CAPTION SHEET CASE MANAGEMENT SYSTEM

1. REPORT DATE: 00/00/00	
2. BUREAU: LAW	
3. SECTION(S):	4. PUBLIC MEETING DATE: 00/00/00
5. APPROVED BY:	
DIRECTOR:	
SUPERVISOR:	
6. PERSON IN CHARGE:	7. DATE FILED: 10/17/02
8. DOCKET NO: P-00021986	9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT:

RESPONDENT/APPLICANT: PPL ELECTRIC UTILITIES CORP

COMP/APP COUNTY: UTILITY CODE: 110500

ALLEGATION OR SUBJECT

PETITION OF PPL ELECTRIC UTILITIES CORPORATION FOR A DECLARATORY ORDER TO TERMINATE CONTROVERSIES CONCERNING PPL'S CERTIFICATED RIGHTS TO PROVIDE SERVICE IN THE BOROUGH OF OLYPHANT AND RELATED TRANSITION CHARGES.

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OCT 23 2002

1701 Market Street
Philadelphia, PA 19103-2921
215-963-5000
Fax: 215-963-5299

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Morgan, Lewis
& Bockius LLP
COUNSELORS AT LAW

David B. MacGregor
215-963-5448
dmacgregor@morganlewis.com

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PA PUC
SECRETARY'S BUREAU

OCTOBER 17, 2002

P-00021996

VIA HAND DELIVERY

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

Re: Petition of PPL Electric Utilities Corporation for a Declaratory Order To Terminate Controversies Concerning PPL's Certificated Rights To Provide Service in the Borough of Olyphant and Related Transition Charges

Dear Secretary McNulty:

Enclosed, for filing, are an original and three (3) copies of the Petition of PPL Electric Utilities Corporation for a Declaratory Order To Terminate Controversies Concerning PPL's Certificated Rights To Provide Service in the Borough of Olyphant and Related Transition Charges. As indicated on the enclosed Certificate of Service, a copy is being sent to counsel for the Borough of Olyphant.

If you have any questions regarding the foregoing, please contact the undersigned at the addresses or telephone numbers provided above.

Respectfully submitted,

David B. MacGregor

David B. MacGregor

DBM/kmk
Enclosure
cc: Certificate of Service

DOCUMENT
FOLDER

128

COMMONWEALTH OF PENNSYLVANIA

DATE: October 24, 2002

SUBJECT: P-00021986

TO: Law Bureau

FROM: James J. McNulty, Secretary JJM

PPL ELECTRIC UTILITIES CORPORATION

Attached is a copy of a Petition for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Service in the Borough of Olyphant and Related Transition Charges, filed by PPL Electric Utilities Corporation in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS
OTS

was

DOCUMENT FOLDER

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OCT 23 2002

LAW OFFICES
WHEATLEY & RANQUIST
34 DEFENSE STREET
ANNAPOLIS, MARYLAND 21401

(410) 266-7524
IN WASHINGTON, D.C.
(301) 261-8608

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October 28, 2002

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OCT 28 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA OVERNIGHT DELIVERY

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

Re: Docket No. P-0021986, Petition of PPL Electric Utilities Corporation; Unopposed Motion by Borough of Olyphant for Extension of Time to Answer Petition of PPL Electric Utilities to November 12, 2002

Dear Secretary McNulty:

Enclosed for filing please find an original and four copies of an Unopposed Motion by Borough of Olyphant for Extension of Time to Answer Petition of PPL Electric Utilities to November 12, 2002. Please return a date-stamped copy of the Motion in the enclosed self-addressed stamped envelope.

Thank you for your courtesy and cooperation in this matter.

Sincerely,

Charles F. Wheatley, Jr.

CJW/jm
Enclosures

120

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Service in the Borough of Olyphant and Related Transition Charges	)	Docket No. P-00021986

UNOPPOSED MOTION BY BOROUGH OF OLYPHANT FOR EXTENSION OF TIME TO ANSWER PETITION OF PPL ELECTRIC UTILITIES TO NOVEMBER 12, 2002

1. On October 18, 2002, counsel for To Provide Service in the Borough of Olyphant and Related Transition Charges" in Docket No the Borough of Olyphant, Pennsylvania, received a copy of "Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights. P-00021986. The Petition was dated October 17, 2002, and was presumably filed by PPL Electric Utilities Corporation ("PPL") on October 17, 2002.

2. The Petition raises a number of factual and legal issues that are now before the U.S. District Court for the Middle District of Pennsylvania in a Complaint filed by the Borough of Olyphant, Pennsylvania, on December 5, 2001, in a case entitled "*Borough of Olyphant, Pennsylvania v. PP&L, Inc., PPL Corporation, PPL Electric Utilities Corporation, and PPL Generation, L.L.C.*" under alleging violations of the Federal Antitrust Laws and Federal Agreements

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between the Borough of Olyphant and PPL, Docket No. 3:CV-01-2308, before Judge James M. Munley.

3. The Borough of Olyphant duly requests an approximate one week extension of time to November 12, 2002, in which to file its Response to PPL's Petition in the present Docket Number P-0021986. Counsel for PPL has advised that they consent to this extension and have no objection to this Motion to extend the time to November 12, 2002.

4. For the foregoing reasons, the Borough of Olyphant, Pennsylvania, hereby respectfully requests that the Pennsylvania Public Utility Commission extend the time in which the Borough of Olyphant may file its Response to PPL's Petition to November 12, 2002.

Respectfully submitted,

Charles F. Wheatley, Jr.
John F. Woods
WHEATLEY AND RANQUIST, PA
34 Defense Street
Annapolis, Maryland 21401
Telephone: (410) 266-7524
Fax: (301) 261-8699
E-mail: wheatlaw@aol.com

C. J. Mustacchio
Attorney No. 33776
Kane Professional Building, Suite E
116 N. Washington Avenue
Scranton, Pennsylvania 18503
Telephone: (570) 343-1722
Fax: (570) 963-5744

Counsel for the Borough of Olyphant,
Pennsylvania

October 28, 2002

CERTIFICATE OF SERVICE

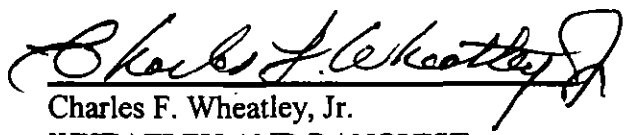
The undersigned hereby certifies that copies of the foregoing Unopposed Motion by Borough of Olyphant for Extension of Time to Answer Petition of PPL Electric Utilities to November 12, 2002 was served by fax and first class mail this 28th day of October, 2002 to the following:

David B. MacGregor
Kenneth M. Kulak
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
FAX: (215) 963-5299

John H. Isom
Morgan, Lewis & Bockius LLP
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101-1904
FAX: (717) 237-4004

Paul E. Russell
Associate General Counsel
PPL Electric Utilities Corporation
Two North Ninth Street
Allentown, PA 18101-1179
FAX: (610) 774-6726

James R. Atwood
Edward H. Rippey
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
FAX: (202) 778-5298



Charles F. Wheatley, Jr.
WHEATLEY AND RANQUIST
34 Defense Street
Annapolis, Maryland 21401

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

IN REPLY PLEASE
REFER TO OUR FILE

October 28, 2002

ORIGINAL

JAMES J. MC NULTY, SECRETARY
PA PUBLIC UTILITY COMMISSION
P O BOX 3265
HARRISBURG PA 17105-3265

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FOLDER

Re: Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Service in The Borough of Olyphant and Related Transition Chargers

Docket No. P-00021986

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of the **Answer** of the Office of Trial Staff for filing in the above-captioned proceeding.

Copies are being served upon all active parties of record.

Very truly yours,

Kenneth L. Mickens
Senior Prosecutor
Office of Trial Staff
Pa. Public Utility Commission

KLM:pae
c: Parties of Record
Enclosures

134

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SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Service in The Borough of Olyphant and Related Transition Charges	:	Docket No. P-00021986

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ANSWER OF OFFICE OF TRIAL STAFF IN SUPPORT OF PETITION FOR DECLARATORY ORDER

The Office of Trial Staff ("OTS") of the Pennsylvania Public Utility Commission ("Commission"), by and through its Senior Prosecutor, pursuant to 52 Pa. Code §5.61, hereby respectfully Answers the Petition for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Service in the Borough of Olyphant and Related Transition Charges ("Petition"), filed by PPL Electric Utilities Corporation ("PPL").

I. INTRODUCTION AND BACKGROUND

1. On October 17, 2002, PPL filed its Petition with the Commission. In its Petition, pursuant to Sections 331(f) and 2812(f)(2) of the Public Utility Code, 66 Pa. C.S. §§ 331(f) and 2812(f)(2) and 52 Pa. Code §5.42, PPL requests that the Commission issue a declaratory order to terminate controversies concerning: (1) the attempt by the Borough of Olyphant ("Olyphant") to force PPL to abandon certificated electric service within the Mid-Valley Industrial Park ("Industrial Park") in Olyphant; and, (2) the obligation of PPL retail customers in PPL's

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certificated territory within Olyphant to pay transition charges imposed by the Commission. PPL Petition, p. 1.

2. PPL is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the transmission and distribution of electricity to approximately 1.3 million customers over a service territory that encompasses all or portions of 29 counties in central and eastern Pennsylvania. PPL Petition, p. 2. PPL is a "public utility" and "electric distribution company" as those terms are defined under the Public Utility Code. 66 Pa. C.S. §§1102 & 2803.

3. The record indicates that in 1946 Olyphant, a borough incorporated under the laws of Pennsylvania, granted a franchise by ordinance to Scranton Electric Company ("Scranton Electric"), a predecessor of PPL, to supply electric service to consumers whose load exceeds 100 H.P. and, with the consent of Olyphant, to consumers whose load requirements are less than 100 H.P. PPL Petition, p. 3. Scranton Electric later filed an application with the Commission to issue a certificate of public convenience to Scranton Electric to provide electric service within Olyphant in the manner described above. On June 28, 1948, the Commission entered an order approving the application. PPL Ex. 3. By resolution on December 5, 1978, Olyphant authorized PPL to also provide electric power to all consumers in the Industrial Park within Olyphant's borders. See PPL Ex. 5.

4. PPL represents that since enactment of the resolution, PPL has supplied power to all customers in the Industrial Park and continues to do so pursuant to its certificate.[1] See PPL Petition, p. 4.

5. On December 16, 1997, Olyphant Borough Council passed a resolution declaring that it is in Olyphant's interest "to be the exclusive electric supplier within the Borough Limits" and "to prohibit electrical generation suppliers from serving end-use customers within the Borough[l]imits." PPL Ex. 6. On or about April 25, 2001, the Olyphant Borough Manager sent a letter to PPL stating Olyphant's intention to become the exclusive provider of power and distribution service within its borders based upon its belief that 66 Pa. C.S. §2805(b)(1)(i) authorizes "a borough which is engaged in distributing electricity to end-use customers within a borough to prohibit electric generation suppliers from serving such customers within its borough limits." See, PPL Ex. 7. PPL filed the instant Petition in response to Olyphant's representation.

II. PPL'S PETITION FOR DECLARATORY ORDER SHOULD BE GRANTED.

6. OTS agrees with PPL that Olyphant's attempt to force PPL to abandon certificated service to its customers in the Industrial Park is contrary to the requirements of the Public Utility Code and Pennsylvania law. In this regard,

[1] In 1996 Olyphant and 15 other Pennsylvania boroughs initiated litigation against PPL at the Federal Energy Regulatory Commission ("FERC") concerning transmission service and the recovery of wholesale stranded costs by PPL. Borough of Lansdale, et al., FERC Docket No. TX96-9-000 (filed May 8, 1996). After FERC established a new proceeding (Docket No. SC97-1-000) to address stranded costs, PPL and Olyphant (and 14 other boroughs) entered into a settlement agreement, which was approved by FERC.

Section 1102 of the Public Utility Code prohibits a utility from abandoning certificated service without first obtaining a certificate of public convenience. 66 Pa. C.S. §1102(a)(2). Grove City v. Pennsylvania Public Utility Commission, ___ Pa. Commonwealth Ct. _, 505 A.2d 346 (1986), appeal denied, _ Pa. _, 528 A.2d 603 (1987). The record indicates that the Commission has not provided to PPL a certificate of public convenience to abandon service within Olyphant.

7. Olyphant's reliance upon 66 Pa. C.S. 2805(b) is similarly flawed because PPL is, by definition, an "electric distribution company" not an "electric generation supplier." See, 66 Pa. C.S. §2803. The action allowed in Section 2805(b) may only be taken against electric generation suppliers.

8. PPL represents that Olyphant has informed at least one large PPL customer in the Industrial Park that PPL customers who take service from Olyphant will no longer have to pay stranded costs approved by the Commission. PPL Petition, p. 14. However, under the Public Utility Code, intangible transition charges ("ITCs") are defined as non-bypassable charges imposed on all persons located within a utility's certificated service territory on or after the effective date of the Electric Competition Act. 66 Pa. C.S. §2812(g). Moreover, any shortfall in ITC collection due to the failure of Industrial Park customers to pay ITCs, would have to be recovered from other customers through the ITC adjustment

---

Pursuant to this settlement agreement, PPL apparently agreed not to seek stranded costs against any of the borough parties, including Olyphant. See PPL Petition, p. 5.

mechanism. See, 66 Pa. C.S. §2812(b)(4). Thus, Olyphant's representation that Industrial Park PPL customers need not continue to pay ITCs, must be rejected.

III. CONCLUSION

WHEREFORE, for the reasons stated above, OTS respectfully requests that the Commission enter an order declaring that:

(1) The Industrial Park in Olyphant is within PPL's certificated territory and only the Commission can require PPL to abandon its certificated service to PPL customers within Olyphant;

(2) PPL customers within Olyphant must continue to pay ITCs until such charges are paid in full.

Respectfully submitted,

Kenneth L. Mickens
Senior Prosecutor
Office of Trial Staff
Pennsylvania Public
Utility Commission

Date: October 28, 2002

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Service in The Borough of Olyphant and Related Transition Charges	:	Docket No. P-00021986

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer of the Office of Trial Staff In Support Of Petition for Declaratory Order**, dated October 28, 2002, either personally, by first class mail, electronic mail, or by fax upon the persons listed below:

Irwin A. Popowsky, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place - 5th Floor
Harrisburg, PA 17101-1923

Carol F. Pennington, Esquire
Office of Small Business Advocate
Commerce Building - Suite 1102
300 North 2nd Street
Harrisburg, PA 17101

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SECRETARY'S BUREAU

Kimberly M. Colonna, Esquire
David M. Kleppinger, Esquire
McNees, Wallace & Nurick
100 Pine Street
Harrisburg, PA 17108-1166

Kenneth M. Kulak, Esquire
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103-2921

Charles F. Wheatley, Jr., Esquire
Wheatley & Ranquist
34 Defense Street
Annapolis, MD 21401

C. J. Mustacchio, Esquire
Kane Professional Building
Suite 2E
116 North Washington Avenue
Scranton, PA 18509

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PA P.U.C.
SECRETARY'S BUREAU

Kenneth L. Mickens
Senior Prosecutor
Office of Trial Staff

Dated: October 28, 2002
Docket No. P-00021986

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights To Provide Service In The Borough of Olyphant And Related Transition Charges	:	Docket No. P- 00021986

Petition of PPL Electric Utilities Corporation for a Declaratory Order To Terminate Controversies Concerning PPL's Certificated Rights To Provide Service in the Borough of Olyphant and Related Transition Charges

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation ("PPL") hereby petitions the Pennsylvania Public Utility Commission ("Commission"), pursuant to Sections 331(f) and 2812(f)(2) of the Public Utility Code, 66 Pa. C.S. §§ 331(f) and 2812(f)(2), and 52 Pa. Code § 5.42, for a declaratory order to terminate controversies concerning: (1) the attempt by the Borough of Olyphant ("Olyphant") to force PPL to abandon certificated electric service within the Mid-Valley Industrial Park ("Industrial Park") in Olyphant; and (2) the obligation of PPL retail customers in PPL's certificated territory within Olyphant to pay transition charges imposed by order of this Commission. PPL seeks a declaratory order stating that: (1) the Industrial Park is within PPL's certificated territory and only this Commission, not Olyphant, can require PPL to abandon certificated service to PPL's customers in the Industrial Park; (2) any retail customer of PPL in Olyphant must continue to pay intangible transition charges previously imposed by this Commission, during the period in which transition charges are being collected, even if such customer were, in the future, to receive electric service from Olyphant instead of PPL; and (3) any

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retail customer of PPL in Olyphant has a similar obligation to pay competitive transition charges, even if such customer were to receive electric service from Olyphant.

As set forth in detail in this Petition, the controversies PPL seeks to address involve basic powers of the Commission under the Public Utility Code and key provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 et seq. ("the Competition Act"). If Olyphant's interpretation of the Public Utility Code is allowed to prevail, the Commission's ability to regulate the abandonment of utility service within the Commonwealth will be substantially diminished. Similarly, Olyphant's efforts to convince utility customers that they can avoid paying stranded costs in the future by taking service from Olyphant undermines both the Competition Act and orders of this Commission and could result in a substantial shift of transition charges between utility customers. PPL's petition is both timely and necessary to eliminate uncertainty and confusion now being created by Olyphant.

In support of the Petition, PPL states the following:

I. BACKGROUND OF THE CONTROVERSIES

A. PPL's Certificated Service In Olyphant

1. PPL is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and is engaged in the transmission and distribution of electricity to approximately 1.3 million customers throughout a 10,000 square mile service territory covering all or portions of 29 counties in central and eastern Pennsylvania. PPL is a "public utility" and an "electric distribution company" as defined under the Public Utility Code, see 66 Pa. C.S. §§ 1102 & 2803, serving customers within certificated territory approved by this Commission, and is subject to the regulatory jurisdiction of this Commission.

2. Pursuant to Section 2807(e) of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2807(e), PPL is also a "provider of last resort," furnishing generation supply service to customers not purchasing generation supply from Electric Generation Suppliers ("EGSs").

3. Olyphant is a public corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

4. In 1946, Olyphant granted a franchise by ordinance to Scranton Electric Company ("Scranton Electric"), a predecessor of PPL, to supply electric service to consumers in Olyphant whose load exceeds 100 H.P. and, with the consent of Olyphant, to consumers whose load requirements are less than 100 H.P. PPL Exhibit No. 1 (An Ordinance, *In Re: Application of The Scranton Elec. Co.*, PUC Docket No. 71229 ("*Scranton*"), Sept. 11, 1946).

5. Scranton Electric subsequently filed an application with the Commission, asking the Commission to issue a certificate of public convenience to Scranton Electric for the power, right and privilege to provide electric service within Olyphant to consumers whose load exceeds 100 H.P. and, with the consent of Olyphant, to consumers whose load requirements are less than 100 H.P. PPL Exhibit No. 2 (Application, *Scranton*, Nov. 20, 1947).

6. In 1948, the Commission entered an order approving Scranton Electric's application. See PPL Exhibit No. 3 (Order, *Scranton*, June 28, 1948). In its order, the Commission noted that Scranton Electric had supplied the entire electric requirements of Olyphant since 1946. Id. at 1. The Commission then made an express finding that Scranton Electric's application was "necessary or proper for the service,

accommodation, convenience or safety of the public," and that a certificate of public convenience should issue. Id.

7. The Commission then issued the certificate of public convenience to Scranton Electric for consumers within Olyphant whose load requirements exceed 100 H.P., and smaller customers with consent. PPL Exhibit No. 4 (Certificate, *Scranton*, June 28, 1948).

8. In 1978, Olyphant enacted a resolution authorizing PPL also to provide electric power to all consumers in the Mid-Valley Industrial Park ("Industrial Park") within Olyphant's borders. PPL Exhibit No. 5 (Resolution of Olyphant Borough Council, Dec. 5, 1978) ("the Resolution"). The Resolution provided in pertinent part:

> WHEREAS, manufacturing plants being located in the Mid-Valley Industrial Park will have need for electrical power; and
>
> WHEREAS, the cost of furnishing such power will exceed a quarter of a million dollars; and
>
> WHEREAS, the Borough of Olyphant Council and its Light Committee are financially unable to furnish the electrical power needed for the Mid-Valley Industrial Park; and
>
> WHEREAS, [PPL] has indicated willingness to furnish these electric power facilities to the Mid-Valley Industrial Park,
>
> NOW, THEREFORE, . . . it is resolved by the Olyphant Borough Council and by its Olyphant Borough Light Committee that [PPL] be and is hereby authorized to expend any funds necessary to meet the electrical power needs of *any and all* manufacturing plants making use of the said Mid-Valley Industrial Park . . . .

Id. at 1 (emphasis added).

9. Since the enactment of the Resolution, PPL has supplied power to all customers in the Industrial Park and continues to do so pursuant to its certificate.

10. In 1996, Olyphant and fifteen other Pennsylvania boroughs initiated litigation against PPL at the Federal Energy Regulatory Commission ("FERC") concerning transmission service and the recovery of wholesale stranded costs by PPL. *Borough of Lansdale, et al.*, FERC Docket No. TX96-9-000 (filed May 8, 1996).[1] Subsequently, after the FERC established a new proceeding (Docket No. SC97-1-000) to address stranded costs, PPL and Olyphant (and fourteen other boroughs) entered into a Settlement Agreement, which was approved by FERC.

11. As part of the Settlement Agreement, each of the boroughs (including Olyphant) agreed to enter into a five-year power supply agreement, and PPL agreed not to seek stranded cost recovery against any of the borough parties, including Olyphant. PPL currently provides all of Olyphant's wholesale power needs pursuant to a Power Supply Agreement entered into by PPL and Olyphant, consistent with the Settlement Agreement.

B. Olyphant's Attempt To Exclude PPL From Providing Certificated Service And Its Misrepresentations Regarding "Exclusive" Rights And The Obligation of PPL Customers To Pay Transition Charges

12. On December 16, 1997, the Olyphant Borough Council passed a resolution declaring that it is in Olyphant's interest "to be the exclusive electric supplier within the Borough Limits of the Borough of Olyphant" and resolving "to prohibit electrical generation suppliers from serving end-use customers within the Borough [l]imits." PPL Exhibit No. 6 (Resolution #16 of Olyphant Borough Council, Dec. 16, 1997).

---

[1] The FERC proceeding was initiated by the boroughs against PP&L, a predecessor to PPL.

13. On or about April 25, 2001, the Olyphant Borough Manager sent a letter to PPL stating Olyphant's intention to become the exclusive provider of power and distribution service within its borders. PPL Exhibit No. 7 (Letter from Norbert R. Kosciuk, Manager, the Borough, to F.A. Long, Executive Vice-President and C.O.O., PPL Corporation, April 25, 2001). The letter stated:

> a. "This is to advise you that the Borough of Olyphant is undertaking steps to provide electric power from its municipal electric system to users in the Mid-Valley Industrial Park located within the Borough. This action has been authorized by the Pennsylvania Legislature, § 2805(b)(1)(i) of the 'Electricity Generation Customer Choice and Competition Act', 66 Pa. C.S.A. Section 2802 [sic], which authorizes a borough which is engaged in distributing electricity to end-use customers within a borough to prohibit electric generation suppliers from serving such customers within its borough limits." Id. at 1.
>
> b. The Borough "has exclusive rights to serve PP&L's customers within the Borough . . . ." Id.
>
> c. "The Borough would like to have negotiations with PP&L as soon as possible to coordinate a cooperative transition in placing our poles and transformers relating to the Borough providing future electric service to the Mid-Valley Industrial Park." Id.

14. At approximately the same time, the Borough Mayor sent similar letters to PPL's Industrial Park customers. PPL Exhibit No. 8 (letter from Michael Wargo, Jr., Mayor, the Borough, to Business Owner in Mid-Valley Industrial Park). These letters stated:

> a. "This is to advise you that the Borough of Olyphant is undertaking steps to provide electric power . . . to users in the Mid-Valley Industrial Park located within the Borough. This action has been authorized by [66 Pa. C.S. § 2805(b)(1)(i), which] authorizes a [b]orough which is engaged in distributing electricity to end-use customers within the [b]orough to prohibit electric generation

suppliers from serving such customers within its [b]orough limits . . . ." Id. at 1.

b. The Borough "has exclusive rights to serve end-use customers within the Borough. . . . and it now desires to provide all of your electric power requirements located within the Borough of Olyphant." Id.

d. "[W]e request that you provide us with a copy of your monthly electric power bills for the past year, as well as any information about any projected increases or decreases in your usage for the next two years. Once we have this information, we will provide you with detailed rates and information for your future power service from the Borough. . . . We are looking forward to providing your electricity service for the future." Id. at 2.

15. On March 15, 2001, Olyphant, through its solicitor, sent a letter to WEA Manufacturing, PPL's largest customer located within the Industrial Park. PPL Exhibit No. 9 (Letter from C.J. Mustacchio to WEA Manufacturing, dated March 26, 2001) ("Mustacchio Letter"). The letter enclosed a memorandum from Olyphant's outside counsel addressed to an Olyphant official, offering legal analysis purporting to support Olyphant's "exclusive" right to serve customers in the Industrial Park as well as Olyphant's assertion that Industrial Park customers would not have to pay transition charges approved by the Commission if Olyphant provided service instead of PPL. See id. at 1-7.

16. The letter to PPL's customer cited the provisions of 66 Pa. C.S. § 2805(b), which permits a borough to prohibit electric generation suppliers from serving end-use customers within borough limits, as support for Olyphant's exclusive right to serve customers within the Borough. The letter did not discuss PPL's certificate of convenience and stated – erroneously – that PPL's service territory did not include Olyphant "because it was serving that area only pursuant to the consent of the Borough

pursuant to a resolution adopted by the Borough on December 5, 1978." Mustacchio Letter, at 6. The letter further asserted that because of the Settlement Agreement, no stranded costs could be collected from those customers in the event such customers were to take service from Olyphant. Id. at 5. The letter did not explain that PPL was providing service to Industrial Park customers as an electric distribution company ("EDC"), not as an EGS, nor did it discuss the non-bypassable nature of retail stranded costs established by this Commission.

C. Olyphant's Federal Lawsuit

17. On December 5, 2001, Olyphant filed a lawsuit in the United States District Court for the Middle District of Pennsylvania, alleging that PPL had violated federal antitrust laws and breached the Settlement Agreement and Power Supply Agreement. PPL subsequently filed a motion for summary judgment, demonstrating that Olyphant's antitrust claims were without merit, in part because Olyphant's intention of becoming the exclusive provider of electric service in the Industrial Park is at odds with established principles of antitrust injury and standing. PPL's motion is pending before the court, and discovery is scheduled to close on November 25, 2002.

18. Ten PPL customers located within the Industrial Park filed a joint motion to intervene in the federal proceedings. PPL Exhibit No. 10 (Brief in Support of Motion To Intervene, filed April 5, 2002). The customers, representing ninety-eight percent (98%) of the electrical usage of the Industrial Park, id. at 3, sought to intervene based upon the risk of losing their benefits under the Competition Act if Olyphant were to become the exclusive electric supplier to the Industrial Park. The customers emphasized that if Olyphant were to provide exclusive service, Olyphant's rates would not be capped and the customers would lose the benefits of PPL's capped rates through

December 31, 2009. Id. at 6-7. The customers' motion to intervene is pending before the court. On May 6, 2002, the customers filed a brief in support of PPL's motion for summary judgment.

II. THE COMMISSION SHOULD DECLARE THAT THE INDUSTRIAL PARK IS WITHIN PPL'S CERTIFICATED TERRITORY AND ONLY THE COMMISSION, NOT OLYPHANT, CAN REQUIRE PPL TO ABANDON CERTIFICATED SERVICE TO PPL'S CUSTOMERS

19. Olyphant's attempt to force PPL to abandon certificated service to PPL customers in the Industrial Park based upon an asserted "exclusive" right to serve within borough boundaries without proceeding before this Commission is contrary to well-established Pennsylvania law. A declaratory order by this Commission will resolve the dispute between Olyphant and PPL regarding Olyphant's ability to assert its "exclusive" right to exclude PPL from serving PPL's customers in accordance with PPL's certificate of public convenience. Such an order will also address the uncertainty and concerns of PPL's customers created by Olyphant's actions.

20. As set forth above, PPL is providing retail service to customers within the Industrial Park in Olyphant in accordance with a certificate of public convenience issued by the Commission. Olyphant does not dispute the issuance of the certificate, nor has it sought to modify the certificate.

21. Section 1102 of the Public Utility Code forbids utilities from abandoning certificated service without obtaining a certificate of public convenience.

> (a) **General Rule.**---Upon the application of any public utility and the approval of such application by the commission, *evidenced by its certificate of public convenience first had and obtained*, and upon compliance with existing laws, it shall be lawful:
>
> . . . .
>
> (2) For any public utility to abandon or surrender, in whole or in part, any service, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron.

See 66 Pa. C.S. § 1102(a)(2) (emphasis added). A certificate of public convenience may be revoked by the PUC only for cause. West Penn Power Co. v. Pennsylvania Public Utility Commission, 643 A.2d 125, 127 (Pa. Cmwlth. 1994).

22. Jurisdiction over disputes relating to certificates of public convenience is vested in this Commission. Borough of Lansdale v. Philadelphia Electric Co., 170 A.2d 565, 567-68 (1961) (upholding dismissal of borough petition seeking a declaratory judgment that a borough had the exclusive right to sell electricity in annexed borough territory where certificated service was already being provided by a utility, noting that jurisdiction over the controversy vested in the Commission); Re General Electric Co., 58 Pa. PUC 97, 102-03 (1983) ("[W]e are of the firm opinion that [section 1102] provides us with the requisite jurisdiction to reach a determination as to the proper entity authorized to provide electrical service in a geographical territory described in a certificate of public convenience issued by the public service commission in 1920."), aff'd sub. nom., Borough of Grove City v. Pennsylvania Public Utility Commission, 505 A.2d 346 (Pa. Cmwlth. 1986), appeal denied, 528 A.2d 603 (Pa. 1987) ("Grove City").

23. In Grove City, a utility, Penn Power, had been providing electric service to a large industrial customer located in the borough of Grove City. The industrial customer was on land located within Penn Power's certificated service territory, as established by a certificate of public convenience issued in 1920, which had been annexed by Grove City in 1957. Subsequently, Grove City built a new substation in an attempt to serve the expanding needs of the industrial customer, and sought to prohibit Penn Power from providing service to that customer, despite the existing certificate of public convenience. Both the customer and Grove City sought declaratory relief at the

Commission. The Commission declared that Penn Power was the proper supplier of the industrial customer, and that nothing in the Borough Code or the Public Utility Code supported Grove City's claims that it could revoke certificated service territory through annexation or oust a public utility providing service pursuant to a commission-issued certificate. See Re General Electric, 58 Pa. PUC 97, 105-06 (1983); see also Grove City, at 351. Grove City filed an appeal to the Commonwealth Court.

24. After examining the Public Utility Code, the Borough Code, Penn Power's existing certificate, and the preference of the industrial customer, the Commonwealth Court rejected Grove City's claim and affirmed the Commission. The court noted specifically that nothing in the Borough Code suggested that a borough, "having consented that a utility duly authorized to serve the territory may bring and conduct electric current into the borough limits, may by its fiat alone force the utility to abandon that service without recourse by the affected customers and without allowance by the PUC." Grove City, at 353.

25. Olyphant appears to believe that it can unilaterally preclude PPL pursuant to Section 2805(b) of the Competition Act. See Mustacchio Letter, at 3-4. This argument is wholly without merit. Section 2805(b) provides in relevant part:

> A borough may prohibit electric generation suppliers from serving end-use customers within its borough limits; however, such a borough shall be prohibited from providing generation service to end-use customers outside of its borough limits which it did not serve prior to the effective date of this chapter.

26. Section 2805(b), on its face, applies only to EGSs. PPL is not an EGS subject to the provisions of this section; it is an EDC that serves the Industrial Park as a provider of last resort. The Public Utility Code defines an EDC and an EGS as follows:

> **"Electric distribution company."** The public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers . . . .
>
> **"Electric generation supplier."** A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter . . . that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company . . . .

66 Pa. C.S. § 2803. The Commission distinguishes between the rights and obligations of an EDC and an EGS; for example, an EDC offering provider-of-last-resort service, as PPL does in Olyphant, is not required to obtain a license to serve within its certificated territory. See 66 Pa. Code. 52 § 54.32(h) ("An EDC acting within its certified service territory as a provider of last resort is not required to obtain a license.").

27. As an EDC, PPL remains obligated to acquire and deliver electric energy to its customers during the period in which transition charges are being collected. The Competition Act makes PPL's obligation clear:

> While an electric distribution company collects either a competitive transition charge or an intangible transition charge or until 100% of its customers have choice, whichever is longer, the electric distribution company shall continue to have the full obligation to serve, including the connection of customers, the delivery of electric energy and the production or acquisition of electric energy for customers.

66 Pa. C.S. § 2807(e)(1). Pursuant to the Competition Act, PPL continues to provide both distribution and power to retail customers in the Industrial Park as an EDC and provider of last resort, not an EGS. Thus, the statutory language relied upon by Olyphant is inapplicable.

28. Olyphant appears to believe that Grove City is no longer the law after the passage of the Competition Act, and that the Act gives Olyphant the power to

unilaterally eject PPL from the Industrial Park. However, there is no basis to conclude that the Competition Act in any way invalidated any of PPL's existing certificates of public convenience, enlarged borough powers with respect to such certificates, or otherwise limited the jurisdiction of the Commission with respect to revocation of such certificates.

29. Under Pennsylvania law, such wholesale revocation of long-standing provisions of the Public Utility Code cannot be implied. See 1 Pa. C.S. § 1932 (b) ("Statutes in pari materia shall be construed together, if possible, as one statute."); Consumers Educ. & Protective Ass'n v. Schwartz, 495 Pa. 10, 23 n.17, 432 A.2d 173, 180 n.17 (1981) (noting "the widely recognized principle that repeals by implication are not favored and will not be permitted if there is any other reasonable construction, and that a law is not repealed by a later enactment if the two may be operative without repugnance to each other.").

30. The United States Court of Appeals for the Third Circuit has already explained that no such revocation of basic provisions of the Public Utility Code pertaining to certificates of convenience occurred in the passage of the Competition Act. See City of Pittsburgh v. West Penn Power, 147 F.3d 256, 260 (3d. Cir. 1998) (explaining that "[a] certificate may be amended only with permission from the PUC" and "the Competition Act did not alter the statutory requirement that [an electric utility] petition the PUC to amend its certificate").

31. For these reasons, the Commission should declare that the Industrial Park in Olyphant is within PPL's certificated territory and only the Public

Utility Commission, not Olyphant, can require PPL to abandon its certificated service to PPL customers within Olyphant.[2]

III. THE COMMISSION SHOULD DECLARE THAT PPL'S RETAIL CUSTOMERS IN OLYPHANT MUST CONTINUE TO PAY TRANSITION CHARGES REGARDLESS OF WHO SUPPLIES THEIR ELECTRICITY

A. The Industrial Park Customers Within PPL's Certificated Territory In Olyphant Must Continue To Pay Intangible Transition Charges

32. As described above, Olyphant has informed at least one large PPL customer in the Industrial Park that it believes PPL customers who take service from Olyphant will no longer have to pay stranded costs approved by this Commission. This Commission has exclusive jurisdiction over any dispute arising out of the obligations to impose and collect intangible transition charges ("ITCs"). See 66 Pa. C.S. § 2812(f)(2). Olyphant's assertions have created uncertainty with respect to whether a retail customer must continue to pay ITCs if it takes service from Olyphant (or another borough). Therefore, PPL seeks a declaratory order to resolve this issue and address the confusion that has been created by Olyphant's statements to PPL customers.

33. On August 27, 1998, this Commission entered a Final Order at Docket No. R-00973954, approving a settlement of PPL's restructuring plan. PPL Exhibit No. 11 ("Final Order"). As part of this restructuring plan, the Commission concluded that it was just and reasonable for PPL to recover $2.97 billion of its stranded costs, with up to $2.85 billion of that amount to be paid by customers through ITCs and the remainder through competitive transition charges ("CTCs"). Final Order, ¶ 7.

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[2] PPL notes that it is not seeking any determination by the Commission with regard to PPL's contract rights arising from the 1946 franchise Ordinance, the 1978 Resolution, the Settlement and Power Supply Agreements, or any other agreement between PPL and

34. The Commission's Final Order permitted PPL to collect both ITCs and CTCs from customers in its certificated territory, providing in part:

> [T]his Commission authorizes PP&L to impose on, and collect from its customers, either directly or through bills rendered by electric generation suppliers or any subsequently selected providers of last resort, through non-bypassable charges applied to the bill of every customer of electric services within the geographic area that comprises PP&L's certificated territory on the effective date of the Act, whether such customer was a customer on the effective date of the Act or became a customer after that effective date, (i) Competitive Transition Charges ("CTCs") as provided in the Joint Petition in an amount sufficient to permit PP&L to recover the full amount of its Transition or Stranded Costs as authorized for recovery by the Commission's approval of the Settlement Petition, and (ii) Intangible Transition Charges in an amount sufficient to recover the aggregate principal amount of the Transition Bonds plus an amount sufficient to provide for . . . other expenses related to the Transition Bonds . . . .

Final Order, ¶ 9. On May 21, 1999, the Commission issued another order, supplementing the Final Order's provisions for the issuance of transition bonds and filing of appropriate tariff supplements establishing the ITCs and reduced CTCs. PPL Exhibit No. 12 ("Supplemental QRO").

35. Under the Public Utility Code, ITCs are defined to be non-bypassable charges imposed on all persons located within a utility's certificated territory on or after the effective date of the Competition Act. 66 Pa. C.S. § 2812 (g).

36. The Public Utility Code further provides that to the extent the Commission specifies that a qualified rate order is irrevocable, neither the order nor the ITCs authorized by the order "shall be subject to reduction, postponement, impairment or termination by any subsequent action of the [C]ommission." 66 Pa. C.S. § 2812(b)(3).

Olyphant. PPL simply seeks a declaration that the Industrial Park within Olyphant is in PPL's certificated territory.

The Commission declared that the Final Order and the Supplemental QRO were irrevocable for purposes of 66 Pa. C.S. § 2812. Final Order, ¶18; Supplemental QRO, ¶ 2.

37. Thus, as a matter of law and consistent with the Commission's orders, a PPL customer located within PPL's certificated territory on the effective date of the Competition Act (or that becomes a customer within such territory) who remains within the territory must pay the non-bypassable ITCs approved by this Commission. In accordance with the Public Utility Code, these orders, and PPL's Commission-approved tariff, PPL's customers in the Industrial Park have been paying these ITCs, which PPL has collected and remitted directly to the trustee for benefit of the transition bondholders.

38. Olyphant has misrepresented to at least one PPL customer in the Industrial Park that the Industrial Park customers are not located within PPL's certificated territory and that they will not have to pay ITCs as provided in the Public Utility Code and the Commission's orders if they are served by Olyphant. See Mustacchio Letter, at 1 & 6-7. However, as set forth above, PPL's certificate of convenience has been in effect since 1946, it applies to the Industrial Park within Olyphant, and Olyphant has never requested the Commission to modify or revoke this certificate. Even if the Commission were to now revoke PPL's certificate of public convenience, there can be no dispute (as explained in Section II of this petition) that the Industrial Park customers were within PPL's certificated territory on the effective date of the Competition Act (January 1, 1997), which fact alone is determinative under 66 Pa. C.S. § 2812(b)(5) and the Commission's qualified rate orders. The Industrial Park customers who have been receiving service from PPL are thus obligated to pay the ITC charges imposed by this

Commission, whether or not they receive electric service from PPL. Cf. ARIPPA v. Pennsylvania Public Utility Comm'n., 792 A.2d 636, 667 (Pa. Commw. 2002) (explaining that "stranded costs" are a means to pay "costs previously incurred or obligated in a regulated environment" and "were not meant to pay for costs associated with the current delivery and generation of electricity.").

39. If there were a shortfall in ITC collection due to the failure of Industrial Park customers to pay ITCs, the shortfall would have to be recovered from other customers through the ITC adjustment mechanism. See 66 Pa. C.S. § 2812(b)(4) (authorizing adjustment mechanism); Supplemental QRO, at ¶¶ 9-18. Therefore, resolution of this issue by the Commission will have a direct effect on all PPL retail customers.

40. If another entity (such as Olyphant) were to provide electric service to PPL's customers, the Public Utility Code further provides that the entity will have an obligation to collect ITCs as a condition of providing that service:

> If the qualified rate order so provides, the obligations of the electric utility:
>
> (i) shall be binding upon the electric utility, its successors and assigns; and
>
> (ii) shall be required by the commission to be undertaken and performed by the electric utility *and any other entity which provides electric service* to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that became a customer of electric services within such territory after the effective date of this chapter and is still located within such territory, *as a condition to the provision of service to such customer by such electric utility or other entity*, unless the customer has paid a termination charge in the manner and on the basis specified in the qualified rate order.

66 Pa. C.S. § 2812(b)(5) (emphasis added). Consistent with 66 Pa. C.S. § 2812(b)(5), the Final Order provides that the obligations of PPL to collect ITCs are binding upon PPL, its successors and assigns, and any other entity providing transmission and distribution service to a person that was a customer of PPL within PPL's certificated territory on or after January 1, 1997. Final Order, ¶ 17. Therefore, if Olyphant were to provide service to PPL's customers, it would have an obligation to collect the ITCs and remit those ITCs directly to the trustee for benefit of the transition bondholders.[3]

41. Consistent with the Public Utility Code and the Commission's orders, PPL requests the Commission to declare that every retail customer of PPL in Olyphant must continue to pay intangible transition charges previously imposed by this Commission even if such customer were subsequently to receive electric service from Olyphant instead of PPL in the future.

---

[3] Olyphant appears to believe that it has no such obligation, due to language in the Settlement Agreement approved by FERC which provides that PPL will not seek stranded cost recovery from the parties to the Settlement Agreement. See, e.g., Mustacchio Letter, at 4. PPL is contemporaneously filing a separate petition for a declaratory judgment at FERC regarding this issue, and PPL does not here seek any determination of its obligations under the Settlement Agreement, over which this Commission does not have jurisdiction. However, PPL notes that (1) FERC had no jurisdiction to approve a settlement agreement governing retail stranded costs, and (2) the language of the Settlement Agreement applies only to the boroughs who were parties to the Settlement Agreement (such as Olyphant), and PPL does not seek stranded costs from Olyphant. See Settlement Agreement, Article 2.6 ("PP&L will not seek any stranded cost recovery or exit fee against any of the Parties to this Settlement Agreement, and hereby waives any present or future rights to any such claims.") & Article 6.2 ("Based on the terms and conditions of this Settlement Agreement, PP&L will not seek, and hereby waives the right to seek, any stranded cost recovery or exit fee against any of the parties to this Settlement Agreement.") (emphasis added).

B. PPL's Customers Within Its Certificated Territory In Olyphant Must Continue To Pay Competitive Transition Charges

42. As described above, the Commission's Final Order approving the settlement of PPL's restructuring imposed both CTCs and ITCs on customers in PPL's certificated territory. PPL has collected CTC charges in accordance with the Commission's orders and its tariff. See supra ¶¶ 33-34. However, Olyphant has misrepresented to at least one PPL customer in the Industrial Park that the Industrial Park customers are outside PPL's certificated territory and will not be obligated to pay either CTCs or ITCs if they are served by Olyphant. Mustacchio Letter, at 1 & 6-7. In light of this dispute between PPL and Olyphant and the additional uncertainty created by Olyphant's statements with respect to CTCs, PPL also seeks a declaratory order providing that customers in the Industrial Park must continue to pay CTCs and that PPL is authorized to collect such charges even if Olyphant were to provide electric service to those customers.

43. Under the Public Utility Code, CTCs are defined to be non-bypassable charges. Section 2803 provides:

> **"Competitive Transition Charge."** A nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network which (charge) is designed to recover an electric utility's transition or stranded costs as determined by the commission under sections 2804 (relating to standards for restructuring of the electric industry) and 2808 (relating to competitive transition charge).

66 Pa. C.S. § 2803.

44. Section 2808 of the Public Utility Code clearly states that CTCs must be paid by customers to PPL within a utility's certificated territory:

> **(a) General rule.**—To provide each electric utility with an opportunity to recover its transition or stranded costs . . . 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.

66 Pa. C.S. § 2808(a). Notably, CTCs must be fully paid to PPL even if a customer installs on-site generation that significantly reduces the customer's purchases of electricity through the transmission and distribution network. Id.

45. The Commission authorized the imposition of CTCs in an amount sufficient to permit PPL to recover the full amount of its stranded costs on the bill of every customer of electric services within PPL's certificated territory on the effective date of the Competition Act, including customers who enter PPL's certificated territory after that date. See Final Order, at 9. The Commission extended the period of payment through December 31, 2009. Upon issuance of the transition bonds and commencement of the collection of ITC charges, see supra ¶¶ 33-35 & 37, PPL reduced the CTCs paid by customers by a proportionate amount, as required by the Final Order. See Final Order, ¶ 10.

46. Contrary to the representations of Olyphant, the Industrial Park customers remain within PPL's certificated territory today and were within PPL's certificated territory on the effective date of the Competition Act (i.e., January 1, 1997). See supra ¶¶ 4-9 & 20. Pursuant to 66 Pa. C.S. § 2808 and the Commission's orders, these customers are obligated to pay CTCs owed to PPL in accordance with PPL's tariff.

47. In addition, even if an Industrial Park customer were to receive distribution service from Olyphant in the future, that customer would still be accessing PPL's transmission network, which delivers all power purchased by Olyphant. Such a customer would remain obligated to pay CTCs directly to PPL in accordance with PPL's tariff, as required by 66 Pa. C.S. § 2808(a).

48. Pursuant to the Commission's orders, PPL is authorized to collect such charges. Final Order, ¶ 9. Furthermore, the obligation to collect CTCs remains with PPL and another entity providing electric service in place of PPL does not assume any collection obligation with respect to CTCs. Compare Final Order, ¶ 9 with id. ¶ 17.

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission enter an order declaring that:

(1) the Industrial Park in Olyphant is within PPL's certificated service territory and only the Public Utility Commission, not Olyphant, can require PPL to abandon its certificated service to PPL customers within Olyphant;

(2) any retail customer of PPL in Olyphant must continue to pay intangible transition charges previously imposed by this Commission, during the period in which transition charges are being collected, even if such customer were, in the future, to receive electric service from Olyphant instead of PPL; and

(3) any retail customer of PPL in Olyphant must continue to pay competitive transition charges previously imposed by this Commission, during the period in which transition charges are being collected, even if such customer were, in the future, to receive electric service from Olyphant instead of PPL.

Respectfully submitted,

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Of Counsel:

Morgan, Lewis & Bockius LLP

Date: October 17, 2002

EXHIBITS

INDEX OF PPL EXHIBITS

Exhibit	Description
1	An Ordinance, *In Re: Application of The Scranton Elec. Co.*, Pennsylvania Public Utility Commission (the "PUC") Docket No. 71229 ("*Scranton*"), September 11, 1946.
2	Application, *Scranton*, November 20, 1947.
3	Order, *Scranton*, June 28, 1948.
4	Certificate of Public Convenience, *Scranton*, June 28, 1948.
5	Resolution of Olyphant Borough Council, December 5, 1978.
6	Resolution #16 of Olyphant Borough Council, December 16, 1997.
7	Letter from Norbert R. Kosciuk, Manager, Olyphant Borough, to F.A. Long, Executive Vice-President and C.O.O., PPL Corporation, April 25, 2001.
8	Letter from Michael Wargo, Jr., Mayor, Olyphant Borough, to Business Owner in Mid-Valley Industrial Park (undated).
9	Letter from C.J. Mustacchio, Olyphant Borough Solicitor, to WEA Manufacturing, March 15, 2001, attaching March 14, 2001 letter from Charles Wheatley, Jr., Wheatley and Ranquist, to Norbert R. Kosciuk, Manager, Olyphant Borough.
10	Brief in Support of Motion to Intervene by Mid-Valley Industrial Park Electric Consumers, *Borough of Olyphant v. PPL Corporation, et al.*, No. 3:CV-01-2308, United States District Court for the Middle District of Pennsylvania, April 5, 2002.
11	Final Order, Pennsylvania Public Utility Commission, Docket No. R-00973954, August 27, 1998.
12	Order, Pennsylvania Public Utility Commission, Docket No. R-00994637, May 21, 1999.

AN ORDINANCE

AN ORDINANCE GRANTING A FRANCHISE AUTHORIZING AND PERMITTING THE SCRANTON ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN AND OPERATE POLES, WIRES AND ELECTRIC APPLIANCES FOR THE DISTRIBUTION AND TRANSMISSION OF ELECTRIC CURRENT ON, UNDER AND THROUGH THE STREETS, ALLEYS, LANES, HIGHWAYS AND PUBLIC AREAS, AND TO SELL, DISTRIBUTE AND TRANSMIT ELECTRIC CURRENT, WITHIN THE LIMITS OF THE BOROUGH OF OLYPHANT, COUNTY OF LACKAWANNA, AND STATE OF PENNSYLVANIA; SUBJECT TO THE LIMITATIONS THEREIN CONTAINED.

BE IT ORDAINED by the Borough Council of the Borough of Olyphant, at a special meeting, and it is hereby ordained by authority of the same:

SECTION 1: That The Scranton Electric Company, its successors and assigns, is hereby granted a franchise and permission to construct, operate and maintain in, on and over, under and along any and all of the streets, highways, lanes, alleys, and public areas or places, within the Borough of Olyphant, County of Lackawanna, State of Pennsylvania, such poles, wires, cross-arms, conduits and appliances, as may be necessary or appropriate for the supply and distribution of electric current and electric energy, for lighting, heat, power and any other purpose for which electric current or energy is now or may hereafter be used, and for the transmission of the same within, through or across said Borough.

SECTION 2. That The Scranton Electric Company, its successors and assigns, is hereby granted a franchise and permission to sell, supply, transmit and distribute electric current or electric energy for power purposes to certain individuals, partnerships or corporations, within the territorial limits of the Borough, whose load

APPLICANT'S EXHIBIT "A"

requirements exceed one hundred horsepower, or, with the consent of the Borough, to those whose load requirements are less than one hundred horsepower; and to sell, supply, transmit and distribute electric current for electric lighting to such individuals, partnerships or corporations.

SECTION 3. That nothing herein contained shall be construed as a franchise or permission to The Scranton Electric Company, its successors or assigns, to sell, supply, transmit or distribute electric current or electric energy for lighting purposes generally to the inhabitants of the said Borough.

SECTION 4. All ordinances, or parts of ordinances, inconsistent herewith are hereby repealed.

ORDAINED AND ENACTED into an Ordinance the 11th day of September, 1946.

(S) WILLIAM FEDORCHAK
President of Council

ATTEST:

(S) JOSEPH SAKKO
Secretary

Approved the 11th day of September, 1946.

(S) EDWARD J. BURKE
Burgess

BEFORE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: Application of The Scranton Electric Company for approval of the beginning of the exercise of the right, power or privilege of selling, supplying, transmitting, and distributing electric current and electric energy for power purposes to such individuals, partnerships, or corporations within the territorial limits of the Borough of Olyphant whose load requirements exceed 100 H.P. or, with the consent of the Borough of Olyphant, to such persons whose load requirements are less than 100 H.P. on the demand of such persons, individuals, partnerships or corporations, and to sell, supply, transmit and distribute electric current for electric lighting to such individuals, partnerships or corporations, not including the sale, supply, transmission or distribution of electric current or electric energy for lighting purposes generally to the inhabitants of said Borough of Olyphant; and to construct, operate and maintain in, on and over, under and along any or all of the streets, highways, lanes, alleys, and public areas of places within the Borough of Olyphant, County of Lackawanna, State of Pennsylvania, such poles, wires, crossarms, conduits and appliances, as may be necessary or apropriate for the supply and distribution of electric current and electric energy for electric lighting, heat, power and any other purpose for which electric current or electric energy may now or hereafter be used, and for the transmission of the same within, through or across said Borough.	APPLICATION DOCKET NO. 71229 1947

Re. 47532 - O'Malley, Harris & Harris
Rec'd 11/15/47
Pet. Ord. & Pub. Ltr.

TO PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. The name and address of applicant are: The Scranton Electric Company, Scranton Electric Building, 507-509 Linden Street, Scranton, Pennsylvania.

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APPLICATION
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2. The name and address of applicant's attorneys are: O'Malley, Harris, Harris & Warren, 700 Scranton Electric Building, Scranton, Pennsylvania.

3. The nature and character of the service to be rendered is: The sale, supply, transmission and distribution of electric current or electric energy for power purposes to such individuals, partnerships or corporations within the territorial limits of the Borough of Olyphant whose load requirements exceed 100 H.P. or, with the consent of the Borough of Olyphant, to such persons whose load requrements are less than 100 H.P., on the demand of such person, persons, individuals, partnerships or corporations, and to sell, supply, transmit and distribute electric current for electric lighting to such individuals, partnerships or corporations, not including the sale, supply, transmission or distribution of electric current or electric energy for lighting purposes generally to the inhabitants of said Borough of Olyphant; and to construct, operate and maintain in, on and over, under and along any or all of the streets, highways, lanes, alleys, and public areas or places within the Borough of Olyphant, County of Lackawanna, State of Pennsylvania, such poles, wires, crossarms, conduits and appliances, as may be necessary or appropriate for the supply and distribution of electric current and electric energy for electric lighting, heat, power and any other purpose for which electric current or electric energy may now or hereafter be used, and for the transmission of the same within, through or across said Borough.

The population of the Borough of Olyphant is 9,252, according to the United States Census of 1940.

The municipal authorities of the Borough of Olyphant have granted to the applicant, The Scranton Electric Company, a franchise and permission to exercise the rights, powers, and privileges hereinbefore described in paragraph 3, by ordinance enacted the 11th day of September, 1946, approved by the Burgess on the same date The said ordinance was accepted by the applicant on September 25, 1946, and was filed with the Public Utility Commission in October of 1946, and is indexed P.U.M.C. 1433. Proceedings are now pending before the Public Utility Commission against the Borough of Olyphant and The Scranton Electric Company to determine the reasonableness, legality, or any other matters affecting the validity of the ordinance-agreement.

A copy of the said ordinance is attached hereto as Applicant's Exhibit "A".

4. Applicant will employ, in furnishing the proposed service, the following facilities: The facilities contemplated will be the usual transmission lines to be installed within the Borough of Olyphant when necessary to furnish power to customers in accordance with the ordinance of the Borough of Olyphant and in accordance with this application. There is at the present time no pending demand by any proposed power consumer for any installation of facilities for the supply of electric energy. It is, therefore, impossible to state more definitely the probable time when service will be furnished, because it depends entirely on a potential demand by a consumer. For the same reason, it is impossible to estimate the cost of such facilities.

5. It is proposed to finance the contemplated service from current treasury funds, in the same manner as other extensions of distribution lines are financed in order to furnish service to consumers.

6. No corporation, partnership or individual is now furnishing or has the corporate or franchise right to furnish, service similar to that desired to be rendered by the applicant in the territory covered by this application, and no competitive conditions will be created thereby, except as follows: The Borough of Olyphant owns and has in the past operated a municipal electric plant for the generation of electric current and electric energy, and such energy was sold to the inhabitants of the Borough of Olyphant for lighting purposes and to users of small amounts of power. The municipal plant was shut down in the fall of 1946, for necessary repairs, but was, and after repairs will be, inadequate to supply consumers whose load requirements exceed 100 H.P. Pending repairs to the municipally owned electric light plant, the Borough of Olyphant is purchasing electric energy from The Scranton Electric Company, in accordance with the terms and conditions, and at the rates established by the tariff schedules of The Scranton Electric Company on file with the Public Utility Commission.

7. No further development is planned or in contemplation, other than the furnishing of electric current and electric energy to consumers within the Borough of Olyphant who may desire to purchase electric energy or power in excess of 100 H.P., or a lesser amount, if the Borough of Olyphant gives its consent, in accordance with the terms of the said ordinance; and other than the construction of such distribution lines and facilities as may be required to furnish such consumers, or for the transmission of electric energy in and through the Borough of Olyphant.

8. The applicant has the franchise, right and privilege of selling electric power and electric energy in contiguous municipalities, namely: Borough of Dunmore, Borough of Throop, Borough of Dickson City, and Borough of Winton, and under its franchises and corporate charters authorizing sale and distribution of electric current and electric energy in such municipalities, has the franchise, right and privilege to sell and transmit such electric current and electric energy in adjacent territory, which includes the said Borough of Olyphant.

9. Approval of the application is necessary or proper for the following reasons: As required by the Public Utility Act of 1937, P.L. 1053, Article 2, Section 202 (c), as amended by the Act of 1939, P.L. 419, Section 1, Purdon's Annotated Statutes Title 66, Section 1122 (c).

WHEREFORE, applicant prays your Honorable Commission to issue a certificate of public convenience as follows: Approving of the beginning of the exercise of the right, power or privilege of selling, supplying, transmitting, and distributing electric current and electric energy for power purposes to such individuals, partnerships, or corporations within the territorial limits of the Borough of Olyphant whose load requirements exceed 100 H.P. or, with the consent of the Borough of Olyphant, to such persons whose load requirements are less than 100 H.P., on the demand of such person, persons, individuals, partnerships or corporations, and to sell, supply, transmit and distribute electric current for

electric lighting to such individuals, partnerships or corporations, not including the sale, supply, transmission or distribution of electric current or electric energy for lighting purposes generally to the inhabitants of said Borough of Olyphant; and to construct, operate and maintain in, on and over, under and along any or all of the streets, highways, lanes, alleys, and public areas or places within the Borough of Olyphant, County of Lackawanna, State of Pennsylvania, such poles, wires, crossarms, conduits and appliances as may be necessary or appropriate for the supply and distribution of electric current and electric energy for electric lighting, heat, power and any other purpose for which electric current or electric energy may now or hereafter be used, and for the transmission of the same within, through or across said Borough.

THE SCRANTON ELECTRIC COMPANY

By C. F. Nagle
President

COMMONWEALTH OF PENNSYLVANIA (
(SS:
COUNTY OF LACKAWANNA (

C. F. NAGLE, being duly sworn according to law, deposes and says that he is President of The Scranton Electric Company, that he is authorized to and does make this affidavit for it; and that the facts set forth above are true and correct to the best of his knowledge, information and belief, and he expects the said The Scranton Electric Company to be able to prove the same at the hearing hereof.

C. F. Nagle

Sworn and subscribed to
before me this 31st.
day of October, 1947.

Loretta Dorsey
Notary Public

My commission expires: March 6, 1951.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application Docket No. 71229

In re: Application of THE SCRANTON ELECTRIC COMPANY - For approval of the beginning of the exercise of the additional right, power or privilege of supplying electric service to consumers within the Borough of Olyphant, whose load requirements exceed 100 HP, and with the consent of the said borough, to consumers whose load requirements are less than 100 HP in the Borough of Olyphant, Lackawanna County.

O R D E R

BY THE COMMISSION, JUNE 28, 1948:

The Scranton Electric Company filed this application with the Commission November 20, 1947, seeking approval of the beginning of the exercise of the right to supply electric service to consumers within the Borough of Olyphant, whose load requirements exceed 100 HP, and with the consent of the borough authorities, to other consumers.

Since October 2, 1946, petitioner has supplied the entire electric requirements of the Borough of Olyphant Municipal System and now desires to supply industrial customers within the borough with loads of 100 HP direct from its lines, thereby providing more reliable service to such prospective customers.

Hearing was held at Scranton on February 3, 1948, at which time witnesses were presented by both the petitioner and the Borough of Olyphant.

Upon full consideration of all the matters and things involved, we find and determine that the granting of said petition is necessary or proper for the service, accommodation, convenience or safety of the public and that a certificate of public convenience issue; THEREFORE,

IT IS ORDERED: That the application of The Scranton Electric Company for approval of the beginning of exercise of the additional right, power or privilege of supplying electric service to consumers within the Borough of Olyphant, whose load requirements exceed 100 HP,

RECORD FOLDER

and with the consent of the said borough, to consumers whose load requirements are less than 100 HP in the Borough of Olyphant, Lackawanna County, be and is hereby approved and that a certificate of public convenience issue evidencing such approval.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

J. Lawrence Higgins, Jr.
Chairman

ATTEST:

J. A. Walter
Secretary

Commissioner Morgal being absent did not participate in the vote on this order.

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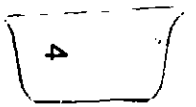

PENNSYLVANIA

A. 71229 PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE APPLICATION OF

THE SCRANTON ELECTRIC COMPANY, under Section 202(c), Article II, of the Public Utility Law, for approval of the beginning of the exercise of the additional right, power or privilege of supplying electric service to consumers within the Borough of Olyphant, whose load requirements exceed 100 HP, and with the consent of the said borough, to consumers whose load requirements are less than 100 HP in the Borough of Olyphant, Lackawanna County.

CERTIFICATE
OF
PUBLIC CONVENIENCE

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing had on the above entitled application, it has, by its report and order made and entered, a copy of which is attached hereto and made a part hereof, found and determined that the granting of said application is necessary or proper for the service, accommodation, convenience and safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

In Testimony Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 28th day of June, 1948.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Attest:

John Lizzus Jr
Chairman

J. A. Walter
Secretary

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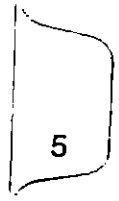
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RESOLUTION

WHEREAS, the United States Department of Housing and Urban Development has approved a grant for the development of the Mid-Valley Industrial Park; and

WHEREAS, the financial responsibility for the building of access roads, water and sewer lines for the Industrial Park will be with the Borough of Olyphant in which the park is primarily located; and

WHEREAS, manufacturing plants being located in the Mid-Valley Industrial Park will have need for electrical power; and

WHEREAS, the cost of furnishing such power will exceed a quarter of a million dollars; and

WHEREAS, the Borough of Olyphant Council and its Light Committee are financially unable to furnish the electrical power needed for the Mid-Valley Industrial Park; and

WHEREAS, the Pennsylvania Power and Light Company has indicated willingness to furnish these electric power facilities to the Mid-Valley Industrial Park.

NOW, THEREFORE be it Known this Resolution to cover only the Mid-Vallry Industrial Park.

RESOLVED, and it is resolved by the Olyphant Borough Council and by its Olyphant Borough Light Committee that the Pennsylvania Power and Light Company be and is hereby authorized to furnish the electrical power needed for the Mid-Valley Industrial Park and to expend any funds necessary to meet the electrical power needs of any and all manufacturing plants making use of the said Mid-Valley Industrial Park, and, further, to handle all of the necessary billing for such electrical service through its own facilities and not through those of the Olyphant Borough Light Committee. The responsible officials of the Borough of Olyphant are hereby authorized to notify the

Pennsylvania Power and Light Company of this decision by forwarding to them a certified copy of this resolution which is hereby adopted unanimously at a regular meeting of Olyphant Borough Council held on Tuesday, December 5, 1978, at 8:00 P.M. in the Olyphant Borough Building at which regular meeting a quorum was present and a roll call was had indicating that all of the members of Council voted in favor of the resolution.

President, Olyphant Borough Council

Attest:

Secretary

Certification

I, Joseph McNamara, Borough Secretary, certify that the above resolution was unanimously adopted by Borough Council at a regular meeting held Tuesday, December 5, 1978, and the resolution was made part of the minutes of that meeting..

Secretary

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RESOLUTION #16 of 1997

A RESOLUTION OF THE BOROUGH OF OLYPHANT, LACKAWANNA COUNTY, COMMONWEALTH OF PENNSYLVANIA, DECLINING TO BECOME AN ELECTRICAL GENERATION SUPPLIER TO ELECTRIC CUSTOMERS NOT PRESENTLY SERVED WHO ARE LOCATED OUTSIDE THE BOUNDARIES OF THE BOROUGH OF OLYPHANT AND DIRECTING THE MANAGER OF THE BOROUGH OF OLYPHANT TO ADVISE ELECTRICITY SUPPLIERS ACCORDINGLY.

WHEREAS, the Borough of Olyphant, Lackawanna County, Commonwealth of Pennsylvania, (Hereinafter the "Borough of Olyphant"), is an electricity provider within the limits of the boundaries of the Borough of Olyphant; and

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania has enacted the "Electricity Generation Customer Choice and Competition Act, being a portion of Act 138 of 1996, codified at 66 Pa. C.S.A. Section 2801 et seq. (1996, Dec. 3, P. L. 802, No. 138, Section 4. Effective January 1, 1997) (herein the "Act"); and

WHEREAS, it is in the best interest of the Borough of Olyphant to be the exclusive electric supplier within the Borough Limits of the Borough of Olyphant.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Olyphant, Lackawanna County, Commonwealth of Pennsylvania, and is hereby resolved and adopted by the committee of the same, that the Borough of Olyphant does hereby exercise its rights pursuant to the Act, 66 Pa. C.S.A. Section 2805 (b)(1)(i), to prohibit electrical generation suppliers from serving end-use customers within the Borough Limits of the Borough of Olyphant; and

BE IT FURTHER RESOLVED, that the Borough Manager of the Borough of Olyphant be, and said Manager hereby is, authorized and directed to take such action as may be necessary to advise the Commonwealth of Pennsylvania Public Utility Commission and all appropriate electrical generation suppliers of the foregoing.

Peter P. Kolcharno,
President of Council

Michael Wargo Jr.
Mayor, Borough of Olyphant

ATTEST:

William G. Shigo,
Secretary

CERTIFICATION

NOW, this 16th day of December, 1997, I hereby certify that the foregoing Resolution was adopted at a regular meeting of Council of the Borough of Olyphant where a quorum was present and was passed unanimously and made a part of the minutes of said meeting.

William G. Shigo, Secretary
Olyphant Borough

MEB

RECEIVED
APR 27 2001
EXECUTIVE
VICE PRESIDENT'S OFFICE

Borough of Olyphant

April 25, 2001

Certified Mail:
7099 3400 0003 6966 6985

Mr. F. A. Long
Executive Vice-President and COO
PP&L, Inc.
Two North Ninth Street
Allentown, PA 16101-1179

Re: Mid-Valley Industrial Park in Olyphant

Dear Mr. Long;

This is to advise you that the Borough of Olyphant is undertaking steps to provide electric power from its municipal electric system to users in the Mid-Valley Industrial Park located within the Borough. This action has been authorized by the Pennsylvania Legislature, £2805(b)(1)(i)of the "Electricity Generation Customer Choice and Competition Act", 66 Pa. C.S.A. Section 2802, which authorizes a borough which is engaged in distributing electricity to end-use customers within a borough to prohibit electric generation suppliers from serving such customers within its borough limits. Since the Mid-Valley Industrial Park is within the borough limits, this provision of the Pennsylvania law authorizes the Borough to serve entities located within the Park. The Borough has received confirmation from the Executive Director of the Pennsylvania Public Utilities Commission that it has exclusive rights to serve PP&L's customers within the Borough.

PP&L is presently providing electric service to commercial and industrial customers located in the Mid-Valley Industrial Park in Olyphant pursuant to a 1978 Resolution which the Borough has the right to change at any time. The Borough would like to have negotiations with PP&L as soon as possible to coordinate a cooperative transition in placing our poles and transformers relating to the Borough providing future electric service to the Mid-Valley Industrial Park.

113 Willow Avenue, Olyphant, Pennsylvania 18447-1498
(570) 489-2135

Re: Mid-Valley Industrial Park in Olyphant

As you know, the Borough of Olyphant presently has a wholesale power contract with PP&L whereby has agreed to supply all of Olyphant's capacity and energy requirements for service to its customers in its service area. The Borough now has facilities in place which can provide service to most of the customers in the Park, and contemplates arrangements, which it would like to discuss with PP&L, for obtaining all of its power service from PP&L at 69kv.

Please contact me at (570) 489-8503, as when we can get together with our appropiate legal experts and electrical engineers to coordinate a smooth transition pertaining to this matter.

The Borough has appreciated its long-standing power supply arrangements with PP&L and look forward to their continuation in the future.

Sincerely,

Norbert R. Kosciuk

Norbert R. Kosciuk
Borough Manager

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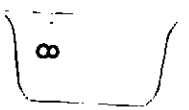

Borough of Olyphant

Mid-Valley Industrial Park Business

Re: BOROUGH OF OLYPHANT SUPPLYING ELECTRIC POWER TO MID-VALLEY INDUSTRIAL PARK BUSINESSES WITHIN IT'S BOUNDARIES

Dear Business Owner:

This is to advise you that the Borough of Olyphant is undertaking steps to provide electric power from its municipal electric system to users in the Mid-Valley Industrial Park located within the Borough. This action has been authorized by the Pennsylvania Legislature. Section 2805(b)(1)(i) of the "Electricity Generation Customer Choice and Competition Act", 66 Pa. C.S.A. Section 2802, authorizes a Borough which is engaged in distributing electricity to end-use customers within the Borough to prohibit electric generation suppliers from serving such customers within its Borough limits. Since the Mid-Valley Industrial Park is within the Borough limits, this provision of the Pennsylvania law authorizes the Borough to serve entities such as your company, located within the Park. The Borough has received confirmation from the Executive Director of the Pennsylvania Public Utilities Commission that it has exclusive rights to serve end-use customers within the Borough.

The Borough of Olyphant presently has a wholesale power contract with PP&L that requires PP&L to supply all of Olyphant's capacity and energy requirements for service to its customers in its service territory. The Borough's contract expressly precludes the imposition of any stranded cost on the Borough relating to the wholesale power purchased by the Borough for its retail customers.

PP&L is presently providing electric service to you and other commercial and industrial customers located in the Mid-Valley Industrial Park in Olyphant pursuant to a 1978 Resolution which the Borough has the right to change at any time. The Borough now has facilities in place which can provide your electric service requirements, and it now desires to provide all of your electric power requirements located within the Borough of Olyphant.

113 Willow Avenue, Olyphant, Pennsylvania 18447-1498
(570) 489-2135
FAX (570) 383-7818

Mid-Valley Industrial Park Business

Re: BOROUGH OF OLYPHANT SUPPLYING ELECTRIC POWER TO MID-VALLEY INDUSTRIAL PARK BUSINESSES WITHIN IT'S BOUNDARIES

We believe that the service and rates for electric power by the Borough to your company will be reliable and reasonable. In order to provide a rate for you, we request that you provide us with a copy of your monthly electric power bills for the past year, as well as any information about any projected increases or decreases in your usage for the next two years. Once we have this information, we will provide you with detailed rates and information for your future power service from the Borough.

If you have any questions, please contact me or the Borough manager, Norbert Kosciuk at 489-8503.

We are looking forward to providing your electricity service for the future.

Sincerely,

Michael Wargo Jr.

Michael Wargo Jr.
Mayor of Olyphant

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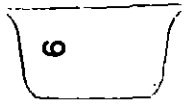

C. J. Mustacchio, Esquire
Attorney at Law

Area Code 570
343-1722
Fax No. (570) 963-5744

Kane Professional Building
Suite 2E
116 North Washington Avenue
Scranton, Pennsylvania 18503

March 15, 2001

WEA Manufacturing
1400 East Lackawanna Avenue
Olyphant, Pennsylvania 18448

Attention: Jeffrey Raider, Esquire

RE: Borough of Olyphant
Electric Power to Mid-Valley Industrial Park

Dear Mr. Raider:

Enclosed find correspondence received from Charles F. Wheatley, Jr., Esquire, dated March 14, 2001. The correspondence provides a well-reasoned explanation as to several points of discussion identified at our March 1, 2001 meeting, including the following:

1.) Exclusive right of Borough to serve electric customers within Borough limits;

2.) Non-applicability of stranded costs or competitive transition charges to Borough or Mid-Valley Industrial Park customer supplied by Borough;

3.) Regulatory jurisdiction; and

4.) Rate caps set by the Electricity Generation Customer Choice and Competition Act.

Also enclosed for your review is Resolution No. 16 of 1997 of the Borough of Olyphant and correspondence of Barbara Bruin, Executive Director, Public Utility Commission, dated April 12, 2000. These documents are self-explanatory and provide an additional basis for the conclusions set forth in the enclosed letter of Mr. Wheatley.

Please review the enclosed and provide comment as you deem appropriate.

Very truly yours,

C. J. MUSTACCHIO, ESQUIRE
Olyphant Borough Solicitor

CJM/meg
Enclosures
cc: Charles F. Wheatley,Jr., Esquire
Norbert Kosciuk

LAW OFFICES
WHEATLEY & RANQUIST
34 DEFENSE STREET
ANNAPOLIS, MARYLAND 21401

(410) 266-7526
(301) 261-8698 (Fax)
IN WASHINGTON, D.C.
(301) 261-8606

March 14, 2001

VIA FACSIMILE & OVERNIGHT COURIER

Mr. Norbert Kosciuk
Borough Manager
Borough of Olyphant
113 Willow Street
Olyphant, PA 18447

Re: Borough of Olyphant Supplying Electric Power To Mid Valley Industrial Park

Dear Mr. Kosciuk:

Pursuant to the request of the Borough Council at a meeting held March 1, 2001, this firm was requested to provide a legal opinion as to whether stranded costs (competitive transition charges) ("CTC") could be assessed by Pennsylvania Power & Light Co,. ("PP&L") against either the Borough of Olyphant or its customers in the Mid Valley Industrial Park upon the Borough taking over the provision of electric power service to industries located within the Park.

It is my opinion under the applicable federal and state laws pertaining to this subject, as well as the existing Settlement Agreement and Power Contract between the Borough and Pennsylvania Power & Light Co. ("PP&L"), approved by the Federal Energy Regulatory Commission, that the Borough has the right to undertake such service and that no such charges can be asserted by PP&L.

1. **Right Of The Borough To Serve All Electric Customers Within The Borough**

The "Electricity and Generation Customer Choice and Competition Act," enacted by the Pennsylvania legislature, effective January 1, 1997, 66 Pa. C.S.A. §2802, authorizes a borough which is engaged in distributing electricity to end-use customers within the Borough

to prohibit electric generation suppliers from serving such customers within its borough limits. Section 2805(b)(1)(i) provides as follows:

> *. . . A borough may prohibit electric generation suppliers from serving end-use customers within its borough limits; however, such a borough shall be prohibited from providing generation service to end-use customers outside of its borough limits which it did not serve prior to the effective date of this Chapter.*

66 C.S.A. §2805(b)(1)(i); emphasis added.

Since the Mid-Valley Industrial Park is completely within the Borough limits, this provision of the Pennsylvania law authorizes the Borough to serve those entities located within that park. The Borough of Olyphant adopted a resolution on December 16, 1997 to exercise its rights under 66 C.S.A. §2805(b)(1)(i) "to prohibit electrical generation suppliers from serving end-use customers within the Borough limits of the Borough of Olyphant."

Based on a decision by the Borough of Olyphant to serve the Industrial Park, the Executive Director of the Pennsylvania Public Utility Commission has confirmed its right to do so:

> . . . Under Section 2805(b), a borough may prohibit electrical generation suppliers from serving end-use customers within its borough limits, so long as it is not providing generation service to end-use customers outside its borough limits . . .
>
> Based upon the information in your letter, it appears that Olyphant Borough has decided to maintain its exclusive rights to serve end-use customers within the borough.

Letter by Barbara Bruin, Executive Director of the Pennsylvania Public Utility Commission to Borough Manager dated April 12, 2000.

The Executive Director's letter confirmed that the Pennsylvania Public Utility Commission has no jurisdiction to address any contractual disputes between the Borough and PP&L:

> . . . You should be aware, however, that the Commission does not have jurisdiction to address contractual disputes between the Borough and PP&L. Therefore, if PP&L claims a contractual right to serve the Industrial Park, that is a matter that would have to be pursued through the civil court system.

There are no contracts between the Borough and PP&L that give PP&L the right to continue providing service to the Industrial Park. The existing Power Supply Agreement between PP&L and the Borough of Olyphant, dated December 8, 1998, expressly requires PP&L to supply all of Olyphant's capacity and energy requirements for service to its customers in its service territory:

> 3. *Sale of Power*. During the term of this Agreement, PP&L shall supply to Olyphant and Olyphant shall purchase from PP&L all of Olyphant's capacity and energy requirements for service to its customers in its service territory (provided that if Olyphant seeks to serve customers beyond its service territory, nothing here shall preclude Olyphant from obtaining a power supply from suppliers other than PP&L for such service).

The provisions of this Contract requires PP&L to provide all of the power required by Olyphant to serve any of its customers within the Borough. Under these terms, PP&L is contractually committed to provide the power at wholesale to Olyphant for it to serve its customers in its service area. The language of the Power Supply Agreement is consistent with Section 2805(b) of the Pennsylvania Electricity Generation Customer Choice and Competition Act which expressly provides that:

> . . .a. Borough may prohibit electric generation suppliers from serving end-use customers within its Borough limits.

2. **No Stranded Costs Are Assessable By PP&L Based On The Borough Of Olyphant Serving The Industrial Park**

The Power Supply Agreement of December 8, 1998 between PP&L and the Borough expressly incorporates, by reference, the Settlement Agreement attached thereto, effective February 1, 1999, between the Borough and PP&L which was approved by the Federal Energy Regulatory Commission. That Settlement Agreement completely resolved the complaint proceeding brought by Olyphant and 14 other Boroughs against PP&L at the Federal Energy Regulatory Commission, Docket No. SC97-1-000, wherein PP&L sought to impose stranded costs against the Boroughs. Article 2.6 of that Settlement Agreement provides as follows:

> . . . PP&L will not seek any stranded cost recovery or exit fee against any of the Parties to this Settlement Agreement, and hereby waives any present or future rights to any such claims. . . .

Since the Power Supply Agreement of December 8, 1998 incorporates the Settlement Agreement, PP&L cannot assert any stranded costs against the Borough for serving any customers within the Borough, to which PP&L is required to provide the wholesale power needed to meet their requirements.

Once the Borough exercises its legal right to serve customers within the Borough located in the Mid-Valley Industrial Park, PP&L has no right to seek to charge a Borough customer for a stranded cost. Since PP&L has expressly recognized in its Power Supply Contract with Olyphant that Olyphant is entitled to acquire all of its power at wholesale to serve its customers within the Borough, and that PP&L has no right to charge any stranded costs to Olyphant for any such power, this Power Contract, together with the incorporated Settlement Agreement, bars PP&L from making any such charge.

Furthermore, as noted above, since the Pennsylvania Electricity Generation Customer Choice and Competition Act, in Section 2805(b), provides that a borough may prohibit electric generation suppliers from serving end-use customers within its borough limits, any CTC provided under that Act to PP&L, would be subject to the Borough's rights. This conclusion is also supported by other provisions of that Act. Section 2802(15) setting

the Policy of the Act, explained that stranded costs, are to be reimposed only on "public utilities" which have an obligation to serve customers "within their defined service area":

> (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; . . . 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. (Emphasis added).

It is also clear from the language of the statute that the "competitive transition charge" only applies to "public utilities" subject to the jurisdiction of the State Commission and does not give that Commission any jurisdiction to determine a CTC for a municipal system, which, as a wholesale customer is subject to the exclusive jurisdiction of the FERC.

Under state law, PP&L had no "defined service territory" to include the Borough of Olyphant because it was serving that area only pursuant to the consent of the Borough pursuant to a resolution adopted by the Borough on December 5, 1978. That resolution provided no set time period for such service, and established no permanent franchise or period of time that PP&L could provide such service.

Other definitions in §2803 also make this clear. "Electric distribution company" is defined as "The public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers . . ." The definition of "Competitive transition charge" refers to "a retail electric customer" of the public utility. The definition of "competitive transition charge" in the state law is limited to a customer "accessing the transmission or distribution network of the public utility." To the extent that the Borough serves entities within the Borough as the Borough's customers, those customers would no longer be customers of PP&L because the Borough itself would be directly responsible for that access for its wholesale supplies of power.

Furthermore, the Act defines "retail electric customer" as a "direct purchaser of electric power." None of the industries within the Industrial Park inside the Borough, after

the Borough commences purchasing wholesale power and reselling that power to them, would then be a "direct purchaser of electric power."

Section 2808 providing for the "competitive transition charge" under state law states the following:

> (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. . . .*

§2808(a); emphasis added. Since the customers are not located in PP&L's certificated territory, but are solely within the Borough subject to the jurisdiction of the Borough, no basis would exist once the Borough commences serving at wholesale to the entity for the imposition of any competitive transition charge.

3. The FERC Has Exclusive Jurisdiction Over Any Claims For Stranded Costs Affecting the Borough's Customers And Its Regulations Bar Any Such Recovery

The FERC, in Order 888-A, has ruled that it has jurisdiction to determine any claims of stranded costs arising from a situation where an existing municipal system takes over service of customers formerly served by a public utility:

> Accordingly, we clarify that this Commission will be the primary forum for addressing the recovery of stranded costs if an existing municipal utility uses the transmission system of its annexed retail customers' former supplier to access new suppliers to serve the annexed load. As long as Commission-required transmission access (the former supplier's open-access tariff or transmission services ordered under FPA section 211) is the vehicle that enables an existing municipal utility to obtain power supplies to serve annexed

> loads, we believe that any costs stranded as a result of this wholesale transmission access are properly viewed as economic costs that are jurisdictional to this Commission . . . .

Order 888-A, ¶31,048 at 31,408-09; *see also*, Order 888-B, ¶61,248 at 62,102.

The Commission's decisions in this regard have been affirmed on appeal in *Transmission Access Policy Study Group v. F.E.R.C.*, 225 F.3d 667, 722-724 (D.C. Cir. 2000), *certiorari granted on other issues sub. nom. New York v. FERC*, U.S. Sup. Ct. No. 00-568 (Feb. 26, 2001). The FERC's regulation providing for the "recovery of stranded costs by public utilities and transmitting utilities", expressly precludes the recovery of any wholesale stranded costs where it is prohibited by a contract or settlement agreement:

> **18 C.F.R. §35.26 Recovery of stranded costs by public utilities and transmission utilities**
>
> * * *
>
> *(c) Recovery of wholesale stranded costs – (1) General Requirement*
>
> A public utility or transmitting utility will be allowed to seek recovery of wholesale stranded costs only as follows:
>
> (i) No public utility or transmitting utility may seek recovery of wholesale stranded costs if such recovery is explicitly prohibited by a contract or settlement agreement, or by any power sales or transmission rate schedule or tariff.

Since the existing Settlement Agreement effective February 1, 1999 between PP&L and the Borough of Olyphant, which is expressly incorporated into the Borough's Power Supply Agreement with PP&L, expressly prohibits PP&L from recovery of any stranded costs from Olyphant, *see* Section 2 at 3-4, *supra*, PP&L has no right to collect any stranded costs once the Borough is serving customers within the Mid-Valley Industrial Park.

4. **The Rate Caps Set by the Electricity Generation Customer Choice and Competition Act Require the Payment of Stranded Costs and Are Subject to Significant Increases That Now Appear Likely**

Section 2804(4) of the Act sets two different caps on electric utility rates for all public utilities subject to the Act. The first cap extended for a period of 54 months from the effective date of the Act, January 1, 1997 (*see* Section 6). Accordingly, that cap would expire as of June 30, 2001. That cap provided as follows:

> (A) the total charges of an electric distribution utility for service to any customer who purchases generation from that utility shall not exceed the total charges that have been approved by the commission for such service as of the effective date of this chapter; . . .

The rates included in PP&L, Inc.'s Rate Schedule LP-5, effective January 1, 2000 for large general service at 69,000 volts or higher, falls within that initial protection cap. Since this cap ends as of June 30, 2001, its benefits are limited.

The second cap approved by Section 2804(4)(ii) extends for another five years, as follows:

> (ii) In addition to the rate cap set forth in subparagraph (i), for a period of nine years from the effective date of this chapter until an electric distribution company is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all customers of an electric distribution system can choose an alternate provider of electric generation, whichever is shorter, the generation component of a utility's charges to customers who purchase generation from the utility, including the competitive transition charge and intangible transition charge, shall not exceed the generation component charged to the customers that has been approved by the commission for such service as of the effective date of this chapter.

The price guarantee for nine years, namely through December 31, 2005 would insure that the rates under Rate Schedule LP-5 would continue through that nine years, but is subject to certain exceptions which allow the company to at any time increase those rates without the consent of the customer. Section 2804(4)(iii) sets forth seven exceptions that would allow PP&L to increase its rates. For example, the rates can be increased for the following:

> (D) The electric distribution utility is subject to significant increases in the unit rate of fuel for utility generation or the price of purchased power that are outside of the control of the utility and that would not allow the utility to earn a fair rate of return. . .
>
> * * *
>
> (F) The electric distribution utility seeks to increase its allowance for nuclear decommissioning costs to reflect new information not available at the time that the utility's existing rates were determined, and such costs are not recoverable in the competitive generation market and are not covered in the competitive transmission charge or intangible transition charge, and such costs would not allow the utility to earn a fair rate of return.

Based on the large increases in natural gas and oil prices in the past year and the rapidly escalating price of purchased power in the PJM Pool, the rates could be increased substantially over their present levels for the remaining period of the nine-year cap.

The Borough of Olyphant's prices under its Power Supply Contract with PP&L and the Settlement Agreement expressly deleted any fuel adjustment clause and are not subject to any such escalations, nor any changes in nuclear decommissioning costs.

Based on the charges set forth in PP&L's Rate Schedule LP-5, even putting aside any of the seven different grounds for unilateral escalation thereof by PP&L through a filing with the state commission, the electricity under LP-5 is substantially higher than the costs for wholesale power that the Borough has under its existing Power Supply Agreement with PP&L. Also, the Borough of Olyphant is part of a 15 Borough group that is one of the largest customers served by PP&L and is in a position to negotiate competitive prices in the

market for firm wholesale electric power which should enable the Boroughs to continue to provide low rates in the future for their customers.

There appear to be substantial savings to the Borough and any industrial customers that the Borough would serve within the Mid-Valley Industrial Park. Based on a comparison of the existing rates being paid by such customers with those available to the Borough as a 69 kV customer under the existing Power Supply and Settlement Agreements with PP&L, the new service would result in lower rates which should prove to be of substantial benefit to the Borough, as well as to the companies taking service in the Park.

CONCLUSION

For the foregoing reasons, we conclude that under the applicable federal and state laws, the Borough of Olyphant has a right to serve all customers within the Mid-Valley Industrial Park, located in Olyphant, and that no stranded costs are assessable by PP&L on the Borough or its customers.

If you have any further questions, do not hesitate to call.

With best regards.

Sincerely,

Charles F. Wheatley, Jr.

CFW:fdd

Charles F. Wheatley, Jr.

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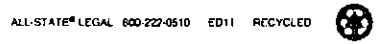

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BOROUGH OF OLYPHANT, PENNSYLVANIA,	:	
Plaintiff,	:	CIVIL ACTION NO. 3:CV-01-2308
v.	:	
	:	(JUDGE JAMES M. MUNLEY)
PP&L, INC., PPL CORPORATION PPL ELECTRIC UTILITIES CORP. PPL GENERATION, LLC	:	
Defendants,	:	

BRIEF IN SUPPORT OF MOTION TO INTERVENE

This action is a dispute about who will be the provider of electric distribution service for the electric consumers located in the Mid-Valley Industrial Park. Each of the Proposed Intervenors is an electric consumer within the Mid-Valley Industrial Park whose electric service is provided by the Defendants and who the Borough now seeks to serve. The Proposed Intervenors presently enjoy a statutory right to choose their electric generation supplier pursuant to the Pennsylvania Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, et seq., the right to be provided electric generation supply services by Defendants at capped rates through December 31, 2009, if they cannot obtain lower-cost supply from an alternate supplier, and the right to be provided electric

distribution and transmission services by the Defendants at capped rates through December 31, 2004. If the Borough prevails on its suit, the Proposed Intervenors will lose these statutory rights and be forced to purchase electric distribution and generation service from the Borough. Because of their significant interest in the litigation, the Motion to Intervene should be granted.

I. FACTUAL HISTORY

General Background

The Borough of Olyphant (the "Borough") purchases electricity from one or more of the Defendants (collectively "PPL") and resells it to certain customers within the Borough limits. Presently, the Borough is the provider of electric distribution and generation service for all of the users in the Borough except for the users located within the Mid-Valley Industrial Park.[1] The fifteen to twenty users in the Mid-Valley Industrial Park have their electric distribution service provided directly by PPL pursuant to contracts with PPL and/or a tariff approved by the Pennsylvania Public Utility Commission ("PUC"), while their electric generation service can be provided by PPL or an alternate electric generation supplier. PPL

[1] The Mid-Valley Industrial Park is located primarily within the Borough limits, but a portion of the Park is located in the Borough of Jessup.

provides the electric distribution and generation service to the Mid-Valley Industrial Park pursuant to: (1) a Certificate of Public Convenience issued by the PUC which grants PPL the right and obligation to supply power to consumers in the Borough; (2) a 1946 Borough ordinance; and (3) a 1978 Borough resolution authorizing PPL to provide power to the consumers in the Mid-Valley Industrial Park. At this point in time, all customers within the Park have chosen to purchase electric generation service from PPL, but they continue to have the flexibility to choose an alternate electric generation supplier at any time.

WEA Manufacturing, Inc. ("WEA"); Dynamic Molding, Inc.; United Fence Supply Company, Inc.; A.L.S. Services, Inc.; Pedmar Incorporated; SimplexGrinnell LP, Rist Construction Inc.; DeSavino & Sons, Inc.; Michael Washo Construction Co. Inc.; and Caines Mechanical Contractors, Inc. (collectively the "MVIP Electric Consumers" or the "Proposed Intervenors") are companies that have facilities within the Mid-Valley Industrial Park that consume electricity. Collectively, the MVIP Electric Consumers use approximately 98% of the electricity used annually at the Mid-Valley Industrial Park. WEA alone uses approximately 110 million kilowatt hours of electricity, roughly 95% of the electricity used annually at the Park, at an annual cost of $4.5 million.

The Right to Shop for An Electric Generation Supplier

Prior to 1997, electric service was provided as a single service comprised of three "bundled" components: generation, transmission, and distribution. In December 1996, the Pennsylvania Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 et. seq., ("Competition Act"), was enacted. The Competition Act separated the three components of electric service and permitted customers to choose among competing electric generation suppliers for the generation component. This right to shop for competitive generation supply was enacted based on policy findings that electricity cost is an important factor for businesses in decisions to locate, expand or retain facilities in this Commonwealth and that the introduction of generation supply competition was necessary "to protect Pennsylvania's ability to compete in the national and international market place for industry and jobs." 66 Pa. C.S. § 2802 (6), (7). The transmission and distribution of electricity continue to be natural monopolies that are regulated by the Federal Energy Regulatory Commission ("FERC") and the PUC.

The Competition Act, however, does not require boroughs that resell electricity to make their distribution systems available to other suppliers that desire to provide competitive electric generation supply to the borough's customers. Specifically, the Act provides that a borough that resells electricity to customers

may prohibit other electric generation suppliers from serving customers within that borough's limits as long as the borough does not begin to provide electric generation services outside of the geographic limits of the borough. 66 Pa. C.S. § 2805(b)(1)(i). In other words, borough customers must purchase both electric distribution service and generation supply service only from the borough. In December 1997, the Borough of Olyphant adopted a resolution stating that it would not provide electric generation service to customers outside of the Borough limits and that it would exercise its right to preclude other electric generation suppliers from serving end-use customers within the Borough. Therefore, the customers who purchase electricity from the Borough of Olyphant do not have the right to choose their electric generation supplier.

Because the MVIP Electric Consumers are not presently customers of the Borough, they enjoy the right to shop for their electric generation service providers, and they have enjoyed this right since January 1, 1999. If the Borough were to become their electricity provider, the MVIP Electric Consumers would lose their right to choose their electric generation service providers.

Rate Caps

The Competition Act also required each public utility to submit to the PUC restructuring plans containing proposed prices and rates for each of the three

unbundled components -- generation, transmission and distribution. 66 Pa. C.S. § 2806(e). If the PUC received objections to a utility's proposed restructuring plan, the dispute was resolved in proceedings before the PUC.

PPL's restructuring plan was extensively litigated before the PUC by various parties, including WEA, one of the Proposed Intervenors, who participated as a member of a group of large commercial and industrial customers known as the PP&L Industrial Customer Alliance. As a result of those proceedings, the PUC entered orders capping the PPL rates for transmission and distribution through December 31, 2004, and capping the PPL rate for generation through December 31, 2009. Until these dates, the PPL charges are capped at level of PPL charges that were in effect on January 1, 1997. The rate caps provide a substantial benefit to customers, including the MVIP Electric Customers, by creating certainty in the electricity component of their production costs for an extended time period.

The provision of the Competition Act that establishes rate caps does not apply to municipal corporations such as the Borough. See 66 Pa. C.S. §§ 2804(4), 102 and 1301. Therefore, if the Borough were to become the electricity supplier for the Mid-Valley Industrial Park, the Borough could charge rates in excess of the PPL capped rates. Each of the MVIP Electric Consumers presently has the right to purchase its electric service from PPL at the PPL capped rates. If the Borough

were to become their electricity supplier, the MVIP Electric Consumers would lose this right and the cost certainty that results from the rate caps.

Stranded Costs

In exchange for the rate caps and the right to shop, the PUC ordered PPL customers to make additional payments to PPL to compensate PPL's "stranded costs." See 66 Pa. C.S. §§ 2803 and 2808. These stranded costs are "[a]n electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would have been 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. The MVIP Electric Consumers have been making stranded costs payments to PPL for approximately three years. WEA alone has paid approximately $3 million in stranded costs payments from January 1, 1999, through March 1, 2002. If the Borough were to become the electric service provider for the MVIP Electric Consumers, they would lose the benefits, namely the right to shop and the rate caps, that they had secured by making the stranded costs payments. Additionally, the Borough cannot guarantee that the MVIP Electric Consumers would be relieved from the obligation

to pay stranded costs to PPL through December 31, 2009, even if the Borough were to become the electric service provider for the Mid-Valley Industrial Park. Therefore, the MVIP Electric Consumers face the risk of having to continue to make stranded costs payments even after they no longer receive the corresponding benefits provided by the Competition Act.

II. PROCEDURAL HISTORY

On December 14, 2001, the Borough of Olyphant (the "Borough") filed a Complaint asserting that PPL had violated federal antitrust laws and had breached a settlement agreement and power contract approved by FERC. As a basis for these claims, the Complaint alleged that PPL had interfered with the Borough's ability to provide electric service to some customers within the Borough. The Complaint also alleged that the Defendants had imposed restrictive conditions on the Borough that made the Borough unable to compete to acquire PPL's customers. The Defendants filed an Answer with Defenses and Counterclaims on February 25, 2002. Approximately one month later, the MVIP Electric Consumers filed a Motion to Intervene in the action. This Brief is filed in support of the Motion to Intervene.

III. STATEMENT OF QUESTIONS INVOLVED

A. SHOULD THE MVIP ELECTRIC CONSUMERS BE PERMITTED TO INTERVENE AS OF RIGHT IN THE INSTANT ACTION, PURSUANT TO FED. R. CIV. P. 24(a)(2)?

(Suggested Answer: YES)

B. IN THE ALTERNATIVE, SHOULD THE MVIP ELECTRIC CONSUMERS BE PERMITTED TO INTERVENE PERMISSIVELY, PURSUANT TO FED. R. CIV. P. 24(b)(2)?

(Suggested Answer: YES)

IV. ARGUMENT

A. The MVIP Electric Consumers Have A Right To Intervene In This Action.

Fed. R. Civ. P. 24(a) describes the circumstances under which a nonparty is entitled to intervention of right. The right to intervene exists when: (1) the non-party applicant has a sufficient interest in the litigation; (2) the interest may be affected or impaired, as a practical matter by the disposition of the action; (3) the interest is not adequately represented by an existing party; and (4) the application for intervention is timely. Pa. R. Civ. P. 24(a)(2); see also, Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc., 72 F.3d 361, 366 (3d Cir. 1995)

(quoting Harris v. Pernsley, 820 F.2d 592, 597 (3d Cir. 1987)). In the instant case, the MVIP Electric Consumers satisfy all four of the requirements necessary for intervention of right.

1. Each of the MVIP Electric Consumers has a sufficient interest in the pending litigation.

Fed. R. Civ. P. 24(a)(2) requires the intervenor to demonstrate "an interest relating to the property or transaction which is the subject of the action...." Fed. R. Civ. P. 24(a)(2). The kind of interest justifying intervention has not been precisely defined, but general guidance has been provided by the courts. Mountain Top, 72 F.3d at 366. The Supreme Court has stated that an intervenor's interest must be "significantly protectable," and the Third Circuit has held that applicant for intervention of right "must demonstrate that there is a tangible threat to a legally cognizable interest ...." Id. (citing Donaldson v. United States, 400 U.S. 517 (1971) and Harris v. Pernsley, 820 F.2d 592, 601 (3rd Cir. 1987)). The interest must be owned by or belong to the proposed intervenor. Id. (citing United States v. Alcan Alum. Co., 25 F.3d 1174 (3rd Cir. 1994)).

In the present case, the Borough has alleged that it seeks to compete with PPL to be the electric distribution and generation service provider for customers within the Borough that are presently served directly by PPL. The Borough,

however, has already adopted a resolution stating that it will prohibit other electric generation suppliers from serving customers within the Borough limits. In short, the Borough does not seek to compete with Defendants; rather, the Borough seeks to become the exclusive electric distribution and generation supplier for all end-users within the Park. If the Borough is granted the relief it seeks in this litigation, then it will become the exclusive electric generation supplier for all customers within the Park.

On the simplest level, the MVIP Electric Consumers have an interest in this litigation because they are among the customers whose electric generation supplier will be determined in this action. More importantly, however, the MVIP Electric Consumers have significant and legally-protectable rights under the Competition Act that are threatened by this litigation. Specifically, they have the right to shop for their electric generation suppliers, the right to purchase electric transmission and distribution from PPL at capped rates through the end of 2004, and the right to purchase electric generation from PPL at capped rates through the end of 2009. All of these rights would be lost if the Borough were to prevail in this action and become the exclusive provider of electric service to the Mid-Valley Industrial Park. The loss of these rights will prevent the MVIP Electric Consumers from seeking the lowest generation rates and will destroy the certainty about the

electricity costs that they MVIP Electric Consumers presently enjoy. Under these circumstances, the Borough's suit presents a clear and tangible threat to important statutory interests of the MVIP Electric Consumers.

Additionally, there is a risk that the MVIP Electric Consumers would have to continue making stranded cost payments even if they no longer enjoyed the corresponding benefits under the Competition Act. The MVIP Electric Consumers also have an interest in this action because they have contracts with PPL that will be disrupted if the Borough becomes the electric service provider for the Mid-Valley Industrial Park. Because this action will affect the statutory and contractual rights of the MVIP Electric Consumers, their interests are sufficient to support intervention of right.

2. The MVIP Electric Consumers' interests may be affected by this litigation.

The second requirement for intervention of right requires that the Court look at the practical consequences of the litigation and consider whether the litigation will "affect or impair" the interests of the applicants for intervention. See Brody v. Spang, 957 F.2d 1108, 1122 (3rd Cir. 1992)(citing Harris v. Pernsley, 820 F.2d 592 (3rd Cir. 1987)). This requirement is met if their "rights may be affected by a proposed remedy." Id.

As explained above, the practical consequence of this litigation is that the MVIP Electric Consumers' electric service provider (for both distribution service and electric generation supply) will be determined. The Borough claims the right to "compete with" the Defendants to provide electric service to the users in the Mid-Valley Industrial Park and the right to buy wholesale electric from Defendants to provide it to those users. In actuality, however, if the Borough were to prevail, it would not "compete with" the Defendants to serve the Park; rather, the Borough would become the sole provider of both distribution service and electric generation supply to the Park and would exclude the Defendants and all other electric generation suppliers. As a result, the MVIP Electric Consumers would lose their right to shop for competitive generation suppliers and would lose the rate cap protections provided in the Competition Act. Manifestly, then, the MVIP Electric Consumers' interests will, as a practical matter, suffer a significant legal effect if the Borough is granted the remedies that it seeks in this action.

3. The MVIP Electric Consumers' interests in the litigation are not adequately represented by the existing parties.

The third requirement for intervention of right requires the Court to determine whether the applicant's interests are not adequately represented by the existing parties. Pa. R. Civ. P. 24(a)(2). The Supreme Court has observed that this

requirement "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal.'" Mountain Top, 72 F.3d at 368 (quoting Trbovich v. United Mine Workers, 404 U.S. 528, 538 n. 10 (1972)). Stated another way, the requirement is satisfied when the applicant for intervention has interests that diverge from the interests of the parties so that the existing parties cannot devote proper attention to the interests of the applicant. See Brody, 957 F.2d at 1123 (citing Hoots v. Pennsylvania, 672 F.2d 1133 (3rd Cir. 1982)).

In the instant case, both of the existing parties are providers of electric service and their interests are, therefore, different from the interests of the MVIP Electric Consumers, all of whom are end-users of electric power. PPL and the Borough have an interest in retaining all aspects of the MVIP Electric Consumers service (i.e., distribution, generation and transmission) and in maximizing the profits from such service. Neither the Borough nor PPL has an interest in representing the interests of the customers within the Mid-Valley Industrial Park. The MVIP Electric Consumers seek to intervene to protect their rights under the Competition Act and their contractual rights with PPL. These interests diverge from the interest of the parties because the Borough and PPL are not primarily interested in ensuring that the MVIP Electric Consumers can continue to shop for

the lowest cost electric generation suppliers and continue to have the option to purchase electric generation supply and distribution at capped rates. These statutory rights permit the MVIP Electric Consumers to access the lowest costs for their electric generation supply, which reduces their costs and enhances their financial viability. Neither the Borough nor PPL has any reason to represent these interests in the litigation.

4. The request to intervene is timely.

With respect to intervention as of right, courts construe the timeliness requirement broadly:

> [S]ince in situations in which intervention is of right the would-be intervenor may be seriously harmed if he is not permitted to intervene, courts should be reluctant to dismiss a request for intervention as untimely, even though they might deny the request if the intervention were merely permissive....
>
> ...[I]ntervention is not precluded merely because of the passage of time between the filing of [the] lawsuit and the application for intervention....

Mountain Top, 72 F.3d at 369. The trial court has discretion in determining whether a request to intervene is timely and should consider three factors: (1) the stage of the proceeding; (2) the prejudice that delay may cause the parties; and (3) the reason for the delay. Id., 72 F.3d at 369 (citing In re Fine Paper Antitrust Litigation, 695 F.2d 494, 500 (3d Cir. 1982)). In Mountain Top, for example, the

Third Circuit found that an application to intervene was timely even though four years had passed since the inception of the litigation. Noting that in appropriate cases "intervention has been allowed even after the entry of a judgment" [citations omitted], the Mountain Top Court found that no prejudice would result from intervention, despite the passage of such a lengthy time, because no depositions had been taken, no dispositive motions had been filed, and no decrees had been entered during the four years the action had been pending. 72 F.3d at 370.

By contrast, the instant action was commenced less than four months prior to the MVIP Electric Consumers' request for intervention. The MVIP Electric Consumers moved promptly to intervene in this action, filing their Motion to Intervene only one month after the Defendants' answered the Complaint. Local Rules 14.1 and 14.2 provide that motions to join additional parties to an action may be made as late as six months after the Defendant's answer to the Complaint is filed. In light of this rule, the MVIP Electric Consumers' Motion to Intervene is timely and was not unreasonably delayed. Furthermore, the proceedings are still in an early stage. As of the filing of this brief, the case management conference has not yet been held and no depositions have been taken. Given the early stage of the litigation, the motion to intervene does not present a risk of prejudicial delay.

Accordingly, the MVIP Electric Consumers have met the timeliness requirement for intervention as of right.

In the present case, the MVIP Electric Consumers satisfy the four requirements necessary for intervention of right. They have significant protectable interests in the action; their interests will, as a practical matter, be affected by the resolution of this action; their interests are not adequately protected by the existing parties; their Motion to Intervene is timely. Therefore, the MVIP Electric Consumers are entitled to intervene as of right in the present action. The Motion to Intervene should be granted.

B. Permissive Intervention Is Appropriate In This Action.

In the event that this Court determines that intervention as of right is not proper in the instant case, the MVIP Electric Consumers request that the Court grant them permissive intervention. Permissive intervention, upon timely application, is allowed "when an applicant's claim or defense and the main action have a question of law or fact in common...." Fed. R. Civ. P. 24(b)(2). In considering a request for permissive intervention, the Court must consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties". A court's inquiry under Rule 24(b)(2) "should be conducted in light of...the competing interests at stake in [the] case." Brody, 957

F.2d at 1125. Among the factors to be considered are whether intervention will unduly delay the case or prejudice the original parties, whether the applicant will benefit by intervening, the nature and extent of the intervenor's interests, whether those interests are adequately represented by other parties, and whether the intervention will significantly contribute to a full development of the underlying factual issues and to a just and equitable adjudication of the legal questions presented. See U.S. Postal Serv. v. Brennan, 579 F.2d 188 (2d Cir. 1978).

As discussed above, the MVIP Electric Consumers' Motion to Intervene was timely. Therefore, the Court need only determine whether the MVIP Electric Consumers seek to assert defenses that raise questions of law or fact that are common to the main action. See Fed. R. Civ. P. 24(b)(2). As demonstrated by the proposed answer attached to the Motion to Intervene, the MVIP Electric Consumers wish to raise many defenses that have also been raised by PPL. These defenses address the central factual and legal issues of the case, including: (1) whether the Borough is permitted to provide electric distribution and generation service to the users in the Mid-Valley Industrial Park and exclude other electric generation providers from doing so; (2) whether the Defendants have the right and obligation to provide electric distribution and generation service to the Mid-Valley Industrial Park; (3) whether the Defendants acted in violation of the antitrust laws;

(4) whether the Defendants actions were proper in light of the Borough ordinance and resolution and the PUC Certificate of Public Convenience which granted PPL the right to serve the Mid-Valley Industrial Park. Furthermore, the proposed intervention will not unduly delay the proceeding because the Proposed Intervenors are prepared to abide by all deadlines established by the Court. Thus, the proposed intervention will not prejudice the rights of the original parties in any way.

The MVIP Electric Consumers seek to intervene because this action will determine who will be their electric service provider and because the resolution of this action threatens to interfere with the statutory and contractual rights that the MVIP Electric Consumers presently enjoy. Their interest is critical because the right to shop for an electric generation supplier and the right to purchase electricity at capped rates permit the MVIP Electric Consumers to reduce their costs and enhance their financial viability. The MVIP Electric Consumers can provide the best articulation of these important issues in this case and their participation will significantly contribute to a full development of the factual and legal issues in this matter. As discussed above, these interests will not be represented in this action in the absence of intervention. As a result, permissive intervention is appropriate and should be granted.

CONCLUSION

For the reasons discussed above, the MVIP Electric Consumers request that this Court enter an order allowing their intervention as of right in the instant action under Fed. R. Civ. P. 24(a)(2). In the alternative, the MVIP Electric Consumers request that the Court grant them permissive intervention pursuant to Fed. R. Civ. P. 24(b)(2).

Respectfully submitted,

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Dated: April 5, 2002

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 27, 1998

Commissioners Present:

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

Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.	: : : :	Docket No. R-00973954

FINAL ORDER

BY THE COMMISSION:

On August 12, 1998 PP&L, Inc. ("PP&L" or the "Company"); the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Office of Trial Staff ("OTS"); the PP&L Industrial Customer Alliance ("PPLICA"); Eric Epstein; Conectiv Energy ("Conectiv"); West Penn Power Company t/a Allegheny Power ("APS"); Mid-Atlantic Power Supply Association ("MAPSA"); PECO Energy Company ("PECO"); Local 1600 of the International Brotherhood of Electrical Workers ("IBEW"); New Energy Ventures ("NEV"); Enron Power Marketing, Inc. ("Enron"); Gilberton Power Company ("Gilberton"); the Anthracite Region Independent Power Producers Association ("ARIPPA"); Schuylkill Energy Resources ("SER"); Pennsylvania Rural Electric Association ("PREA"); Allegheny Electric Cooperative, Inc. ("AEC");

Metropolitan Edison Company and Pennsylvania Electric Company, collectively doing business as GPU Energy ("GPU"); the Pennsylvania Petroleum Association ("PPA"); Environmentalists;[1] and other parties as designated on the signature pages (all such parties collectively referred to as the "Joint Petitioners") submitted a Joint Petition for Full Settlement of PP&L's Proposed Restructuring Plan and Application for a Qualified Rate Order ("Joint Petition"). On August 13, 1998, the Joint Petitioners filed an Addendum which modified the Joint Petition slightly.

The proposed terms and conditions of the Joint Petition represent a comprehensive settlement which resolves all issues on appeal before Commonwealth Court and all issues before the U.S. District Court arising from challenges by the Joint Petitioners to the Commission's final order and reconsideration order regarding PP&L's Application for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code[2].

The Joint Petitioners aver that this comprehensive settlement is in the public interest and, therefore, request that this Commission: (1) approve without modification the proposed settlement as set forth in the Joint Petition and the Addendum; (2) amend our final order, and reconsideration order as necessary to implement the full settlement;

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[1] The following Environmentalists Member Organizations did not participate in the Joint Petition but agree to abide by the terms and conditions contained therein: Sierra Club, Penn PIRG, and Lehigh Greens.

[2] As noted in the certificate of service, copies of the Joint Petition and appendices have been served by PP&L on all parties to the proceeding by overnight mail or hand delivery. In addition, the Joint Petition provides that PP&L will provide written notice of the proposed settlement by letter to its customers, will post notice in its office and on its Internet web page, and will provide notice by news release.

(3) approve the tariff supplements necessary to implement the proposed settlement; (4) issue a Qualified Rate Order authorizing PP&L to securitize up to $2.85 billion of stranded assets and costs as proposed in the full settlement;[3] and (5) approve PP&L's transfer of generation assets. The Joint Petitioners recognize, however, that pursuant to the provisions of Section 703(g) of the Public Utility Code, the Commission is obligated to provide notice of and opportunity to be heard before it may amend a prior order. In our tentative order approving the proposed settlement issued August 13, 1998, we provided for a comment period which closed on August 24, 1998.

In the proposed settlement, all PP&L customers will receive a guaranteed 4% rate reduction effective January 1, 1999, the start date for retail electric generation competition in PP&L's service territory through December 31, 1999, independent of securitization. In addition to the guaranteed rate decreases of 4%, customers shall receive a system-average shopping credit of 3.81 cents per KWH on January 1, 1999, and 4.13 cents per KWH on January 1, 2000, with a steady escalation of the shopping credit throughout the entire recovery period of the Competitive Transition Charges ("CTCs"). Customers that elect to shop for generation shall receive total rate reductions in 1999 equal to the 4% decrease referenced above plus savings produced by the difference between their generation purchase price and their shopping credit. Moreover, given the escalating system average shopping credits of 3.81 cents per KWH in 1999 to 5.02 cents

[3] The Joint Petition originally provided for the securitization of up to $2.97 billion. In the Addendum filed with the Commission this morning, the Joint Petitioners requested the amount to be securitized be reduced by $120 million.

per KWH in 2009 included in the proposed settlement, as well as other specific components of the proposed settlement, the Joint Petitioners expect the development of a competitive market with many alternative electric generation suppliers.

In addition, the settlement terms and conditions provide that PP&L will (1) recover a substantially smaller amount of stranded cost recovery than it claimed before the Commission; (2) transfer its EGS function to a separate corporate affiliate subject to competitive safeguards to insure fair dealing; (3) expand its current universal service programs; (4) accelerate the phase-in to customer choice for all customer classes; (5) educate consumers about restructuring; (6) facilitate funding of sustainable energy and economic development; (7) encourage small renewable energy technologies; and (8) withdraw its actions before Commonwealth Court and its civil complaint before the U.S. District Court challenging the Commission's restructuring orders at Docket No. R-00973954.

The Joint Petitioners, in turn, agree to resolve all objections to PP&L's Restructuring Plan and to withdraw (1) all cases pending before the Commonwealth Court which challenge the constitutionality of the Electric Competition Act and the Commission's Restructuring Order and Reconsideration Order at Docket No. R-00973954, provided that the Joint Petitioners are not barred from raising any factual, legal or contrary positions in other proceedings as long as such positions are not in derogation of this settlement.

The terms of the Joint Settlement include PP&L's application for the issuance of a Qualified Rate Order and the effectiveness of the Joint Settlement is contingent upon issuance of the Qualified Rate Order at the same time the Joint Settlement is approved. Accordingly, we have included, in this order, ordering paragraphs addressing PP&L's request for a Qualified Rate Order.

Comments

We received a number of timely comments as discussed below.

The United States Department of Defense and Federal Executive Agencies ("USDOD"), a party to the restructuring proceeding but not a participant in settlement negotiations and not a signatory to this settlement, filed comments to the settlement, commending the signatories for their efforts and recommending approval of the settlement.

We received many comments the following individual PP&L customers: Joseph A. Quigley; Patricia A. Cecere; Samuel Warner; Ronald W. Fenstermaker; Ronald F. Richards; Orrien O. Griesemer; John Gesiskie; Curtis L. Rohm; Eva H. Garman; Sadie K. Dupler; J. Vincent; Kevin P. McGinnis for Charles P. McGinnis; J. Michael Pressimone; Charles Malseed; Howard L. Snoke; Edward C. Fritchman; John P. Stevens; June V. Boyle; Manus and Hilda Mulherin; Magdalene Kovaschetz; William G. Miller; Man-Fong Cheng and Wing-Chuen Wong; Gloria M. Murray; June and Willard Sites; Thomas W. Parson; Joseph and Betty Scopelliti; Helen I. Grove; Martin E. Trokan; Wayne B.

Jackson; Russ Bubernak; Ron Zeshonski; R.S. Heckman, Jr.; Harold G. Wertman; Martha A. West; June and Richard Leitner; and Marc C. deVillers. In addition, we received one anonymous letter and one telephone call without a follow-up letter.

The individual consumer comments expressed a wide variety of opinion and concern. Many individuals commended PP&L for its presence in the community and its excellent service throughout the years and urged the Commission to increase the amount the Company may recover. Others maintained that PP&L should recover far less than authorized under the settlement, arguing that a four percent (4%) rate reduction was not enough.

Based on the record before us, we believe that the amount reached in settlement is reasonable. PP&L is permitted to recover a slightly greater amount of stranded costs than authorized in the Commission's Restructuring Order of June 15, 1998, while consumers will obtain a 4% guaranteed rate decrease during 1999 and have the protection of a rate cap for an extended period of time. These and other provisions in the settlement package, taken as a whole, represent a fair and reasonable balance of the competing interests involved in this matter.

Several commenters questioned the public policy issues of a set aside for clean energy technology and low-income energy assistance. To the extent the comments recommended eliminating funding for these purposes, they are denied. Encouraging the development of clean energy technology and providing energy assistance to

Pennsylvania's low-income consumers benefits our society as a whole and adheres to the letter and spirit of the Electric Competition Act.

Some commenters requested additional basic information regarding shopping for electric generation service or technical and detailed information regarding what is included in Transition Costs. For those with basic questions regarding how electric competition will be implemented or when you may be eligible to shop, the Commission has established an Electric Competition Hotline at 1-800-782-3228. The people answering this hotline are knowledgeable of the general workings of electric competition. Those with more detailed questions should review the Commission's PP&L Restructuring Order of June 15, 1998 at this docket. The Restructuring Order contains far more detail and explanation of what PP&L may and may not recover than was included in the Joint Settlement or in the orders addressing the settlement.

Conclusion

The proposed settlement set forth in the Joint Petition, the Addendum and its appendices constitutes a comprehensive resolution of the broad array of issues raised by PP&L's restructuring plan under the Electric Competition Act. Consistent with the fundamental goals of that historic legislation, the settlement provides for an orderly transition from the current regulated electric utility structure for generation to a structure under which retail customers will have direct access to a competitive market for the generation of electricity; moreover, and also consistent with the legislation, the settlement

provides for a fair and reasonable recovery of PP&L's transition and stranded costs created by this transition to a competitive market. Despite several comments questioning the wisdom of departing from a regulated environment, we have an obligation to implement electric generation competition in Pennsylvania by year's end. We firmly believe that this area of the industry is ripe for competition and believe that Pennsylvania has created a system which will maximize the benefits associated with competition. Indeed, this settlement contains the following benefits:

- customers will receive a guaranteed rate decrease of 4% during 1999;
- customers will receive a shopping credit that will allow shopping customers to achieve bill savings in addition to the guaranteed rate cuts;
- the size of the shopping credit and other provisions of the settlement will insure that a competitive market for electricity will be created and functioning by January 1, 1999.
- transmission and distribution rates will be capped for an additional three and one-half years (to December 31, 2004);
- the generation rate cap will be extended for an additional four years (to December 31, 2009);
- universal service programs will be expanded, and a sustainable energy fund will promote the development and use of renewable energy and clean energy technologies, energy conservation and efficiency which will benefit the environment;

- substantial litigation and its associated costs and uncertainties will be avoided (the settlement lists eight Commonwealth Court actions and one Federal Court action to be withdrawn as a part of this proposed settlement)

Upon our review of the Joint Petition, the Addendum and the appendices, and the comments thereto, we find that the proposal is in the public interest and therefore should be approved. We note that the Joint Petition has been signed by all of the active parties of record to PP&L's restructuring proceedings. We recognize and appreciate the uncounted hours spent by the participants in preparing this Joint Petition, which presents a negotiated resolution of important and conflicting interests in a practical and enforceable manner. We believe that this settlement represents a difficult, but important step in the advancement of the economies of the area served by PP&L and the Commonwealth, and an historic breakthrough in the creation of retail electric competition in the Commonwealth. At the same time, the Joint Petition continues necessary and important safeguards for utility customers which must be preserved in the public interest.

Upon consideration of the proposed settlement, appendices and addendum, and the comments thereto, we find that the proposed settlement is the public interest; THEREFORE,

IT IS ORDERED:

1. That in consideration of and reliance upon the representations, mutual promises and undertakings of the parties to this proposed settlement, including the express agreement of each signatory to be legally bound by its terms and the certification of each signatory that he

or she has full authority to enter into the settlement and to act on behalf of their respective parties, the terms of the proposed full settlement set forth in the Joint Petition, the Addendum and the appendices shall be and are hereby approved as to each and every one of its terms and conditions and we hereby reconsider and amend our prior orders in these proceedings as necessary to implement the terms of the full settlement. Any issue not specifically addressed in the settlement shall be treated and resolved in accordance with the resolution of that issue adopted by the Commission at this docket in the Restructuring Order entered June 15, 1998, and the Reconsideration Order entered July 9, 1998.

2. That the Commission hereby approves, consistent with the conditions enumerated in the Joint Petition at Paragraph K.2, PP&L's transfer of its EGS function to a separate corporation no later than September 15, 1998. The transfer or assignment may be, in PP&L's discretion, to an entity that is an affiliate or non-affiliate of PP&L. Subject to review and audit of the assets to be transferred, consistent with the spirit of the settlement and the Codes of Conduct, we tentatively grant the approvals, licenses and certificates of public convenience required under the Public Utility Code regarding the transfer or assignment of PP&L's generating assets and liabilities under the settlement, including but not limited to approvals under Chapters 5, 11, 19, 21 and 28 of the Public Utility Code.

3. That all aspects of PP&L's transfer of its generation assets and liabilities and wholesale contracts under the settlement are approved. In addition, we grant the approvals, licenses and certificates of public convenience required under the Public Utility Code

regarding the transfer or assignment of PP&L's generating assets and liabilities under the settlement, including but not limited to approvals under Chapters 5, 11, 19, 21 and 28 of the Public Utility Code.

4. That PP&L's recovery of the transition and stranded costs as set forth in the settlement is just and reasonable and in the public interest and that securitization of up to $2.85 billion of stranded costs as set forth in the settlement is just and reasonable and in the public interest.

5. That the Application of PP&L, Inc. ("PP&L") for the Issuance of a Qualified Rate Order under Sections 2808 and 2812 of the Electricity Generation Customer Choice and Competition Act ("Act"), 66 Pa. C.S. §§2808 and 2812 ("QRO Application") contained in the Joint Petition for Settlement of PP&L Inc.'s Proposed Restructuring Plan, filed on August 12, 1998 (the "Joint Petition"), be, and hereby is, granted, consistent with this Qualified Rate Order.

6. That, to the extent specified this Qualified Rate Order, PP&L's filings, testimony and exhibits submitted to the Commission in conjunction with PP&L's Proposed Restructuring Plan on April 1, 1997, at Docket No. R-00973954 (the "Restructuring Filing"), are hereby incorporated herein by reference.

7. That it is just and reasonable and in the public interest for PP&L to recover from its customers, through Intangible Transition Charges as and to the extent authorized in paragraph 9 of this Qualified Rate Order, up to $2.85 billion of the $2.97 billion of the

Company's Transition or Stranded Costs approved by the Commission for recovery from customers and other Qualified Transition Expenses, as defined in paragraph no. 9, below. The savings from securitization and issuance of transition bonds are provided for in the rates and rate reductions set forth in Section B.1 and Appendix A of the Joint Petition for Full Settlement of PP&L Inc.'s Restructuring Plan and Related Court Proceedings at Docket No. R-00973954 ("Joint Petition") and the further reductions in the CTC/ITC set forth in Section A.5 of the Joint Petition. The aforesaid rates and CTC/ITC reductions constitute full compliance with Sections 2808(e) and 2812(b)(2) of the Electricity Generation Customer Choice and Competition Act. ("Electric Competition") and no further rate adjustment is required.

8. That this Commission authorizes the issuance of Transition Bonds in an aggregate principal amount not to exceed $2.85 billion and finds that the issuance of such amount of Transition Bonds is in the public interest. Provided that the rate reductions specified in the Joint Petition are implemented as provided in paragraph 10 of this Qualified Rate Order, this Commission hereby determines that 75% of all savings that may be accomplished through securitization will be passed on to customers through the rate reductions in paragraph 10, and PP&L is not required to pass on additional savings, and no further rate adjustment is required because the Commission hereby finds that such additional savings have been reflected in the Joint Petition.

9. That this Commission authorizes PP&L to impose on, and collect from its customers, either directly or through bills rendered by electric generation suppliers or any subsequently selected providers of last resort, through non-bypassable charges applied to the bill of every customer of electric services within the geographic area that comprises PP&L's certificated service territory on the effective date of the Act, whether such customer was a customer on the effective date of the Act or became a customer after that effective date, (i) Competitive Transition Charges ("CTCs") as provided in the Joint Petition in an amount sufficient to permit PP&L to recover the full amount of its Transition or Stranded Costs as authorized for recovery by the Commission's approval of the Settlement Petition, and (ii) Intangible Transition Charges in an amount sufficient to recover the aggregate principal amount of Transition Bonds plus an amount sufficient to provide for any credit enhancement, to fund any reserves, and to pay interest, redemption premiums, if any, servicing fees and other fees, and other expenses relating to the Transition Bonds (the Transition or Stranded Costs, which includes principal of and interest on Transition Bonds, costs for credit enhancement, the costs of retiring existing debt and equity, costs of defeasance, servicing fees and other related fees, taxes, costs, charges and expenses permitted to be recovered through the intangible Transition Charges, collectively, the "Qualified Transition Expenses"). The Commission finds that such recovery and the imposition of such CTCs and Intangible Transition Charges are in the public interest and are just and reasonable. The Commission finds that good cause has been shown to extend the payment period for imposing the CTCs and the Intangible

Transition Charges to December 31, 2009. The Intangible Transition Charges shall be collected over periods of time and in such amounts as are necessary to amortize each series and class of Transition Bonds in accordance with the terms thereof, but in no event shall be charged to customers after December 31, 2009. Notwithstanding anything else in the Qualified Rate Order, but subject to the terms of the Joint Petition, the Intangible Transition Charges shall be collected from customers in an amount sufficient to discharge the Transition Bonds in accordance with their terms.

10. Upon the successful issuance of Transition Bonds authorized by this Qualified Rate Order and the imposition of Intangible Transition Charges related thereto, PP&L is directed to implement the following adjustments to its rates: PP&L shall reduce the CTCs imposed on its customers by an amount equal to the Intangible Transition Charges associated with such Transition Bond issuance and PP&L shall reduce the CTCs imposed on its customers by an additional amount necessary to flow through to customers 75% of the net savings achieved as a result of securitization of its Transition or Stranded costs and issuance of Transition Bonds. The reductions specified above shall be implemented on the following terms: (a) upon the issuance of any series of Transition Bonds, a corresponding reduction shall be calculated and implemented corresponding to each such series; (b) the rate reduction shall be applied to bills using the method and allocation set forth in the Joint Petition; and (c) the Intangible Transition Charges associated with the Transition Bonds issued on that date shall be applied to bills simultaneously with the reduction of the CTCs.

11. That the CTCs and the Intangible Transition Charges shall be applied to customer bills using the methodology and allocation set forth in PP&L's QRO Application and its Restructuring Filing, as adjusted by the Joint Petition. Pursuant to Section 2812(b)(5) of the Act, the Commission authorizes PP&L to make annual adjustments (each, an "Annual Adjustment") to the Intangible Transition Charges if collections of such Intangible Transition Charges fall below the amount necessary to ensure the receipt by the assignee of the Intangible Transition Property and the Financing Party of revenues sufficient to recover fully the Qualified Transition Expenses consistent with this Commission's Order; provided, however, that adjustments during the final calendar year of Intangible Transition Charge collection for any series of Transition Bonds shall be done quarterly or monthly, if necessary, in order to ensure full recovery of Intangible Transition Charges. The revenues received by the assignee of the Intangible Transition Property and the Financing Party through the Intangible Transition Charges shall be determined to be sufficient for this purpose if and only if the revenues so received through the Intangible Transition Charges are sufficient to provide for the payment of principal, interest, and acquisition or redemption premiums on the Transition Bonds, to fund any reserves and to pay related credit enhancement, servicing fees and other related fees, costs and charges in accordance with the terms thereof and as consistent with the terms of this Qualified Rate Order and the Joint Petition. For each Annual Adjustment, PP&L shall file with this Commission: (a) an accounting of Intangible Transition Charges received by the assignee of the Intangible Transition

Property and the Financing Party for the previous annual period; (b) a statement of any over- or under-receipts; (c) the charge or credit to be added to Intangible Transition Charges to ensure that the Intangible Transition Charges revenue received by the assignee of the Intangible Transition Property and the Financing Party will be sufficient to amortize the Qualified Transition Expenses in accordance with the amortization schedule for Transition Bonds to be determined at the time of issuance of each series of Transition Bonds, and the corresponding reduction or increase in the CTCs or, if CTCs have not been imposed, PP&L's distribution rates; and (d) any proposal by PP&L to modify the reconciliation methodology. Pursuant to 66 Pa. C.S. §2812(b)(5), this Commission shall finally adjudicate all Annual Adjustments within 90 days of PP&L's Annual Adjustment filing.

12. That this Commission determines that the methodology under which PP&L will recover the Intangible Transition Charges authorized by this Qualified Rate Order satisfies the provisions of 66 Pa. C.S. §2812(g), which require that the methodology not shift inter-class or intra-class and that the methodology maintains consistency with the allocation methodology for utility production plant used by the Commission in PP&L's most recently concluded base-rate proceeding.

13. That this Commission concludes that it is in the public interest to, and authorizes PP&L and any Assignee to, (a) assign, sell, transfer or pledge Intangible Transition Property (such term includes all right, title and interest of PP&L or any

Assignee in this qualified Rate Order) in an amount sufficient to recover all its Qualified Transition Expenses and in all revenues, collections, claims, payments, money or proceeds arising from Intangible Transition Charges pursuant to this Qualified Rate Order to the extent this Qualified Rate Order and the rates and other charges authorized hereunder are declared irrevocable and (b) issue, sell and refinance, in reliance on this Qualified Rate Order, one or more series of Transition Bonds, each series in one or more classes, secured by the Intangible Transition Property created by this Qualified Rate Order; provided that the final maturity of any services of Transition Bonds shall not exceed 10 years from the date of issuance and in no event shall any Transition Bond have a final maturity after December 31, 2009. Notwithstanding the foregoing, PP&L retains sole discretion regarding whether to assign, sell or otherwise transfer Intangible Transition Property created hereby or to issue or cause the Transition Bonds to be issued or refinanced.

14. That PP&L or any Assignee may refinance the Transition Bonds in a face amount not to exceed the unamortized principal thereof. That, if PP&L or any Assignee refinances the Transition Bonds, the Intangible Transition Charges authorized in this Qualified Rate Order shall be adjusted in accordance with the true-up mechanism described in paragraph 11 of this Qualified Rate Order to ensure the receipt by the Transition Bond Assignee of revenues sufficient to pay all Transition or Stranded costs of PP&L approved by the Commission for recovery under Sections 2804 (relating to standards for restructuring of electric industry) and 2808 (relating to competitive

transition charge), through the issuance of Transition Bonds; the reasonable costs of retiring existing debt or equity capital of the electric utility or its holding company parent, including accrued interest and premiums upon acquisition or redemption of equity or debt, costs of defeasance, and other related fees, costs and charges relating to, through the issuance of Transition Bonds or the assignment, sale or other transfer of Intangible Transition Property; and the costs incurred to issue, service or refinance the Transition Bonds, including accrued interest and acquisition or redemption premium, and other related fees, taxes, costs and charges, or to assign, sell or otherwise transfer Intangible Transition Property. This amount will not exceed the $2.85 billion permitted to be securitized under the Joint Settlement. The revenues received by the Transition Bond Assignee through the Intangible Transition Charges shall be determined to be sufficient for this purpose if and only if the revenues so received through the Intangible Transition Charges provide for the amortization of Transition Bonds in accordance with the amortization schedule set forth in any prospectus or other offering document provided to the holders of the refinanced bonds after payment of interest, reserves, all Transition or Stranded costs of PP&L approved by the Commission for recovery under Sections 2804 (relating to standards for restructuring of electric industry) and 2808 (relating to competitive transition charge), through the issuance of Transition Bonds; the costs of retiring existing debt or equity capital of the electric utility or its holding company parent, including accrued interest and premiums upon acquisition or redemption of equity or debt, costs of defeasance, and other related fees, costs and charges relating to, through the

issuance of Transition Bonds or the assignment, sale or other transfer of Intangible Transition Property; and the costs incurred to issue, service or refinance the Transition Bonds, including accrued interest and premiums upon acquisition or redemption of equity or debt, and other related fees, costs and charges, or to assign, sell or otherwise transfer Intangible Transition Property.

15. That this Commission directs that PP&L use the proceeds from the assignment, sale, transfer or pledge of Intangible Transition Property and the issuance and sale of Transition Bonds principally to reduce PP&L's Transition or Stranded costs as set forth in the Settlement Petition and to reduce related capitalization. The Commission authorizes PP&L to reduce PP&L's existing capitalization through retirement of outstanding debt and preferred stock and through stock buy backs, dividends and market purchases of common stock in such proportions as PP&L determines.

16. That PP&L shall file with this Commission, no later than 120 days after the issuance of refinancing of Transition Bonds, a description of the final structure of each issuance or refinancing of such Transition Bonds, including the principal amount, the price at which each such series and/or class of Transition Bonds was sold, payment schedules, the interest rate and other financing costs, and the final plans for PP&L's use of the proceeds of such offering. Notwithstanding such filing, the final structure of each such issuance of refinancing shall not be subject to change or revision by this Commission after the date of such issuance or refinancing.

17. That, to the extent that PP&L, or any Assignee, assigns, sells, transfers, or pledges any interest in the Intangible Transition Property created hereby, this Commission authorizes PP&L to contract, for a specified fee, with such Assignee for PP&L, its successors or assigns to continue to operate the system to provide electric services to PP&L's customers, to impose and collect the applicable Intangible Transition Charges for the benefit and account of the Assignee, to make periodic adjustment of Intangible Transition Charges contemplated under paragraph 11 of this Qualified Rate Order, and to account for and remit the applicable Intangible Transition Charges to or for the account of the Assignee free of any charge, deduction or surcharge of any kind (other than the specified contractual fee referred to above). This Commission also authorizes PP&L to contract with the Assignee and an alternative party, which may be a trustee, that the alternative party will replace PP&L under its contract with the Assignee and perform the obligations of PP&L contemplated in this Qualified Rate Order. The obligations of PP&L (a) shall be binding upon PP&L, its successors and assigns and (b) shall be required by this Commission to be undertaken and performed by PP&L and any other entity which provides transmission and distribution services to a person that was a customer of PP&L located within PP&L's certificated territory on January 1, 1997, or that became a customer of electric services within such territory after January 1, 1997, and is still located within such territory, as a condition to providing service to such customer or municipal entity providing such services in place of PP&L by PP&L or other entity.

18. That this Commission hereby declares that paragraphs 5 through 21 this Qualified Rate Order shall be irrevocable for purposes of Section 2812 of the Public Utility Code, 66 Pa. C.S. §2812, and accordingly agrees that it will not directly or indirectly, by any subsequent action, reduce, postpone, impair or terminate this Qualified Rate Order or the Intangible Transition Charges authorized to be imposed or collected under this Qualified Rate Order. This Commission further declares that the right, title and interest of PP&L and any Assignee in this Qualified Rate Order and the Intangible Transition Charges, the rates and other charges authorized hereby and all revenues, collections, claims, payments, money or proceeds of or arising from the same constitutes Intangible Transition Property. PP&L shall have the irrevocable right to issue Transition Bonds in accordance with this Qualified Rate Order until December 31, 2009.

19. That PP&L may apply to the Commission for supplements to this Qualified Rate Order, not inconsistent with the terms and provisions hereof and the Settlement Petition, as PP&L deems necessary to enable the issuance of Transition Bonds authorized hereunder.

20. That during some or all of the period during which the Intangible Transition Charges and the CTCs approved by this Qualified Rate Order are being collected, the generation component of PP&L's charges to customers will be limited by the provisions of 66 Pa. C.S. §2804(4) (pertaining to rate caps) and the provisions of the Joint Petition. For purposes of 66 Pa. C.S. §2804(4)(ii), the generation component of

PP&L's charges includes CTCs, Intangible Transition Charges, and other generation charges. If the combined total of these elements would cause the generation component of PP&L's charges to exceed the rate cap specified in 66 Pa. C.S. §2804(4) and the Joint Petition, PP&L shall retain whatever right it may have under the existing provisions of the statute as limited by the Joint Petition to request relief from the rate cap, but if it does not seek such relief, or that relief is denied, PP&L shall adjust the non-securitized elements of its generation charges, rather than the Intangible Transition Charges approved by this Qualified Rate Order, to bring the charges into compliance with the rate cap provisions of 66 Pa. C.S. §2804(4) and the Joint Petition.

21. That all regulatory approvals within the jurisdiction of the Commission that are necessary for the securitization of Qualified Transition Expenses and all related transactions contemplated in PP&L's Application for a Qualified Rate Order, including but not limited to any approvals under Chapters 11 and 19 of the Public Utility Code, are hereby granted.

22. That the tariff supplements appended to the Joint Petition and all other appendices are hereby approved, being necessary to implement the full settlement, and shall become effective pursuant to the terms set forth in the Joint Petition and the Addendum.

23. That pursuant to 52 Pa. Code §1.2(c), the Commission hereby waives the requirements of its regulations at 52 Pa. Code as necessary and appropriate to implement the joint petition and this final order.

24. That a copy of this final order shall be served upon all parties to PP&L's restructuring proceeding at Docket No. R-00973954 and upon those who provided comments to our Tentative Order.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 27, 1998

ORDER ENTERED: AUG 27 1998

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265

Public Meeting held May 21, 1999

Commissioners Present:

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

Petition of PP&L, Inc. for Issuance of a Supplemental Qualified Rate Order Under Sections 2808 and 2812 of the Public Utility Code.

Docket Number:
R-00994637

ORDER

BY THE COMMISSION:

On April 1, 1999, PP&L, Inc. (PP&L) filed the above-docketed petition (Petition) for the issuance of a supplemental Qualified Rate Order (QRO) under Sections 2808 and 2812 of the Public Utility Code. Pertinent portions of the Petition are attached as Exhibit A. A copy of the Petition was served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, and all active parties in PP&L's restructuring proceeding at Docket No. R-00973954.

On August 27, 1998, we entered a Final Order at Docket No. R-00973954 (Final Order), approving the settlement of PP&L's Restructuring Proceeding under the Electricity Generation Customer Choice and Competition Act of December 3, 1996 (Competition Act). As part of the Final Order, we issued a QRO (Initial QRO) authorizing PP&L to issue, through December 31, 2009,

Transition Bonds in an aggregate principal amount not to exceed $2.85 billion. The Final Order provided that PP&L may apply to the Commission for supplements to the initial QRO, not inconsistent with the terms and provisions approved in the Final Order, as PP&L deemed necessary to enable the issuance of Transition Bonds.

Through the instant Petition, PP&L is seeking to supplement and clarify certain provisions of the Initial QRO which relate primarily to the computation, design, and reconciliation of Intangible Transition Charges (ITCs) that are intended to provide for collection of amounts needed to pay Qualified Transition Expenses (QTEs) incurred in connection with the issuance of Transition Bonds. PP&L is also seeking Commission approval for a financing structure for the Transition Bonds that it believes will be adequate to achieve a AAA-rating, with reasonable credit enhancements.

On April 21, 1999, the Office of Consumer Advocate (OCA) filed an answer to PP&L's Petition and the Mid-Atlantic Power Supply Association (MAPSA) filed a Petition to Intervene in the proceeding. On April 22, 1999, the Commission on Economic Opportunity (CEO) filed comments to PP&L's Petition and on April 30, 1999, PP&L Industrial Customer Alliance (PPLICA) filed a Petition to Intervene in the proceeding. Also, several PP&L customers wrote letters commenting on certain provisions of the Petition.

The OCA contends in its answer to the Petition, that PP&L's proposal regarding reconciliation and adjustment may result in a double count of both uncollectible and payment lags and submits that PP&L's proposal to address the rate cap requires further clarification to ensure consistency with the Settlement and the Act. The OCA also argues that PP&L's request to service its bonds for a $2 million

per year fee is unsupported in the filing, and that certain aspects of PP&L's General Account should be clarified to ensure that interest earned on this ratepayer funded account is used to the benefit of the ratepayer. The CEO maintains that PP&L should receive a reasonable fee for servicing the Transition Bonds only if PP&L commits to managing the assets of the Sustainable Energy Fund at no additional cost. The specific issues of the OCA and the CEO are incorporated in the discussion below.

On several occasions, PP&L, OCA, MAPSA, the CEO, and the PPLICA met to discuss possible settlement of this proceeding. As a result of these discussions, the above-parties reached a settlement of all issues and entered into a Settlement Agreement that was received by this Commission on May 10, 1999 (Settlement Agreement) (See Exhibit B).

Proposed Transition Bonds

PP&L has designed a financing structure whereby PP&L's Intangible Transition Property (ITP) is being transferred to a special purpose limited liability company (SPC) established or acquired by PP&L. The SPC will then issue the Transition Bonds in one or more series at different times in response to market conditions and other business circumstances. The proceeds for the Transition Bonds will be transferred to PP&L and will be used by PP&L principally to reduce stranded costs and related capitalization.

To meet the funding requirements imposed pursuant to the periodic adjustment mechanism in Section 2812(b)(4) of the Competition Act which ensures that the recovery of revenues is sufficient to provide for the payments of

principal, interest, acquisition, or redemption premiums and for other fees, costs and charges in respect of the Transition Bonds, PP&L is proposing to act as servicer of the bonds by billing and collecting the ITCs for the account of the SPC. Because ITC collections will be the property of the SPC, PP&L will receive these funds solely as agent for the SPC. For each billing period, PP&L initially will remit payments of the ITCs to the SPC on account, based on a collections curve which PP&L has developed.

The collections curve, which is factored into PP&L's ITC rate calculation, is based on PP&L's actual recent collection experience for retail accounts and reflects the timing of the amounts PP&L would expect to receive after bills are sent to customers. PP&L will subsequently reconcile the initial payments to the SPC to the actual ITC collections it has received from its customers. If the actual ITC collections are found to be more than the payments on account, PP&L will pay the balance to a bond trustee (Trustee) for the account of the SPC. If actual ITC collections are found to be less than the payments on account, PP&L will reduce its remittances by the amount of the shortfall or require the SPC to pay back the excess remittances.

The SPC will establish a Collection Account, comprised of several subaccounts, as a trust account to be held by the Trustee as collateral to ensure the payment of principal and interest on the Transition Bonds and other Reconciliation Funding Requirements (QTEs including amounts to replenish the subaccounts) in full and on a timely basis. These subaccounts will be funded by the ongoing process of the ITC and by a capital contribution from PP&L. If the ITC remittances to the Trustee are insufficient to make all scheduled payments of

Reconciliation Funding Requirements, these subaccounts will be drawn down to make up the difference.

The Trustee will deposit the ITC remittances from PP&L into the General Subaccount. Monies in this subaccount, including interest earned from the monies being invested in interest bearing securities by the Trustee, will be applied by the Trustee on a periodic basis to pay expenses of the SPC, to pay principal and interest on the Transition Bonds, and to meet the funding requirements of the other subaccounts. When the Transition Bonds and related expenses have been paid in full, the balance remaining in this subaccount, including interest earned, will be released to the SPC, and PP&L's customers will receive a credit equal to that amount through an adjustment to the Competitive Transition Charge (CTC) or through a temporary reduction in distribution rates.

The Overcollateralization Subaccount will be established to serve as collateral to ensure timely payment of principal and interest on the Transition Bonds and other Reconciliation Funding Requirements. To the extent it becomes necessary to draw on this subaccount to pay those amounts due to a shortfall in the ITC remittances, it will be replenished through future ITC remittances to its required level, not expected to exceed 2 percent of the original principal amount of the Transition Bonds, through the periodic reconciliation process. Monies in this subaccount will be invested in interest bearing securities and will be used to pay principal and interest on the Transition Bonds and other Reconciliation Funding Requirements. When the Transition Bonds and related expenses have been paid in full, the balance remaining in this subaccount, including interest earned, will be released to the SPC and PP&L's customers will receive a credit equal to that

amount through an adjustment to the CTC or through a temporary reduction in distribution rates.

The Capital Subaccount will be funded by a capital contribution from PP&L expected to equal 0.5 percent of the original principal amount of the bond issuance. This subaccount will also serve as collateral to ensure timely payment of principal and interest on the Transition Bonds and other Reconciliation Funding Requirements. To the extent it becomes necessary to draw on this subaccount to pay those amounts due to a shortfall in the ITC remittances, it will be replenished to its original level through future ITC remittances determined in the periodic reconciliation process. The monies in this subaccount will be invested in interest bearing securities, and amounts equal to the interest earnings will be periodically released by the Trustee to the SPC if not needed during the current period to pay principal and interest on the bonds or to meet other obligations. Because the Capital Subaccount will be funded by a PP&L capital contribution, any balance remaining in this subaccount, including any interest, will revert back to PP&L when the Transition Bonds and related expenses have been paid in full.

The Reserve Subaccount will hold any ITC remittances and interest earnings on the Overcollateralization Subaccount and any earned interest on the balance within the Reserve Subaccount in excess of the amounts needed to pay current principal and interest requirements on the Transition Bonds and to pay other Reconciliation Funding Requirements. The payments from this subaccount include, but are not limited to, funding or replenishing the Overcollateralization and Capital Subaccounts. Any balance in this subaccount will be treated as an overcollection for reconciliation purposes and be reflected as a credit for the periodic ITC adjustments. Like the other subaccounts, monies in this subaccount

will be invested in interest bearing securities, and will be used to pay principal and interest on the Transition Bonds and other Reconciliation Funding Requirements. When the Transition Bonds and related expenses have been paid in full, the balance remaining in this subaccount, including interest earned, will be released to the SPC, and PP&L's customers will receive a credit equal to that amount through an adjustment to the CTC or through a temporary reduction in distribution rates.

As mentioned, if the ITC remittances to the Trustee are insufficient to make all scheduled payments of Reconciliation Funding Requirements, the Reserve Subaccount, the Overcollateralization Subaccount, and the Capital Subaccount will be drawn down to make those payments. These subaccounts will be drawn down without regard to the level of contributions made by each customer class and each rate schedule. However, the Overcollateralization and the Capital Subaccounts must be replenished on a periodic basis through the reconciliation process and that process will reflect draw-downs on a customer class basis as an undercollection.

Calculation and Flow-Through of Savings.

PP&L supplied supporting documentation with estimates that set forth the method for the calculation of savings from the issuance of Transition Bonds and the manner in which 75 percent of savings, as provided for in the Final Order, will be flowed through to customers. Savings arise from the difference between the weighted average interest rate on the Transition Bonds, and the 10.86 percent weighted average return on the unamortized CTC balances, which was authorized by the Commission in the Final Order. If the market conditions seem favorable and if the Transition Bonds have not yet been issued, PP&L may enter into one or more

contracts (hedges) to lock-in a particular interest rate and that effect also would be reflected in the savings calculation.

PP&L proposed an annual servicing fee of $2 million per year for servicing the Transition Bonds. The OCA contends that PP&L does not set forth the basis for determining that fee or state whether the fee is intended to cover PP&L's actual costs. The OCA states that this fee should be rejected and that PP&L should only be allowed to recover incremental costs which it incurs to service the bonds. The OCA further contends that if PP&L were to profit from servicing the bonds, that profit would represent a reduction in the securitization savings of the ratepayers.

The CEO submitted that PP&L should receive a reasonable servicing fee, but only if PP&L committed to management of the assets of the Sustainable Energy Fund, along with the Transition Bonds, at no additional cost. In providing these management services, PP&L would increase the public purpose benefits provided by the Sustainable Energy Fund by avoiding the need to engage a third-party fund manager. This is similar to the way that PP&L proposes to increase customer securitization savings by avoiding the need for engaging a third-party bond servicer. As part of the Settlement Agreement, PP&L agreed to CEO's request and offered to manage financial investment activity of the Sustainable Energy Fund at no cost to the fund. Pursuant to the Settlement Agreement, the Board of Directors of the Fund shall determine in its sole discretion, whether to accept PP&L's offer.

The Settlement Agreement provides that the amount to be included in the ITCs for the services to be charged by PP&L will be $1.25 million. This provision is not intended to limit the actual Servicer Fee that PP&L may charge the SPC. The actual calculations of net savings will reflect actual costs of premiums,

fees, credit enhancements, and other expenses related to issuing the Transition Bonds. We are in agreement with the Settlement Agreement in that it reserves the right for all parties to review the actual amounts incurred for reasonableness, and that any adjustment made by the Commission shall be reflected in the CTC reconciliation process.

ITC Reconciliation and Adjustment

In the instant petition, PP&L states that since the issuance of the Final Order, it has become apparent from meetings with underwriters and rating agencies that in order to secure a AAA-rating for the Transition Bonds, with reasonable credit enhancements, it must implement more detailed reconciliation procedures than were set forth in its initial QRO application. PP&L has determined that the reconciliation process described in this petition eliminates the need for the originally approved mechanisms and requests that the Commission specifically find that PP&L can implement its proposed reconciliation process in lieu of the other. PP&L claims that if its proposed reconciliation procedures are not approved, it is likely that its Transition Bonds will not attain a AAA-rating and that costly additional credit enhancements will be required to attain a AAA-rating. PP&L maintains that either result would significantly reduce the savings that customers will realize from the issuance of the Transition Bond.

The QRO approved by the Commission on August 27, provided for two tariff supplements relating to the ITC and its reconciliation. One tariff supplement, the Net Securitization Adjustment (NSA), reflected a provision for the recovery of all known and estimated Qualified Transition Expenses (QTEs) consisting of transition or stranded costs, expenses associated with the issuance and service of Transition Bonds, and related recapitalization costs. The NSA was

designed to periodically reconcile only the difference between the revenue requirement necessary to amortize the QTE principal balance and actual revenues, and to adjust the ITC rate accordingly. The second tariff supplement, the Transition Bond Expense Adjustment (TBEA), was a reconciliation mechanism to collect or refund the difference between the estimated Transition Bond Expenses that have been incorporated into the Transition Bonds being recovered through the ITC, and the actual bond expenses.

The major provisions reflected in the Petition for the Supplemental QRO and subsequent Settlement Agreement that were not included in the original QRO are: the use of a single ITC reconciliation rider as compared to two, with both the revenue and costs being reconciled through the same mechanism; the reforecasting of sales during the reconciliation process rather than using the sales forecast approved by the Commission in the Settlement; reflecting projected uncollectible ITCs and payment lags in the calculation of the ITC rates; grouping the various rate schedules into three customer classes for reconciliation purposes; the establishment of collateral accounts by the transferee of the Intangible Transition Property funded by both PP&L and ITC revenues to ensure the payment of the QTEs on a timely basis; and a provision for review and audit by the Commission.

Finally, the instant Petition and Settlement Agreement would differ from the original QRO in its customer grouping of rate schedules for reconciliation purposes. PP&L's tariff has approximately 23 rate schedules and rate riders. In the instant petition, PP&L is proposing a reconciliation of the ITC by customer class within three principal customer class groupings: (1) residential; (2) small commercial and industrial, including street-lighting; and (3) large commercial and

industrial. These three broad customer class groupings are based upon the voltage level at which service is taken by the various customers. Because some rate schedules have only a few customers and a small delivery base, PP&L believes that it is necessary to reconcile over/under collections by customer class rather than by individual rate schedule in order to provide a broad base of deliveries against which to reconcile, to prevent large rate swings in the reconciliation process, and to reduce the risk of failure to meet the Reconciliation Funding Requirements. PP&L states that reconciliation by rate schedule would effectively preclude the issuance of Transition Bonds for many rate schedules and would significantly increase the cost of any Securitization which could be accomplished.

Although PP&L proposes to aggregate the over/under collection by customer class, a separate ITC reconciliation credit/charge will be calculated for each rate schedule based on the cost allocations approved in the Final Order. Any over/under collection for a particular Customer Class will be allocated to each individual Rate Schedule within that Customer Class. Such allocation will be based upon the ratio of the cumulative ITC over/under collection applicable to the Customer Class to the projected ITC revenues for the Customer Class for the period during which the ITC reconciliation factor will be applied. The resulting allocated over/under collection will be reflected in the ITC rates for each Rate Schedule within the customer class.

After all QTEs have been paid in full and the Capital Subaccount has been fully replenished, any overcollection of ITC revenues, including an amount equal to the balances remaining in the General Subaccount, the Overcollateralization Subaccount and the Reserve Subaccount, will be reflected in the reconciliation

of the CTC for the calendar year in which the Transition Bond principal and interest were paid in full or through a temporary reduction in distribution rates.

PP&L is proposing to make annual reconciliation filings on October 1 of each year during the bond period. The filings will include a schedule of actual over/under collections for the nine months ended August 31, an estimate of over/under collections for the three months ending November 30, and a recalculation of the ITCs based upon the most recent forecasts of annual deliveries, uncollectibles, payment lags and other expenses for the next calendar year. On December 15 of each year, PP&L will file actual over/under collection data as of November 30, replacing the estimated data submitted on October 1, along with a tariff supplement reflecting the new ITCs and supporting data for the ITC rates to become effective each January 1. The annual rate adjustment and reconciliation will become effective for service rendered on and after January 1 and would remain in effect for one year, except possibly during the final bond year.

During the final 12 months of the bond period, PP&L is proposing to be permitted to make interim reconciliation filings as often as monthly in order to minimize any possible over/under collection of the ITC for the final reconciliation. These interim adjusted ITC rates, which may be monthly or quarterly as determined by PP&L, would continue until the earlier of the full payment of all QTEs or December 31, 2009, the last day of the authorized bond period. Such interim reconciliation filings would become effective on the first day of the next calendar month, with not less than 15 days' notice.

As previously mentioned, the OCA submitted comments regarding several items contained in the instant Petition. First, the OCA stated that the Company's description of the General Subaccount does not mention any credit for ratepayers related to the interest earned by that account which is funded with ratepayer monies. The OCA requested a clarification on the matter. We share the OCA's concern regarding the use of the interest earned by the subaccounts. However, it should be noted that each of these subaccounts provide that the primary use of an any interest earned on the balances in the subaccounts is toward paying the principal and interest on the Transition Bonds. Any remaining interest in the Overcollateralization Subaccount and the Reserve Subaccount will be used for making the payment on the principal and interest on the Transition Bonds in a latter payment period. The Settlement Agreement provides that interest earned on the General Subaccount will be treated in the same fashion as interest on the Overcollateralization Subaccount.

Regarding the proposed time frame for annual filings, the OCA does not oppose PP&L's proposed annual filing schedule. The OCA does express a concern that it may be difficult to completely resolve all issues in the 90 day time period, October 1 to January 1, particularly if other utilities are on a similar schedule. We, however, believe that the December 15 filing date of the updated actual 12 month activity through November 30 and the January 1 effective date is impractical for reviewing the filing and submitting a report for a Commission public meeting prior to January 1. We believe that a more practical process would be for PP&L to submit monthly updates to its October 1 filing within 15 days following the conclusion of each calendar month. Such monthly updates, along with the availability of quarterly reports for review and audit as discussed below, will allow staff sufficient time to perform a meaningful review of any proposed

ITC rate adjustment. Based upon staff review of the quarterly filings, monthly updates, etc., a report would be prepared for the Commission based upon a November 15 filing update that reflects 11 months of actual data through October 31. Following the Commission's action on the November 15 filing, a compliance filing would be made on December 15 reflecting an update of the Company's November actual data. Accordingly, we direct PP&L to include the appropriate language in its ITC Reconciliation Rider to provide for the monthly updates to its October 1 annual filing and to provide for the December 15 compliance filing.

As indicated previously, PP&L is proposing to reforecast its annual sales during the reconciliation proceedings rather than utilize the sales forecast contained in the Settlement approved by the Commission in the Final Order. The Final Order approved an 11 year sales forecast with a 1.5 percent annual escalator beginning in 1999. Our understanding is that PP&L and the bond underwriters believe that an 11 year forecast is too long a period to use for the ITC without risking the potential for large over/under collections and rate swings annually. In order to mitigate that potential risk and to assure a AAA-rating on its bonds, PP&L has proposed that it be permitted to use an annual reforecasting of its sales in its ITC reconciliation process.

The OCA has commented that it does not oppose the reforecasting of sales during the reconciliation proceeding, and agrees that this will help eliminate large over/under collections. However, the OCA has stated that caution must be utilized in the reforecasting process to assure that the rate caps are not violated. The Settlement Agreement approves the use of reforecasting provided that any reforecasting will comply with the rate cap provisions of Section 2804(4) of the

Competition Act. We believe this is a sufficient guarantee that the rate cap will not be violated.

Another provision in the proposed ITC Reconciliation Rider not provided for in that originally approved, is the provision for Commission review and audit of the annual ITC reconciliation filings. The Rider states that the review and audit must be concluded on a timely basis so as to permit implementation of changes in the ITC rates by the January 1 annual effective date. Essentially, PP&L has proposed a 16-day time frame from the date it submits its updated actual 12-month data on December 15, until January 1, for the Commission staff to accomplish the audit. It is our understanding that the Company is proposing that the audit be completed prior to the implementation of the recalculated ITC rates to assure to underwriters that scheduled recoveries will not be impacted by any potential audit adjustments after the ITC rates have gone into effect. Without such assurance, it is unlikely that its Transition Bonds will attain a AAA-rating without costly additional credit enhancements.

As previously mentioned, we do not believe that the proposed audit time frame is feasible, particularly if other ITC filings have the same provision and filing period. The Settlement Agreement includes amended language to the ITC Reconciliation Rider that provides for PP&L to submit quarterly reports to the Commission within 30 days of the conclusion of each calendar year quarter. We believe that such quarterly reports would be the basis for the required audit and would provide adequate time to perform the audit and still provide reasonable assurance of the over/under collection reflected in the ITC rates to be implemented on January 1.

PP&L stated at paragraph 12, of its Petition, that it will remit payments of the ITCs to the SPC on account based on a collections curve which it has developed and is based upon its actual recent collection experience for retail accounts and also reflects the timing of the amounts it would expect to receive after bills are sent to customers. Additionally, PP&L stated that if the actual ITC funds collected from ratepayers exceeded the payments made, (an overcollection from ratepayers) PP&L would pay that balance to the Trustee; likewise, if the actual ITC funds collected from ratepayers are less than the payments made, (an undercollection from ratepayers) PP&L would either reduce its remittances to the Trustee, or would require the SPC to refund those excess remittances.

The OCA responded to this issue by stating that PP&L's proposed procedure may result in a double counting of both uncollectibles and payment lags. It is the OCA's position that uncollectibles associated with the full amount of PP&L's revenues, including its CTC/ITC revenues, were assigned to the Transmission and Distribution (T&D) rates in the unbundling process in PP&L's restructuring proceeding at Docket No. R-00973954. Accordingly, the OCA contended that PP&L should not be allowed to reduce the amounts paid to the SPC by an uncollectibles factor, and then seek to recover them in the reconciliation, since ratepayers are fully compensating PP&L for those uncollectibles through the T&D rates. The OCA also noted that, under the Commission's payment ordering rules and PP&L's tariff implementing these rules, the CTC/ITC is the first item to be paid, other that a pre-retail access arrearage.

In addition, the OCA stated that PP&L's existing rates were also set to include the lag in billing and collecting of revenues through an allowance for cash working capital. The OCA believes that since the revenue billing lag is

subsumed within PP&L's rates it is inappropriate for PP&L to delay or reduce payment of the ITC's into the SPC. According to the OCA, if that practice is allowed, it would reduce the monies available in the various funds and will reduce the corresponding interest that could be earned by these funds.

At paragraph B.6. of the Joint Petition for Full Settlement (Joint Petition) filed August 12, 1998, the parties agreed that the T&D rate cap of 1.74 cents per KWH includes 1.73 cents per KWH for all existing costs and services and .01 cents per KWH for the sustainable energy fund during the T&D rate cap period. Additionally, that no new fees shall be proposed or charged during the T&D rate cap period for a cost of service that is included in the bundled T&D rate.

In our Final Order, we stated that PP&L's procedures for applying partial payments shall comply with the guideline relating to partial payments found in the *Final Order Re: guidelines for Maintaining Customer Services at the Same Level of quality Pursuant to 66 Pa. C.S. §2807(d), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2809(e) and (f),* Docket No. M-00960890F0011 (July 10, 1997) (Appendix B, Guideline H).

Guideline H states:

> In regard to application of partial payments, the restructuring plans should direct how payments which are insufficient to cover all charges should be applied. For a customer who has a pre-retail access balance, the payment should be applied by the EDC as follows: (1) outstanding pre-retail access balance or the installment amount for a payment agreement on this balance; (2) intangible transition charge (ITC) and competitive transition charge (CTC); (3) EDC transmission and distribution charges (T&D); (4) supply charges, and (5)

non-basic service charges. If the customer's account develops a post-retail access balance, partial payments should be applied to the pre-retail access balance, according to the terms of the pre-retail access payment agreement, before being applied to any other outstanding post-retail access charges. For a customer with no pre-retail access balance but with a post-retail access balance, partial payments should be applied as follows: (1) balance due for prior ITC, CTC and T&D service; (2) ITC and CTC; (3) T&D; (4) balance due for prior supply charges; (5) supply charges, and (6) non-basic service charges.

The Petition included, at paragraph 29, a proposal to include a provision for uncollectible accounts and payment lags in calculating monthly ITC remittances. The Settlement at paragraph 3, resolves this issue as follows: PP&L agrees to credit CTCs as part of the annual reconciliation of CTCs, in an amount equal to any uncollectible accounts expense included in ITCs. This refinement to the Petition will avoid any double collection of uncollectible accounts expense. The Settlement however, is silent on the OCA issue of payment lags, which was presented by the OCA as a portion of their uncollectibles issue. While the payment lag of revenue receipts is separate from the calculation of an uncollectible accounts expense allowance it is subsumed within the uncollectibles allowance. Therefore, we believe the Settlement is comprehensive and acceptable regarding these issues.

Conclusion

The issuance of Transition Bonds is another step on the path to a more competitive electric industry in the Commonwealth of Pennsylvania. We note with

approval that the various parties were able to resolve their differences in a timely and efficient manner.

Upon full consideration of the instant Petition and the proposed settlement and appendices, we find that their approval is in the public interest; THEREFORE,

IT IS ORDERED:

1. That the Petition of PP&L, Inc. for issuance of a Supplemental Qualified Rate Order under Sections 2808 and 2812 of the Public Utility Code as modified by the Settlement Agreement among the parties, is hereby granted.

2. That this Commission hereby declares that the Supplemental Qualified Rate Order issued on behalf of PP&L, Inc. (PP&L) shall be irrevocable for purposes of Section 2812 of the Public Utility Code. Furthermore, this Commission agrees that it will not directly or indirectly, by any subsequent action, reduce, postpone, impair or terminate this Supplemental QRO or the Intangible Transition Charges (ITCs) authorized to be imposed or collected under this Supplemental QRO or the initial QRO (Initial QRO) issued as part of the Commission's Final Order entered on August 27, 1998, at Docket No. R-00973954 (Final Order). This Commission further declares that Intangible Transition Property (ITP) includes the right, title, and interest of PP&L and any Assignee in this Supplemental QRO, the Initial QRO, the ITCs, the rates and other charges authorized hereby and all revenues, collections, claims, payments, moneys or proceeds of or arising from the same. PP&L and its Assignee shall have the right to issue or cause to be issued transition Bonds in accordance with this

Supplemental QRO and the Initial QRO, as clarified, supplemented, and further delineated hereby until December 31, 2009.

3. That the Petitions to Intervene filed by the Mid-Atlantic Power Supply Association and PP&L Industrial Customer Alliance be hereby granted.

4. That the clarifications, supplements and further delineations contained herein are designed primarily to enhance the prospects that the Transition Bonds will be assigned a AAA-rating, with reasonable credit enhancements, and, thereby, maximize savings for the mutual benefit of PP&L and its customers.

5. That the transactions explained and proposed in Section B, Paragraphs 10 through 14 of the Petition, as modified by the Settlement Agreement among the parties, are hereby approved, and the results of the proposed transactions shall be reflected in calculations of PP&L's ITCs and in reconciliation adjustments to PP&L's ITCs in the manner and to the extent explained therein.

6. That savings derived from the issuance of Transition Bonds to finance a substantial portion of PP&L's stranded costs shall be calculated in the manner described in Section C, Paragraphs 15 through 18, and in Appendix A of the Petition, as modified by the Settlement Agreement among the parties.

7. That 75 percent of the savings derived from the issuance of Transition Bonds to finance a substantial portion of PP&L's stranded costs, which constitutes the percentage to be flowed through to customers pursuant to the Final Order, shall be calculated in the manner described in Section C, Paragraphs 15

through 18, and in Appendix A of the Petition, as modified by the Settlement Agreement among the parties.

8. That PP&L shall design ITCs and CTCs associated with the issuance of Transition Bonds using the methodology explained in Section D, Paragraphs 19 through 24, and in Appendix B of the Petition, as modified by the Settlement Agreement among the parties.

9. That the reconciliation procedures set forth in Section E, Paragraphs 25 through 37, and in Appendix C of the Petition, as modified by the Settlement Agreement among the parties and by this Order, are approved, and PP&L and any successor Servicer of the ITP shall follow these procedures in its periodic reconciliation filings to adjust the ITCs. These procedures shall be followed by PP&L in lieu of the less specific "Transition Bond Expense Adjustment" and "Net Securitization Adjustment" reconciliation procedures set forth in PP&L's Inc.'s Restructuring Plan and Related Court Proceedings" that was filed with the Commission on August 12, 1998.

10. That PP&L and any successor Servicer of the ITP is hereby authorized to file a tariff supplement which contains the reconciliation language set forth in Appendix C to the Petition, as modified by the Settlement Agreement among the parties, and includes the applicable ITCs and reduced CTCs, calculated on the basis of the methodology explained in Section D, Paragraphs 19 through 24, and in Appendix A and Appendix B to the Petition, as modified by the Settlement Agreement among the parties, to become effective upon three days' notice based upon actual data to the extent that actual data are available. PP&L and any successor Servicer of the ITP shall reconcile any differences between estimated

data used to calculate ITCs and CTCs set forth in the tariff supplement to be filed pursuant to the authority granted by this Ordering Paragraph in the first annual CTC reconciliation filed after such actual data become available.

11. That PP&L shall apply ITCs in the manner described in Section F, Paragraphs 38 through 41 of the Petition, as modified by the Settlement Agreement among the parties. If not terminated on an earlier date, ITCs may be charged for service rendered through December 31, 2009.

12. That a certificate of public convenience is hereby issued to PP&L authorizing it to establish or acquire a special purpose company, as a direct subsidiary of PP&L, to serve as the issuer of the Transition Bonds ("Issuer").

13. That PP&L is authorized to (a) assign, sell, transfer, or pledge Intangible Transition Property (such term includes all right, title, and interest of PP&L or any Assignee in the Supplemental Qualified Rate Order and in all revenues, collections, claims, payments, money, or proceeds arising from Intangible Transition Charges pursuant to this Supplemental Qualified Rate Order to the extent this Supplemental Qualified Rate Order and the rates and other charges authorized hereunder are declared irrevocable) in an amount sufficient to recover all of its Qualified Transition Expenses and (b) issue, sell, and refinance, in reliance on this Supplemental Qualified Rate Order, one or more series of Transition Bonds, each series in one or more classes, secured by the Intangible Transition Property created by this Supplemental Qualified Rate Order; provided that the final maturity of any services of Transition Bonds shall not exceed ten years from the date of issuance and in no event shall any Transition Bonds have a final maturity after December 31, 2009. Notwithstanding the foregoing, PP&L

retains sole discretion regarding whether to assign, sell, or otherwise transfer Intangible Transition Property created hereby or to issue or cause the Transition Bonds to be issued or refinanced.

14. That, with this Supplemental QRO and the approvals granted herein and heretofore in the Final Order, including the Initial QRO contained therein, PP&L has obtained all regulatory approvals required from this Commission for the issuance of Transition Bonds and all of the transactions explained in the Petition and in the Application for a QRO presented as Appendix E to the "Joint Petition for Full Settlement of PP&L, Inc.'s Restructuring Plan and Related Court Proceedings" that was filed with the Commission on August 12, 1998.

15. That a copy of this Order shall be served on all parties of record and all active parties in PP&L's restructuring proceeding at Docket No. R-00973954.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 21, 1999

ORDER ENTERED: MAY 21 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the **Petition of PPL Electric Utilities Corporation for a Declaratory Order To Terminate Controversies Concerning PPL's Certificated Rights To Provide Service in the Borough of Olyphant and Related Transition Charges** on the following parties, listed below in the manner indicated, in accordance with the requirements of § 5.42 (Petitions for Declaratory Orders).

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Date: October 17, 2002

Kenneth M. Kulak

RECEIVED
OCT 17 PM 4:01
P.U.C.
SECRETARY'S BUREAU

McNees Wallace & Nurick LLC
attorneys at law

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ORIGINAL

November 6, 2002

VIA HAND DELIVERY

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

DOCUMENT

RE: Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Service in the Borough of Olyphant and Related Transition Charges; Docket No. P-00021986

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of the Petition to Intervene and Answer in Partial Opposition of the PP&L Industrial Customer Alliance.

Copies of this filing are being served consistent with the attached Certificate of Service. Please date stamp the extra copy of this transmittal letter and kindly return it to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By Karen S. Miller Orner

David M. Kleppinger
Pamela C. Polacek
Karen S. Miller Orner

Counsel to the PP&L Industrial Customer Alliance

KSMO
Enclosures
c: Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

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SECRETARY'S BUREAU

VIA FIRST CLASS MAIL

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PPL Electric Utilities Corporation
Two North Ninth Street
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Karen S. Miller Omer

Karen S. Miller Omer

Dated this 6th day of November, 2002, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Service in the Borough of Olyphant and Related Transition Charges	:	Docket No. P-00021986

ORIGINAL DOCUMENT

PETITION TO INTERVENE AND ANSWER IN PARTIAL OPPOSITION OF THE PP&L INDUSTRIAL CUSTOMER ALLIANCE

Pursuant to Sections 5.61(a) and 5.101 of the Pennsylvania Public Utility Commission's ("PUC" or Commission") Regulations, 52 Pa. Code §§ 5.61(a) & 5.101, the PP&L Industrial Customer Alliance ("PPLICA") hereby files this Answer in Partial Opposition in response to the above-captioned Petition for Declaratory Order ("Petition") of PPL Electric Utilities Corporation ("PPL" or "Company") with respect to controversies concerning: (1) the attempt by the Borough of Olyphant ("Borough") to require PPL to abandon certificated electric service within Mid-Valley Industrial Park ("MVIP") in the Borough; and (2) the obligation of retail customers in PPL's certificated territory within the Borough to pay transition charges imposed by order of this Commission. See Petition at 1. In addition, pursuant to Sections 5.71 through 5.74 of the Commission's Regulations, 52 Pa. Code §§ 5.71 - 5.74, PPLICA hereby files this Petition to Intervene in the above-captioned proceeding.

In its Petition, PPL seeks a declaratory order stating that: (1) MVIP is within PPL's certificated territory and, therefore, only the Commission can require PPL to abandon certificated service to the Company's customers located in MVIP; (2) any retail customer of PPL in the

Borough must continue to pay intangible transition charges ("ITCs") previously imposed by the Commission, even if such customer receives electric service from the Borough, rather than PPL, in the future; and (3) any retail customer of PPL in the Borough must continue to pay competitive transition charges ("CTCs") previously imposed by the Commission, even if such customer receives electric service from the Borough, rather than PPL, in the future. See Petition at 1-2. PPLICA avers, inter alia, that PPL correctly asserts that MVIP is within PPL's certificated territory and, therefore, only the Commission can require PPL to abandon certificated service to PPL's customers in MVIP. PPLICA asserts, however, that because there is no uncertainty or controversy before the Commission concerning the obligation of retail customers within MVIP to pay transition charges to PPL, the Commission should not consider the issue of whether current PPL retail customers within the Borough would be obligated to pay ITCs and CTCs to PPL if they receive service from the Borough in the future. See 66 Pa. C.S. § 331(f). The transition charge issue is not ripe unless and until this Commission rules that PPL will no longer provide service to MVIP. Accordingly, PPLICA respectfully requests that the Commission deny without prejudice the portions of PPL's Petition concerning the stranded cost obligations of retail customers.

In support of its Petition to Intervene and Answer in Partial Opposition, PPLICA asserts as follows:

I. BACKGROUND

On December 5, 2001, the Borough filed a Complaint against PPL ("Complaint") in the United States District Court for the Middle District of Pennsylvania ("Federal Court"). The primary issue in dispute is whether PPL is violating Federal antitrust law by refusing to provide the Borough with wholesale electricity to enable the Borough to supply retail electric service to

the MVIP consumers. The Borough also alleges that PPL has engaged in an anticompetitive price squeeze by charging the MVIP customers the capped generation rates specified in PPL's tariff while not providing wholesale supply to the Borough at a price that would allow the Borough to compete for those customers. The Borough further claims that PPL's actions violate a Federal Energy Regulatory Commission ("FERC")-approved Settlement and wholesale contract. Two issues that may be tangentially involved in the Federal Court proceeding are: (1) whether the Borough can require PPL to abandon certificated electric service within MVIP by adopting a resolution that the Borough will be the exclusive provider of electric service within the Borough's limits; and (2) whether current PPL customers located within MVIP will remain obligated to pay ITCs and CTCs to PPL if such customers receive service from the Borough in the future.

PPL filed an Answer to the Borough's Complaint on February 25, 2002. In addition, PPL filed a Motion for Summary Judgment on March 29, 2002. The MVIP Electric Consumers,[1] which filed a Motion to Intervene on March 28, 2002, filed a Brief in Support of PPL's Motion on May 7, 2002. On May 15, 2002, the Borough filed an Answer to PPL's Motion. The Federal Court heard oral argument with respect to PPL's Motion for Summary Judgment and the MVIP Electric Consumers' Motion to Intervene on July 18, 2002; however, the Federal Court has not yet rendered a decision with respect to either Motion. The discovery period is scheduled to close on November 25, 2002, and trial of this proceeding is scheduled to begin in January, 2003.

[1] The MVIP Electric Consumers include the following companies that have facilities within MVIP that consume electricity: WEA Manufacturing, Inc. ("WEA"); Dynamic Molding, Inc.; United Fence Supply Company, Inc.; A.L.S. Services, Inc.; Pedmar Incorporated; SimplexGrinnell LP; Rist Construction Inc.; DeSavino & Sons, Inc.; Michael Washo Construction Co. Inc.; and Caines Mechanical Contractors, Inc.

On October 17, 2002, PPL filed the Petition. PPL served copies of its Petition on interested parties, including the Borough, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff ("OTS"), and the MVIP Electric Consumers. The OTS filed an Answer to PPL's Petition on October 28, 2002.

PPLICA is an ad hoc association of energy-intensive industrial customers receiving electric service in PPL's service territory. One PPLICA member, WEA, is located within MVIP. PPLICA members purchase service from PPL primarily under Rate Schedules LP-4, LP-5, LP-6, IS-P, and IS-T, as well as available riders. PPLICA members collectively consume approximately 2.12 billion kWh of electricity annually in manufacturing and other operational processes, and electricity costs comprise a significant portion of their production costs. As will be explained in more detail below, PPLICA is concerned with issues regarding the terms and conditions of its electricity service, including the imposition of stranded costs. For purposes of this proceeding, PPLICA includes the companies listed in Attachment "A" hereto.

The names and address of PPLICA's attorneys are:

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Pamela C. Polacek
Karen S. Miller Orner
McNEES WALLACE & NURICK LLC
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Phone: (717) 232-8000
Fax: (717) 237-5300
dkleppin@mwn.com
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korner@mwn.com

PPLICA requests that the names and address of its attorneys be added to the Commission's and all parties' service lists. All correspondence and telephone inquiries to PPLICA should be directed to Ms. Polacek.

II. ANSWER

1-31. PPLICA accepts, but neither admits nor denies, the allegations set forth in Paragraphs 1 through 31 of PPL's Petition. By way of further answer, PPLICA agrees with PPL's assertion that, because MVIP is located within PPL's certificated territory, only the Commission has the authority to require PPL to abandon certificated service to the Company's customers within MVIP.

Section 1102(a)(2) of the Public Utility Code states:

> **(a) General rule.** – Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:
>
> **(2)** For any public utility to abandon or surrender, in whole or in part, any service . . . .

66 Pa.C.S. § 1102(a)(2). The Public Utility Code states unequivocally that a public utility may abandon service only with the Commission's prior approval. See id. Accordingly, only the Commission, not the Borough, may require PPL to relinquish its right to serve customers located in MVIP.

32. PPLICA admits that the Borough has informed at least one large PPL customer of the Borough's belief that current PPL customers that take service from the Borough in the future will no longer be obligated to pay stranded costs approved by the Commission. Moreover, PPLICA agrees that the PUC has authority to resolve any dispute arising out of PPL's obligations to impose and collect ITCs. PPLICA submits, however, that the Commission should not resolve the issue of retail customers' stranded cost obligations at this time due to the lack of "an uncertainty or a controversy," as required by Section 331(f) of the Public Utility Code, 66 Pa. C.S. § 331(f). Specifically, because neither this Commission nor the Federal Court has ruled that customers within MVIP must accept electric service from the Borough, the question of whether

such customers would be required to pay stranded costs to PPL if those customers are served by the Borough at some future date is a secondary issue, not currently an uncertainty or a controversy, that it is not necessary for the Commission to answer in order to resolve the abandonment of certificate issue. Thus, MVIP customers' stranded cost obligations are not properly before the Commission at this time.

33-34. PPLICA submits that the Final Order and the Supplemental QRO speak for themselves.

35. Paragraph 35 states a conclusion of law to which no response is required. By way of further answer, Section 2812(g) of the Electricity Generation Customer Choice and Competition Act ("Competition Act") states as follows:

> **"Intangible transition charges."** The amounts authorized to be imposed on all customer bills and collected, through a nonbypassable mechanism by the electric utility or its successor or by any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that, after this effective date of this chapter, became a customer of electric services within such territory and is still located within such territory, to recover qualified transition expenses pursuant to a qualified rate order. The amounts shall be allocated to customer classes in a manner that does not shift interclass or intraclass 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.

66 Pa. C.S. § 2812(g). PPLICA submits that the interpretation and application of this provision, including the meaning of the term "nonbypassable mechanism," is within the discretion of the Commission.

36. PPLICA submits that the cited provision of the Public Utility Code, as well as the Final Order and Supplemental QRO, speak for themselves.

37. Paragraph 37 states a conclusion of law to which no response is required.

38-48. PPL sets forth a detailed hypothetical scenario, under which the Federal Court rules that: (1) PPL must discontinue electric service to customers located within MVIP; and (2) these customers must accept electric service from the Borough. In its Petition, PPL seeks a ruling from this Commission as to the proper application of the stranded cost provisions of the Competition Act in the event of such a Federal Court order, which necessarily would require the Commission to interpret the term "nonbypassable mechanism." However, the Federal Court has issued no order requiring PPL to relinquish service to MVIP customers and, under PPL's legal argument in Paragraphs 1-31, does not have the authority to require PPL to abandon the service area. More importantly, a request has not been made to this Commission for PPL to abandon the service area. Accordingly, for the reasons explained below, PPLICA submits that the stranded cost obligations of current PPL customers, in the event that those customers must take service from the Borough at some future date, are not ripe for consideration.

First, the Public Utility Code permits the Commission to issue a declaratory order only to terminate a controversy or to remove uncertainty. 66 Pa. C.S. § 331(f). Similarly, Section 5.42 of the Commission's Regulations requires that a petition for a declaratory order "state ... the controversy or uncertainty which is the subject of the petition." 52 Pa. Code § 5.42(a). An uncertainty or controversy must exist before the Commission may issue a declaratory order. Professional Paramedical Services, Inc. v. Pennsylvania Public Utility Commission, 106 Pa. Commw. Ct. 278, 283 (1987). PPLICA submits, however, that no "uncertainty or controversy" currently exists with respect to the stranded cost payment obligations of customers located within MVIP. Presently, MVIP customers receive service from, and pay ITCs and CTCs to, PPL. Unless and until the Federal Court and/or this Commission rules that the MVIP customers must accept service from the Borough, there is no "uncertainty or controversy" concerning these customers' stranded cost obligations. Because there is no existing uncertainty or controversy

concerning the MVIP customers' stranded cost obligations at this time, the Commission should not issue a declaratory order in resolution of these issues. See 66 Pa. C.S. § 331(f); 52 Pa. Code § 5.42; see also Professional Paramedical Services, 106 Pa. Commw. Ct. at 283.

PPL's instant request for a declaratory order is analogous to a request for a declaratory order that was denied by the Commonwealth Court in Ruszin v. Commonwealth of Pennsylvania, 675 A.2d 366 (Pa. Commw. Ct. 1996). In Ruszin, several former steelworkers filed a declaratory judgment action against their former employers and the Commonwealth of Pennsylvania, Department of Labor and Industry, seeking to have portions of the Workers' Compensation Act declared unconstitutional. Id. The statutory provision in question limited the period for filing certain claims related to hearing loss to within three years of the claimant's last exposure to hazardous noise. Id. at 369. Petitioners claimed, in part, that the statute extinguished their right to file claims for hearing loss they had or may have had prior to enactment of the provision. Id. The Commonwealth Court denied the claim of one employee who had not yet lost his hearing on the basis that his claim was not ripe for judicial determination. Id. The Court stated:

> [O]ne limitation on a court's ability to issue a declaratory judgment is that the issues involved must be ripe for judicial determination, meaning that there must be the presence of an actual case or controversy. [Citations omitted.] There can only be a case and controversy where there are antagonistic claims indicating imminent and inevitable litigation, and declaratory judgment is an inappropriate remedy to determine rights in anticipation of events which may never occur. [Emphasis added.] [Citations omitted.] ... [U]ntil he suffers a total hearing loss, there is no antagonistic claim indicating imminent or inevitable litigation. To issue declaratory judgment would be to determine rights in anticipation of events that may never occur, which we cannot do.

Id.

Similarly, by asking the Commission to rule upon the MVIP customers' stranded cost obligations in the event that those customers are forced to take service from the Borough in the future, PPL requests this Commission's determination of a dispute that may never arise, in a situation that may never occur. Such a determination by the Commission would be improper under the Public Utility Code and the Commission's Regulations. See 66 Pa. C.S. § 331(f); 52 Pa. Code § 5.42.

Second, even if the PUC were to issue a declaratory order concerning the MVIP customers' stranded cost obligations, the order may become moot due to later Federal Court action. As explained above, the Borough's Complaint proceeding remains pending before the Federal Court. If the Federal Court grants PPL's outstanding Motion for Summary Judgment, thereby permitting MVIP customers to continue to receive service from PPL, a determination by this Commission regarding those customers' stranded cost obligations to PPL would be unnecessary. Further, even if this case reaches the trial stage in January, 2003, the Borough may not be successful on the merits in terminating PPL's service to the MVIP customers. Again, any Commission ruling regarding those customers' obligations to pay ITCs and CTCs to PPL would be of no effect.

The Commission's application of the stranded cost provisions of the Competition Act, particularly the meaning and interpretation of the term "nonbypassable mechanism," is of great importance to electricity consumers throughout Pennsylvania. PPLICA submits that these provisions are too important to be applied to a hypothetical factual scenario that may never materialize. Rather, as required by the Public Utility Code and the Commission's Regulations, this Commission should determine the stranded cost obligations of MVIP customers only when

the Commission is presented with an actual uncertainty or controversy requiring resolution.[2] See 66 Pa. C.S. § 331(f); 52 Pa. Code § 5.42; see also Professional Paramedical Services, 106 Pa. Commw. Ct. at 283.

III. PETITION TO INTERVENE

PPLICA is an ad hoc association of energy-intensive industrial customers receiving electric service in PPL's service territory. PPLICA members purchase service from PPL primarily under Rate Schedules LP-4, LP-5, LP-6, IS-P, and IS-T, as well as available riders. PPLICA members collectively consume approximately 2.12 billion kWh of electricity annually in manufacturing and other operational processes, and electricity costs comprise a significant portion of their production costs.

PPLICA is concerned with issues regarding the terms and conditions of its electricity service, including the imposition of stranded costs. The Commission's final disposition of PPL's Petition will directly affect whether PPLICA member WEA receives service from PPL or from the Borough. In addition, any determination by the Commission regarding the stranded cost obligations of PPL's current retail customers will impact all PPLICA members. As PPL's largest retail customers, PPLICA members have an interest in this proceeding that is not represented by any other party of record; consequently, PPLICA satisfies the standards for intervention under Section 5.72 of the Commission's Regulations. See 52 Pa. Code § 5.72.

[2] Similarly, PPLICA urges the Commission to reject the OTS's comments concerning PPL's ITC recovery in the event that MVIP customers are determined to be exempt from payment of such costs. See OTS Answer at 4-5, ¶ 8. Because neither this Commission, the Federal Court, nor any other body has determined that MVIP customers are so exempt, PPL's recovery of any shortfall is not properly before this Commission.

IV. CONCLUSION

WHEREFORE, for the reasons stated above, PPLICA respectfully requests that this Honorable Commission: (1) grant PPL's request for a declaratory order that MVIP is within PPL's certificated territory and, therefore, only the Commission can require PPL to abandon certificated service to the Company's customers located in MVIP; and (2) deny without prejudice the portions of the Petition for Declaratory Order filed by PPL concerning the obligations of PPL retail customers within MVIP to continue to pay ITCs and CTCs to PPL if such customers receive electric service from the Borough in the future. In addition, PPLICA respectfully requests that the Commission grant this Petition to Intervene and provide PPLICA with full-party status in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By Karen S. Miller Orner

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Pamela C. Polacek
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Counsel to the PP&L Industrial Customer Alliance

Dated: November 6, 2002

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PP&L INDUSTRIAL CUSTOMER ALLIANCE

Agere Systems, Inc.
Air Products and Chemicals, Inc.
Alcoa Engineered Products
Armstrong World Industries, Inc.
Binkley & Ober, Inc.
BOC Gases
Buckeye Pipe Line Company, L.P.
CertainTeed Corporation
Chamberlain Manufacturing Corp.
Hercules Cement Company
Hershey Foods Corporation
Lafarge North America - Whitehall Plant
Magee Rieter Automotive Systems
Mount Joy Wire Corporation
Praxair, Inc.
RR Donnelley & Sons Company
Stroehmann Bakeries
TIMET North America
WEA Manufacturing, Inc.
Wegmans Food Markets, Inc.

ATTACHMENT "A"

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AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF DAUPHIN)

KAREN S. MILLER ORNER, being duly sworn according to law, deposes and says that she is Counsel to the PP&L Industrial Customer Alliance, and that in this capacity she is authorized to and does make this affidavit for them, and that the facts set forth in the foregoing Petition to Intervene and Answer in Partial Opposition are true and correct to the best of her knowledge, information, and belief.

Karen S. Miller Orner
Karen S. Miller Orner

SWORN TO and subscribed
before me this 6th day
of November, 2002.

NOTARIAL SEAL
MARY A. SIPE, Notary Public
Harrisburg, PA Dauphin County
My Commission Expires March 19, 2005

Mary A. Sipe
Notary Public

(SEAL)

COMMONWEALTH OF PENNSYLVANIA

DATE: November 13, 2002

SUBJECT: P-00021986

TO: Law Bureau

FROM: James J. McNulty, Secretary

DOCKETED
NOV 21 2002

DOCUMENT

PPL Electric Utilities Corporation

Attached is a copy of a Petition to Intervene & Answer in Partial Opposition filed by PP&L Industrial Customer Alliance in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS
OTS

jih

1701 Market Street
Philadelphia, PA 19103-2921
215-963-5000
Fax: 215-963-5299

ORIGINAL

Morgan, Lewis & Bockius LLP
COUNSELORS AT LAW

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NOVEMBER 26, 2002

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SECRETARY'S BUREAU

VIA HAND DELIVERY

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

Re: Petition of PPL Electric Utilities Corporation for a Declaratory Order To Terminate Controversies Concerning PPL's Certificated Rights To Provide Service in the Borough of Olyphant and Related Transition Charges, Docket No. P-00021986

Dear Secretary McNulty:

Enclosed, for filing, are an original and three (3) copies of **Answer of PPL Electric Utilities Corporation To Petition To Intervene By The PP&L Industrial Customer Alliance**. As indicated on the enclosed Certificate of Service, a copy is being sent to counsel for the Borough of Olyphant.

If you have any questions regarding the foregoing, please contact the undersigned at the addresses or telephone numbers provided above.

Respectfully submitted,

David B. MacGregor

David B. MacGregor

SRB

DBM/kmk
Enclosure

cc: Certificate of Service

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SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights To Provide Service In The Borough of Olyphant And Related Transition Charges	:	Docket No. P-00021986

DOCKETED

JAN 06 2003

DOCUMENT FOLDER

ANSWER OF PPL ELECTRIC UTILITIES CORPORATION TO PETITION TO INTERVENE BY THE PP&L INDUSTRIAL CUSTOMER ALLIANCE

Pursuant to Section 5.66 of the Pennsylvania Public Utility Commission's Regulations, 52 Pa. Code § 5.66, PPL Electric Utilities Corporation ("PPL Electric") hereby files this answer to the Petition to Intervene ("the Petition") filed by the PP&L Industrial Customer Alliance ("PPLICA").[1] As an initial matter, PPL Electric does not oppose the participation of PPLICA in this proceeding as an intervenor. However, PPL Electric does dispute PPLICA's assertion that the issue of whether PPL Electric customers in Olyphant must continue to pay competitive and intangible transition charges imposed by the Pennsylvania Public Utility Commission (the "Commission") is not "ripe for consideration." Petition, at 7. As explained below, the issue relating to stranded costs for which PPL Electric seeks declaratory judgment is properly before the Commission for resolution, and the Commission should reject PPLICA's request that

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[1] PPL Electric is filing this answer despite the notice of removal relating to this Petition recently filed in United States federal court by the Borough of Olyphant. Although 28 U.S.C. § 1446(d) provides for an automatic stay of state proceedings upon filing of a notice of removal, Olyphant's notice of removal is fatally flawed because the statute permits removal only from a "State court." See, e.g., Sun Buick v. Saab Cars USA, 26 F.3d 1259 (3d Cir. 1994). Since the Pennsylvania Public Utility Commission is not a "State court," PPL's Petition cannot be removed by Olyphant, and PPL Electric therefore regards the automatic stay provision to be inapplicable to the present proceeding.

portions of PPL Electric's petition for a declaratory order relating to stranded costs be denied without prejudice.

As set forth in PPL Electric's Petition for Declaratory Order to Terminate Controversies Concerning PPL Electric's Certificated Rights To Provide Service In The Borough of Olyphant And Related Transition Charges ("PPL Electric Petition"), the Borough of Olyphant ("Olyphant") has asserted an exclusive right to serve PPL Electric's customers located in the Mid-Valley Industrial Park ("MVIP"), within Olyphant's boundaries, which PPL Electric currently serves pursuant to an existing certificate of public convenience. As part of its efforts to exclude PPL Electric, Olyphant has informed at least one large PPL Electric customer that it would not have to pay stranded costs if Olyphant were to provide electric service instead of PPL Electric. Because Olyphant's actions conflict with the Commission's powers to regulate abandonment of certificated service and create uncertainty with respect to payment of stranded costs under Pennsylvania law, PPL Electric has sought declaratory relief from the Commission.[2]

In its Petition, PPLICA agrees with PPL Electric that only the Commission has the authority to require PPL Electric to abandon certificated service to PPL Electric's MVIP customers, and PPLICA requests the Commission grant PPL Electric's request for a declaratory

---

[2] In addition to its efforts directed at PPL's customers described in PPL's Petition, Olyphant has also initiated federal antitrust litigation against PPL in Borough of Olyphant v. Pennsylvania Power & Light, et al., No. 3:CV-01-2308 (M.D. Pa., filed December 5, 2001) ("Olyphant v. PPL"). See PPL Electric Petition, at ¶¶ 17-18. After seeking an extension to respond to PPL's Petition before this Commission, to which PPL agreed, Olyphant filed its notice of removal of PPL's Petition to United States federal court, contending that the Commission is without jurisdiction to hear PPL's Petition. PPL strongly disagrees with Olyphant's claims that this Commission is without jurisdiction over the issues in PPL's Petition, which relate entirely to matters under Pennsylvania law over which this Commission has exclusive jurisdiction. PPL will be filing a motion to remand its Petition to the Commission from federal court no later than December 12, 2002, as Olyphant's attempt to remove this case from the Commission is entirely without merit.

order with respect to PPL Electric's certificated service. Petition, at 5, 11. However, PPLICA makes several arguments that, reduced to their essence, simply claim that PPL Electric's request for a declaratory order relating to transition charges is not ripe for consideration because PPL Electric may still win in Olyphant v. PPL. Petition at 6-9. PPLICA's contentions are in error for several reasons.

First, despite PPLICA's assertions to the contrary, there can be no dispute that Olyphant's actions relating to stranded costs as described in PPL Electric's Petition have created sufficient uncertainty to justify a declaratory judgment by the Commission. See 66 Pa. C.S. § 311(f) (permitting the Commission to issue a declaratory judgment to terminate a controversy or resolve uncertainty). In fact, at least one member of PPLICA (the same PPL Electric customer Olyphant told would be able to avoid paying stranded costs) has sought to intervene in the federal court proceeding in part due to the "risk" of having to make future stranded cost payments. See PPL Electric Petition, Exhibit 10, at 12. PPL Electric's customers should not be able to rely upon alleged uncertainty of their obligation to pay stranded costs as a basis for intervention in a federal proceeding while denying the ripeness of the same issue before the Commission, particularly where that issue turns exclusively on state law over which the Commission – not the United States federal court – has exclusive jurisdiction. See PPL Electric Petition, ¶ 32.

Second, PPLICA's suggestion that the Commission should not entertain PPL Electric's Petition relating to stranded costs because PPL Electric may win in federal court ignores the assistance a Commission ruling on PPL Electric's Petition would provide in resolving those current federal proceedings. As set forth in PPL Electric's Petition, PPL Electric seeks only to resolve the obligation of its customers to pay retail stranded costs imposed by this Commission

under state law – an issue Olyphant continues to ignore in federal proceedings, including its current attempt to divest this Commission of its jurisdiction over PPL Electric's Petition. See Notice of Removal Of Petition Against Borough of Olyphant Filed By PPL Electric Utilities Corporation in State Proceedings Case No. P-00021986, at 8 (asserting that PPL Electric "simply has no basis to seek to charge the Borough or any of its customers with any stranded cost charges") (excerpt attached as Exhibit A). Although the Commission's ruling with respect to the nonbypassable nature of stranded cost charges set forth in PPL Electric's Petition will not terminate the entire controversy between PPL Electric and Olyphant,[3] a Commission ruling clarifying the obligations of PPL Electric customers would substantially contribute to ensuring that the federal court in Olyphant v. PPL does not enter any ruling that would undermine the implementation of the Competition Act.[4]

Third, PPLICA also ignores the effect that a ruling by the Commission would have in limiting other litigation. On October 22, 2002, before PPLICA filed its petition to intervene, fourteen Pennsylvania boroughs, including Olyphant, filed another federal lawsuit nearly identical to Olyphant v. PPL. See Borough of Lansdale v. PP&L, Inc., No. 2:02-cv-08012 (E.D. Pa., filed October 22, 2002). Under PPLICA's view, the Commission should now wait until two federal lawsuits (including likely appeals) are entirely resolved before examining what PPLICA does not dispute are entirely state law issues. This approach is inconsistent with the Commission's use of declaratory judgments to foreclose unnecessary disputes. See, e.g., Petition

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[3] PPL is not seeking the Commission's interpretation of the FERC agreements upon which Olyphant relies. See PPL Electric Petition, ¶ 31 n.2.

[4] In its Petition, PPLICA asserts that the federal proceeding may reach "the trial stage" by January 2003. Petition, at 9. However, no trial date has been set by the federal court, and PPL Electric expects that any trial will not commence until well after January 2003 in light of the fact that scheduled briefing on dispositive motions has not even begun.

of the Borough of Phoenixville Requesting the Issuance of a Declaratory Order Concerning the Sale of Water Utility Assets to Philadelphia Suburban Water Company and the Abandonment of Service, Docket No. P-00950942, 1995 Pa. PUC LEXIS 80 (September 25, 1995) (ruling on jurisdiction over sale of borough assets to public utility, concluding "that the issues raised by the parties are appropriate for disposition via declaratory order based upon our view that situations similar to the instant transfer can be expected in the future due to the Commission-endorsed regionalization efforts by public utilities throughout the Commonwealth.").

Finally, the case law relied upon by PPLICA is inapposite. In Ruszin v. Commonwealth of Pennsylvania, 675 A.2d 366 (Pa. Commw. 1996), a case of original jurisdiction, the Commonwealth Court refused to issue a declaratory judgment where an employee with partial hearing loss sought to establish his benefits in the event he were to suffer a total hearing loss at some unknown future date. Id. at 371. The court concluded that to issue a declaratory judgment in such a case would be to "determine rights in anticipation of events that may never occur, which we cannot do." Id. However, the court reached this ruling after observing that both parties agreed that partial hearing loss was not compensable, and there is no "antagonistic claim indicating imminent or inevitable litigation." Id. Here, of course, litigation involving the state law issues PPL Electric seeks to resolve is already proceeding and expanding, and that litigation turns in part on exactly the issues for which PPL Electric has sought declaratory judgment. The fact that PPL Electric may eventually win in federal court does not make Olyphant's claims to PPL Electric customers that PPL Electric cannot collect stranded costs analogous to the possibility of an individual becoming deaf at some unknown future date.

For these reasons, the Commission should grant PPLICA intervenor status in this proceeding, but reject its request to deny portions of PPL Electric's Petition pertaining to stranded costs.

Respectfully submitted,

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Of Counsel:

Morgan, Lewis & Bockius LLP

Date: November 26, 2002

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

In the Matter of the Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Services in the Borough of Olyphant and Related Transition Charges	NOTICE OF REMOVAL OF STATE (PaPUC) CASE NO. P-000211986 (Before the Pennsylvania Public Utilities Commission)

3:CV-01-2308
(JAMES M. MUNLEY)

NOTICE OF REMOVAL OF PETITION AGAINST BOROUGH OF OLYPHANT FILED BY PPL ELECTRIC UTILITIES CORPORATION IN STATE PROCEEDINGS CASE NO. P-00021986

Pursuant to 28 U.S.C. §§ 1441(b), 1446, and Rule 11 of the Federal Rules of Civil Procedure, the Borough of Olyphant, Pennsylvania (the "Borough" or "Olyphant") hereby removes a civil action brought by PPL Electric Utilities Corporation ("PPL") against the Borough, Case No. P-00021986, Pennsylvania Public Utilities Commission (the "Commission"), to the United States District Court for the Middle District of Pennsylvania. The Borough, the defendant therein, was served by mail in Case No. 00021986 received on October 18, 2002, copy attached hereto as Appendix A. This Petition by PPL against the Borough is being removed under 28 U.S.C. § 1441 because it raises federal issues as to the applicability of the Federal Antitrust Laws and federal Orders issued by the Federal Energy Regulatory Commission to PPL, and seeks an improper end-run around existing litigation between the Borough and PPL in the U.S. District Court for the Middle District of Pennsylvania (Borough of Olyphant v. PPL, Inc., PPL Corporation, PPL Electric Utilities Corp., and PPL Generation, LLC, Case No. 3:CV-01-2308, Judge James Munley), involving the

served any customers within the Borough then served by PPL. Accordingly, PPL's attempt now to collect stranded costs (ITCs or CTCs) directly conflicts with those federal agreements long confirmed by final federal orders of the FERC. PPL, having entered those agreements approved by final orders of the FERC, knowing that they could apply to service by the Borough of any customers within the Borough simply has no basis to seek to charge the Borough or any of its customers with any stranded cost charges. The United States Supreme Court has held that on this issue, directly involving federal jurisdiction over wholesale sales and transmission, preempts State jurisdiction. *New York v. FERC,* 122 S.Ct. 1012 (2002). Moreover, the FERC's regulation providing for the "recovery of stranded costs by public utilities and transmitting utilities" expressly precludes the recovery of any wholesale stranded costs, where, as here, it is prohibited by a contract or settlement agreement subject to a FERC Order. Having established that federal jurisdiction preempts state jurisdiction, the United States Supreme Court has made it clear that when the issue arises in the context of a federal antitrust law claim, the Federal District Court has jurisdiction. *Otter Tail Power Co. v. United States,* 410 U.S. 368 (1973).

The U.S. Supreme Court has confirmed that wholesale sales of electric power in interstate commerce are within the exclusive federal jurisdiction. *New York v. FERC*, 122 S.Ct. 1012, (2002). By its filing at the PaPUC, PPL is attempting to collaterally attack the final 1998 Agreements between PPL and the Borough, approved by FERC Orders.

The District Court that has before it the case filed by Olyphant against PPL for breach of these federal rights, has exclusive jurisdiction to adjudicate these issues. Section 317 of the Federal Power Act vests exclusive jurisdiction in the federal district court of all suits brought to enforce any liability or duty created by an order under the Act:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the **Answer of PPL Electric Utilities Corporation To Petition To Intervene By The PP&L Industrial Customer Alliance** on the following parties, listed below in the manner indicated, in accordance with the requirements of § 1.54 (service by a participant).

VIA HAND DELIVERY

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Date: November 26, 2002

Anthony D. Kanagy

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ORIGINAL

KAREN S. MILLER ORNER
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December 6, 2002

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

VIA HAND DELIVERY

RE: Petition of PPL Electric Utilities Corporation for a Declaratory Order to Terminate Controversies Concerning PPL's Certificated Rights to Provide Service in the Borough of Olyphant and Related Transition Charges; Docket No. P-00021986

Dear Secretary McNulty:

The PP&L Industrial Customer Alliance ("PPLICA") submits this letter to the Pennsylvania Public Utility Commission ("Commission") in order to clarify a statement set forth in the Petition to Intervene and Answer in Partial Opposition ("Answer") that PPLICA filed with the Commission on November 6, 2002, in the above-referenced proceeding. Specifically, on page 3 of its Answer, PPLICA stated that the trial with respect to the Complaint filed in the United States District Court for the Middle District of Pennsylvania by the Borough of Olyphant, Pennsylvania, against PPL Electric Utilities Corporation is scheduled to begin in January, 2003. PPLICA wishes to clarify that the trial in this proceeding has not been definitively scheduled to begin in January, 2003. Under normal procedures, however, the trial likely should occur early in 2003, absent further delays. We will continue to advise the Commission concerning the trial date in the federal court proceeding. In the interim, if you have any questions or need more information, please do not hesitate to contact us.

Copies of this filing are being served consistent with the attached Certificate of Service. Please date stamp the extra copy of this letter and kindly return it to our messenger for our filing purposes. Thank you.

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DOCKETED
JAN 15 2003

Sincerely,

McNEES WALLACE & NURICK LLC

By Karen S. Miller Orner
David M. Kleppinger
Pamela C. Polacek
Karen S. Miller Orner

Counsel to the PP&L Industrial Customer Alliance

KSMO
c: Certificate of Service

DOCUMENT
FOLDER

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ORIGINAL

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Karen S. Miller Orner

Karen S. Miller Orner

Dated this 6th day of December, 2002, in Harrisburg, Pennsylvania.

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