distribution facilities in the Harwick area to WPPC: 127 wood poles; 183 crossarms; 72 guys; 41 anchors; 35 racks; one pole-top extension; 6 insulators; 63,634 feet of conductors; 219 services; and 43 luminaires. (DLC St. No. 1, p. 2.)

23. In addition to its distribution facilities, DLC uses its entire mix of generation (including purchase power sources) and bulk transmission facilities to serve Harwick Village. (DLC St. No. 3, p. 4.)

24. DLC calculated its stranded costs—associated with the transfer of the Harwick customers—to be \$1,266,723; for argument's sake, WPPC calculated DLC's stranded costs to be in the range of \$84,749–\$263,731. (DLC St. No. 3, pp. 4, 11–12 and Exh. JAL-3; DLC St. No. 2, Exh. WDG-1)

25. DLC's method of calculating its stranded costs is based on a revenue-lost approach that estimates its net revenues from serving the Harwick customers from the present through 2005, deducts a market value of the stranded costs, and reduces the total cost to net present value. (DLC St. No. 3, pp. 11–12, 14.)

III. DISCUSSION

A. INTRODUCTION

Springdale Township's complaint seeks an order to force the transfer of about 200 electric customers in Harwick Village who are served—with Commission approval—by DLC but who are situated in the service territory of WPPC. Before WPPC's restructuring proceeding before the Commission, under the Electricity Generation Customer Choice and Competition Act, WPPC appeared willing to purchase DLC's distribution facilities, consistent with earlier transfers in Harwick, for the trended original cost minus depreciation. But DLC contends that the purchase price should include, in addition to the investment book value of the facilities, the stranded costs associated with generation and transmission. After its restructuring proceeding, WPPC contends that it needs additional compensation if it must accept the involved customers because the load (i.e., the stranded costs and provider of last resort obligation) of these customers was not taken into account in its restructuring proceeding. WPPC's witness states that if WPPC is to become the electric distribution company of these customers, it then becomes the provider of last resort (PLR), and constrained, as it is, by PLR price caps, the added customers may require it to purchase more power, making its service noncompensatory.

DLC argues in its main brief that it is appropriate to include stranded costs in the purchase price of the involved Harwick facilities to ensure that DLC's other customers, shareholders, or both, are not adversely affected. (DLCMB, at 8–19.) WPPC responds (1) that the concept of stranded costs is inapplicable to this case (WPPCMB, at 8–11); (2) that DLC did not have a reasonable expectation to continue to serve Harwick customers (WPPCMB at 11–14); and (3) that DLC overstates its stranded costs.

B. APPLICABILITY OF STRANDED COSTS TO TRANSFER FACILITIES

DLC contends that it is entitled to have stranded costs included in the purchase price of the distribution facilities it will convey to WPPC, with the transfer of

the remaining Harwick customers, in order to be adequately compensated for the investment DLC has made, since 1917, to serve these customers.⁴ It is interesting to note, however, that DLC's service to the area was incidental to its generation of electricity for the operation of its coal mine.⁵ Because of the timing of this proceeding and because of DLC's restructuring proceeding under the Electricity Generation Customer Choice and Competition Act (Electric Competition Act),⁶ it is not apparent, on this record, that DLC has not already recovered stranded costs that may have been associated with the involved Harwick customers. Nevertheless, DLC continues to press to recover stranded costs even though DLC acknowledges that stranded costs have come to the forefront in recent years only because of movement in electric industry toward a competitive environment in which customers can choose different generation suppliers.

“Transition or stranded costs” are defined in the Electric Competition Act as “[a]n electric utility’s known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market and which the commission determines will remain following mitigation by the electric utility.”⁷ The departure of the Harwick customers, of course, is unrelated to the competitive generation market—both as to the timing of the customers’ initiative and the legal basis for the initiative. WPPC emphasizes that the Commission’s Report to the legislature on electric competition indicates that stranded costs should be limited to “costs which have decreased in value as a result of the change to a competitive retail generation

⁴ See DLCMB, at 8–21.

⁵ See WPPC St. No. 1, p. 4.

⁶ 66 Pa.C.S. §2801 *et seq.*

⁷ 66 Pa.C.S. §2803.

market.”⁸ In the face of this DLC contends that neither the statute nor the Report “mandates that stranded costs, and their recovery, be limited to a competitive environment.”⁹ Obviously, investment costs can become stranded in any industry, whether regulated or competitive, where (1) an investment has been made, (2) there is a loss of revenue associated with that investment with no offsetting cost savings, and (3) there is no readily available means of replacing that revenue.¹⁰ It is in this more general sense that DLC seeks to recover stranded costs possibly associated with the remaining Harwick customers. With the declining population in the Pittsburgh area and the exit and contraction of basic industries over the last number of years, DLC undoubtedly has had investment costs stranded that were not recoverable under traditional rate-base/rate-of-return regulation. The departure of the remaining Harwick customers is no different.

The Commission said in its Report to the legislature, which preceded the Electric Competition Act, that absent statutory authorization “it may not have sufficiently clear legal authority to provide for the recovery of stranded costs.”¹¹ Nevertheless, DLC asserts a claimed right to recover stranded costs for the following reasons¹²:

First, Duquesne made substantial investment in generation, transmission and distribution facilities to serve the customers of Harwick Village. It did so with a reasonable expectation of (1) continuing to serve those customers in the future and (2) receiving a fair rate of return on its investment.

⁸ ALJ Exh. No. 1: “Report and Recommendation to the Governor and General Assembly on Electric Competition” (from the Investigation into Retail Competition at Docket No. I-940032), at 22; WPPCRB, at 2.

⁹ See DLCRB, at 3–4.

¹⁰ See NT at 189–190; DLCMB, at 9.

¹¹ ALJ Exh. No. 1: “Report and Recommendation,” supra, at 22.

¹² DLCMB, at 14.

Second, it would be grossly inequitable to require Duquesne's remaining ratepayers, its shareholders, or both to bear the costs left stranded by others, namely the departing Harwick Village customers. Lastly, efficiency within the marketplace and societal benefits derived therefrom, [*sic*] dictate recovery of stranded costs for Duquesne.

The essence of DLC's claim is that its investment and its reasonable expectation to continue to serve the Harwick customers in the future equitably justifies—if not legally justifies—allowing it to recover stranded costs. Both the claim for recovery of stranded costs and the claim of a reasonable expectation to continue to serve are suspect.

C. REASONABLE EXPECTATION OF CONTINUING TO SERVE

DLC cites as authority the Federal Energy Regulatory Commission (FERC), addressing a competitive environment in Order No. 888, for the proposition that a utility's "reasonable expectation of continuing to serve a [departing] customer, and for how long," underpins the utility's right to recover stranded costs.¹³ Understandably, the FERC states that whether there is a reasonable expectation "will be determined on a case-by-case basis, and will depend on all the facts and circumstances."¹⁴ One fact to be considered, according to the FERC, is a utility's duty to serve.¹⁵

Under this Commission's approval of the 1917 Articles of Agreement between DLC and WPPC, DLC had a duty to serve the customers in Harwick Village and served those customers until 1993, when some of those customers were transferred—with the Commission's approval—to WPPC.¹⁶ In 1957, DLC's president confirmed an

¹³ 61 Fed. Reg. at 21,653 (1996); see also DLCMB, at 14.

¹⁴ *Id.*

¹⁵ See *Id.*

¹⁶ See DLC St. No. 3, p. 3; Exhs. JAL-1 & JAL-2; WPPC St. No. 1 and Exh. RAP-3.

understanding with WPPC that, subject to regulatory approval and on termination of mining operations, WPPC would have the right, at any time, to purchase DLC's facilities and begin serving the residents of Harwick.¹⁷ DLC's mining operations terminated in about 1958. The Commission's 1993 Order, approving the transfer of some Harwick customers, noted as follows: "Due to the location of its distribution facilities [*sic*] Duquesne constructed facilities and served customers in the village [*sic*] of Harwick area...which is in West Penn's service area, **on a temporary basis** until West Penn had distribution lines in the area."¹⁸

DLC argues that WPPC's failure, for 37 years, to exercise its right to purchase DLC's facilities gave rise to DLC's reasonable expectation that it would continue to serve the Harwick customers.¹⁹ Under the FERC guidelines, cited by DLC, it is not only a reasonable expectation to serve that is relevant to stranded cost recovery, but also for how long service will continue. DLC was on notice that WPPC had a continuing unqualified right to purchase the involved facilities at any time and was reminded in the Commission's 1993 Order that it served the Harwick customers "on a temporary basis."²⁰ Both of these facts should have been clear signals to DLC that the duration of its continued service to Harwick Village was uncertain. This uncertainty could not give rise to a reasonable expectation to serve.

Given that DLC's primary motive to invest in the Harwick area was to serve its coal mine and given that DLC's understanding with WPPC gave the latter the right to purchase DLC's distribution facilities at any time, it becomes questionable whether investment in generation and transmission to serve Harwick customers was

¹⁷ See WPPC St. No. 1, p. 2 and Exh. RAP-1.

¹⁸ WPPC St. No. 1 and Exh. RAP-3; Order, at A-111250, F0049, p. 1 (Emphasis added).

¹⁹ See DLCMB, at 14-16.

²⁰ WPPC St. No. 1 and Exh. RAP-3; Order, at A-111250, F0049, p. 1.

prudent after the 1957 understanding with WPPC. In any event, the FERC “reasonable expectation” standard is not applicable to this case as a matter of law, and the equities of the circumstances do not militate in favor of applying the standard by analogy.

D. STANDING OF THE TOWNSHIP TO REPRESENT UTILITY CUSTOMERS

DLC’s motion challenging the standing of the Township to represent the interests of those in the Village of Harwick who are DLC’s customers and situated in WPPC’s service territory was denied. To preserve the representational standing issue for appeal, DLC again raises the issue, in its brief.²¹ DLC argues that the Township has only those powers expressly granted to it by statute. The First Class Township Code, to which the Township is subject, is silent on the issue of whether a township may litigate, in a representational capacity, the individual claims and interests of its residents. The claims and interests of the residents, notes DLC, may not be identical, and, therefore, incapable of being represented as a class.²²

The Commission has specifically considered— under identical relevant circumstances—the issues raised here by DLC and has recognized the representational standing of a township. In *Twp. of Findlay v. Duquesne Light Co. et al.*, DLC argued, among other things, that the township residents may have disparate load characteristics and disparate uses of electricity and that the township’s representation of its residents exceeded the scope of its authority under The Second Class Township Code.²³ The Commission found no basis on which to reverse the ALJ’s initial decision on the issue; the ALJ cited *Re L&H Trucking Co., Inc.*, 55 Pa. PUC 469 (1992) and *Application of*

²¹ See DLCMB, at 21–23.

²² See DLCMB, at 21.

²³ See Docket No. C-00935374 (Order entered Sept. 4, 1996), at 7–8.

Frederick C. Cianciulli, t/d/b/a Cianciulli's Limousine Service, Docket No. A-00104570, Order entered Nov. 7, 1984, in support of his conclusion to recognize the township's representational standing.²⁴ To the ALJ's implied rationale for recognizing representational standing, the Commission added "administrative efficiencies": "The realization of administrative efficiencies should, however, be balanced in evaluating whether this agency, as an administrative tribunal, should strictly adhere to appellate principles concerning suits brought by municipalities in representation of the interests of its residents where there are substantial and compelling reasons to adopt a more flexible approach. Many of the public policy considerations which were addressed in this agency's expansion of representational standing to associations are entirely applicable to those considerations which support our affirmation of the ALJ's decision to grant representational standing to the Township in the instant matter."²⁵

The Commission's action in *Twp. of Findlay* completely explains why DLC raises the issue only to preserve the matter for appeal. Under *Twp. of Findlay*, DLC's motion was properly dismissed and the standing of the Township of Springdale to represent the interests of its residents in this proceeding was properly recognized.

E. CONCLUSION

The respondent utilities have offered no persuasive reason for treating the remaining Harwick customers differently from the other Harwick customers who were the subject of similar transfers in 1993. The price WPPC must pay to purchase the associated distribution facilities and to discharge its duty to serve those in its service territory should be determined in the same manner as in the earlier transfers. The respondent utilities could not reasonably expect otherwise. Long before the effective date

²⁴ See *Id.*, at 9-10, 11.

²⁵ *Id.*, at 12.

of the Electric Competition Act, DLC was on express notice that WPPC had the right to purchase DLC's facilities **at any time** and to begin serving the Harwick customers.²⁶ There is nothing in the record to suggest that this right of purchase was subject to being extinguished or degraded. Therefore, DLC's prudent planning for generation and transmission should have taken into account the departure of these customers and their load **at any time**. This transfer is unrelated to supplier competition, and there is no basis for including stranded costs in the purchase price.

Before the effective date of the Electric Competition Act and before WPPC's restructuring proceeding, WPPC was aware of this pending litigation and the obvious likelihood that the remaining Harwick customers would be transferred to it for distribution services. WPPC's claim, in testimony, that it failed to anticipate the obligation to serve these Harwick customers in its restructuring proceeding is not unlike DLC's claim that it did not anticipate the risk of the customers' departure. Both parties were on express notice of the prevailing circumstances.

The equities and the Commission's earlier actions, under similar circumstances, require the respondent utilities to transfer the customers. The purchase price of the distribution facilities, similarly, should be determined by the same method as in the past transfers.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding.
2. As the party seeking affirmative relief from the Commission, the Complainant has the burden of producing persuasive evidence of those facts necessary to support granting any relief sought. 66 Pa.C.S. §332(a).

²⁶

See WPPC St. No. 1, p. 2 and Exh. RAP-1.

3. That the transfer of the involved electric utility customers, and related facilities, from Duquesne Light Company to West Penn Power Company is necessary or proper for the service, accommodation, convenience, or safety of the public.

4. That when an electric distribution utility is furnishing service in the service territory of another electric distribution utility and customers of the former are transferred to the latter, it is inappropriate to include in the purchase price of the involved distribution facilities any associated stranded generation or transmission costs, which are unrelated to electric supplier competition.

ORDER

THEREFORE,

IT IS ORDERED as follows:

1. That the formal complaint by the Township of Springdale against Duquesne Light Company and West Penn Power Company, at Docket No. C-00967749, is sustained to the extent consistent with this Order and is otherwise denied and dismissed.

2. That within 90 days after the date on which the order of the Commission becomes final, Duquesne Light Company and West Penn Power Company, individually or jointly, must petition the Commission to transfer those electric utility customers, in or near the Village of Harwick, Springdale Township, who are situated in the service territory of West Penn Power Company but who are presently served by Duquesne Light Company, as their electric distribution company, to West Penn Power Company.

3. The petition(s) of Duquesne Light Company and West Penn Power Company must include detailed plans for the orderly transfer of the involved customers

within a reasonable time to maximize economies and minimize any outages to the customers.

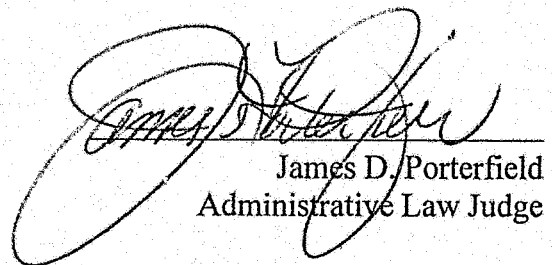
4. That the detailed plans of Duquesne Light Company and West Penn Power Company must include the names and addresses of the involved customers.

5. That the detailed plans of Duquesne Light Company must include a list of its distribution facilities used to serve the involved customers, along with a summary showing the book investment in the facilities, exclusive of contributions, determined by using the original cost, the original cost minus depreciation, the present-day cost, and the present-day cost minus the depreciation.

6. That the purchase price to West Penn Power Company of the involved distribution facilities will be the book investment of Duquesne Light Company in the facilities, exclusive of contributions, determined by using the original cost, the original cost minus depreciation, the present-day cost, and the present-day cost minus the depreciation.

7. That the formal complaint proceeding captioned *Township of Springdale v. Duquesne Light Company and West Penn Power Company*, Docket No. C-00967749, is terminated and the record marked "closed."

Dated: July 26, 2001



James D. Porterfield
Administrative Law Judge

- (a) *Township of Springdale v. Duquesne Light Company and West Penn Power Company.*
- (b) After Springdale Township informally petitioned Duquesne Light Company and West Penn Power Company, in its own behalf and on behalf of about 200 electric customers in Harwick Village, served by DLC but situated in WPPC's service territory, and after DLC and WPPC could not agree on the purchase price of the involved distribution facilities, the Township filed a formal complaint on February 28, 1996, seeking an order to force the transfer. The evidentiary hearing was held on December 10 and 11, 1996. The chief point of contention is the proper method to compute the purchase price of the involved facilities—DLC wanted stranded costs of generation and transmission included in the purchase price and WPPC was willing to pay only trended original cost minus depreciation. The record initially closed on February 14, 1997, but the proceeding was later stayed to facilitate settlement discussions and the record was reopened to receive additional documentary evidence. During the course of the proceeding there occurred the failed merger attempt by the parent companies of the Respondents and the Respondents' restructuring proceedings under the Electricity Generation Customer Choice and Competition Act. The record closed on April 30, 2001. The Respondents filed main and reply briefs; the Complainant filed a reply brief.
- (c) Judge Porterfield prepared the Initial Decision in which he sustains the complaint, after finding that the transfer of the customers and related facilities from DLC to WPPC is necessary or proper for the service, accommodation, convenience, or safety of the public. Further, DLC and WPPC must forthwith petition the Commission for the orderly transfer of customers and related facilities. Finally, the purchase price to WPPC of the involved facilities will be the book investment of DLC in the facilities, exclusive of contributions, determined by using the original cost, the original cost minus depreciation, the present-day cost, and the present-day cost minus the depreciation.

REP

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Act 294

DOCUMENT
FOLDER

Case Identification:

C-00967749; Township of
Springdale v. Duquesne Light
Company and West Penn Power
Company

DOCKETED

SEP 10 2001

Initial Decision By:

ALJ James D. Porterfield

Deadline for Return to OSA:

September 7, 2001

This decision has not been reviewed by OSA.

RECEIVED

SEP 07 2001

* * * * *

OFFICE OF SPECIAL ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Ben Thomas

Commissioner

SEPT 7, 2001

Date

Act 294

Case Identification: C-00967749; Township of Springdale v. Duquesne Light Company and West Penn Power Company

Initial Decision By: ALJ James D. Porterfield

Deadline for Return to OSA: September 7, 2001

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SEP 06 2001

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Commissioner

Date

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Robert K Bloom GMS
Commissioner

9/6/01
Date

PA

Act 294

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SEP 10 2001

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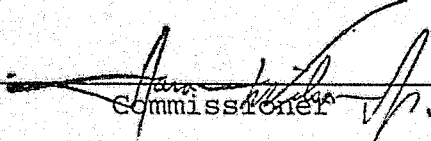
OFFICE OF SPECIAL ASSISTANTS

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Commissioner

Date

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Commissioner

9/7/01

Date

Act 294

Case Identification: C-00967749; Township of
Springdale v. Duquesne Light
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Initial Decision By: ALJ James D. Porterfield

Deadline for Return to OSA: September 7, 2001

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SEP 05 2001

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OFFICE OF SPECIAL ASSISTANTS

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Commissioner

Date

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Terrance J. Fitzpatrick

Commissioner

9-7-01

Date

DATE: September 19, 2001

SUBJECT: C-00967749

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary
nvl

REP

DOCKETED

SEP 19 2001

DOCUMENT
FOLDER

TOWNSHIP OF SPRINGDALE

VS

DUQUESNE LIGHT COMPANY AND
WEST PENN POWER COMPANY

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.