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PENNSYLVANIA PUBLIC UTILITY COMMISSION

Township of Springdale : Docket No.
v. : C-00967749
Duquesne Light Company and :
West Penn Power Company :

JLS

INTERIM ORDER ONE --
PERTAINING TO PREHEARING AND POSTHEARING MATTERS

Background

On February 28, 1996, the Township of Springdale (in Allegheny County), by counsel, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company and West Penn Power Company alleging, as follows:

On or about May 16, 1994 the Township of Springdale, which pays electric bills for street lights, forwarded petitions signed by over 200 residents of the Township of Springdale requesting electric service from West Penn Power Company. Currently the individuals are served by Duquesne Light. Both Duquesne and West Penn agree, in general, that a utility has an obligation under current public utility law to provide service upon request from a person or persons within its certified service area. The residents of Springdale Township are located within the West Penn certified service area. Duquesne and West Penn are stalemated in the transfer of electric service in the area over a dispute as to how to calculate the purchase price of the distribution facilities of Duquesne in the West Penn certified service area of Springdale Township. West Penn proposes to purchase and compute the depreciated costs of the facilities. It is our understanding that West Penn's depreciated cost offer to purchase is \$149,774.00. Duquesne is not willing to sell on

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a depreciated facility cost basis. Duquesne wants to sell on a different theory, namely recapturing the burden of stranded generation, transmission [sic] and other regulatory asset costs. Copies of the May 27, 1994 letter of John L. Munsch, Esquire of West Penn to Solicitor Steve Yakopec, Jr. is enclosed as well as a copy of the June 9, 1995 letter of Larry R. Crayne, Chief Counsel to Duquesne Light to John L. Munsch, Esquire. It is now February of 1996 and this transfer of electric facilities and services is at a standstill. The residents contained in the petition originally requested [sic] a transfer due to the fact that when problems occur with electric service the residents call Duquesne Light Company. Duquesne Light Company tells them that they don't provide electric service to the residents and to call West Penn Power. The residents then respond that they are billed by Duquesne Light and they in fact pay Duquesne Light for their power. Long delays then occur while the people at Duquesne Light try to figure how they are servicing people in West Penn's service area. The township residents then become frustrated as they go this [sic] every time there is a problem. They would like to be serviced by West Penn.

As a remedy, the Township of Springdale (Township or Complainant) seeks the following:

Please step in to the stalemate between Duquesne Light and West Penn Power to obtain the transfer of the distribution facilities from Duquesne Light to West Penn Power. Additionally, please provide and preside over the dispute concerning the purchase of the distribution facilities by West Penn Power from Duquesne Light. Duquesne Light and West Penn Power can litigate this before the Public Utility Commission as to the proper method of payment.

On or about March 22, 1996, Duquesne Light Company (by counsel) filed an answer and new matter to the complaint.¹ It is

¹ Exhibits A and B to the New Matter of Duquesne Light Company (were unintentionally omitted from the pleading and) were

averred in the answer, in part, as follows:

[3.] d. Admitted. Duquesne admits that Springdale is physically located within the borders of West Penn's certificated service area. By way of further response, Duquesne submits that it lawfully provides service in Springdale pursuant to Articles of Agreement dated April 16, 1917 between Duquesne and West Penn. These Articles were approved by the Public utility Commission ... in a Certificate of Public Convenience dated June 27, 1923.

f. Admitted. Duquesne has not accepted West Penn's offer to acquire Duquesne's distribution facilities at depreciated book value. Duquesne has calculated that the distribution facilities West Penn proposes to purchase have a depreciated cost of \$149,774.00. Duquesne submits that appropriate compensation for the transfer of the Springdale customers should reflect the generation, transmission, and other regulatory asset costs which will become stranded as a result of the transfer of these customers. West Penn has so far refused to pay such costs.

It is averred in the new matter, in part, as follows:

14. This Commission has also stated on several occasions its support for the concept of stranded cost recovery in the electric utility industry. In a recent Opinion and Order published within the context of this Commission's ongoing investigation into electric power competition, this Commission cited the following language of the statement of the Massachusetts Department of Public Utilities:

Responsible policy must provide electric utilities a reasonable opportunity to recover net, non-mitigatable stranded costs during the transition period ... [sic] Such a policy is in the public interest.

filed on or about April 2, 1996.

mitigatable stranded costs during the transition period ... [sic] Such a policy is in the public interest.

Opinion and Order, Investigation into Electric Power Competition, Docket I-940032, published at 25 Pennsylvania Bulletin 4283, 4287 (Oct. 7, 1995).

15. This Commission has also expressed its strong agreement with FERC "that the recovery of legitimate and verifiable stranded costs is critical to the successful transition of the electric utility industry ..." [sic] Comments of the Pennsylvania Public Utility Commission to the FERC's Supplemental NOPR on Recovery of Stranded Costs, Doc. No. RM94-7-001, at p. 66 (Aug 4, 1995). This Commission has also endorsed the FERC's finding that direct assignment of the stranded costs to departing customers is the appropriate method for recovery of such costs. Id. at 70. This Commission has also stated its agreement with the principle espoused by the FERC, [sic] that stranded costs should never be borne by the remaining customers or by the utility shareholders. Id. at 71. Finally, this Commission has also expressed its agreement with the "reasonable expectation" standard adopted by the FERC in its analysis of whether to allow recovery of stranded costs. Id., at 66.

On or about March 25, 1996, West Penn Power Company (by counsel) filed an answer and new matter to the complaint. It is averred in the new matter, in part, as follows:

9. West Penn and Duquesne have had a general course of performance whereby customers served by Duquesne in West Penn's service area are transferred to West Penn, upon the customers' request, and the facilities serving the customers are transferred by Duquesne to West Penn at a value representing trended original cost minus depreciation.

10. West Penn and Duquesne have communicated concerning the requests of the Township of Springdale residents. Duquesne has

identified 221 customer accounts that would be subject to the transfer. However, Duquesne and West Penn have been unable to come to terms over the price to be paid for transfer of the facilities. In general, West Penn is willing to pay a value representing trended original cost minus depreciation. Duquesne, on the other hand, wants to transfer the facilities at a value reflecting a purported burden of stranded generation, transmission and other regulatory asset costs. Duquesne has not been [sic] quantified its "stranded asset" value.

11. Recovery of stranded cost is not applicable to Duquesne's transfer of facilities serving Harwick Village. Duquesne's service to Harwick Village was finite in terms of time and was dependent upon factors under the control of Duquesne or its affiliates. Duquesne's investment to serve Harwick Village was made at its own risk.

On or about April 1, 1996, West Penn Power Company (WPPC or West Penn) filed a reply to the new matter of Duquesne Light Company (DLC or Duquesne).² The reply includes the following averment:

12. The statements contained in New Matter paragraph 12 constitute legal arguments and therefore need not be admitted nor denied. By way of further answer, West Penn submits that recovery of stranded investments, if any exist, by Duquesne is inappropriate where the investment was made in an area outside Duquesne's service area. In the alternative, West Penn submits that all Duquesne's arguments concerning reasonableness of recovery of its costs are premature, because Duquesne has not quantified in dollar terms its claimed costs [and, therefore, "as a practical matter, has blocked the transfer of the customers" (e.g., ¶ 7)].

By notice to the parties, dated May 31, 1996, a prehearing

² On or about June 5, 1996, the Township of Springdale also filed a response to the new matter of Duquesne Light Company.

Pennsylvania, with ALJ James D. Porterfield as the assigned presiding officer. The notice advised the parties that Charles Hilmer, Jr., Mediator, would participate in the prehearing conference telephonically.

By letter dated June 5, 1996, counsel for the Township of Springdale indicated that based on the admissions contained in the answers and new matter filed by the respondents (indicating that the only matter at issue is the appropriate method of calculating the purchase price of the involved facilities) that the Township would have only limited participation in the proceeding.³

For the scheduled 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 potential or prospective mediator.

Prehearing memoranda were submitted on behalf of both DLC and WPPC.⁴ The prehearing memorandum of DLC indicated that inasmuch as the primary issue in the proceeding is the compensation due to Duquesne for the transfer of facilities, DLC had no objection to a

³ The letter was identified and admitted into the record as Township Pre-hearing Exh. No. 1. (Tr. 23-24)

⁴ The memoranda were respectively identified and admitted into the record as DLC Pre-hearing Exh. No. 1 and WPPC Pre-hearing Exh. No. 1.

preliminary order directing it to immediately transfer the Springdale customers and facilities to West Penn. In addition, DLC sought a stay of the remainder of the proceeding (until April 1997) because it had not calculated a "final figure" due to it as stranded costs primarily "because the Commission had not yet defined the components of such a calculation":

In light of the above, Duquesne requests that the determination of its compensation for the transfer of its customers and facilities to West Penn in this proceeding be stayed until April 1997, at which time Duquesne anticipates that its recovery plan will be developed and filed with the Commission pursuant to the above-referenced [Commission] Report.⁵ No party will be prejudiced by such a delay in this proceeding inasmuch as the actual transfer of the customers and facilities will have already taken place by virtue of the Preliminary Order recommended above. In addition, Duquesne is the only party that will be due any compensation for this transfer, and it is willing to defer the determination and receipt of that amount until next year. [Footnote added.]

DLC indicated that it did not desire mediation of the dispute "at this time."

The prehearing memorandum submitted on behalf of WPPC, among other things, suggested a time-table for discovery, the exchange of prepared, written testimony etc. That schedule was, for the most part, agreed to by the parties and is reflected hereafter.

During the prehearing conference, it was determined at an early stage that, given the "hard" opposed positions of Duquesne

⁵ West Penn contends that the concept of stranded costs is not applicable in this matter because the involved assets are not assets that are devalued because of generation competition, as contemplated in the Commission's Report. (See, for example, Tr. 13)

Light Company and West Penn Power Company, the Commission's Alternative Dispute Resolution (ADR) process was inappropriate to resolve the matters at issue. (Tr. 15-17; 52 Pa. Code §69.392)

The stay of the proceedings sought by Duquesne Light Company was denied. It did not appear reasonable, from West Penn's business perspective, to immediately transfer Duquesne's facilities and to have West Penn begin serving the involved ratepayers, subject to a later determination of the purchase price of the facilities; among other things, notes West Penn, it is uncertain as to which party or parties will bear the burden of stranded costs if they are recognized in the subject proceeding. (Tr. 12-14)

There was considerable discussion off the record about whether a certified question to the Commission regarding the applicability of the stranded cost concept would expedite the subject proceeding. (Tr. 19-20) In view of the stated positions of the parties, a certified question to the Commission did not appear necessary or appropriate.

The impromptu statement by counsel for DLC and WPPC on the record is helpful to apprehend and appreciate the statement of issues provided by WPPC in its prehearing memorandum. DLC offered the following summary of position, regarding stranded cost recovery, on the record (Tr. 20):

Just simply without getting into the details, number one, as I mentioned and it was mentioned off the record, we feel it is tied into competition, the stranded costs that we would claim in this case.

Even if it is not tied into the Commission's official competition proceeding,

Duquesne's position is that it is still entitled to stranded costs recovery regardless of how the Commission determines stranded costs and how you calculate it. We feel that we are entitled to it and it doesn't have to be tied into the Commission's proceeding.

If we are to proceed, we will present our own version, basically, of what we think the stranded costs should be and why it is applicable in this situation.

In response, the following summary of position was offered on behalf of WPPC (Tr. 21):

West Penn Power's position with respect to Duquesne's attempt to recover stranded costs is that we are talking about monopoly retail service territories and if Duquesne Light was serving outside its retail service territory, it was doing so at its own risk, and it was its own unilateral actions in the 1960s to cease controlling Harwick Mine that caused the territory to no longer come under Duquesne's control.

Therefore, Duquesne Light could have no assurance under the old regulatory compact of recovery of its costs of serving the Township, and West Penn's position is that West Penn is willing to pay in accordance with the prior course of conduct between Duquesne and West Penn an amount representing trended original costs minus depreciation, which comes to approximately \$149,000.[00].

The transcript of the prehearing conference is 25 pages in length.

By notice to the parties, dated July 29, 1996, the initial evidentiary hearing is scheduled for December 10, 11, and 12, 1996, at 10:00 AM, in the 11th Floor Hearing Room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania, with ALJ James D. Porterfield continuing as the assigned presiding officer.

A. DISCOVERY

The consensus of the parties at the prehearing conference was that discovery could be completed by September 20, 1996, that is, approximately sixty (60) days from the date of the prehearing conference.

B. DISTRIBUTION OF PREPARED TESTIMONY⁶

1. All parties shall serve written direct testimony on or before October 18, 1996.

2. All parties shall serve written rebuttal testimony on or before November 15, 1996.

3. Parties shall serve any written surrebuttal testimony on or before November 29, 1996.

C. DEFINITION OF ISSUES

WPPC in its prehearing memorandum sets forth the following matters as being at issue:

1) It must be ascertained which of the 258 residents who signed the two petitions are within the affected area.

2) Duquesne's right and duty to serve the area of Harwick Village ceased when Duquesne's operation of its mine ceased.

3) The issue of "stranded costs" raised by Duquesne to increase the transfer price of its facilities is inapplicable. The concept of stranded cost is inapplicable because the investment was made at Duquesne's sole risk.

4) The Commission has recognized that [sic] in its Report and Recommendation on

⁶ The dates provided are intended to mean that the relevant documents shall be in the appropriate party's or parties' "hands" on the date(s) specified.

Electric Competition at Docket No. I-940032, issued July 3, 1996, that stranded costs may not be recovered absent statutory changes to the "used and useful" standard of Section 1315 of the Public Utility Code. (Report p.4)

5) Even if the concept of stranded cost were a legitimate issue, the facilities Duquesne would claim to be "stranded" do not fit the definition of the term applied by the Commission in its Report of July 3, 1996. The Report states at page 22 that "Commission-authorized recoverable stranded costs must be limited to costs which have decreased in value as a result of the change to a competitive generation market." The facilities arguably stranded here are stranded due to a territory dispute prior to beginning of competitive generation.

6) West Penn and Duquesne have had a course of conduct in exchanging distribution facilities in areas where one utility was serving outside its service area. In those instances, the transfer price was trended original cost minus depreciation, which in this case would amount to \$149,774.00.

D. BRIEFING SCHEDULE AND OTHER MATTERS PERTAINING TO BRIEFS

1. Main Briefs, in compliance with 52 Pa. Code §5.501, et seq., shall be due and delivered to relevant parties no later than Friday, January 31, 1997.

2. Reply Briefs, in compliance with 52 Pa. Code §5.501, et seq., shall be due and delivered to relevant parties no later than Friday, February 14, 1997.

3. Each party filing a brief is directed to serve a copy of the filed brief on the presiding officer, by the due date specified above, at the following address: ALJ James D. Porterfield, Pennsylvania Public Utility Commission, Room 1103, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

of the filed brief on the presiding officer, by the due date specified above, at the following address: ALJ James D. Porterfield, Pennsylvania Public Utility Commission, Room 1103, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

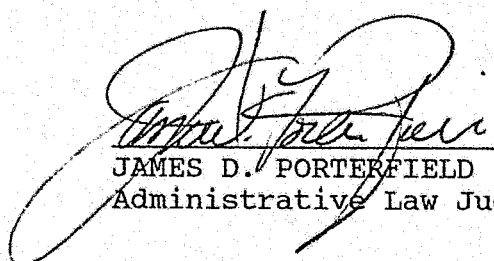
4. The parties' briefs shall include, in addition to the requirements of 52 Pa. Code §5.501(a), (1) a statement of the questions involved, (2) proposed findings of fact with references to transcript pages or exhibits where evidence of the purported fact exists, and (3) proposed conclusions of law.

5. To the extent practical or convenient to any party or parties submitting briefs, a settlement petition, or proposed settlement, it will be appreciated and helpful to the assigned presiding officer, if the parties will provide the presiding officer, along with the official hard copy of the party's brief or settlement documents, a computer diskette containing a representation of the brief or settlement documents. Some version of WordPerfect is the preferred format.

E. MISCELLANEOUS MATTERS

1. The record in the proceeding shall be closed on February 14, 1997.

Date: September 6, 1996



JAMES D. PORTERFIELD
Administrative Law Judge



Duquesne Light Company

ORIGINAL

Legal Unit
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930
Phone: (412) 393-6000
Fax: (412) 393-6645

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RECEIVED
WRITER'S DIRECT DIAL Number:
PROTHONOTARY'S OFFICE
(412) 393-6129

October 2, 1996

JLS

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17105-3265

Re: *Township of Springdale v. Duquesne Light Company
and West Penn Power Company*
Pa. P.U.C. Docket No. C-00967749

Dear Secretary Alford:

Enclosed for filing in the above-captioned proceeding are an original and two (2) copies of a Certificate of Service evidencing service upon the parties of Duquesne Light Company's Answers to West Penn Power Company's First Set of Interrogatories and Request for Production of Documents.

Thank you.

Very truly yours,

Richard S. Herskowitz
Corporate Attorney

DOCUMENT
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Enclosures

cc: John L. Munsch, Esquire (w/enclosure)
Stephen Yakopec, Jr., Esquire (w/enclosure)

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ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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TOWNSHIP OF SPRINGDALE)
)
 v.)
)
 DUQUESNE LIGHT COMPANY)
 and)
 WEST PENN POWER COMPANY)

RECEIVED
PROTHONOTARY'S OFFICE

Docket No. C-00967749

CERTIFICATE OF SERVICE

I hereby certify that I have this day served Duquesne Light Company's Answers to West Penn Power Company's First Set of Interrogatories and Request for Production of Documents, numbers 1-22, upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 5.343(d).

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

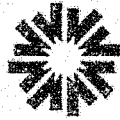
Dated this 2nd day of October, 1996.

DOCKETED
OCT 10 1996

Richard S. Herskovitz
Richard S. Herskovitz, Esquire
Corporate Attorney
Duquesne Light Company
411 Seventh Avenue, 16-006
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930

RSH/njp:062CXX

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Duquesne Light Company

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Legal Unit
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Pittsburgh, Pennsylvania 15230-1930
Phone: (412) 393-6000
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Writer's DIRECT DIAL Number:

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VC
tr

October 17, 1996

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17105-3265

OCT 21 1996
PUBLIC UTILITY COMMISSION

Re: *Township of Springdale v. Duquesne Light Company
and West Penn Power Company*
Pa. P.U.C. Docket No. C-00967749

Dear Secretary Alford:

Enclosed for filing in the above-captioned proceeding are an original and two (2) copies of a Certificate of Service evidencing service upon the parties of Duquesne Light Company's Supplemental Answer to West Penn Power Company's First Set of Interrogatories and Request for Production of Documents.

Thank you.

Very truly yours,

Richard S. Herskovitz
Richard S. Herskovitz
Corporate Attorney

RSH/njp:066CXXA

Enclosures

cc: John L. Munsch, Esquire (w/enclosure)
Stephen Yakopec, Jr., Esquire (w/enclosure)

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FOLDER

257

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TOWNSHIP OF SPRINGDALE)
)
 v.)
)
 DUQUESNE LIGHT COMPANY)
 and)
 WEST PENN POWER COMPANY)

Docket No. C-00967749

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OCT 21 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this day served Duquesne Light Company's Supplemental Answer to Number 22 of West Penn Power Company's First Set of Interrogatories and Request for Production of Documents, upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 5.342(d).

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

Dated this 17th day of October, 1996.

DOCKETED
OCT 25 1996

Richard S. Herskovitz
Richard S. Herskovitz, Esquire
Corporate Attorney
Duquesne Light Company
411 Seventh Avenue, 16-006
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930

RSH/njp:066CXX

DOCUMENT
FOLDER

LEGAL SERVICES

ORIGINAL

Allegheny Power

800 Cabin Hill Drive
Greensburg, PA 15601-1689
Phone: (412) 837-3000
FAX: (412) 838-6177

Writer's Direct Dial No.

October 17, 1996

OCT 21 1996

PUBLIC UTILITY COMMISSION

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

RE: Township of Springdale vs. Duquesne Light Company and
West Penn Power Company
PA Public Utility Commission Docket No. C-00967749

Dear Secretary Alford:

Enclosed please find for filing on behalf of West Penn Power Company a copy of the cover letter and certificate of service for Testimony of R. A. Phillips which were filed with the presiding officer in the above-captioned proceeding.

Very truly yours,

John L. Munsch
John L. Munsch

JLM:bb

Enclosure

c: Certificate of Service

238



Allegheny Power

800 Cabin Hill Drive
Greensburg, PA 15601-1689
Phone: (412) 837-3000
FAX: (412) 838-6177

Writer's Direct Dial No. 412-838-6210

October 17, 1996

UPS NEXT DAY DELIVERY

James D. Porterfield
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

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OCT 21 1996

SECRETARY'S OFFICE
Public Utility Commission

RE: Township of Springdale vs. Duquesne Light Company and
West Penn Power Company
PA Public Utility Commission Docket No. C-00967749

Dear Judge Porterfield:

Enclosed please find for filing on behalf of West Penn Power Company in the above-captioned matter the testimony of R. A. Phillips.

Very truly yours,

Original Signed By
JOHN L. MUNSCH
John L. Munsch

JLM:bb

Enclosure

c: Certificate of Service

bc: C. S. AuIt
M. A. Dandrea
T. K. Henderson - NY
R. L. Henry - Northern
J. R. Howells
T. J. Kearney - State College S.C.
K. V. Pfirrmann
R. A. Phillips - A/K

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing upon the following persons by first-class mail, postage prepaid, as follow:

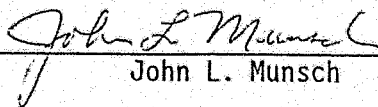
Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, PA 15068

RECEIVED
OCT 21 1996

Larry R. Crayne, Esquire
Richard S. Herskovitz, Esquire
Duquesne Light Company
Legal Unit
411 Seventh Avenue
PO Box 1930
Pittsburgh, PA 15230-1930

SECRETARY'S OFFICE
Public Utility Commission

Dated: October 17, 1996


John L. Munsch

BUCKETED
OCT 25 1996

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Duquesne Light Company

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Fax: (412) 393-6645

Writer's DIRECT DIAL Number:

(412) 393-6129

October 18, 1996

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17105-3265

OCT 21 1996

GENERAL SERVICE
Public Utility Commission

Re: *Township of Springdale v. Duquesne Light Company
and West Penn Power Company*
Pa. P.U.C. Docket No. C-00967749

Dear Secretary Alford:

Enclosed for filing are an original and two (2) copies of a Certificate of Service evidencing service of Duquesne Light Company Statement Nos. 1-3 in the above-captioned proceeding.

Very truly yours,

Richard S. Herskovitz
Corporate Attorney

RSH/njp:065CXXA

Enclosures

cc: The Honorable James D. Porterfield (w/enclosure)
Parties of Record (w/enclosure)

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107

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TOWNSHIP OF SPRINGDALE)
)
 v.)
)
 DUQUESNE LIGHT COMPANY)
 and)
 WEST PENN POWER COMPANY)

Docket No. C-00967749

RECEIVED
OCT 21 1996

CERTIFICATE OF SERVICE

GENERAL OFFICE
Public Utility Commission

I hereby certify that I have this day served a true copy of Duquesne Light Company's Statement Nos. 1-3 upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

The Honorable James D. Porterfield
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, Pennsylvania 15222

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

Dated this 18th day of October, 1996.

DUCKETED
OCT 25 1996

Richard S. Herskovitz
Richard S. Herskovitz, Esquire
Corporate Attorney
Duquesne Light Company
411 Seventh Avenue, 16-006
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930

RSH/njp:065CXX

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STEPHEN YAKOPEC, JR.
ATTORNEY AT LAW

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1706 FIFTH AVENUE
ARNOLD, PA 15068
TELEPHONE: (412) 339-3377
FAX: (412) 339-3414

BY APPOINTMENT:
241 KENTUCKY DRIVE
LOWER BURRELL, PA 15068
TELEPHONE: (412) 335-8773

October 18, 1996

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, PA 17105-3265

OCT 21 1996
SECRETARY OFFICE
Public Utility Commission

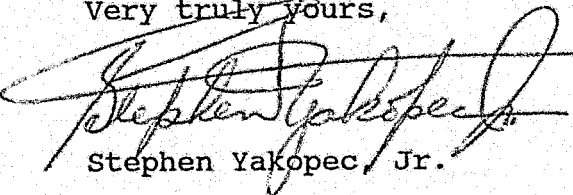
Re: Springdale Township vs. Duquesne Light Company and
West Penn Power Company
PA. P.U.C. No. C-967749

Dear Secretary Alford:

Enclosed for filing in the above captioned matter are an original and two (2) copies of direct testimony submitted on behalf of Springdale Township.

If you have any questions, please feel free to call.

Very truly yours,


Stephen Yakopec, Jr.

SYJR/cd

cc: James D. Porterfield, Administrative Law Judge
John L. Munsch, Esquire
Richard S. Herskovitz, Esquire
Donna M. Diehm, Secretary

RECORDED
INDEXED

251

ORIGINAL

TOWNSHIP OF SPRINGDALE

v.

DUQUESNE LIGHT COMPANY and
WEST PENN POWER COMPANY

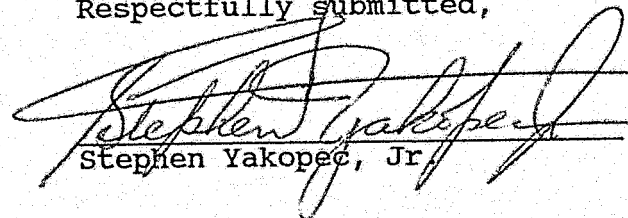
) Docket No. C-967749
)
) Direct Testimony
)
)
)

OCT 21 1996
Public Utility Commission

AND NOW, comes the Township of Springdale, and submits the following direct testimony:

1. Donna M. Diehm is the Secretary of Springdale Township.
2. At a public meeting various residents approached the Township and requested the Board of Commissioners to assist them in having their electric service changed from Duquesne Light Company to West Penn Power Company for the Harwick Village Area which is located within Springdale Township. The Township filed a complaint concerning this matter with the P.U.C. and attached copies of the residents' petitions.
3. The Township Secretary is responsible for the paying of bills.
4. Springdale Township pays an electric bill to Duquesne Light Company for street lights located within the area in question. See Exhibit "1".
5. Springdale Township is a political subdivision, a Township of the first class having offices at P. O. Box 177, Pillow Avenue, Harwick, PA 15049.

Respectfully submitted,


Stephen Yakopec, Jr.

DOCKETED
OCT 25 1996
DOCUMENT
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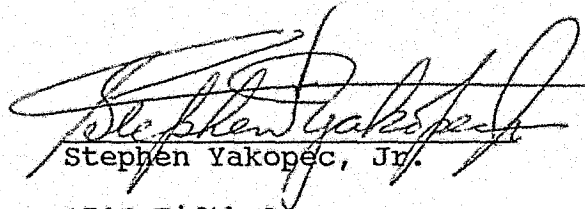
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing DIRECT TESTIMONY was served on October 18, 1996, by first class mail, postage pre-paid, on the following counsel:

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

Richard S. Herskovitz, Esquire
DUQUESNE LIGHT COMPANY
411 7th Avenue
P. O. Box 1930
Pittsburgh, PA 15230-1930

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, PA 17105-3265



Stephen Yakopec, Jr.

1706 Fifth Avenue
Arnold, PA 15068

(412) 339-3377

PA I.D. #41017

ACCOUNT NUMBER
1000001598001

\$784.74

TOWNSHIP OF SPRINGDALE
P O BOX 177
HARWICK, PA 15049-0177

10000015980013 000000794552 000000784740 000000784740

ACCOUNT NUMBER
1000001598001

MERCURY VAPOR/HIGH PRESSURE SODIUM LIGHTING FOR SEP 1996
P O BOX 177 H

PRIOR BILL INFORMATION

AMOUNT OF LAST BILL	784.74
PAYMENT RECEIVED 09/25/96 - THANK YOU	<u>784.74CR</u>
AMOUNT YOU OWE FROM PRIOR BILL	\$0.00

CURRENT CHARGES FOR MONTH ENDING 09/30/96

BASIC SERVICE	(TOTAL OF AMOUNT COLUMN)	\$799.59
PA TAX ADJUST 0.7855CR PERCENT	(TOTAL OF PA TAX ADJ COLUMN)	6.28CR
ENERGY COST RATE	(TOTAL OF ECR COLUMN)	<u>8.57CR</u>
CURRENT BILLING CHARGES		\$784.74

ENERGY COST RATE (ECR) IS CALCULATED AT 0.003628CR PER KWH FOR EACH LINE ITEM
THIS BILL IS SUBJECT TO A 1.25 PERCENT LATE PAYMENT CHARGE IF NOT PAID BY THE DUE DATE

EXHIBIT "1"

CONTINUED ON NEXT PAGE
PAGE 1

DUE DATE 11/01/96
AMOUNT NOW DUE \$784.74



ACCOUNT NUMBER

ACCOUNT NUMBER
1000001598001

MERCURY VAPOR/HIGH PRESSURE SODIUM LIGHTING FOR SEP 1996
P O BOX 177 H

ACCOUNT DETAIL

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>PA TAX ADJ</u>	<u>CHARGE</u>	<u>TOTAL</u>
<u>KWH MULT</u>	<u>KWH</u>			<u>ECR</u>	
1	175 WATT MERCURY			19.590000	
74	74	19.59	.15CR	.27CR	19.17
52	100 WATT MERCURY			15.000000	
44	2,288	780.00	6.13CR	8.30CR	765.57
TOTALS		\$799.59	\$6.28CR	\$8.57CR	\$784.74

FINAL PAGE
PAGE 2



ORIGINAL

LEGAL SERVICES



Allegheny Power

000637

96 NOV 13 11

2-800, Cabin Hill Drive
Greensburg, PA 15601-1689

Phone: (412) 837-3000

FAX: (412) 838-6177

RECEIVED
PROTHONOTARY'S OFFICE

Writer's Direct Dial No. 412-838-6210

November 15, 1996

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

RE: Township of Springdale v. Duquesne Light Company
and West Penn Power Company
Pa. P.U.C. Docket No. C-00967749

JLS

Dear Secretary Alford:

*bjb
not here*

Enclosed please find for filing a copy of the cover letter and certificate of service for rebuttal testimony Statement 1 of West Penn Power Company which were filed with the presiding officer in the above-captioned proceeding.

Very truly yours,

John L. Munsch
John L. Munsch

JLM:bb

Enclosure

c: Certificate of Service

DOCUMENT
FOLDER

000638

96 NOV 18 11 2-19

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
PROTHONOTARY'S OFFICE

Township of Springdale,
Complainant

vs.

Duquesne Light Company,

and

West Penn Power Company,
Respondents

Docket No. C-00967749

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of West Penn Power Company's Rebuttal Statement No. 1 upon the participants, listed below, in accordance with the requirements of 52 Pa. Code §1.54.

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, PA 15068

Richard S. Herskovitz, Esquire
Duquesne Light Company
411 Seventh Avenue, 16-006
P. O. Box 1930
Pittsburgh, PA 15230-1930

DOCK

NOV 20 1996

Dated: November 15, 1996

John L. Munsch
John L. Munsch

DOCUMENT
FOLDER



ORIGINAL
Duquesne Light Company

Legal Unit
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930
Phone: (412) 393-6000
Fax: (412) 393-6645

Writer's DIRECT DIAL Number:
(412) 393-6129

November 15, 1996

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17105-3265

000615

JLS

Re: Township of Springdale v. Duquesne Light Company
and West Penn Power Company
Pa. P.U.C. Docket No. C-00967749

RECEIVED
PROTHONOTARY
95 NOV 13 11:11 AM '96

Dear Secretary Alford:

Enclosed for filing are an original and two (2) copies of a Certificate of Service evidencing service of Duquesne Light Company Statement No. 1R in the above-captioned proceeding.

Very truly yours,

Richard S. Herskovitz
Corporate Attorney

RSH/njp:072CXXA

Enclosures

cc: The Honorable James D. Porterfield (w/enclosure)
Parties of Record (w/enclosure)

84

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

TOWNSHIP OF SPRINGDALE)
)
 v.)
)
 DUQUESNE LIGHT COMPANY)
 and)
 WEST PENN POWER COMPANY)

Docket No. C-00967749

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Duquesne Light Company's Statement No. 1R upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

The Honorable James D. Porterfield
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, Pennsylvania 15222

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

000616

RECEIVED
PROTHONDARY
95 NOV 19 11 21 AM '96

Dated this 15th day of November, 1996.

NOV 22 1996

Richard S. Herskovitz
Richard S. Herskovitz, Esquire
Corporate Attorney
Duquesne Light Company
411 Seventh Avenue, 16-006
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930

ORIGINAL



Duquesne Light Company

Legal Unit
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930
Phone: (412) 393-6000
Fax: (412) 393-6645

95 DEC -2 PM 12:49

Writer's DIRECT DIAL Number:
RECEIVED
PROTHONOTARY'S OFFICE
(412) 393-6129

November 29, 1996

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17105-3265

JLS

Re: Township of Springdale v. Duquesne Light Company
and West Penn Power Company
Pa. P.U.C. Docket No. C-00967749

Dear Secretary Alford:

Enclosed for filing are an original and two (2) copies of a Certificate of Service evidencing service of Duquesne Light Company Statement Nos. 1S and 2S in the above-captioned proceeding.

Very truly yours,

Richard S. Herskovitz
Corporate Attorney

RSH/njp:076CXXA

Enclosures

cc: The Honorable James D. Porterfield (w/enclosure)
Parties of Record (w/enclosure)

DOCUMENT
FOLDER

102

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

000675

95 DEC -2 PM 12:49

TOWNSHIP OF SPRINGDALE)

v.)

DUQUESNE LIGHT COMPANY)

and)

WEST PENN POWER COMPANY)

RECEIVED
PROTHONOTARY'S OFFICE

Docket No. C-00967749

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Duquesne Light Company's Statement Nos. 1S and 2S upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

The Honorable James D. Porterfield
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, Pennsylvania 15222

Stephen Yakopiec, Jr., Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

BUCKETED

DEC 04 1996

DOCUMENT
FOLDER

Dated this 29th day of November, 1996.

Richard S. Herskovitz

Richard S. Herskovitz, Esquire
Corporate Attorney
Duquesne Light Company
411 Seventh Avenue, 16-006
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

000676

95 DEC -2 PM 12:49

TOWNSHIP OF SPRINGDALE)

v.)

DUQUESNE LIGHT COMPANY)

and)

WEST PENN POWER COMPANY)

RECEIVED
PROTHONOTARY'S OFFICE

Docket No. C-00967749

CERTIFICATE OF SERVICE

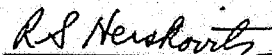
I hereby certify that I have this day served a true copy of Duquesne Light Company's Statement Nos. 1S and 2S upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

The Honorable James D. Porterfield
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, Pennsylvania 15222

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

Dated this 29th day of November, 1996.



Richard S. Herskovitz, Esquire
Corporate Attorney

Duquesne Light Company
411 Seventh Avenue, 16-006
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

96 DEC -2 PM 12:49

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TOWNSHIP OF SPRINGDALE)

v.)

DUQUESNE LIGHT COMPANY)

and)

WEST PENN POWER COMPANY)

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Docket No. C-00967749

CERTIFICATE OF SERVICE

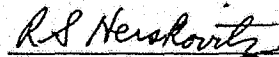
I hereby certify that I have this day served a true copy of Duquesne Light Company's Statement Nos. 1S and 2S upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

The Honorable James D. Porterfield
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, Pennsylvania 15222

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

Dated this 29th day of November, 1996.



Richard S. Herskovitz, Esquire
Corporate Attorney
Duquesne Light Company
411 Seventh Avenue, 16-006
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930

APPEARANCE SHEET

ALJ HEARING REPORT

Docket No. C-00967749

Case Name Township of Springdale

v.

Duquesne Light Company and

West Penn Power Company

Location Pittsburgh

Date December 10-12, 1996

ALJ Porterfield

Reporting Firm ERAN

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held *previously* YES NO

Hearing held YES NO

Testimony taken YES NO

Transcript due YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days _____

RECORD CLOSED YES NO

to be closed DATE _____

Briefs to be Filed YES NO

DATE _____

BENCH DECISION YES NO

REMARKS: *DLC Springdale*
late filed testimony
and exhibits to be filed
Briefing letter will be
sent out in receipt of transcripts

RECEIVED
 DEC 26 PM 12:18
 PORTERFIELD'S OFFICE
 PUGA

December 12, 1996
session canceled
sessions only

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
 PLEASE PRINT CLEARLY
 INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
<u>John L Munsch</u> Telephone No. <u>412-878-6210</u>	<u>Cabin Hill Dr</u> City <u>Greensburg</u> State <u>PA</u> Zip <u>15601</u>	<u>West Penn Power Co</u>
<u>RICHARD S. HERSKOVITZ</u> Telephone No. <u>393-6129</u>	<u>411 SEVENTH AVE - 16-006</u> City <u>PGH</u> State <u>PA</u> Zip <u>15230</u>	<u>DUQUESNE LIGHT CO.</u>
<u>STEPHEN YAKOPEC JR.</u> Telephone No. <u>412-339-3377</u>	<u>1706 5TH AVENUE</u> City <u>ARNOLD</u> State <u>PA.</u> Zip <u>15068</u>	<u>Twp. of SPRINGDALE</u>

CHECK THIS BOX IF ADDITIONAL PARTIES
 OR COUNSEL OF RECORD APPEAR ON BACK.

Bart Spin
 REPORTER

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DATE: December 17, 1996

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

TO: Aggie Brewster, Supervisor
Secretary's Office - Office of Prothonotary - Docket Section

FROM: Janice Zurat, Scheduling Officer
Office of Administrative Law Judge

JLS

Please be advised that the hearing scheduled for Thursday, December 12, 1996 was cancelled.

The hearings for Tuesday, December 10 and Wednesday, December 11, 1996 were held as scheduled and noted on the appearance sheet.

pc: ALJ Porterfield
Norma R. Lewis
Beth Plantz
Office File

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FOLDER
JAN 01 1997

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96 DEC 20 AM 9:27
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PROTHONOTARY'S OFFICE

ORIGINAL



Allegheny Power

LEGAL SERVICES

000230

97 FEB -3 PM 3:07

RECEIVED
PROTHONOTARY'S OFFICE

800 Cabin Hill Drive
Greensburg, PA 15601-1689
Phone: (412) 837-3000
FAX: (412) 838-6177

Writer's Direct Dial No. 412-838-6210

January 30, 1997

The Honorable James D. Porterfield
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Re: Township of Springdale vs. Duquesne Light Company and
West Penn Power Company
Pennsylvania Public Utility Commission Docket No. C-00967749

Dear Judge Porterfield:

Enclosed please find a copy of the Motion of West Penn Power Company to Open Record Pursuant to Section 5.431 in the above-captioned matter.

An original and two (2) copies of this Motion will be filed with Secretary Alford's office, and a copy served on the parties of record.

Very truly yours,

John L. Munsch
John L. Munsch
Attorney

JLM/jss

Enclosures

cc: Certificate of Service

FILED
FOLDER

ERM

Competition, issued July 3, 1996. The Report itself, however, was not identified as an exhibit.

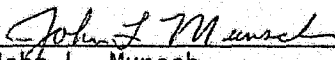
3. West Penn submits that the Report of the Commission is important to the resolution of the parties' disputes.

4. Section 5.406 of the Commission's Rules provides that public documents of the Commission may be offered into evidence by specifying the document, and that they need not be produced or marked for identification. For the convenience of the Presiding Officer and the parties, however, West Penn is providing copies.

5. Counsel for Duquesne Light Company, Richard S. Herskovitz, Esquire, was contacted January 28, 1997 about this Motion and Mr. Herskovitz authorized West Penn to state that he did not object to West Penn's Motion to Open the Record for the purpose stated herein.

WHEREFORE, West Penn Power Company requests that the record in the above proceeding be opened for the limited purpose of admitting as evidence the Report and Recommendation to the Governor and General Assembly on Electric Competition of the Pennsylvania Public Utility Commission at Docket No. I-940032, issued July 3, 1996. The document would be West Penn Power Company Exhibit No. 4.

Respectfully submitted,



John L. Munsch

Attorney for
WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, PA 15601
(412) 838-6210

CERTIFICATE OF SERVICE

I hereby certify that I have this day served an original and two (2) copies of West Penn Power Company's Motion to Open Record Pursuant to Section 5.431 by first-class mail upon:

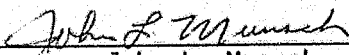
Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
North Office Building
P. O. Box 3265
Harrisburg, PA 17105-3265

and one (1) copy upon:

Richard S. Herskovitz, Esquire
Duquesne Light Company
Legal Unit
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, PA 15230-1930

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, PA 15068

Dated: January 30, 1997



John L. Munsch

DATE: February 5, 1997

SUBJECT: C-00967749

TO: Office of Administrative Law Judge

FROM: John G. Alford, Secretary

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

Attached is a copy of a motion filed on behalf of West Penn Power Company to open the record in the above entitled proceeding.

This matter is assigned to your Bureau for necessary action.

Attachment - copy of motion

cc: Office of Special Assistants - w/copy of motion
Office of Trial Staff - w/copy of motion

JEP

FEB 06 1997

CURRENT
FOLDER

ERM



Duquesne Light Company

Legal Unit
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930
Phone: (412) 393-6000
Fax: (412) 393-6645

Writer's DIRECT DIAL Number:

0001157

(412) 393-6129

February 10, 1997

Via Telecopier

The Honorable James D. Porterfield
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, Pennsylvania 15222

Re: Township of Springdale v. Duquesne Light Company
and West Penn Power Company
Pa. P.U.C. Docket No. C-00967749

RECEIVED
PROTHONOBAKY'S OFFICE
97 FEB 18 AM 9:50

Dear Judge Porterfield:

In accordance with our conversation this morning, this letter will confirm my request for an extension of one week for the parties to file Main Briefs in the above-captioned proceeding and your approval of same. I would also request that the due date for Reply Briefs be extended a week as well, to March 3, 1997. I have contacted counsel for the other parties, and they have no objection to the requests.

Thank you.

Very truly yours,


DOCKETED
FEB 20 1997

Richard S. Herskovitz
Richard S. Herskovitz
Corporate Attorney

RSH/njp:015C

cc: John G. Alford, Secretary
John L. Munsch, Esquire
Stephen Yakopec, Jr., Esquire

DOCUMENT
FOLDER



Duquesne Light Company

Legal Unit
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930
Phone: (412) 393-6000
Fax: (412) 393-6645

Writer's DIRECT DIAL Number:

(412) 393-6129

February 17, 1997

Via Overnight Express Delivery Mail

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17108

RECEIVED

FEB 17 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

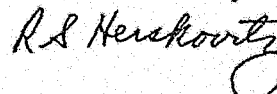
Re: Township of Springdale v. Duquesne Light Company
and West Penn Power Company
Docket No. C-00967749

Dear Secretary Alford:

Enclosed are an original and nine (9) copies of the Main Brief of Duquesne Light Company to be filed in the above-captioned proceeding. A Certificate of Service is attached to each Brief.

Thank you.

Very truly yours,



Richard S. Herskovitz
Corporate Attorney

RSH/njp:016C

Enclosures

cc: The Honorable James D. Porterfield (Enclosure w/diskette)
John L. Munsch, Esquire (Enclosure 2)
Stephen Yakopec, Jr., Esquire (Enclosure 2)

DOCUMENT
FOLDER

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Docket No. C-00967749

TOWNSHIP OF SPRINGDALE

v.

DUQUESNE LIGHT COMPANY
and
WEST PENN POWER COMPANY

**MAIN BRIEF OF
DUQUESNE LIGHT COMPANY
(RESPONDENT)**

Richard S. Herskovitz, Esquire
Attorney I.D. No. 21907

Larry R. Crayne, Esquire
Attorney I.D. No. 09996

Duquesne Light Company
411 Seventh Avenue, 16-006
P.O. Box 1930
Pittsburgh, PA 15230-1930
(412) 393-6129
(412) 393-6645 (FAX)

Counsel for:
Duquesne Light Company

DUCKETEL

FEB 20 1997

**DOCUMENT
FOLDER**

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Re Cambridge Electric Light Company 164 PUR4th 69 (Mass. D.P.U. 1995)	11, 12 19
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Re Massachusetts Institute of Technology 74 F.E.R.C. 61,221, 1996 FERC LEXIS 280 (1996)	12, 13
Re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities 18 CFR Parts 35 and 385, 61 Fed. Reg. 21,540 (1996)	10, 14 19
Re Proposed Policies Governing Restructuring California's Electric Service Industry and Reforming Regulation 168 PUR4th, 484, (1996)	17
Snelling v. Pennsylvania Department of Transportation 27 Pa. Commonwealth Court 276, 366 A.2d 1298 (1976)	21

Strasburg Associates v. Newlin Township 52 Pa. Commonwealth Court 514, 415 A.2d 1014 (1980)	22
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Warner Cable Communications, Inc. v. Borough of Schuylkill Haven 784 F. Supp. 203 (E.D. Pa. 1992)	22

Statutes:

Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801, et seq.	
66 Pa. C.S. § 2806(D)	3
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Public Utility Regulatory Policies Act of 1978	
16 U.S.C. § 824a-3(c)	12
16 U.S.C. § 824a-3(h)	12
First Class Township Code	
53 P.S. § 5101, et seq.	21

I. *Statement of the Questions Involved*

1. Whether Duquesne is entitled to recover its stranded costs under the facts of this case?
2. Whether the amount of the stranded costs recoverable by Duquesne in this case was calculated properly?
3. Whether the Township has standing to represent Duquesne's customers who reside in Harwick Village and who requested service from West Penn?

II. Statement of the Case

On February 28, 1996, the Township of Springdale ("Township") commenced this proceeding by filing a Complaint with the Pennsylvania Public Utility Commission ("Commission") against Duquesne Light Company ("Duquesne") and West Penn Power Company ("West Penn"). The Township avers, *inter alia*, that more than 200 residents of the Township, while located in the certificated service territory of West Penn, are being served by Duquesne. The residents now request electric service to be provided by West Penn instead of Duquesne. The Township further avers that Duquesne and West Penn are at a stalemate regarding the transfer of customers and facilities from Duquesne to West Penn. The alleged stalemate, according to the Township, is a result of a dispute between Duquesne and West Penn over what Duquesne should receive for its facilities. The Township requests the Commission to resolve this dispute.

Duquesne filed its Answer and New Matter with the Commission on or about March 20, 1996. In it, Duquesne contends, *inter alia*, that it is willing, and in fact has agreed to transfer the customers and facilities to West Penn without delay. In doing so, however, Duquesne submits that its compensation to be determined later should reflect the generation, transmission, and other regulatory asset costs which will become stranded as a result of the transfer. Duquesne admits that it has not accepted West Penn's offer to acquire its facilities at depreciated book value. Duquesne's contention is that net book cost is inadequate compensation for the substantial investments Duquesne has undertaken since 1916 to provide service to its Springdale customers.

In its Answer and New Matter filed with the Commission on or about March 25, 1996, West Penn also acknowledges that it has been unable to agree on the price to be paid to Duquesne for the transfer of the facilities to West Penn. West Penn states that it is willing to pay depreciated book value,¹ but that recovery of stranded costs is not applicable to the customer transfer at issue.

¹ West Penn refers to "depreciated book value" as "trended original cost minus depreciation." Trended original cost adjusts book value to current year dollars and is an attempt to determine replacement value. However, for purposes here, these terms will be treated synonymously.

On or about April 1, 1996, West Penn filed its Reply to Duquesne's New Matter. West Penn reiterates therein that depreciated book value is adequate compensation for Duquesne's facilities and recovery of stranded costs is inapplicable and inappropriate. The Township, on or about June 5, 1996, filed with the Commission separate Responses to Duquesne's and West Penn's New Matter averring that the central dispute at issue rests between Duquesne and West Penn.

Both Duquesne and West Penn filed a Prehearing Memorandum. Duquesne asserts that the issue here is not over the transfer of customers and facilities from Duquesne to West Penn (it is acknowledged that customer transfers require Commission approval), but whether the compensation due to Duquesne should reflect stranded costs. Duquesne requested that the Commission issue a Preliminary Order directing immediate transfer of the Springdale customers and facilities to West Penn if warranted, and a stay until April 1997 of that portion of the proceeding involving appropriate compensation due to Duquesne.² West Penn, on the other hand, maintains that stranded costs are not at issue, but if they were, Duquesne's compensation should not include them here because they arise over a territory dispute, not as a result of the change to a competitive generation market. West Penn proposed that the Township's Complaint be ruled upon without delay.

A Prehearing Conference was held on July 25, 1996 before Administrative Law Judge ("ALJ") Porterfield. At that conference, ALJ Porterfield denied Duquesne's proposed stay, and he scheduled evidentiary hearings.

On September 6, 1996, ALJ Porterfield issued "Interim Order One." In it, he summarized the substantive course of events including the parties' positions set forth at the

² As part of the Commission's July 3, 1996 report on competition to the Governor and General Assembly at Docket No. I-00940032, Investigation Into Retail Competition, the Commission recommended that all Pennsylvania electric utilities file a tentative restructuring plan by April 1997 documenting each company's proposed transition to a competitive generation market. These plans are to include the utility's proposal for calculating stranded costs. Duquesne requested to stay until sometime after April 1997 that portion of the instant proceeding involving the issue of stranded costs in order to reflect Commission recommendations, if any, regarding Duquesne's proposed methodology for calculating stranded costs. After April 1997, Duquesne could reflect in this proceeding the Commission's final order concerning calculation of stranded costs. The Commission's recommendation has since been superseded by enactment of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801, et seq., ("Electric Competition Act"), which directed electric utilities to file restructuring plans between April 1, 1997 and September 30, 1997. 66 Pa. C.S. § 2806(D). The Commission has since directed Duquesne to file its restructuring plan on August 1, 1997. See, Procedural Schedule Re Restructuring Filings and Retail Access Pilot Program Filings, Docket No. M-00960890F0005, Order entered January 24, 1997.

Prehearing Conference. Moreover, he set the schedule for distribution of prepared testimony, and he defined the matters that were at issue.

At the hearings on December 10 and 11, 1996, Richard S. Bower, James M. Coulter and James Lahtinen testified on behalf of Duquesne, Alexander Galatic testified on behalf of West Penn and Donna Diehm testified on behalf of the Township. All of these witnesses were cross-examined by opposing counsel. Additionally, ALJ Porterfield admitted the prepared testimony of each of those witnesses, as well as Duquesne witness William D. Garland and West Penn witness Richard A. Phillips, neither of whom were cross-examined.

By notice dated January 10, 1997, the parties were directed to file main briefs. This brief is in support of Duquesne's contention that it is entitled to recovery of stranded costs as a result of the transfer of its customers to West Penn.

III. Summary of Argument

Since 1917, Duquesne has provided adequate and continuous electric service to customers in the Harwick village area of Springdale Township as a result of an exchange of service territories with West Penn which was approved by the Public Service Commission. In meeting its obligation to serve for eighty years, Duquesne has undertaken substantial investments in generation, transmission and distribution facilities with the reasonable expectation of serving the long-term requirements of these customers. Although Duquesne's sale of its mining properties in Harwick Village in the late 1950's did not divest it of its obligation to continue to provide electric service to these customers, Duquesne has agreed to transfer the customers to West Penn if approved by the Commission and if West Penn pays to Duquesne \$149,744 for Duquesne's distribution facilities and \$1,266,723 of costs that would otherwise be stranded resulting from the transfer.

There is no dispute that absent compensation, Duquesne will be forced to seek recovery of the costs for investments made on behalf of Harwick Village residents from its other customers. Allowing customers to avoid paying their fair share of costs by shifting responsibility to other customers is contrary to historical regulatory practice of cost allocation and inconsistent with the intent of the restructuring legislation. Recovery of non-mitigable stranded costs is a key component of the legislation. However, even in the absence of restructuring, it is bad public policy to allow customers to evade responsibility for costs incurred on their behalf. Although Pennsylvania law is silent on the matter, case law in other states and the Federal Energy Regulatory Commission ("FERC") recognize recovery of stranded costs in circumstances similar to the facts of this case, i.e., customer departures in non-competitive situations.

Duquesne's right to recovery of stranded costs here is based upon its reasonable expectation of continuing to serve the Harwick Village customers, equity and fairness to its remaining ratepayers, and efficiency within the marketplace.

Duquesne's calculation of stranded costs is based on the "revenues lost" approach, which has been accepted by the FERC and other states as a fair and efficient means to determine such costs.

Finally, the Township has no statutory authority to represent its residents in this proceeding, and it should therefore be precluded from doing so.

IV. ARGUMENT

A. Introduction.

On April 16, 1917, Duquesne and West Penn entered into Articles of Agreement ("Articles" or "Agreement") for the purpose of consolidating the territories in which each provided public utility service. The Articles provided for the exchange of certain service territories between the two utilities. In paragraph Fifteenth of the Articles, Duquesne reserved the right to furnish electric service to coal mining properties it owned or controlled in several municipalities, including Springdale Township. These Articles were filed with and approved by the then Public Service Commission.

Since the 1917 Agreement, and continuing to the present day, Duquesne has provided adequate and continuous electric service to Springdale Township, including Harwick Village, the area of the Township involved in this proceeding. To provide this service, Duquesne has undertaken substantial investments in generation, transmission and distribution facilities with the reasonable expectation of serving the long-term requirements of its Springdale (and Harwick Village) customers. These costs were incurred pursuant to Duquesne's obligation to serve these customers created by the Commission's issuance of a Certificate of Public Convenience approving the 1917 Agreement, as amended.

Around 1958-1959, Duquesne sold its interest in the Harwick Village mining properties identified in paragraph Fifteenth of the 1917 Agreement. Duquesne did not, however, cease to provide electric service to those customers located in that area of the Township because they would have had the right to demand continued service from Duquesne. Duquesne continued to provide electric service to those customers without objection for almost forty more years. Indeed, it is unreasonable to expect that Duquesne could have refused to provide service to the Harwick Village customers even after it sold its mining properties.

While Duquesne no longer owns the Harwick Village mining properties, its rights under the 1917 Agreement and subsequent Certificate of Public Convenience approving that Agreement have not been terminated. Paragraph Fifteenth of the Agreement exempts the customers in those locations from being transferred to West Penn. This exemption was not contingent upon Duquesne's continued ownership of the mining properties. The Agreement

makes no mention of transferring the customers on these coal mining properties back to West Penn if Duquesne ever divested itself of those properties. The plain language of the Agreement demonstrates that Duquesne's right to continue to provide electric service to the Harwick Village customers survived Duquesne's sale of its ownership interest in the mining properties.

Nevertheless, Duquesne has agreed to the transfer of these customers to West Penn as long as Duquesne is reimbursed for the cost of Duquesne's assets used to provide service to these customers. The net book cost of the assets, which West Penn is willing to pay, is inadequate compensation for the generation and transmission assets which will become stranded by virtue of the transfer of these customers to West Penn. Net book cost is inadequate compensation for the substantial investments Duquesne has undertaken since 1917 to provide service to Harwick Village. Thus it is Duquesne's claim that it is entitled to recovery of these stranded costs (to avoid burdening its remaining customers) which forms the basis for this proceeding.³

B. Duquesne is entitled to recover stranded costs under the facts of this case.

What are stranded costs?

In general, stranded costs refer to the difference between the revenues utilities would receive, under traditional cost of service regulation, for historical investments and contractual obligations and the revenues that they would receive (market value) if generation services were sold in a competitive market.

Duquesne Statement No. 3, p.4.

³ Duquesne and West Penn are not in dispute over whether Duquesne will incur stranded costs in this case. As evidenced herein, Duquesne will suffer some measure of stranded costs, and both parties recognize this, although West Penn often refers to them in this case as "uneconomic investments." West Penn Statement No. 2, p. 3. West Penn's testimony focuses not on the issue of whether Duquesne will incur stranded costs, but rather whether Duquesne is entitled to recover stranded costs, and if so, what is the appropriate dollar amount. West Penn states:

The purpose of this testimony is to . . . explain the reasons why Duquesne should not recover what Duquesne is calling stranded costs relating to the transfer of electric service customers in the Harwick Village area . . . to West Penn.

West Penn Statement No. 2, pp. 2-3. Thus, the difference between the parties' positions is the recoverability and dollar amount of the stranded costs, not whether Duquesne will incur them.

Stranded costs are certainly not limited to competitive circumstances within the industry as West Penn would have the Commission believe. They can arise any time there is (1) a customer departure, (2) a corresponding loss of revenue not offset by corresponding cost savings, and (3) no readily available means of replacing that revenue loss.

Duquesne's proposed treatment of stranded costs in this case is consistent with the regulatory treatment afforded the transfer of assets in the past. Historically, assets were transferred at net book values with little regard for potential stranded costs because until most recently, market values were close to or exceeded book values. As a result, stranded cost considerations were of little concern. However, in today's environment, book values exceed market levels, and thus, stranded costs have become a substantial concern. Duquesne Statement No. 3, p. 7.

It is acknowledged that the primary reason stranded costs have come to the forefront of the electric utility industry in the past two years is because of the industry's move toward a competitive environment. The reason, quite simply, is that competition paves the way for customer departure and a corresponding loss in revenue without any guarantee of finding replacement customers or revenue. Under the traditional regulatory regime, customers could not readily depart from an electric utility's system, and therefore, revenues were essentially fixed. An electric utility could fix its costs and investments so that the revenues it expected to receive would cover those costs plus provide a fair rate of return for its investors. In a competitive environment, customers have a choice, at least in part, to depart from their electric provider's system. With customer departures, the electric provider's revenues may decline leaving it unable to recover the costs of investments it made to serve those customers prior to the inception of a competitive marketplace.

Recognizing that competition is one means that can lead to customer departure, loss of revenue and ultimately stranded costs, that is not to say that other means of customer loss cannot also lead to stranded costs. The Electric Competition Act acknowledges co-generation as another means of customer departure leading to stranded costs. 66 Pa. C.S. § 2808(A). The cases discussed below involve still other means of customer departure that can result in stranded costs.

In Re City of Clyde, 168 PUR4th 114 (1996), the City of Clyde ("City" or "Clyde") filed an application with the Ohio Public Utilities Commission requesting approval to (1) substitute its municipal electric service for service provided by Toledo Edison within the City's corporate limits, (2) require Toledo Edison to remove its distribution facilities therein, and (3) modify Toledo Edison's certificate from the Commission to the extent necessary to relieve Toledo Edison of its obligation to furnish electricity within the City. This case was not a product of competition. The City had the right to municipalize electric service within its corporate limits, and the Ohio Commission recognized that if it would have granted the City's application, Toledo Edison would have incurred stranded costs. The Commission wrote:

It is clear from the evidence presented that there will be an extraterritorial impact on Toledo Edison, not only in facility removal costs but also in that Toledo Edison would arguably suffer a certain amount of "stranded investment" (i.e., investment which was built under Toledo Edison's obligation to serve the residents of Clyde which will now be rendered stranded as a result of Clyde's actions).

....

The utility has provided stranded investment cost calculations for the record, which it purports to be approximately \$32 million based upon the revenue lost approach . . .

....

While Clyde has raised a number of arguments regarding the reasonableness of Toledo Edison's calculations, we believe that, even after giving some weight to Clyde's arguments, the utility will still incur significant costs which potentially will have a negative impact on the utility and its ratepayers.

168 PUR4th at 134-135. The Commission appropriately denied Clyde's application. In its application for rehearing filed May 13, 1996, Clyde argued, *inter alia*, that the Commission's reliance on hypothetical concerns about stranded investment as grounds for denial of Clyde's application is undercut by the FERC's Order No. 888 Re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 18 CFR Parts 35 and 385, 61 Fed. Reg. 21,540 (1996) ("Order No. 888"), confirming that there are no stranded investments

under the circumstances of the case. See, Re City of Clyde, 171 PUR4th 283 (1996). To this, the Commission responded:

The second issue raised by Clyde, regarding the Commission's consideration of the stranded investment impact on Toledo Edison also does not warrant rehearing in this case. The Commission finds that costs to be incurred by Toledo Edison . . . to remove or relocate facilities, as well as the possibility that Clyde could leave the Toledo Edison system without the issue of stranded costs even being considered, are factors that must be considered in determining whether it is in the public welfare to grant the abandonment. The fact that the FERC's definition of stranded investment, in . . . Order No. 888 . . . , does not include the costs that would be incurred by Toledo Edison does not materially alter our determination. Thus, Clyde's arguments on this issue are not persuasive.

171 PUR4th at 285.

Similarly, In Re Cambridge Electric Light Company, 164 PUR4th 69 (Mass. D.P.U. 1995), Massachusetts Institute of Technology ("MIT") was an all-requirements customer of Cambridge Electric Company ("Cambridge") when it constructed its own cogeneration facility to supply its power needs. Upon leaving Cambridge's system, MIT petitioned the Massachusetts Department of Public Utilities to establish standby, maintenance and supplemental rates for service from Cambridge. As an addition to those rates, Cambridge proposed to include a Transition Charge which was intended to recover stranded costs. The following excerpt from the Massachusetts' Commission's Opinion is instructive in resolving the issue of stranded cost recovery:

Cambridge argued that it should be allowed to recover prudent costs that were incurred to serve MIT as an all-requirements customer and that its approach [in determining the amount of stranded costs] is consistent with the principles set out in the Department's Order in *Electric Industry Restructuring*, D.P.U. 95-30. MIT asserted that the imposition of the CTC [the Transition Charge] is unlawful because it is inconsistent with the requirements of PURPA, is an improper tying arrangement, and is not calculated properly.

The Department stated in D.P.U. 95-30 that utilities should have a reasonable opportunity to recover net, non-mitigable stranded costs associated with commitments previously incurred pursuant to their legal obligation to provide electric service. The Department's focus there was on stranded costs that may arise as the result of Department initiatives to

promote competition in the generation sector of the electric utility industry by giving customers access to other sources of electricity supply in addition to the electric company in whose distribution territory these customers were located. The matter currently before the Department differs somewhat from the model described in D.P.U. 95-30. [Cambridge] did not file the CTC tariff as the result of D.P.U. 95-30, or any other Department initiative to promote competition in the electric utility industry. In fact [Cambridge's] tariff filing pre-dates the Department's Order in D.P.U. 95-30. Moreover, cogeneration has been an option for many years, and has been promoted as a national policy since at least 1978 with the passage of PURPA. The record is clear that MIT has been investigating the cogeneration option since 1985, and that [Cambridge] has been aware of MIT's interest.

....

Given the length of time over which MIT planned but did not act, [Cambridge] could well have regarded the MIT project as one of any number of plans by customers that do not go beyond the design or financing stage. In the meantime, Cambridge had to plan and procure resources to meet its obligations to serve MIT, a long-term customer of significant load. In fairness, the Company should have a reasonable opportunity to recover its investments, including those to serve MIT. Moreover, the Department is concerned about the significant impact of the loss of MIT on [Cambridge] and its ratepayers . . .

164 PUR4th at 103-104 (citations omitted). The Commission then concluded:

[T]he Department has expressed clearly its policy with respect to allowing utilities "a reasonable opportunity to recover costs for existing commitments that might be stranded in the transition to competition". The instant Order [allowing Cambridge to include the Transition Charge in its standby, maintenance and supplemental rates for MIT and thus recover stranded costs] is a further articulation of the Commonwealth's regulatory policy.

164 PUR4th at 108 (citations omitted).

Following this decision, MIT filed a petition with the FERC for enforcement pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. § 824a-3(h)) ("PURPA") against the Massachusetts Commission. See, Re Massachusetts Institute of Technology, 74 F.E.R.C. 61,221, 1996 FERC LEXIS 280 (1996). In the petition, MIT alleged, *inter alia*, that the Transition Charge violates the requirement of section 210(c) of PURPA (16 U.S.C. § 824a-3(c)) that rates for sales by utilities to Qualifying Facilities ("QFs")

be non-discriminatory. Following some discussion about the Transition Charge, QFs and the PURPA, the FERC responded:

The Massachusetts Commission's approval of the Transition Charge is generally consistent with our preliminary guidance in the Open-Access NOPR ["Notice of Proposed Rulemaking"]⁴, although our Open-Access NOPR only applies to situations where requirements customers leave due to the availability of transmission access.

1996 FERC LEXIS 280, *12 (footnote added). Thus, the FERC explicitly acknowledged that Cambridge's Transition Charge was consistent with the FERC's policy on the recoverability of stranded costs as set forth in the NOPR (and later in Order No. 888), even though the stranded costs incurred by Cambridge did not arise because of competition, but rather by voluntary customer departure.

In looking to the facts of the present case, the contemplated departure of Duquesne's Harwick Village customers and accompanying revenue loss were not brought on by competition, but rather were a result of the 1917 exchange of certificated territories between Duquesne and West Penn. Duquesne Statement No. 3, p. 3; Exhibit JAL-1. However, that does not mean that Duquesne did not incur stranded costs. Clearly, the opposite is true. The customer departure and revenue loss leaves Duquesne unable to fully recover its investments and the costs it incurred to serve those customers unless rates to remaining customers are increased. By selling the load reserved for the Harwick Village residents in the wholesale market, Duquesne will be able to recover only some of its stranded costs. Mr. Lahtinen states Duquesne's dilemma best by saying:

Duquesne would receive substantially less revenues from the sale of energy at market prices than it now receives from a similar amount of electrical energy to the Harwick Village residents under current cost based tariffs.

Duquesne Statement No. 3, p. 6. Without the allowance for recovery in this case, Duquesne's ratepayers ultimately will have to absorb these stranded costs.

⁴ The FERC adopted the Open Access NOPR, 60 Fed. Reg. 17,662, as Order No. 888.

Duquesne asserts that its right to recovery of stranded costs is based upon the following reasons. 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. 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, dictate recovery of stranded costs for Duquesne.

Reasonable Expectation

The underlying reason for the legitimacy of stranded cost recovery is **reasonable expectation**. Duquesne Statement No. 3, p. 5. In Order No. 888, the FERC succinctly stated:

[A] utility seeking to recover stranded costs must demonstrate that it had a **reasonable expectation** of continuing to serve the departing customer. Whether a utility had a reasonable expectation of continuing to serve a customer, and for how long, will be determined on a case-by-case basis, and will depend on all the facts and circumstances.

61 Fed. Reg. at 21,653 (emphasis added). In footnote 793 of the Order regarding reasonable expectation, the FERC wrote:

The examples that the Commission provided in the Supplemental NOPR of possible ways to establish reasonable expectation were not intended to be dispositive of the issue. As we make clear in this Rule, whether a particular utility had a reasonable expectation that a [service] contract would be extended will depend on all of the facts and circumstances.

61 Fed. Reg. at 21,653. The FERC then continued:

Whether the state law . . . imposes a mandatory obligation to serve would be among the factors to be considered in determining whether the reasonable expectation is met in a particular case.

61 Fed. Reg. at 21,653.

The facts and circumstances in the present case clearly warrant the finding that Duquesne had a reasonable expectation to serve its Harwick Village customers. Duquesne had a lawful duty to provide adequate, safe, reasonable, and continuous electric service to its customers in Harwick Village. 66 Pa.C.S.A. § 1501. Duquesne has satisfied its duty. Tr. 83. The only way Duquesne could accomplish this was to make investments in generation, transmission and distribution facilities to serve the Harwick Village residents. Duquesne Statement No. 3, pp. 4-5. That is exactly what Duquesne did; it made investments in facilities to satisfy its duty to serve, but it did so under the reasonable expectation that (1) it would continue to serve the Harwick Village customers and (2) it would receive a fair rate of return on the investments. Duquesne Statement No. 3, pp. 4-5; Duquesne Statement No. 1S, pp. 12-14.

Duquesne's reasonable expectation has its roots in the 1917 "Articles of Agreement" between Duquesne and West Penn whereby Duquesne and West Penn agreed to exchange certain service territories. Duquesne Statement No. 3, p. 3; Exhibit JAL-1. Essentially, West Penn extended to Duquesne the right to serve coal mining properties owned by Duquesne yet located in West Penn's certificated service territory. Similarly, Duquesne extended to West Penn the right to serve coal mining properties owned by West Penn and located in Duquesne's certificated service territory.

Some forty (40) years subsequent to this Agreement, Duquesne's then president, P.H. McCance sent a letter, dated April 30, 1957, to West Penn's then President, P.H. Powers, wherein he stated that West Penn has the "right to purchase" Duquesne's distribution facilities and take over the customers in Harwick Village at any time after Duquesne discontinued mining operations. West Penn Statement No. 1, p. 2; Exhibit RAP-1. Duquesne sold the last of its coal mining properties and ceased mining operations by 1958 or 1959. Duquesne Statement No. 3, p. 3.

For the next 37 years (1957 to 1994), West Penn remained silent, declining to exercise its option to serve the residents in Harwick Village. West Penn never made any effort to take over the Harwick Village customers. Even in this proceeding it was the residents of Harwick Village, not West Penn, that raised the issue of transferring to West Penn. Duquesne Statement No. 1R, pp. 1-2. It is precisely the decades of silence and acquiescence that formed the basis of Duquesne's reasonable expectation to continue to serve, and be compensated for the

investment to serve the residents of Harwick Village. Not only does common sense support that it was reasonable for Duquesne to expect to continue to serve and be compensated, but the equitable concept of laches also recognizes that when one party sits on its rights for a significant amount of time, that party loses its rights in favor of an opposing party.

West Penn asserts that the significance of the 1957 letter "clearly shows that Duquesne did not have a reasonable expectation of continuing to provide electric service to Harwick Village past the time it ceased mining operations." West Penn Statement No. 1, p. 2. Such an argument might have been persuasive in 1960, but not in 1994. To the contrary, West Penn's failure for almost forty years to assert any intent to serve the customers confirms that West Penn never expected to serve the customers and that Duquesne had a reasonable expectation of continuing to serve the customers. West Penn's current opportunistic arguments are unpersuasive.

Finally, it is completely illogical to think that the Commission would have permitted Duquesne to refuse to serve the Harwick Village residents, or alternatively, that Duquesne could have lawfully and unilaterally provided degraded service to them. The Commission would not have given to Duquesne the right to serve the residents of Harwick Village and authorize pricing and investment plans unless Duquesne's promises to provide service were credible. Duquesne Statement No. 3, p. 5. Duquesne could not have made such promises without fully believing and expecting that it would continue to serve Harwick Village and receive a fair rate of return in exchange. Duquesne's expectations were reinforced by West Penn's inaction in failing to assert any right to serve the customers for almost eighty years.

Equity and Fairness to Duquesne's Remaining Ratepayers and its Shareholders

Equity and fairness to Duquesne's remaining ratepayers and shareholders also require that Duquesne be entitled to recover its stranded costs. The fact of the matter is, if Duquesne does not recover its stranded costs caused solely by the departure of Harwick Village customers, Duquesne's remaining ratepayers and/or its shareholders will bear the stranded financial burden.

With regard to the remaining ratepayers, it is fundamentally unfair to burden these customers with costs and obligations originally undertaken on behalf of the Harwick Village

customers. Duquesne Statement No. 3, pp. 5, 7. The California Commission put it best in describing the equities of allowing stranded cost recovery so as not to burden remaining ratepayers. It said:

The first principle of fairness is that the [stranded cost charge] should fall on all customers in rough proportion to the benefits they have received from the utility's system. If some customers avoid those charges, others will consequently and unjustly bear more than their fair share.

Re: Proposed Policies Governing Restructuring California's Electric Service Industry and Reforming Regulation, 168 PUR4th, 484, 488 (1996).

With regard to Duquesne's shareholders, these investors would not have been willing to commit capital to carry out Duquesne's obligation to provide service to Harwick Village unless they believed the Pennsylvania regulators' offer of an opportunity to earn a fair rate of return on their capital investment was credible. Duquesne Statement No. 3, p. 5. Sound policy and regulation requires that a public utility providing service under rate-of-return regulation must be given the opportunity to recover and receive a fair return on all its prudent investment. Duquesne Statement No. 1S, pp. 4-5. By disallowing recovery of Duquesne's stranded costs in this case, Duquesne would not receive a fair rate of return on investments it made to serve the Harwick Village customers. Consequently, Duquesne's investors and shareholders would be denied their fair rate of return.

Finally, when Duquesne transfers assets at a premium above book value, Duquesne passes these benefits onto remaining customers by writing down its investment in nuclear generation, accelerating amortization on plant, and providing a credit on ratepayer bills through the ECR. The sale of Duquesne's interest in its Ft. Martin plant is one such example. See, Petition of Duquesne Light for Declaratory Order and Application of Duquesne Light Company for Approval to Transfer its Interest in the Ft. Martin No. 1 Generating Unit to AYP Capital, Inc., Docket Nos. P-00951001 and A-110150F0011, Order entered June 20, 1996. Flowing through all or a portion of these benefits is completely consistent with the notion of allowing a utility an opportunity to earn a reasonable return on capital. Conversely, where Duquesne incurs stranded costs in transferring assets, equity demands that regulators must afford symmetrical treatment and allow these costs to be recovered so that (1) shareholders are given

their opportunity to earn a fair rate of return on their invested capital and (2) remaining customers do not absorb the cost responsibility through higher rates. Duquesne Statement No. 3, p. 7.

In sum, the recovery of stranded costs associated with customer departure is a legitimate charge to insure that Duquesne's other remaining customers, stockholders or both are not adversely impacted. Duquesne Statement No. 3, p. 5.

Efficiency in the Marketplace

Stranded cost recovery is necessary to insure that customer departures, either in a competitive marketplace or in transfers like the situation here, are consistent with efficiency and the overall public interest. Duquesne Statement No. 3, p. 8.

Efficiency in the marketplace can be defined in two ways. From a cost perspective, efficiency occurs where a certain amount of goods or services are produced at the minimum cost. From a production perspective, efficiency occurs where a maximum amount of goods are produced from a fixed set of production inputs. Duquesne Statement No. 3, p. 8. Efficiency is important in a marketplace because it allows customers buying a particular product to pay the minimum price while providing a fair return for the seller. Any efficient transaction in the marketplace will benefit all parties involved because each party will either experience a cost savings or added value (e.g., all parties will gain in some manner). Duquesne Statement No. 3, p. 8.

With regard to the transfer of Harwick Village customers and assets in the present case, it certainly is not an efficient transaction if Duquesne's remaining customers and its shareholders experience a loss. Duquesne Statement No. 1S, pp. 9-11, 15-17. Duquesne's recovery of stranded costs in this case assures that all parties can gain, demonstrating it is an efficient transaction. Duquesne Statement No. 1S, p. 18.

The present movement to competition in the electric utility industry around the country evidences the importance of achieving efficiency in providing the least cost product in the electric generation marketplace. There is no reason, at least from an economic perspective, why the transaction at issue in this case should be treated differently from what legislatures are attempting to achieve generally in the electric supply industry today. Not coincidentally, the Commission considered the impact of efficiency in developing its recommendations to the

Governor and General Assembly on electric utility industry restructuring in Pennsylvania. Since the issue of efficiency present in this case is essentially the same one the Commission dealt with in its investigation on competition, the Commission should consider efficiency in this case as well. Duquesne Statement No. 3, p. 9. This principle of efficiency was recently codified in the Electric Competition Act, which mandates a just and reasonable recovery of stranded costs.⁵

C. *Using the revenues lost approach, Duquesne properly calculated \$1,266,723 as the dollar amount of stranded costs it will incur when its Harwick Village customers transfer to West Penn.*

Using the revenues lost approach, Duquesne calculated that \$1,266,723 in costs will become stranded when its Harwick Village customers transfer to West Penn. Duquesne Statement No. 3, p. 11. With regard to the revenues lost approach, the FERC concluded in its Order No. 888:

We reaffirm our proposal that the determination of recoverable stranded costs should be based on the "revenues lost" approach. We find that the revenues lost approach is the fairest and most efficient way to balance the competing interests of those involved.

61 Fed. Reg. at 21,658. See, also Duquesne Statement No. 3, p. 14.

The revenues lost approach calculates stranded costs by computing the difference in the net revenues that Duquesne expected to receive from the Harwick Village customers versus the net revenues it estimates it would receive from the sale of the same incremental load on the open market. Duquesne Statement No. 3, p. 11.

To demonstrate the calculation, it is best to use round numbers. The actual figures are presented in tabular format in Exhibit JAL-3 and explained in greater detail in Duquesne Statement No. 3, pp. 11-15. Duquesne receives annual net revenues of approximately \$284,000 from the Harwick Village customers. This revenue amount is reasonable assuming 300

⁵ Duquesne recognizes that some of the cited authority in this brief pertains to competition. However, the economic reasoning that persuaded legislatures and regulatory commissions to adopt provisions for stranded cost recovery is the very same reasoning espoused by Duquesne herein. Moreover, that reasoning also persuaded state public utility commissions in other jurisdictions (e.g., Ohio and Massachusetts) to allow or recognize stranded cost recovery by utilities under non-competitive circumstances. See Re City of Clyde and Re Cambridge Electric Company cited supra.

customers paying an average of about \$1000.00 per year. Duquesne estimates that it would receive \$44,594 by selling the same incremental load on the open market. Duquesne calculated this amount by multiplying the Harwick Village customers' annual load of 2,347,071 kilowatt-hours ("kWh") by 1.9¢/kWh, the current rate Duquesne receives for sales of firm energy into the wholesale power market.⁶ In addition, Duquesne estimates that it would no longer incur approximately \$7300 to \$9300 per year on operation and maintenance costs ("O&M") due to the loss of the Harwick Village customers. Applying the net revenues lost formula to these numbers, it turns out that Duquesne's annual loss of revenue will be approximately \$230,000 per year.⁷ Exhibit JAL-3 and Duquesne Statement No. 3, pp. 11-15.

The annual revenue loss is then capitalized over the number of years that Duquesne estimated it would incur the revenue loss. Duquesne assumed nine years was an appropriate number of years because it appears that the Commission envisions a process whereby utilities would have an opportunity to recover stranded costs through the year 2005.⁸ The total revenue loss Duquesne will experience as a result of losing the Harwick Village customers, therefore, is \$2,070,000 (e.g., \$230,000 x 9). This is a conservative number because it assumes no change in base rates over the nine-year period. Exhibit JAL-3 and Duquesne Statement No. 3, pp. 11-15.

From this number, it is appropriate to subtract out the net book value for Duquesne's distribution facilities (\$149,744) so as to not double count that amount.⁹ This leaves a total stranded cost liability of approximately \$1,920,000 (\$2,070,000 - \$149,744) that Duquesne will experience over a nine-year period. When that number is adjusted to its present value, the result is an amount totaling \$1,266,723. Exhibit JAL-3 and Duquesne Statement No. 3, pp. 11-15.

⁶ The 1.9¢/kWh is subject to change. Duquesne is considering offering for sale capacity and associated energy through a competitive solicitation as part of its retail pilot program. The sale proceeds will more adequately establish a market value for power which can be plugged into the revenues lost formula. Duquesne Statement No. 3, p. 12.

⁷ Net revenues expected to be received from the Harwick Village customers (\$284,000) minus net revenues estimated to be received from the sale of the same incremental load on the open market (\$44,594) minus savings in O&M costs (\$9300).

⁸ In fact, after Duquesne's testimony was submitted, the Electric Competition Act was enacted which specifically sets nine years as the usual period for the collection of stranded costs. 66 Pa.C.S.A. §2808(B).

⁹ It would be inappropriate to count \$149,744 in the revenues lost calculation and then also require a separate payment for Duquesne's distribution facilities.

Calculating stranded costs by comparing the difference in net revenues that Duquesne expected to receive from the Harwick Village customers to the net revenues that Duquesne estimates it would receive if it sold Harwick Village customers' incremental load on the open market properly measures the value of assets left stranded as a result of the customers' departure. Duquesne Statement No. 3, p. 14. If a different methodology of calculating stranded costs is ultimately approved by the Commission, Duquesne would have no objection to updating the stranded cost charge in this case. Duquesne Statement No. 3, p. 16.

D. The Township does not have standing to represent Duquesne's customers who reside in Harwick Village and who requested service from West Penn.

Duquesne's Motion to exclude the Township from representing its residents and businesses who are customers of Duquesne in Harwick Village was denied on the basis of Township of Findlay v. Duquesne Light Co., et al., Docket No. C-00935374, Order entered September 4, 1996. Tr. 164. That case is currently on appeal before the Commonwealth Court. However, the following argument is set forth at this time merely to preserve this issue in the event of an appeal of this case.

The Township can maintain this action only in its capacity as a municipal customer of Duquesne. The Township's attempt to represent the interests of its Harwick Village residents is inconsistent with the First Class Township Code. 53 P.S. § 55101, et seq.

In this action, the Township seeks to represent a disparate group of electric consumers. The residents and businesses located in Harwick Village have different load characteristics and use electrical energy for different purposes. Some of them may not even want to transfer to West Penn.

The Township is a governmental body which has only those powers expressly granted by the Legislature. Thus, the Township must be authorized by the Legislature to represent the interests of its residents in Commission proceedings. Nowhere under the First Class Township Code is the Township given such express or implied authority to represent the interest of its residents in administrative proceedings before the Commission. To the contrary, the Code is silent concerning any authority for a first class township to represent the claims and interests of its residents.

The United States District Court for the Eastern District of Pennsylvania recently reviewed the Pennsylvania case law concerning the parameters of a municipal corporation's authority in holding that the Borough of Schuylkill Haven did not have the authority to build and operate a cable television system. In Warner Cable Communications, Inc. v. Borough of Schuylkill Haven, 784 F. Supp. 203 (E.D. Pa. 1992), the Court provided the following summary of the law in this area:

It is well established that Pennsylvania has adopted the Dillon rule, which states that a municipal corporation does not possess and cannot exercise any other than the following powers: (1) Those granted in express words; (2) Those necessary or fairly implied in or incident to the powers expressly granted; (3) Those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable doubt as to the existence of power is resolved by the courts against its existence in the [municipal] corporation, and therefore denied. The reason behind this strict rule is that a borough or other municipal corporation is not a sovereign with inherent powers, but rather a creature of the state. As such, it is completely subject to the state legislature's authority and may do only those things which the legislature has placed in its power.

784 F.Supp at 210-211 (citations omitted).

Moreover, the Commonwealth Court has found that municipal corporations, absent express statutory authorization, lack standing to assert the rights or claims of individual property owners in light of the municipality's purpose to merely carry out local government functions. Department of Environmental Resources v. Borough of Carlisle, 16 Pa. Commonwealth Court 341, 330 A.2d 293 (1974). See, also Snelling v. Pennsylvania Department of Transportation, 27 Pa. Commonwealth Court 276, 366 A.2d 1298 (1976); Township of Upper Moreland v. Pennsylvania Department of Transportation, 48 Commonwealth Court 27, 409 A.2d 118 (1979); and Strasburg Associates v. Newlin Township, 52 Pa. Commonwealth Court 514, 415 A.2d 1014 (1980).

The lack of express statutory authority for representational standing in the First Class Code supports Duquesne's argument that the Township cannot represent its Harwick Village residents in this proceeding. Further, the Harwick Village residents are not without

representation. As customers, they may file individual complaints with the Commission. The Office of Consumer Advocate, Office of Small Business Advocate and Office of Trial Staff are publicly funded representatives charged with the objective representation of customers' interests. There is, therefore, no need for such gratuitous efforts by the Commonwealth's thousands of municipalities to undertake the representation of consumers before the Public Utility Commission. Municipalities have no special expertise in representing consumers before the Commission, are often motivated more by the politics of the situation rather than the best interests of customers, and may very well act contrary to the desires of a significant number of their residents.

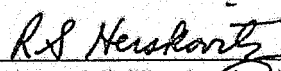
For all of these reasons, the Township should not be allowed representational standing in this proceeding.

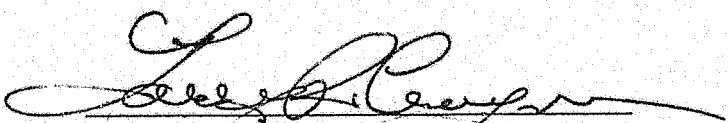
V. Conclusion

For the above stated reasons, Duquesne requests the Commission to approve the transfer of the Harwick Village customers from Duquesne to West Penn subject to West Penn's payment to Duquesne of \$149,744 for Duquesne's distribution facilities and \$1,266,723 for stranded costs resulting from the transfer.

Respectfully submitted,
Duquesne Light Company
By Counsel:

Dated this 17th day of February, 1997.


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RSH/LRC/njp:016CX

APPENDIX

PROPOSED FINDINGS OF FACT

1. Duquesne is a corporation and a public utility, duly organized under the laws of Pennsylvania and having its principal place of business at 411 Seventh Avenue, P.O. Box 1930, Pittsburgh, Pennsylvania 15230-1930.
2. West Penn is a corporation and a public utility, duly organized under the laws of Pennsylvania and having its principal place of business at 800 Cabin Hill Drive, Greensburg, Pennsylvania, 15601-1689.
3. The Township of Springdale is a Township of the First Class and a political subdivision of the Commonwealth of Pennsylvania. It has its offices at P.O. Box 177, Pillow Avenue, Harwick, Pennsylvania 15049. Harwick Village is the area of the Township at issue in this proceeding. Springdale Statement No. 1; Tr. 72.
4. On or about May 18, 1994, residents of Harwick Village submitted a letter and an attached signed petition to West Penn. In the letter, the residents stated that they were currently being served by Duquesne, and requested that West Penn provide them with service instead of Duquesne. Duquesne Statement No. 3, p. 4; West Penn Statement No. 1, p. 5.
5. On or about February 28, 1996, the Township, on behalf of the Harwick Village residents, filed a Complaint with the Commission to effectuate the transfer of electric service from Duquesne to West Penn. Springdale Statement No. 1; Complaint.
6. The Township is a customer of Duquesne. It pays the electric bill for street lights located within Harwick Village. Springdale Statement No. 1; Tr. 69.

7. Harwick Village is located within West Penn's certificated service territory. Duquesne Statement No. 3, p. 4.

8. Duquesne's right to serve the Harwick Village residents dates back to an agreement, entitled "Articles of Agreement," between Duquesne and West Penn, dated April 16, 1917, wherein Duquesne and West Penn agreed to exchange certain service territories described therein. Duquesne Statement No. 3, p. 3; Exhibit JAL-1.

9. The Pennsylvania Public Service Commission issued a Certificate of Public Convenience by Report and Order dated June 27, 1923 approving certain amendments to the Articles.¹⁰ Duquesne Statement No. 3, p. 3; Exhibit JAL-2.

10. In paragraph Fifteenth of the Articles, Duquesne reserved the right to furnish electric service to coal mining properties it owned or controlled situated in several townships, including the Township of Springdale. One of the coal mining properties referred to in the Articles was in the area now known as Harwick Village. This is how Duquesne came to serve its customers in Harwick Village. Duquesne Statement No. 3, p. 3; Exhibit JAL-1; Tr. 97.

11. Duquesne believes that it sold the last of the coal mining properties by 1958 or 1959. Duquesne Statement No. 3, p. 3.

12. During the sale of the last of the coal mining properties, Duquesne's then president, P.H. McCance drafted a letter, dated April 30, 1957, to West Penn's then President, P.H. Powers wherein he stated that West Penn has the "right to purchase" Duquesne's distribution facilities and take over the customers in Harwick Village after Duquesne ceased mining operations. West Penn Statement No. 1, p. 2; Exhibit RAP-1.

¹⁰ Duquesne was not able to locate the Public Service Commission's approval of the original 1917 Agreement. Duquesne Statement No. 3; p. 3.

13. For 37 years (1957 to 1994), West Penn remained silent, declining to exercise its option to serve the customers in Harwick Village. West Penn never made any effort to take over the Harwick Village customers after Duquesne ceased its mining operations and sold its properties in the late 1950s. It was the residents of Harwick Village, not West Penn, that ultimately raised the issue of transferring to West Penn, obviously because of a temporary rate disparity between Duquesne's and West Penn's rates. As a result of West Penn's silence and acquiescence, Duquesne continued to base its transmission and generation plans on the reasonable expectation of (1) serving the load in Harwick Village and (2) receiving a fair rate of return on its transmission, generation and distribution investment there. Duquesne Statement No. 1R, pp. 1-2; Duquesne Statement No. 1S, pp. 12-14.

14. In accordance with the 1917 Agreement, Duquesne has provided continuous electric service to the residents and businesses of Harwick Village to the present date and without objection from West Penn. Duquesne Statement No. 3, pp. 3-4.

15. Duquesne's distribution facilities in the Harwick Village area which Duquesne proposes to transfer to West Penn include 127 wood poles, 183 crossarms, 72 guys, 41 anchors, 35 racks, 1 pole top extension, 61 insulators, 63,634 feet of conductors, 219 services and 43 luminaires. Duquesne Statement No. 1, p. 2.

16. In addition to these distribution facilities, Duquesne uses its entire mix of generation, including purchased power sources, and bulk transmission facilities to serve the Harwick Village area. Duquesne Statement No. 3, p. 4.

17. Duquesne is willing to transfer its customers and distribution facilities in Harwick Village to West Penn upon West Penn's payment of the depreciated costs (alternatively referred to as "net book value" or "trended original cost minus depreciation") of Duquesne's distribution facilities in the Harwick Village area, plus stranded costs. Duquesne Statement No. 3, p. 4.

18. Duquesne informed West Penn of its desire to recover stranded costs as early as June 9, 1995 in a letter from Duquesne's then Chief Counsel, Larry R. Crayne, to West Penn's counsel, John L. Munsch. West Penn never responded to Mr. Crayne's letter or his proposal therein. Duquesne Statement No. 1R; Exhibit JAL-1R.

19. West Penn is prepared and able to provide electric service to Harwick Village. West Penn is willing to pay to Duquesne "net book value" or \$149,774 for Duquesne's distribution facilities in Harwick Village. West Penn is unwilling to compensate Duquesne for stranded costs Duquesne will incur as a result of the loss of the customers and revenues. West Penn Statement No. 1, pp. 6-8.

20. Stranded costs amount to \$1,266,723 while the net book value of Duquesne's distribution facilities totaled \$149,744. Duquesne Statement No. 3, p. 4; Exhibits JAL-3 and WDG-1; West Penn Statement No. 1, p. 7.

21. Duquesne relied upon the "revenue lost approach" in calculating stranded costs in this case. This approach, while comparing the difference in net revenues under continued regulation versus net revenues under competition, properly measures the value of assets left stranded as a result of customer departures, whether through retail wheeling, or as in this case, a transfer of customers. Moreover, the revenue lost approach has been adopted by the Federal Energy Regulatory Commission ("FERC") in its recent Order No. 888. Duquesne Statement No. 3, pp. 11, 14.

22. Equity, efficiency and reasonable expectations provide the bases for Duquesne to recover stranded costs in this proceeding. With regard to equity, it is fundamentally unfair to burden Duquesne's remaining customers with costs and obligations originally undertaken on behalf of customers located in Harwick Village. Recovery of costs associated with premature customer departure is a legitimate charge to insure that Duquesne's other remaining customers, stockholders or both are not adversely impacted. Duquesne Statement No. 3, pp. 4-5. Regardless of whether a transfer of customers and/or facilities occurs in a fully regulated regime,

as in the present case, or in a competitive environment after deregulation occurs, recovery of stranded costs assure that everyone, utilities and consumers, gain and that efficiency and equity will be achieved. Duquesne Statement No. 1S, p. 3.

23. In regards to efficiency, Duquesne's transfer of facilities and customers to West Penn without receiving compensation for stranded costs results in West Penn and its customers recognizing a gain at the expense of Duquesne and its remaining customers. Such a transfer is economically "inefficient." Duquesne Statement No. 3, pp. 7-9; Duquesne Statement No. 1S, pp. 9-11, 15-17.

24. Regarding reasonable expectations, although a competitive marketplace in the electric industry is one way electric utilities will incur stranded costs, it is not the underlying reason for the legitimacy of stranded cost recovery. The underlying rationale concerns reasonable expectations. Duquesne Statement No. 3, p. 5.

25. In providing service to Harwick Village over the past 8 decades, Duquesne has undertaken substantial and prudent investments in generation, transmission, and distribution facilities. Duquesne made these investments based, in part, upon its reasonable expectations that (1) it would continue to serve the residents of Harwick Village and (2) that it would receive a reasonable rate of return on its investments. Duquesne Statement No. 3, pp. 4-5; Duquesne Statement No. 1S, pp. 12-14. Duquesne's expectations were a result of West Penn's forty years of silence and acquiescence regarding Duquesne's continuous service of electricity to the Harwick Village customers. Duquesne Statement No. 1R, pp. 1-2; West Penn Statement No. 1, p. 2; Exhibit RAP-1.

26. Duquesne's proposed treatment of stranded costs in this case is consistent with the regulatory treatment afforded the transfer of assets in the past. Historically, assets were transferred at net book values with little regard for potential stranded costs because until most recently, market values were close to or exceeded book values. As a result, stranded cost considerations were of little concern. However, in today's environment, book values exceed

market levels, and thus, stranded costs have become a substantial concern. Duquesne Statement No. 3, p. 7.

27. Duquesne would receive substantially less revenues from the sale of energy at market prices than it now receives from a similar amount of electrical energy to the Harwick Village residents under current cost based tariffs. Duquesne Statement No. 3, p. 6.

28. On three (3) prior occasions referred to by West Penn, Duquesne's and West Penn's transfer of customers and/or facilities did not reflect stranded costs, but rather was completed at "net book value." West Penn Statement No. 1, pp. 3-4; Exhibits RAP-2, RAP-3 and RAP-4. Duquesne's policy of requesting recovery for stranded costs was not established until the summer of 1994, which was subsequent to these three transfers. Duquesne Statement No. 1R, p. 2.

29. The Commission has made a policy determination that stranded costs should be recovered to prevent cost shifts among customers. Duquesne's proposal in this case treats the customers in the Harwick Village area consistent with the Commission objectives, as expressed in its July 3, 1996 report to the Pennsylvania Legislature ("PUC Report and Recommendation to the Governor and General Assembly"), (and the recently enacted Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, et seq.). Duquesne Statement No. 3, p. 16; West Penn Exhibit No. 4.

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TOWNSHIP OF SPRINGDALE)

v.)

DUQUESNE LIGHT COMPANY)

and)

WEST PENN POWER COMPANY)

Docket No. C-00967749

CERTIFICATE OF SERVICE

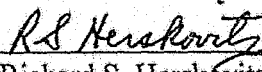
I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable James D. Porterfield
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, Pennsylvania 15222

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

Dated this 17th day of February, 1997.


Richard S. Herskovitz, Esquire
Corporate Attorney
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RSH/njp:016CXX

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February 18, 1997

VIA EXPRESS MAIL

The Honorable James D. Porterfield
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

RECEIVED

FEB 18 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Re: Township of Springdale vs. Duquesne Light Company and
West Penn Power Company
Pennsylvania Public Utility Commission Docket No. C-00967749

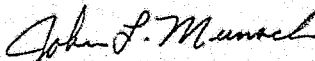
Dear Judge Porterfield:

Enclosed please find a copy of the Main Brief of West Penn Power Company in the above-captioned matter.

An original and nine (9) copies have been served on Secretary Alford. Two copies have been served upon on all parties of record as shown on the attached Certificate of Service.

This filing is made by express delivery so that the filing date is deemed to be today, February 18, 1997.

Very truly yours,


John L. Munsch
Attorney

JLM/jss

Enclosures

cc: Certificate of Service

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STATEMENT OF QUESTIONS INVOLVED

1. Were the "stranded costs" claimed by Duquesne caused by regulatory change?

ANSWER: No.

2. Was there a reasonable expectation on behalf of Duquesne to continue to serve the Harwick Village customers?

ANSWER: No.

3. Assuming that the Presiding Officer rules in favor of Duquesne that its so-called stranded costs should be recovered from Harwick customers, was Duquesne's method of calculating stranded costs reasonable?

ANSWER: No.

PROPOSED FINDINGS OF FACT

1. By letter dated May 16, 1994, Stephen Yakopec, Jr., Solicitor for the Township of Springdale, presented to West Penn a petition signed by 258 Harwick Village customers of Duquesne Light in Springdale Township, to switch their electric service from Duquesne Light to West Penn. Of those customers, Duquesne Light has concluded that 221 are outside Duquesne Light's service area. (West Penn Statement No. 1, pg. 5). (Duquesne Statement No. 3, pg. 2; Duquesne Light's Answer and New Matter, dated March 20, 1996, paragraph 3b).

2. Harwick Village is an unincorporated community in Springdale Township, Allegheny County, Pennsylvania. The Village was first constructed in the early 1900's to provide housing for employees who worked at the Harwick Mine, which was owned by Duquesne Light or its predecessor, and which provided coal to Duquesne Light's nearby power station. Duquesne Light originally served the area because in the early 1900's it had electric facilities in place to serve the area even though it was in West Penn's service territory. (West Penn Statement No. 1, pg.4).

3. Under Articles of Agreement, dated April 16, 1917 (Duquesne Statement No. 3, Exhibit JAL-1), between Duquesne and West Penn, the utilities agreed to describe their service territories for the purpose of defining their territories. In the fifteenth paragraph of the Articles, Duquesne reserved the right to furnish electric service to certain coal mining properties, including Harwick Village in the Township of Springdale. Article 15 provides that "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...." (Duquesne Light Statement No. 3, pg. 3). In terms of electrical supply, Harwick Village is an island served by Duquesne Light, surrounded by area served by West Penn.

4. In 1958 and 1959, however, Duquesne Light sold the mining properties. (Duquesne Light Statement No. 3, pg. 3). But it continued to provide electric service to the residents in Harwick Village, even though the area is within the service territory of West Penn Power Company. Duquesne Light acknowledges that Harwick Village is in West Penn's service territory. (Duquesne Light Statement No. 3, lines 3-4).

5. About the time that Duquesne sold its mining properties, Duquesne acknowledged that its right to serve Harwick Village was limited. In a 1957 letter from Duquesne Light's then-President, R. H. McCance, to P. H. Powers, then West Penn's President, Mr. McCance recited the understanding that West Penn would have the right, at any time, to purchase Duquesne's facilities and take over the customers in Harwick Village upon Duquesne Light's cessation of its mining operations, subject to regulatory approval. (West Penn Statement No. 1, pg. 2; Exhibit RAP-1).

6. Duquesne Light has continued to serve Harwick Village since 1917. However, there were two exchanges of customers to West Penn Power. (West Penn Statement No. 3, pgs. 3-4). On August 13, 1993, nineteen (19) customers in Harwick Village had their electric service transferred from Duquesne to West Penn. The transfer was completed pursuant to an Order at A-111250, F0049, dated

June 3, 1993. In the joint petition at that docket number, West Penn and Duquesne recognized that the customers in Harwick Village are in an area in which West Penn has charter service rights. The cost of the transaction was based on Duquesne's book investment in the facilities determined as trended original cost less depreciation. (West Penn Statement No. 1, Exhibit RAP-3).

7. In the Order of the Commission approving the joint petition of Duquesne and West Penn, the Commission noted that, "Due to the location of its distribution facilities, Duquesne constructed facilities and served customers in the Village of Harwick area of Springdale Township, Allegheny County, which is in West Penn's service area, on a temporary basis until West Penn had distribution lines in the area." (Exhibit RAP-3; Order at A-111250 F0049).

8. Through a Joint Application of Duquesne and West Penn in 1993, at Docket No. A-111250 F0054, another group of customers in Harwick Village was transferred by Duquesne to West Penn. (West Penn Statement No. 1, Exhibit No. RAP-4). The joint petition stated, and the Commission Order stated, that Harwick Village was in the certificated area of West Penn Power. Although the Joint Petition and the Commission Order do not recite the monetary figure paid by West Penn to Duquesne for the transferred facilities, witness Richard Phillips stated that the figure was developed using a "trended original cost minus depreciation" methodology. (West Penn Statement No. 1, pg. 7, lines 19-24).

9. In this proceeding West Penn offered to purchase Duquesne Light's facilities in Harwick Village for an amount representing the trended original cost, minus depreciation, of the facilities. The offer was a value of

\$149,774.00. The figure of \$149,774.00 was developed by Duquesne Light. (Tr. 104). It was based on trended original cost minus depreciation. (West Penn Statement No. 1, pg. 7; Duquesne Light Statement No. 2, Attachment 1, last page (showing break-even price at \$149,774.00)). The \$149,774.00 represents the value of the facilities to be transferred; it does not reflect Duquesne's stranded cost claim. (Tr. 104). The \$149,774.00 figure is acceptable to West Penn. (West Penn Statement No. 1, pg. 8).

10. Duquesne wanted a higher figure representing the entire costs and mix of generation including purchase power sources, transmission facilities and local area distribution facilities used to supply the residents of Harwick Village that Duquesne contended would be lost or stranded if Duquesne were to give up its service to the Harwick Village customers. (Duquesne Light Statement No. 3, pg. 4; West Penn Statement No. 1, pg. 7).

11. Duquesne calculated its stranded costs as \$1,266,723.00 as calculated in Exhibit JAL-3. (Duquesne Light Statement No. 3). Presented for the purpose of argument only, West Penn's calculation of Duquesne's stranded cost ranged from \$84,749.00 to \$263,731.00, although West Penn argues that no recovery is allowed. (WP Rebuttal Statement No. 1, pg. 12). The stranded cost figure would be in addition to the \$149,744.00 figure representing trended original cost minus depreciation. Duquesne's method of calculating its stranded costs is based on a revenue-loss approach, which calculates the utility's net revenues from serving Harwick Village from the present through the year 2005 (Duquesne Light Statement No. 3, pgs. 11, 12), deducts a market value of the stranded costs, and reduces the total value to net present value.

12. West Penn was willing to buy the facilities at the \$149,774.00 figure but West Penn refused to pay any additional amount representing stranded costs, contending that stranded costs were not applicable for several reasons.

13. West Penn is able and willing to provide electric service to Harwick Village. It states that it has substation service near Harwick Village with two 138-kV lines and two 138-12 kV transformer banks supporting its distribution load surrounding Harwick Village. It further states that engineering and construction for the exchange could be completed within a three-month period with limited or no electrical outage during the exchange. (West Penn Statement No. 1, pg. 6).

PROPOSED CONCLUSIONS OF LAW

West Penn will provide Proposed Conclusions of Law with its Reply Brief or, if a Reply Brief is not filed, as a stand-alone filing.

ARGUMENT

I. THE CONCEPT OF ANY "STRANDED COSTS" IS INAPPLICABLE IN THIS PROCEEDING.

Since the Harwick Village customers' request in 1994, the concept of stranded cost has become more refined in Pennsylvania, first as a result of the Commission's Report and Recommendation to the Governor and General Assembly on Electric Competition at Docket No. I-940032, issued July of 1996 (hereinafter "Report"), and second, in the passage of "The Electricity Generation Customer Choice and Competition Act," 66 Pa. C.S. §2801 et seq., which became effective January 1, 1997 (hereinafter "Chapter 28").

The term "stranded costs" was raised by Duquesne as a barrier to the departure of the Harwick Village residents. Duquesne's change of heart from using a "trended-original-cost-minus-depreciation" approach is a change from its position in other Harwick Village customer transfers, at Docket No. A-111250 F.49 (West Penn Statement No. 1, Exhibit RAP 3) and A-111250 F.54. (West Penn Statement No. 1, Exhibit RAP 4).¹

The definitions of stranded cost in both the Report and in Chapter 28 specifically exclude the kind of losses claimed by Duquesne. Specifically, the Report states under "Exclusions from Recovery" on pgs. 21-22:

¹Although the Joint Application at the second transfer of customers does not describe the transfer as being made at "trended-original-cost-minus-depreciation," West Penn Witness Phillips, who was closely involved in the transfer, states that the transfer price was at trended-original-cost-minus-depreciation. (West Penn Statement Nos. 1 and 7, lines 19-24).

"Additionally, Commission-authorized recoverable stranded costs must be limited to costs which have decreased in value as a result of the change to a competitive retail generation market."

Report, pgs. 21-22

It is quite clear that the request of the Harwick customers is not due to the change to a competitive generation market. The request of the Harwick customers could have been made anytime since 1917 and was not due to a change in law or regulation. Even Duquesne's consultant, Dr. Bower, recognized that the potential switch of the Harwick customers could have occurred anytime since 1917. (Tr. 44). This is so because the ability to switch retail service area providers has always existed under the existing monopoly area laws. Dr. Bower candidly stated that the customers could always have switched to West Penn since they were in West Penn's service territory (Tr. 44), and moreover, he stated they could have requested to do so "even if they were not in West Penn's territory." (Tr. 44, line 23).

Chapter 28 adopts the concept of stranded costs from the Report, and similarly limits its applicability to assets lost as a result of the regulatory transition to a competitive electric generation market, as created by Chapter 28. Chapter 28 defines stranded costs as follows:

"Transition or Stranded Costs." An 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.

66 Pa. C.S. §2803. (Emphasis added).

The general costs that Duquesne claims will be stranded have nothing to do with the passage of Chapter 28 and the commencement of a "competitive electric generation market." The request by the Harwick customers to be served by the utility in whose service territory they are physically located is not prompted by Chapter 28 or any regulatory charge. Such a request could have been made (and indeed in this case was made) under the traditional regulated environment. Such a request can also be made after the passage of Chapter 28. In short, Chapter 28 does not affect the ability of a customer to seek to be served distribution service from the area's certificated service provider. Chapter 28 allows all customers in the Commonwealth to choose different generation suppliers by the year 2001. Even Duquesne's witness Mr. Lahtinen acknowledges in his written testimony that stranded costs occur when generation services must be sold in a competitive market. (Duquesne Light Statement No. 3, pg. 3, lines 13-16).

The fact that there is no common law basis for Duquesne to recover the stranded costs was recognized by the Commission in its Report. There the Commission makes a frank statement about the limits of its authority, writing:

f. Legal and Policy Issues Related to Stranded Costs. There are two primary legal issues related to stranded cost recovery. First, the Commission must have legal authority to authorize utilities to recover stranded costs. The Commission concludes that it may not have sufficiently clear legal authority to provide for the recovery of stranded costs.

Report at pg. 22 (citing in footnote the case of Barasch v. Pa. Public Utility Commission, 516 Pa. 142, 532 A.2d 325 (1987); Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989); emphasis added). West Penn's point is simply that in July of 1996 the Commission said it could not order stranded cost recovery absent new

legislation. And the new legislation with which the General Assembly responded was Chapter 28, and Chapter 28 does not envision recovery of purported generation stranded costs unless they have been created by the change to competitive generation.

The request of the Harwick Village customers is merely an attempt to change their electrical supplier to the company certificated to supply service. It has nothing to do with generation choices or Chapter 28.

The cause of the defection of the Harwick Village residents was not regulatory change. The most likely reason was the disparity in rates between Duquesne and West Penn. Mr. Lahtinen testified that the difference in rates was large -- residents pay 11.74 cents per kWh to Duquesne, versus 7 cents per kWh to West Penn. (Tr. 95). This has caused two homeowners to move their homes from Duquesne's side of the street to West Penn's side. (Tr. 87).

II. DUQUESNE DID NOT HAVE A REASONABLE EXPECTATION TO CONTINUE TO SERVE THE HARWICK CUSTOMERS.

FERC's Order 888 provides that, to be a recoverable stranded cost, an asset must not only be stranded by regulatory change, but also, the utility must have had a "reasonable expectation" of continuing to serve the customer who departs the system. (West Penn Rebuttal Statement No. 1, pg. 3).

The "reasonable expectation" is not applicable at all in this case, because one never gets past the requirement that the customer must be lost due to regulatory change. Even assuming for the purpose of argument, however, that

the "reasonable expectation" standard were an issue, still, Duquesne does not meet that standard.

Duquesne did not have a reasonable expectation of continuing to serve Harwick Village because Harwick Village was not in Duquesne's certificated retail territory. The 1957 letter of Duquesne Light President Presley McCance portrays Duquesne's expectation of serving Harwick as being very limited, at best. (West Penn Statement 1, Exhibit RAP-1). Mr. McCance stated:

"Duquesne Light will continue to serve its Harwick mining operation and customers in Harwick Village so long as its mining operations continue in this area, with the understanding that West Penn Power Company shall have the right to purchase such facilities and take over the customers in Harwick Village at any time after such mining operations are discontinued.

Mr. McCance's statement reflects the expectation of Duquesne. Those expectations were, or should have been, as Mr. McCance stated, that West Penn had the right to purchase Duquesne's facilities, after mining operations ceased, and that right could be exercised at any time. These are hardly expressions of a reasonable expectation on Duquesne's part to continue to serve the area.

While Duquesne claims it had a reasonable expectation to serve Harwick Village, and in theory at least, included the Harwick customers in its generation construction plans; Duquesne's service to retail customers outside its service territory was done at Duquesne's own risk.

Both the Report and the ensuing Chapter 28 recognize that the stranded cost concept in the state-jurisdictional area hinges on a utility's duty to serve

within its certificated service territory. The Report explains the relationship between stranded cost and certificated service territory on page 20, as follows:

Electric utilities have invested heavily in their generation assets based on the existing system of rate base/rate of return regulation. That is to say, a utility receives a certificated service territory in which it is the supplier of power. In return it commits to build its system as necessary to serve the current and future needs of all customers in the service area. The utility is then allowed to recover the cost of prudent investment it makes to provide such service, plus the opportunity to earn a regulated return on investment.

Report, page 20 (Emphasis added).

Chapter 28 similarly recognizes the relationship between stranded costs and certificated service areas, when in its declaration of policy, it provides:

(15) In establishing the standards for the transition to and creation of a competitive electric market, heretofore, public utilities generally have had an obligation to serve customers within their defined service territories; consistent with that obligation, have undertaken long-term investments in generation, transmission and distribution facilities in order to meet the needs of their customers; and have entered into long-term power supply agreements as required by Federal law. In many instances, these investments and agreements have created costs which may not be recoverable in a competitive market. The commission is empowered under this chapter to determine the level of transition or stranded costs for each electric utility and to provide a mechanism, the competitive transition charge, for recovery of an appropriate amount of such costs in accordance with the standards established in this chapter.

66 Pa. C.S. §2802(15) (Emphasis added).

Thus, not only do Duquesne's claimed stranded costs not meet the requirement of having been caused by regulatory change, the claimed stranded

costs also were not incurred in serving Duquesne's certificated service territory. As such, the generation costs of serving Harwick Village, which are theoretical costs, were made at Duquesne's risk.

III. EVEN ASSUMING THAT "STRANDED COSTS" WERE APPLICABLE, DUQUESNE'S CALCULATION OF STRANDED COSTS IS UNREASONABLE AND OVERSTATED.

The "competitive transition charge" anticipated under Section 2808 of Chapter 28 is the mechanism whereby utilities recover their stranded costs. See, Pa. C.S. §2808. West Penn submits that, even assuming for the purpose of argument that Duquesne is entitled to stranded costs for departing Harwick customers, its stranded cost figure is too high. Duquesne witness James Lahtinen calculated stranded cost based on a "revenues lost" approach. (Duquesne Statement No. 3, pg. 11). This method assumes that Duquesne would have continued to receive its historic annual revenues from the Harwick Village residents for nine (9) years. It then deducts from that total revenue amount the market value of Duquesne's investment in generating, transmission and distribution facilities. The result of subtracting the market value from the total "lost revenues" yields the stranded cost.

Mr. Lahtinen assumes the market value of Duquesne's generation to be 1.9 cents per kWh. (Duquesne Statement No. 3, pg. 2, line 13). A major point of difference between Mr. Lahtinen's estimate of stranded cost and that of West Penn's witness, Alexander Galatic, is the estimate of market value. Mr. Galatic stated that the 1.9 cents per kWh figure was too low and that in his opinion, the market value should be closer to 3 cents per kWh. (Tr. 179). Suffice it to say that for a company with a high claim of stranded cost facilities, the lower the

market value the better, because it yields a higher stranded cost. Moreover, Duquesne's witness Lahtinen stated that Duquesne's market value of power would be based on a competitive solicitation which would occur as part of its "pilot program" -- which had not yet occurred as of the hearing and still has not occurred.² Indeed, even Duquesne witness Dr. Bowers was extremely skeptical of anyone's ability to forecast market value, as shown in the following question and response:

Q: Who is supposed to determine the market value of that uneconomic generation?

A: I would like to think the Lord might help us, but that's not going to work. Duquesne's plan to see -- to bid the property, that seems like a reasonable way. It's going to be a problem. In New York, they have been talking about not doing it as a one-shot deal, but doing it through time so that you have the benefit of marginal costs through time for energy as a key. After all, a plant that today appears to be uneconomic in the current forecast may become quite economic, if that's the way to describe it, if prices zoom upwards, if the prices of energy sources zoom upwards.

Cross-examination of Dr. Bowers (Tr. 56-57).

The position of Duquesne's Lahtinen and Strategic Energy, Ltd.'s Galatic over future market price of generation was a major disagreement in their respective positions.

Duquesne's calculation of its stranded costs that would occur as a result of the Harwick Village defection was \$1,266,723.00. West Penn's calculation,

²Chapter 28 provides that "pilot programs" should be implemented by April 1, 1997. 66 Pa. C.S. §2806(G). While pilot programs may start in terms of customer selection in April, the utilities' actual pilots, with selection of generation suppliers by participating customers, will not begin until 1998.

performed by Witness Galatic, was a range of \$84,749.00 to \$263,731.00, depending on whether or not Duquesne's regulatory asset claim was allowed. (West Penn Rebuttal Statement No. 1, pg. 12).

Finally, Duquesne made a major switch at the hearings when it concluded that the responsibility for paying its claimed stranded costs should fall, not on West Penn, but rather on the departing customers of Harwick Village. Duquesne Light's witness, Dr. Bower, recognized that the Harwick Village customers, not West Penn, should pay any stranded cost. (Tr. 41). Dr. Bower was then supported by Duquesne's Mr. Lahtinen, who testified that "if the Commission were to decide that stranded costs were recoverable, that for efficiency reasons, they would be properly recovered from the Harwick Village residents." (Tr. 115, lines 22-23). West Penn submits, of course, that Duquesne Light is not entitled to a stranded cost claim from either the Township residents or from West Penn.

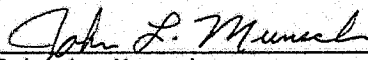
CONCLUSION

The relief requested in the Complaint of the Township of Springdale should be granted and Duquesne Light Company should be ordered to transfer its patrons in the Township of Springdale area known as Harwick Village to the service of West Penn Power Company, and further, Duquesne Light Company should be ordered to transfer its facilities to West Penn Power Company in said area at a cost of \$149,774.00.

Respectfully submitted,

Date: February 18, 1997

By:



John L. Munsch
Attorney for
WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, PA 15601
(412) 838-6210

CERTIFICATE OF SERVICE

I hereby certify that I have this day served an original and nine (9) copies of the Main Brief of West Penn Power Company by Express mail upon:

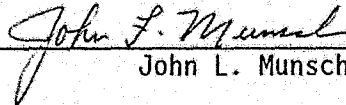
Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
North Office Building
P. O. Box 3265
Harrisburg, PA 17105-3265

and two (2) copies by first-class mail upon:

Richard S. Herskovitz, Esquire
Duquesne Light Company
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Stephen Yakopec, Jr., Esquire
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Dated: February 18, 1997



John L. Munsch

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February 18, 1997

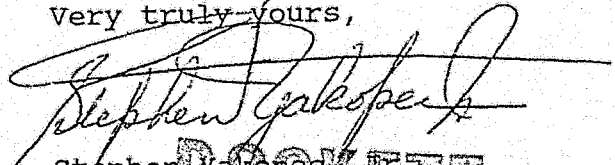
The Honorable James D. Porterfield
Pennsylvania Public Utility Commission
1103 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Re: Township of Springdale vs. Duquesne Light Company
and West Penn Power Company
Pa. PUC Docket No. C-00967749

Dear Judge Porterfield:

Enclosed please find a letter of joinder of the Township of Springdale in the main brief of West Penn Power Company in the above captioned matter. An original and nine (9) copies have been served on Secretary Alford, two (2) copies have been served upon all parties of record, as shown on the attached.

Very truly yours,


Stephen Yakopec

DOCKETE

FEB 24 1997

SYJR/cd

Enclosure

cc: John L. Munsch, Esquire
Richard S. Herskovitz, Esquire
John G. Alford, Secretary

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MAIL

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February 18, 1997

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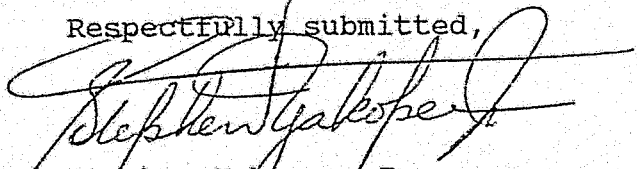
Re: Township of Springdale vs. Duquesne Light Company
and West Penn Power Company
Pa. PUC Docket No. C-00967749

Dear Judge Porterfield:

The Township of Springdale hereby joins in the main brief of West Penn Power Company. The Township submits the additional information to the Court for consideration.

The 200 residents of the Township who are requesting transfer from Duquesne Light to West Penn Power simply could not afford this transfer at the price requested by Duquesne Light Company. As you will recall, West Penn Power indicated that it would seek to recoup the costs from the residents if the Court required it to pay Duquesne Light's requested price. Part of the purpose of the Public Utility Commission is to insure that residents are charged a fair rate by the service providers. Such a dramatic price with a corresponding increase in rates to the Township and its residents simply would not be fair.

Respectfully submitted,



Stephen Yakopec, Jr.

cc: John L. Munsch, Esquire
Richard S. Herskovitz, Esquire
John G. Alford, Secretary

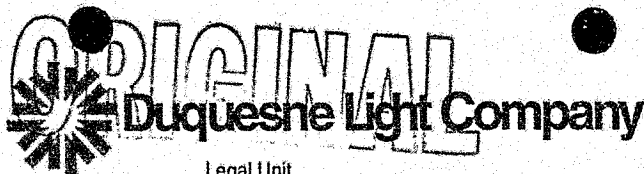
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March 11, 1997

Via Overnight Express Delivery Mail

Robert F. Frazier, Prothonotary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17105-3265

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MAR 11 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Re: *Township of Springdale v. Duquesne Light Company
and West Penn Power Company*
Docket No. C-00967749

Dear Mr. Frazier:

Enclosed are an original and nine (9) copies of the Reply Brief of Duquesne Light Company to be filed in the above-captioned proceeding. A Certificate of Service is attached to each Brief.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "R.S. Herskovitz".

Richard S. Herskovitz
Corporate Attorney

RSH/njp:024C

Enclosures

cc: The Honorable James D. Porterfield (Enclosure w/diskette)
John L. Munsch, Esquire (Enclosure 2)
Stephen Yakopec, Jr., Esquire (Enclosure 2)

ERM

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TOWNSHIP OF SPRINGDALE)

v.)

DUQUESNE LIGHT COMPANY)
and)
WEST PENN POWER COMPANY)

Docket No. C-00967749

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**REPLY BRIEF OF
DUQUESNE LIGHT COMPANY
(RESPONDENT)**

MAR 11 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

I. Statement of the Case

Duquesne Light Company ("Duquesne") incorporates by reference the "Statement of the Case" in its Main Brief as if set forth more fully herein.

II. Argument

In its Main Brief, West Penn Power Company ("West Penn") asserts that Duquesne should not be entitled to recover stranded costs in this case on the following grounds. First, West Penn argues that the concept of stranded costs is inapplicable in this case. (West Penn's Main Brief, pp. 8-11). Next, West Penn contends that Duquesne did not have a reasonable expectation to continue to serve its Harwick Village customers. (West Penn's Main Brief, pp. 11-14). Lastly, West Penn asserts that Duquesne's calculation of stranded costs is unreasonable and overstated. (West Penn's Main Brief, pp. 14-16). To each of these, Duquesne replies as follows.

*Not Only Are Stranded Costs Applicable in this Case,
But the Facts Dictate that Duquesne Is Entitled To Recover Them*

As Duquesne demonstrated in its Main Brief (Duquesne Main Brief, pp. 8-19), stranded costs are undeniably applicable in this case. The reason, quite simply, is that the departure of its Harwick Village customers will cause Duquesne to suffer a loss of revenue which cannot be fully replaced. Due to this loss of revenue, Duquesne will not be able to recover the costs of its generation, transmission and distribution facilities that were put in place to serve specifically those customers in Harwick Village. Thus, these costs become stranded.

West Penn makes the argument that stranded costs are only applicable in a competitive marketplace, unlike the facts here. Yet, even West Penn's expert, Mr. Alexander Galatic, acknowledges that stranded costs can occur in any industry and are certainly not limited to competitive circumstances within the electric utility industry. Mr. Galatic states:

Stranded cost[s] generally could occur in any business. They are costs of capital that cannot be recovered if your business goes away. For example, to cite a non-utility example, if a steel company invests in plant to serve an auto maker customer and the auto maker switches steel suppliers and the steel supplier cannot find a replacement customer, then their costs, their fixed costs, their capital investment are stranded by that departing customer.

Tr. 189-190. Applying this to the instant case, Duquesne invested in plant (e.g., generation, transmission and distribution facilities) to serve its Harwick Village customers. When these customers switch to West Penn, leaving Duquesne without replacement customers or alternative sources of revenue, Duquesne's cost of its facilities and its capital investment become stranded. Thus, to conclude that stranded costs are inapplicable in this case is clearly erroneous.

In support of its contention that stranded costs are inapplicable in this case, West Penn cites the Commission's Report and Recommendation to the Governor and General Assembly on Electric Competition at Docket No. I-940032, issued July 3, 1996 ("Report"), and The Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 *et seq.* ("Electric Competition Act"), which became effective January 1, 1997. (West Penn's Main Brief, p. 8). West Penn argues, essentially, that these authorities mandate that stranded costs, and their recovery, be limited to competitive circumstances. This just is not correct. Nothing in the

language of either the Commission's Report or the statute mandates that stranded costs, and their recovery, be limited to a competitive environment. West Penn cites the following language from the Commission's Report as support for this proposition:

Commission-authorized recoverable stranded costs must be limited to costs which have decreased in value as a result of the change to a competitive retail generation market.

West Penn Main Brief, p. 9 citing the Commission's Report, pp. 21-22. A closer look at the Report as a whole reveals that what the Commission was suggesting by this requirement was that costs incurred by a particular electric utility, which do not become stranded as a result of the change to a competitive retail generation market, should not be included in that company's Competitive Transition Charge ("CTC"). Stated more simply, stranded costs which did not arise because of competition cannot be recovered through a CTC. This in no way is tantamount to saying that stranded costs which did not arise because of competition cannot be recovered at all.

Moreover, West Penn cites the Legislature's definition of stranded costs (66 Pa.C.S.A. § 2803) to further support its contention that stranded costs are limited to competitive circumstances and, thus, are inapplicable in this case. West Penn Main Brief, p. 9. While it is true that the quoted language from the statute and from the Commission's Report are couched in terms of competition, this can be attributed to the fact that the sole purpose of the Commission's Report and the Electric Competition Act were to specifically address Pennsylvania's electric utility industry's transition to competition, not to address generally the problem of stranded costs. For example, the first paragraph of the Executive Summary of the Commission's Report states:

The Pennsylvania Public Utility Commission (Commission) submits this Report and Recommendation to the Governor and General Assembly in response to the nationwide interest in restructuring of the electric utility industry. As a result of its Investigation concerning electric competition, the Commission recommends that it is in the public interest for Pennsylvania to begin a careful transition that will provide all retail customers the opportunity to choose their electric generation provider, and that will end the regulation of electric generation as a retail monopoly.

Likewise, in the Electric Competition Act, the Legislature's enumerated declarations of policy (66 Pa.C.S.A. § 2802) pertain only to issues surrounding competition.

What must not go unnoticed is the fact that the Commission's Report and the Electric Competition Act did not in any manner prohibit stranded cost recovery in instances outside of competition. Quite frankly, the Commission and the Legislature were silent in this regard.

Additionally, it appears from the similarities in the language of the Commission's Report and the language of the Massachusetts Department of Public Utilities' opinion in Re Industry Restructuring, D.P.U. 95-30, 163 PUR4th 96 (1995), that the Commission followed closely how the Massachusetts Commission handled the transition to a competitive generation market. Assuming this, the Commission should be mindful of the Massachusetts Commission's opinion in Re Cambridge Electric Light Company, 164 PUR4th 69 (Mass. D.P.U. 1995) decided shortly after Re Industry Restructuring, cited above, where the Massachusetts Commission stated:

The [Commission] stated in D.P.U. 95-30 that utilities should have a reasonable opportunity to recover net, non-mitigable stranded costs associated with commitments previously incurred pursuant to their legal obligation to provide electric service. The [Commission's] focus there was on stranded costs that may arise as the result of [Commission] initiatives to promote competition in the generation sector of the electric utility industry by giving customers access to other sources of electric supply in addition to the electric company in whose distribution territory these customers were located. The matter currently before the [Commission] differs somewhat from the [competitive] model described in D.P.U. 95-30. [Cambridge] did not file the CTC tariff as the result D.P.U. 95-30, or any other [Commission] initiative to promote competition in the electric utility industry. In fact, [Cambridge's] tariff filing pre-dates the [Commission's] Order in D.P.U. 95-30.

....

In fairness, [Cambridge] should have a reasonable opportunity to recover its investments, including those to serve MIT [the departing customer]. 164 PUR4th at 103-104 (citations omitted).

....

[T]he [Commission] has expressed clearly its policy with respect to allowing utilities "a reasonable opportunity to recover costs for existing commitments that might be stranded in the transition to competition." The

instant Order [allowing Cambridge to include the CTC in its rates to MIT to recover its costs stranded as a result of MIT's voluntary departure] is a further articulation of [this] Commonwealth's regulatory policy. 164 PUR4th at 108 (citations omitted).

See Duquesne Main Brief, pp. 11-12.

Finally, West Penn contends on page 10 of its Main Brief that "[e]ven Duquesne's witness Mr. Lahtinen acknowledges in his written testimony that stranded costs occur when generation services must be sold in a competitive market". This is an incorrect interpretation of Mr. Lahtinen's testimony. Mr. Lahtinen is clearly speaking of the sale of generation in the competitive bulk power market to determine the amount of stranded costs. Duquesne Statement No. 3, p. 4-7. He is not stating that stranded costs only occur as a result of lost load due to competition. Mr. Lahtinen is stating how stranded costs are measured, not caused.

In sum, it is irrefutably clear that as a factual matter, Duquesne will suffer stranded costs when its Harwick Village customers depart. It is also clear that the Commission, in its Report, and the Legislature, in the Electric Competition Act, addressed stranded costs only in the context of competition and did not prohibit recovery of such costs in non-competitive situations. These authorities are not dispositive of the stranded cost recovery issue. West Penn's argument that stranded costs are inapplicable and/or that the Commission does not have authority to award the same, should be rejected.

*Duquesne Had a "Reasonable Expectation"
to Continue Serving its Harwick Village Customers*

West Penn argues that Duquesne did not have a reasonable expectation to continue serving its Harwick Village customers for two reasons. First, West Penn relies upon the 1957 letter from Duquesne's then president, Pressly H. McCance, to West Penn's then president, P.H. Powers, wherein Mr. McCance stated:

Duquesne Light will continue to serve its Harwick mining operation and customers in Harwick Village so long as its mining operations continue in this area, with the understanding that West Penn Power shall have the right to purchase such facilities and take over the customers in Harwick Village at any time after such mining operations are discontinued.

According to West Penn, this passage "portrays Duquesne's expectation of serving Harwick as being very limited, at best." West Penn Main Brief, p. 12. As fully discussed in Duquesne's Main Brief, Duquesne contends that West Penn's 37 years of silence, of acquiescence, and of sitting on its rights, is more than ample time to allow Duquesne to develop a reasonable expectation to continue to serve. See Duquesne Main Brief, pp. 15-16.

West Penn further argues that both the Commission's Report and the ensuing Electric Competition Act recognize that the stranded cost concept hinges on a utility's duty to serve within its certificated territory. According to West Penn, because Duquesne's claimed stranded costs were not incurred in serving Duquesne's certificated service territory, Duquesne did not have a reasonable expectation to continue to serve; that the costs of serving Harwick Village were made at Duquesne's own risk and are, therefore, not recoverable. West Penn's argument fails on its face because Duquesne's claimed stranded costs were in fact incurred while serving in its certificated service territory.

In 1917, the predecessor to the present day Commission, the Pennsylvania Public Service Commission, approved the transfer of the Harwick Village area from West Penn to Duquesne. This approval was evidenced by the Public Service Commission's issuance of a Certificate of Public Convenience in 1923 approving Duquesne's and West Penn's amendments to the agreement and obligating Duquesne to serve Harwick Village.¹ As a matter of fact, this proceeding, whereby the Commission was requested to issue a Certificate of Public Convenience approving the transfer of Duquesne's Harwick Village customers and facilities to West Penn, acknowledged by implication the fact that Duquesne holds rights and obligations to serve Harwick Village.

For the above reasons, West Penn's argument, that Duquesne's claimed stranded costs were not incurred in serving Duquesne's certificated service territory and that its claim for stranded costs must therefore fail, is devoid of merit and must be rejected.

¹ As stated in its Proposed Findings of Fact, Duquesne could not locate the Public Service Commission's approval of the original 1917 Agreement. Duquesne Main Brief, p. A-2. However, neither party disputes that the Public Service Commission approved the 1917 Agreement. As a matter of fact, the 1923 Certificate of Public Convenience expressly provided that the 1917 "[A]greement is . . . made a part hereof . . ." Duquesne Exhibit JAL-2.

*Duquesne's Calculation of Stranded Costs in this Case
Was Reasonable in Light of FERC Order No. 888 and the
Data Duquesne Possessed at the Time of Calculation*

The last argument raised by West Penn is that Duquesne's stranded cost calculation was unreasonable and overstated in this case. West Penn Main Brief, pp. 14-16. West Penn's sole point of contention is that Duquesne's estimate of 1.9¢ per kWh as the market value of its generation was too low. By undervaluing the market, asserts West Penn, Duquesne overstates stranded costs. The fact of the matter is, Duquesne used the best data that it had, and it plugged that data into a reasonable and accepted formula (e.g., the revenue lost formula approved by FERC in its Order No. 888). It should be noted that it was West Penn who advocated that this case was ripe for a decision. Tr. 14-15. Duquesne, on the other hand, emphasized that it was unsure how to reasonably calculate stranded costs at this time. During the prehearing conference, Duquesne requested a stay of that portion of the proceeding dealing with stranded cost calculation until guidelines were established by the Commission. Tr. 8-9. West Penn, however, opposed the requested stay. Tr. 12-14. Moreover, Duquesne's expert, Mr. James A. Lahtinen, expressly made clear that Duquesne will be better equipped to determine the market value for Duquesne's generation through the competitive solicitation process Duquesne will undertake as part of its pilot program. The stranded costs amount in this case will be based upon that market valuation. Duquesne Statement No. 3, pp. 12-13. Additionally, Mr. Lahtinen testified that if a different methodology is approved by the Commission, Duquesne has no objection to updating its stranded cost calculation in this proceeding. Duquesne Statement No. 3, p. 16.

As the record clearly indicates, Duquesne has fully demonstrated its willingness to work with West Penn and the Commission on the issue of stranded costs calculation in this case.

Finally, West Penn stated in its Main Brief that Duquesne made a major switch at the hearings by concluding that the responsibility for paying stranded costs should fall, not on West Penn, but rather the departing customers of Harwick Village. West Penn Main Brief, p. 16. To this Duquesne responds that its main concern is recovery of its stranded costs. Both Dr. Bower and Mr. Lahtinen agree that efficiency calls for the departing customers to be responsible for their fair share of unavoidable or stranded costs. Tr. 41, 115-116. These costs were incurred under the expectation that Duquesne would continue to serve the demands for

electrical service in Harwick Village, like it has since 1917. However, this does not mean that the Harwick customers should bear stranded costs plus the applicable West Penn retail tariff rate. (This seems to be what West Penn suggests through the rebuttal testimony of Mr. Galatic. West Penn Rebuttal Statement No. 1, pp. 9-10.) What efficiency calls for is Duquesne's recovery of stranded costs from the Harwick customers and West Penn's recovery of the marginal costs incurred by West Penn in serving these customers during the period over which stranded costs are recovered. Duquesne Statement No. 1S, pp. 9-11; Tr. 41-42. After stranded costs have been recovered, Harwick residents could be placed on West Penn's applicable retail tariff (bundled or unbundled) at that time. This approach would allow the Harwick customers to realize savings to the extent West Penn could provide power at costs that are less than the market value of power (since Duquesne has committed to credit Harwick customers based on the market value established under its competitive solicitation). In addition, since West Penn would recover its marginal costs, there would be no burden placed on its other ratepayers. And after stranded costs were fully recovered, West Penn and its other customers would realize contributions from the Harwick residents through sales of power and delivery services at market or approved regulated rates. Regardless of the ratemaking treatment between West Penn and the Harwick Village customers, Duquesne is entitled to fully recover its non-mitigable stranded costs associated with the customer transfers. Moreover, if the transfer is socially beneficial (i.e., efficient), it can be accommodated so that no party is made worse off as a result.

*In the Absence of Recovery of Stranded Costs,
Duquesne Should Continue to Serve in Harwick Village*

Duquesne's agreement in principle to transfer its facilities and its Harwick Village customers to West Penn is contingent, of course, upon an agreeable purchase price. Duquesne will not accept any purchase price that does not reflect compensation for its stranded costs. Thus, if the Commission is unsure as to the applicability of stranded costs in this proceeding, or if it concludes that Duquesne is not entitled to recovery of stranded costs in this proceeding, then Duquesne withdraws its offer to transfer its customers.² In such an event, the public interest

² The only other alternative would be for Duquesne to collect the amount of the stranded costs from its remaining customers, which would be inappropriate here because these costs were incurred on behalf of the Harwick Village customers.

would be best served by just allowing Duquesne to continue serving Harwick Village pursuant to the Public Service Commission's approval of the 1917 Agreement and the Certificate of Public Convenience issued on June 27, 1923. Duquesne Exhibits JAL-1 and JAL-2.

Beginning January 1, 1999, all of Duquesne's customers, including of course those in Harwick Village, will begin the transition to choice of electric suppliers. Duquesne submits there is no need to rush to judgment in this proceeding because the ability to choose generation suppliers is imminent. The Electric Competition Act, as previously discussed, was not intended to impact existing certificated rights to provide transmission and distribution services.

Amended Proposed Findings of Fact

Proposed Finding of Fact Number 7 on page A-2 of Duquesne's Main Brief is incorrectly stated. It should have stated that "Harwick Village is physically located within West Penn's service territory, but only Duquesne is certificated in that service territory to furnish electricity to Harwick Village". Duquesne Statement No. 3, pp. 3-4; Tr. 97, 222-223; Exhibit JAL-1-2. Harwick Village is not within West Penn's "certificated" service territory, it is within Duquesne's "certificated" service territory. There is a critical distinction between the two. As stated above, and in Duquesne's Proposed Findings of Fact Numbers 8-10, the Pennsylvania Public Service Commission's issuance of a Certificate of Public Convenience on June 27, 1923, approving the 1917 Agreement between West Penn and Duquesne, authorized Duquesne to serve in Harwick Village even though it was physically located in West Penn's territory. Thus, Harwick Village is physically located within West Penn's geographical service territory, but Duquesne is the only electric utility certificated by the Commission to serve the customers in Harwick Village.

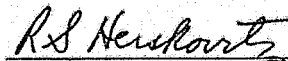
III. Conclusion

For the reasons set forth above and in Duquesne's Main Brief, the Commission should approve the transfer of the Harwick Village customers from Duquesne to West Penn subject to payment by West Penn to Duquesne of \$149,744 for Duquesne's distribution facilities

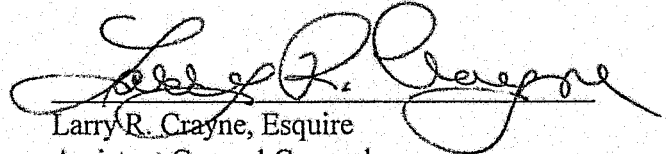
and \$1,266,723 for stranded costs resulting from the transfer. Alternatively, the Commission should order Duquesne to continue serving the Harwick Village customers pursuant to its authority to do so under the Certificate of Public Convenience issued June 27, 1923.

Respectfully submitted,
Duquesne Light Company
By Counsel

Dated this 11th day of March, 1997.



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RSH/LRC/RDD/njp.024CX

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TOWNSHIP OF SPRINGDALE)

v.)

DUQUESNE LIGHT COMPANY)

and)

WEST PENN POWER COMPANY)

Docket No. C-00967749

CERTIFICATE OF SERVICE

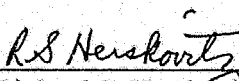
I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable James D. Porterfield
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh State Office Building
300 Liberty Avenue - Room 1103
Pittsburgh, Pennsylvania 15222

Stephen Yakopec, Jr., Esquire
1706 Fifth Avenue
Arnold, Pennsylvania 15068

John L. Munsch, Esquire
West Penn Power Company
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

Dated this 11th day of March, 1997.


Richard S. Herskovitz, Esquire
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RSH/LRC/RDD/njp:024CXX

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March 11, 1997

JLS

000144

The Honorable James D. Porterfield
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Re: Township of Springdale vs. Duquesne Light Company
and West Penn Power Company
Pennsylvania Public Utility Commission Docket No. C-00967749

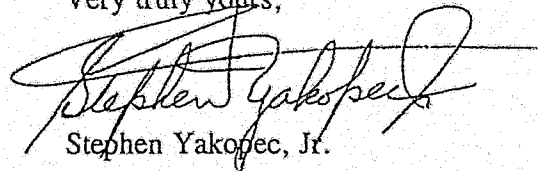
Dear Judge Porterfield:

Enclosed is the Reply Brief of Springdale Township in the above-captioned matter.

An original and nine (9) copies have been served on Secretary Alford. Two (2) copies have been served upon all parties of record as shown on the attached Certificate of Service.

This filing is made by United States Postal Service today, March 11, 1997.

Very truly yours,


Stephen Yakopiec, Jr.

SY/ay

Enclosures

cc: Richard S. Herskovitz, Esquire
John L. Munsch, Esquire

ORIGINAL

REPLY BRIEF OF SPRINGDALE TOWNSHIP

AND NOW, come Springdale Township by and through its attorney, Stephen Yakopec, Jr., and sets forth the following reply brief to that submitted by Duquesne Light Company.

Duquesne claims it is entitled to recover stranded costs under the facts of this case (DUQ. Brief Pgs 8-14). This is incorrect.

Duquesne relies upon In Re: City of Clyde, 168 PUR4th 114(1996). However, this case concerns the stranded cost for an entire city. This is inapplicable to the case in Springdale Township. Springdale Township is in West Penn's service territory. All of Springdale Township except one small portion is served by West Penn Power. In fact, prior transfers of facilities in this area from Duquesne to West Penn have occurred. Likewise, In Re: Cambridge Electric Light Company, 164 PUR4th 69 (1995) concerned the entire college. Both of these cases are factually dissimilar in that no other utility was servicing the entire area in question. Here, West Penn serves all other portions of the Township. The prior transfer of other Harwick village customers was done at the

original cost minus depreciation method. (West Penn Statement #1, Exhibit RAP #3.) Moreover, any revenues which Duquesne might lose, could be mitigated by their obtaining the certified territory indicated in the 1917 exchange of territory agreement. (Duquesne Statement #3, Exhibit JAL-1, West Penn Statement #1, Exhibit RAP-1.)

Duquesne cannot claim that it has a reasonable expectation of continuing to serve the Harwick Village residents. (Duq. Brief 14-18.) There was a prior transfer of Harwick Village residents in the area. (West Penn Statement #1, Exhibit RAP #3 and #4.) These customers have not been lost due to any regulatory change. The 1957 letter of Duquesne Light President Presley McCance does not show a reasonable expectation of continuing to serve the Harwick Village residents. (West Penn Statement #1, Exhibit RAP-1). Duquesne's statement that West Penn did not exercise its options to serve residents in Harwick Village is simply wrong. (DUQ. Brief Pgs 15-16). To the contrary, West Penn Power is serving the municipal building as well as new developments in the Harwick Village area. All of which are contiguous to the small area in question served by Duquesne Light. Again, there was a prior transfer of customers in this area to West Penn from Duquesne. Roughly, there are only 200 customers which are requesting the change.

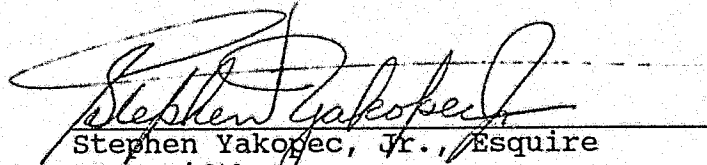
Duquesne Light's principal reason for serving this small area in question was its coal mine (Transcript pages 124-127). Duquesne had a coal mine in Harwick and had to run electrical generation in order to operate its mine. The service of the people in Harwick

Village was incidental to this primary purpose. A coal mine has a finite life span. Duquesne is hard put to argue that it had a continuing expectation to serve the 200 residents of Harwick Village in the West Penn certified territory when the original reason for servicing the area -its mine - no longer exists. Duquesne cannot honestly represent to this court that it had a reasonable expectation of continued service to this area when it made prior transfers of customers to West Penn. Such an argument is disingenuous, at best.

This case and the transfer of these 200 residents of Springdale Township, is insignificant in terms of Duquesne Light's bottom line. (Transcript 121). Therefore, this case has a minimal impact on Duquesne Light. Additionally, Duquesne Light has the ability to serve the residents of West Penn's mining facility in Duquesne's certified service territory. This would enable Duquesne to re-coup the money in question. Basically, West Penn and Duquesne Light swapped territories once before - they can do so again - without the necessity of engaging in this academic discussion of stranded cost recovery. West Penn and Duquesne Light can use the trended original cost minus depreciation method. This is the fairest method for the 200 residents of Harwick Village who wish to be served by West Penn Power.

For the foregoing reasons, this court should order the transfer of the customers in questions at a cost of \$149,774.00.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Stephen Yakobec, Jr.", is written over a horizontal line. The signature is fluid and somewhat stylized.

Stephen Yakobec, Jr., Esquire
1706 Fifth Avenue
Arnold, PA 15068
(412) 339-3377

CERTIFICATE OF SERVICE

I hereby certify that I have this day served an original and nine (9) copies of the Main Brief of West Penn Power Company by Express mail upon:

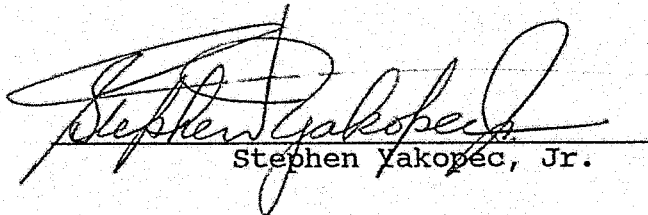
Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
North Office Building
P O Box 3265
Harrisburg, PA 17105-3265

and two (2) copies by first-class mail upon:

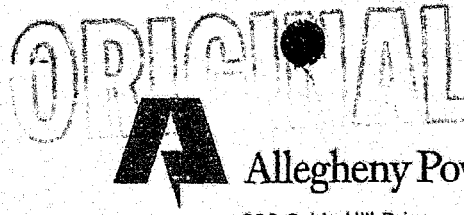
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John L. Munsch, Esquire
Allegheny Power
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Dated: March 11, 1997


Stephen Yakopiec, Jr.

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JLS

March 11, 1997

RECEIVED

VIA FEDERAL EXPRESS MAIL

The Honorable James D. Porterfield
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

MAR 11 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Re: Township of Springdale vs. Duquesne Light Company and
West Penn Power Company
Pennsylvania Public Utility Commission Docket No. C-00967749

Dear Judge Porterfield:

Enclosed please find a copy of the Reply Brief of West Penn Power Company in the above-captioned matter.

An original and nine (9) copies have been served on the Prothonotary. Two copies have been served upon on all parties of record as shown on the attached Certificate of Service.

This filing is made by Federal Express delivery so that the filing date is deemed to be today, March 11, 1997.

Very truly yours,

John L. Munsch
John L. Munsch
Attorney

JLM/jss

Enclosures

cc: Certificate of Service

96

REPLY BRIEF OF WEST PENN POWER COMPANY

At page 8 of its brief, Duquesne Light Company ("Duquesne") presents a definition of stranded costs which is incorrect because it does not include the requirement that the costs or assets be stranded as a result of competition and that they be recoverable under the traditional regulated environment.

The term "transition or stranded costs" is specifically defined in the Electricity Generation Customer Choice and Competition Act at Section 2803, as follows:

"Transition or stranded costs." An 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. (Emphasis added).

66 Pa. C.S. §2803.

The Pennsylvania statutory definition clearly requires that the costs are such as would be recoverable in the traditional regulated environment, but are stranded due to the new competitive generation market.

Under the regulated environment, compensation to Duquesne for the revenue loss of the Harwick customers would not have been recoverable, and it should not be recoverable in a new environment.

West Penn Power Company ("West Penn") again emphasizes that the Pennsylvania Public Utility Commission's ("Commission") report to the legislature indicates that recoverable stranded costs should be limited to "costs which have decreased in value as a result of the change to a competitive retail generation market." (Report and Investigation at Docket No. I-940032, pg. 22).

In footnote 3 in Duquesne's Brief at page 8, Duquesne makes the statement that West Penn does not focus on whether Duquesne should incur stranded costs but rather on whether such costs are recoverable. West Penn's position is that there are no stranded costs in this case, because stranded costs require a change to a competitive environment. West Penn's arguments about the amount of Duquesne's so-called stranded costs are made for the purposes of argument only, contending that even if Duquesne Light were entitled to its so-called stranded cost claim, its claim is too high. Again, Duquesne's so-called stranded costs do not fit the statutory definition because they are not lost due to generation competition, and would not have been recoverable in the traditional regulated environment.

At page 9, Duquesne makes the argument that stranded costs are not limited to competitive circumstances and they can arise whenever there is 1) a customer departure; 2) a corresponding loss of revenue not offset by corresponding costs savings; and 3) no readily available means of replacing revenue loss. West Penn submits that Duquesne unrealistically is attempting to live in a risk-free world. Even in the world of traditional regulation, in which Springdale made its request in 1994, utilities did not operate in a risk-free world. For example, if a customer physically departed a utility's service area,

the utility could not claim as a "stranded cost" the future revenue "lost" from that customer.

The case presented by Duquesne of Re City of Clyde, 168 PUR 4th 114 (1996) (Ohio PUC), is not applicable at all to the Springdale Township situation. And to the extent that the policy underlying the Ohio Commission's rationale in City of Clyde is applicable, the rationale actually argues in favor of denial of Duquesne's stranded cost claim. In the City of Clyde case, Clyde wanted to eject Toledo Edison (the traditional utility supplier) and its facilities from the jurisdictional boundaries of the City in order for the City to provide municipal electric service. The Ohio Commission concluded that it would not allow Clyde to eject Toledo Edison because 1) the financial effect on Toledo Edison would be too great; and 2) there could be a duplication of facilities that would not be in the public interest. But most important, the Ohio Commission recognized that even though Toledo Edison would suffer a financial detriment if Clyde were to municipalize its electric service, it concluded that there was "no clear mechanism for Toledo Edison to recover its stranded costs should these amounts be identified." (168 PUR 4th at 135).

After the issuance of FERC Order 888 in April of 1996, the City of Clyde applied for rehearing of the issue on the ground that perhaps FERC Order 888 would allow Toledo Edison to recover stranded costs. But the Ohio Commission concluded that "final rule in Order No. 888 issued on April 24, 1996, does not include the costs that would be incurred by Toledo Edison.... [t]hus Clyde's arguments on this issue are not persuasive." (171 PUR 4th at 285). Thus,

Clyde's purported stranded costs were neither recoverable under Ohio or federal law.

The City of Clyde case is inapplicable, therefore, for several reasons. One is that Toledo Edison was properly serving within its long-standing service territory and the City of Clyde wanted to eject it. In this case, Duquesne is serving outside its territory in West Penn's service territory. The City of Clyde is also inapposite to Duquesne's position because both in the original case and in the rehearing application, the Ohio Commission recognized that Toledo Edison would not be entitled to stranded cost recovery.

The Massachusetts Institute of Technology case at 74 FERC 61,221 (1996) cited by Duquesne is also inapplicable. In that case, MIT wanted to self-generate to serve its campus facilities and to supplant the traditional utility, Cambridge Electric Company, from so serving. Cambridge Electric sought to recover its purported stranded costs. FERC allowed the recovery by Cambridge of a transitional charge. But the case is not applicable to Duquesne's situation or to its argument in the Springdale Township case because Pennsylvania law already recognizes that where a customer installs self-generation equipment and causes a revenue loss to a utility, that utility can claim the lost revenue as a stranded cost. 66 Pa. C.S. §2808(a) provides:

§ 2808. Competitive transition charge

(a) General rule.--To provide each electric utility with an opportunity to recover its transition or stranded costs following the commission's determination under subsection (c), every customer accessing the transmission or distribution network shall pay a competitive transition charge to the electric distribution company in whose certificated territory that customer is located. The costs

to be recovered shall be allocated to customer classes in a manner that does not shift inter-class or intra-class costs and maintains consistency with the allocation methodology for utility production plant accepted by the commission in the electric utility's most recent base rate proceeding. If a customer installs on-site generation which operates in parallel with other generation on the public utility's system and which significantly reduces the customer's purchases of electricity through the transmission and distribution network, the customer's fully allocated share of transition or stranded costs shall be recovered from the customer through a competitive transition charge. The recovery of transition or stranded costs associated with existing generating facilities is contingent on continued operation at reasonable availability levels of the generation facilities for which recovery has been approved, except when the generation facility is uneconomic on a production cost basis because of the transition to a competitive market. (Emphasis added).

Thus, the self-generation that Cambridge Electric argued should allow recovery of stranded costs and would indeed entitle a utility in Pennsylvania to recover stranded costs through its competitive transition charge.

Duquesne argued repeatedly that it had a reasonable expectation to continue to serve Harwick Village under Rule 888 of FERC, 61 F. Reg. at 21,653. It also contends that the equitable concept of laches applies because West Penn did not request Duquesne to leave Harwick Village and is therefore estopped from preventing stranded cost recovery argued by Duquesne. West Penn is not aware of any application in law or in equity of the laches arguments applied to the certified territories of utilities.

Assuming for the purpose of argument that there is validity to Duquesne's "laches" argument, Duquesne failed to provide a factual presentation of the time of construction of generation facilities it built in supposed

reliance on the Harwick load. The investments certainly were not made in 1997 - - and it is more likely they were made in the 1960's or early 1970's, just a few years after the statement of Mr. McCance that West Penn could take over the facilities in Harwick Village at any time. As the proponent of stranded costs argument, it was Duquesne's burden to present the dates of which the generation facilities it claims are now stranded (or hypothetically stranded in part) were built.

West Penn does not agree with Duquesne's efficiency arguments on page 18 of Duquesne's main brief. Efficiency for Duquesne seems to be synonymous with maximizing profit. Certainly Duquesne's definition of efficiency seems to be what would get Duquesne the most money in any situation. For example, Duquesne stated it was efficient for Duquesne to continue to serve the Harwick customers outside its load in the first place back in the 1957 period. (J. Lahtinen's Cross-examination at Tr. 100). And now Duquesne claims it is efficient for Duquesne to continue to collect its revenue loss as claimed for the next nine (9) years. Contrary to Duquesne's claim, payment of a stranded cost claim is not a "win-win" situation for the Township residents as it would prevent them from switching to West Penn, now and in the future.

Finally, West Penn emphasizes again that the customers are in West Penn certificated service area, and Duquesne has earned a profit on providing them electric service -- outside Duquesne's service territory -- for many years.

PROPOSED CONCLUSIONS OF LAW

1. The area of Springdale Township, known as Harwick Village, is in the certificated area of West Penn Power Company, although it has been provided electric service by Duquesne Light Company since 1917.

2. The articles of agreement between West Penn Power Company and Duquesne Light Company, dated April 16, 1917, provided as follows:

FIFTEENTH. It is further understood and agreed 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 or by the Philadelphia Company, or mining properties in which said companies are substantially interested by stock ownership, situate in the Townships of Harmar, Springdale, Indiana, East Deer and West Deer and the Borough of Springdale and Cheswick, Allegheny County, Pennsylvania, without opposition or objection either directly or indirectly from the West Penn Power Company, its affiliated or subsidiary companies, their successors or assigns.

3. Mining operations ceased in the approximate time frame of 1957 through 1959 and Duquesne Light Company sold its property in Harwick Village.

4. Most or all of the Harwick Village residents have requested to switch retail electric suppliers from Duquesne Light Company to West Penn Power Company.

5. Harwick Village residents and the Township of Springdale have requested that electric service be provided by West Penn Power Company.

6. West Penn Power Company is able to provide reasonable, adequate and reliable electric service to the area known as Harwick Village pursuant to the requirements of Section 1501 of the Public Utility Code.

7. West Penn Power Company and Duquesne Light Company have transferred customers in Harwick Village in 1993 and 1994 with the cost of the facilities being measured at trended original cost minus depreciation.

8. Duquesne Light Company has measured the trended original cost minus depreciation for the transfer of facilities proposed by Springdale Township in this proceeding at \$149,000.00.

9. Duquesne Light Company is not entitled to a monetary claim for stranded costs (which it measures as loss of revenues over nine (9) years due to the departing customers) which it claims to be \$1.2 million because the costs alleged by Duquesne Light Company were not caused by regulatory change to a competitive generation market and would not have been recoverable in the traditional regulated environment. 66 Pa. C.S. §2803.

Respectfully submitted,

Date: March 11, 1997

By: John L. Munsch
John L. Munsch
Attorney for
WEST PENN POWER COMPANY
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Duquesne Light Company

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April 28, 1997

**VIA FACSIMILE AND
U.S. FIRST CLASS MAIL**

The Honorable James D. Porterfield
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Re: Township of Springdale v. Duquesne Light Company
and West Penn Power Company
Docket No. C-00967749

Dear Judge Porterfield:

Duquesne Light Company has no objection to and concurs with the
Complainant's Motion for Stay of Proceedings as set forth in Mr. Yakopec's letter of
April 14, 1997.

Very truly yours,

Richard S. Herskovitz
Corporate Attorney

RSH/dlm

cc: Stephen Yakopec, Jr., Esquire
John L. Munsch, Esquire
James J. McNulty, Prothonotary ✓

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MAY 06 1997

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April 30, 1997

DOCUMENT
FOLDER

VIA FAX AND U.S. FIRST-CLASS MAIL

The Honorable James D. Porterfield
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

DOCKETED

MAY 02 1997

0000002

Re: Township of Springdale v. Duquesne Light Company
and West Penn Power Company; Docket No. C-00967749

Dear Judge Porterfield:

West Penn Power Company has no objection to the Complainant's Motion for Stay of Proceedings requested by Attorney Yakopec in his letter to you of April 14, 1997.

Very truly yours,

John L. Munsch
John L. Munsch
Attorney

REC'D
MAY 2 1997
MAY 2 1997

cc: Stephen Yakopec, Jr. Esquire
Richard S. Herskovitz, Esquire

Prothonotary
Pennsylvania Public Utility Commission

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