

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Citizen Power and Pennsylvania :
Steel and Cement Manufacturers Coalition for a : Docket No. P-2010-2195426
Declaratory Order to Investigate Utility Stranded :
Cost Collection and Mitigation Efforts :

**REPLY OF
CITIZEN POWER AND
PENNSYLVANIA STEEL & CEMENT MANUFACTURERS COALITION**

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Dated: November 1, 2010

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Citizen Power and Pennsylvania Steel and Cement Manufactures Coalition (“Joint Petitioners”) hereby files, pursuant to 52 Pa. Code § 5.63, this Reply to the Answers of Duquesne Light, The Energy Association of Pennsylvania (“EAP”), UGI Utilities Inc., PPL Electric Utilities Corporation, West Penn Power Company d/b/a Allegheny Power, PECO Energy Company, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company. For the reasons that follow, the Pennsylvania Public Utility Commission (“Commission”) should deny the relief requested in the various Answers.

I. INTRODUCTION

Between 1998 and 2001, at various Dockets, the Commission approved stranded cost calculations and recovery mechanisms for each Pennsylvania Electric Distribution Company (“EDC”).¹ These stranded cost calculations essentially looked at each EDC’s existing rate based generation and power supply costs which would have been recoverable under regulation but, based upon long range price forecasts, may not be recovered in a competitive environment. On August 24, 2010, the Joint Petitioners filed a Petition for a Declaratory Order to investigate stranded cost mitigation efforts, to investigate stranded cost collections and to refund any stranded cost over collections, under 52 Pa. Code § 5.42 (“Petition for Declaratory Order” or

¹ Restructuring docket numbers: R-00973975 (UGI-Electric Utilities, Inc.), R-00973981 (West Penn Power Co.), R-00974101 (Duquesne Light Co.), R-00973953 (PECO Energy), R-00973954 (PP&L), R-00974008 (Metropolitan Edison Co.), and R-00974009 (Pennsylvania Electric Company).

“Petition”). On September 13, 2010, the Energy Association of Pennsylvania filed a Motion for an extension of time to file an answer or otherwise respond to the Petition. On September 14, 2010, a Secretarial Letter was filed, granting the motion for an extension until October 12, 2010. On October 6, 2010, Patricia M. Braden R.N. and Herbert Braden, P.E. filed statements in support of the Petition for Declaratory Order. On October 11, 2010, Clean Air Council filed a Letter in Support of the Petition for Declaratory Order and on October 15, 2010 Dennis Baylor filed a statement in support of the Petition for Declaratory Order. On October 12, 2010, PPL, the Energy Association of Pennsylvania, UGI Utilities, Inc., West Penn Power Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and PECO Energy Company all filed Answers to the Petition for Declaratory Order. Many of these Answers make similar arguments to those put forth by PPL in their Motion for Judgment on the Pleadings Dismissing the Petition for Declaratory Order (“Motion for Judgment on the Pleadings” or “Motion”). The Joint Petitioners now file this Reply to the Answers of Duquesne Light, The Energy Association of Pennsylvania, UGI Utilities Inc., PPL Electric Utilities Corporation, West Penn Power Company d/b/a Allegheny Power, PECO Energy Company, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company. For organizational purposes, the reply of Citizen Power incorporates by reference Citizen Power’s Answer to the Motion of PPL Electric Utilities Corporation (“Answer”) for Judgment on the Pleadings Dismissing the Joint Petition of Citizen Power and Pennsylvania Steel & Cement Manufacturers Coalition for a Declaratory Order, also filed today with the Commission.

II. REPLIES

A. Reply To The Answer Of The Energy Association Of Pennsylvania To Joint Petition For Declaratory Order.

1. EAP's Claim That "The Joint Petitioners' Proposed 'Second Look' At Stranded Costs Has Previously Been Found Unlawful By Both The Commission And The Commonwealth Court"

Please see the Joint Petitioners' Answer at II.B.

2. EAP's Claim That "The Joint Petitioners Misconstrue The Electric Companies' 'Duty to Mitigate'"

Please see the Joint Petitioners' Answer at II.C.

3. EAP's Claim That "Substantial Mitigation Savings Were Factored Into The Commission's Stranded Cost Findings"

Please see the Joint Petitioners' Answer II.C. and Answer II.F. (related to securitization and Qualified Rate Orders). The Joint Petitioners do believe, however, that divestiture of generation assets at market value to an unaffiliated party under the Section 2808(c)(4) mitigation requirement may fulfill an EDC's duty to mitigate if the proceeds are used toward future transition charges.

4. EAP's Claim That "Citizen Power Is, And The Individual Members Of The Coalition Likely Are, Estopped From Seeking The Relief Requested"

No PSCMC member was a Party to any of the restructuring proceedings. Some of the assets now owned by coalition members were owned by entities like Lukens Steel or Bethlehem Steel, but those assets were acquired through the liquidation via a bankruptcy and the current owners of those assets were not successors in the interests of Bethlehem or Lukens but merely acquirers of certain assets. Citizen Power is not estopped from seeking the relief requested in the Joint Petition. It is true that Citizen Power was a member of a

group called the “Environmentalists” that intervened in the Duquesne and West Penn Power cases referenced by EAP. It is also true that Citizen Power was a party in West Penn’s POLR II proceeding at Docket No. R-00039022. However, Citizen Power’s participation in these cases is immaterial to the current Joint Petition. The Joint Petitioners are not seeking to change the Commission’s determination in any of these cases. Instead, the Joint Petitioners are asking for an investigation into mitigation efforts of the EDCs under Section 2808(c)(4). These statutory mitigation requirements have no bearing on the initial stranded cost determination determined at the EDC’s litigated restructuring proceedings.

5. EAP’s Claim That “The Joint Petitioners’ Claim That Electric Companies Over recovered Their Stranded Costs Is Specious”

EAP claims that the “Joint Petitioners disregard the very substantial benefits that customers have derived over the past twelve years by having available the option to purchase generation at capped rates...”² As evidence, EAP cites to a 2007 paper titled *The Benefits of Electric Restructuring to Pennsylvania Consumers*, authored by Dr. Jonathan Lesser, which claims on page nine that the rate caps have “locked-in billions of dollars of benefits for consumers and insulated them from the ups and downs of the competitive market prices over more than a decade.” However, there is little credible evidence in this paper supporting these claimed benefits because the study by Dr. Lesser ignores several important aspects of PJM’s electricity market structure. The study equates increased nuclear generation availability in Pennsylvania with load being dropped across the Commonwealth which ignores both PJM’s Locational Marginal Pricing system for congestion management. Dr. Lesser’s flawed study shows an ignorance of the fact that total load and price are highly but far from perfectly correlated and his reliance on natural gas pricing as the independent variable ignores the fact

² Answer of The Energy Association of Pennsylvania to Joint Petition For Declaratory Order, in Docket No. P-2010-2195426, pg. 17.

that natural units set the LMP is less than 30% of the hours in the years he analyzed according to the corresponding annual State of the Market Reports by PJM's own Market Monitor.

6. EAP's Claim That "Utility Customers Are Not Entitled To Gains, Nor Are They Responsible For Losses, Realized By Non-Regulated Purchasers Of Formally Used And Useful Property"

EAP claims that that a "second look" of stranded costs is not feasible because the ultimate determination of stranded costs can only be done by looking at the entire anticipated service life of a generation asset. However, the Joint Petitioners are not asking for a redetermination of stranded costs, but an investigation into mitigation efforts Section 2808(c)(4). In fact, the Joint Petitioners agree with EAP that the entire anticipated service lives of generation assets needs to be addressed and urges the Commission to investigate mitigation efforts at points in the future to determine whether any mitigation savings can be allocated to consumers.

EAP also claims that once the generation assets were transferred to the unregulated entities that acquired those assets, any risks associated with those assets were also transferred to the unregulated entities. For an answer to these claims please see the Joint Petitioners' Answer at II.G. and II.H.

B. Reply To The Answer Of UGI Utilities, Inc. To Joint Petition For Declaratory Order.

UGI joined in and adopted the Answer filed by EAP. However, UGI also claimed that the Joint Petition was untimely because any refunds would violate the four year statute of limitations contained in Section 1312 of the Public Utility Code. The Joint Applicants agree that this statute would bar recovery from UGI for overpayments after August 24, 2006.

C. Reply To The Answer Of PPL Electric Utilities Corporation To Joint Petition For Declaratory Order.

1. PPL's Claim That "The Commission Does Not Have Legal Authority To Grant The Relief Requested In the Petition For Declaratory Order"

Please see the Joint Petitioners' Answer at II.B. (regarding the reevaluation of stranded costs), Answer at II.D. (regarding the commission-made rate doctrine), Answer at II.E. (regarding authority to issue refunds under Section 1312), Answer at II.F. (regarding Qualified Rate Orders), and Answer at II.G and Answer at II.H (regarding transfer of generation assets to unregulated affiliates).

2. PPL's Claim That "Any Recalculation Of Stranded Costs Based Upon Higher Energy Prices During The Transition Period Would Not Produce Lower Rates During The Transition Period And Would Not Produce Any Refunds For Customers"

Under Section 2804(4)(v), if transition charges were reduced, then stranded costs would be recovered sooner by keeping rates at the cap level and devoting excess earning under the cap to mitigate stranded costs.

3. PPL's Claim That "PPL Electric's Generating Affiliate Did Not Receive Market Prices For Sales Of Electricity To PPL Electric During The Transition Period."

PPL correctly points out in Section E of its Answer that PPL Energy Plus did not receive market prices from PPL Electric, in fact PPL Electric incurred a mere \$90 million in stranded costs and that it did not seek recovery of those costs. Joint Petitioners believe however that PPL Corporation did abide by the Competition Act and in so doing that PPL Energy Plus did attempt to mitigate stranded costs through the "[m]aximization of market revenues from existing rate base generation assets". Joint Petitioners have not argued that PPL Electric is entitled to no more than the \$90 million advance payment as the only actually incurred transition cost for PPL

Electric, but the degree to which PPL and other PA EDCs were successful in mitigating stranded costs during the transition period should be investigated.

4. PPL's Claim That "The Petition For Declaratory Order Fails To Recognize That The Commission Did Account For Mitigation Efforts In Setting Stranded Cost Levels."

Please see the Joint Petitioners' Answer at II.C.

5. PPL's Claim That "It Is Not Possible To Calculate Actual Stranded Costs At This Time."

Please see Section II.A.6. of this Reply.

6. PPL's Claim That "The Petition For Declaratory Order Presents An Incomplete And Inaccurate Depiction Of The Calculation Of Stranded Costs And The Benefits Of Rate Caps."

The Joint Applicants in their Petition asked for an investigation into stranded cost overcollection. Assuming *arguendo* that the methodology used by the Joint Petitioners is inaccurate, that could be corrected by the Commission at the investigation stage. Please see Section II.A.5 of this Reply (regarding rate caps).

7. PPL's Claim That "The Petition For Declaratory Order Unfairly Proposes A One-Way Reconciliation."

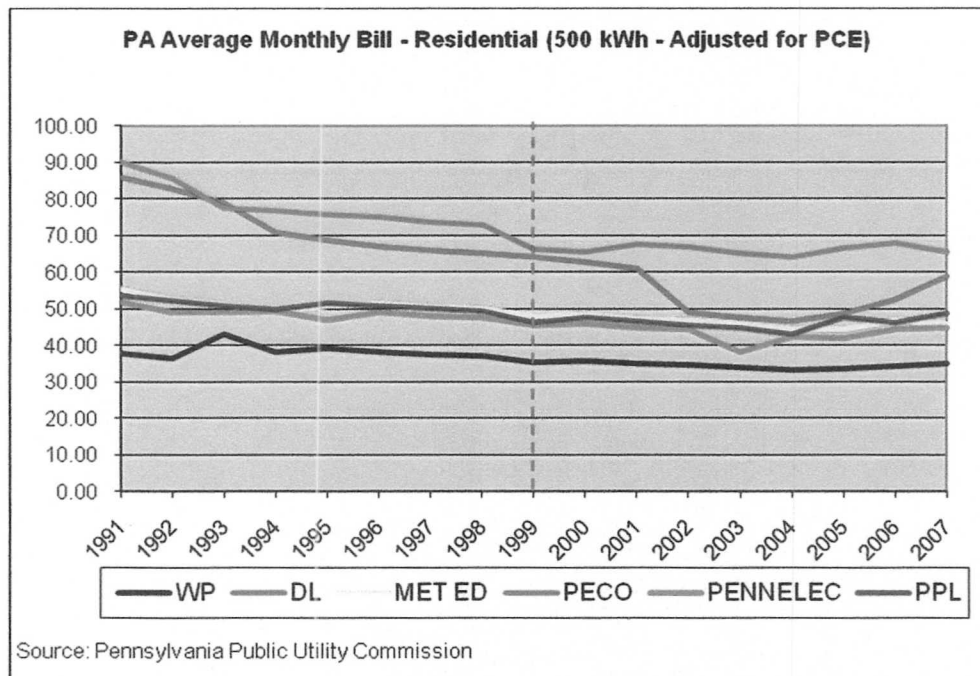
Under Section 2808(c)(4), the duty to mitigate generation-related transition or stranded costs is placed upon the electric utility. Therefore, under the Public Utility Code, mitigation is indeed a one way street and can only result in lower transition charges.

8. PPL's Claim That "The Petition For Declaratory Order Is Incorrect In Asserting That Robust Electric Competition Does Not Exist Or That The Competition Act Assumed That Electric Prices Would Fall."

PPL states that "As of October 8, 2010, 34.6% of PPL Electric customers, representing 73.2% of PPL Electric's total load, were taking service from an EGS. However, PPL does not mention the percentage of residential customers served by alternative supplier for other

EDCs: Allegheny Power 0%, Duquesne Light 18.4%, MetEd/Penelec 0.02%, PECO Energy 0.2%, Penn Power 15.2%, and UGI 0%.³ In all of the cases the incumbent utility serves the generation needs of a vast majority of residential customers. This is not robust electric competition.

Citizen Power's claim that electric competition failed because it did not deliver lower prices is based on the fact that prices were on a downward trend prior to competition being implemented. After deregulation of the industry, a significant downward trend did not continue, even with the "benefits" of rate caps.



Note: Pennsylvania Public Utility Commission numbers adjusted for PCE by Citizen Power.

D. Reply To The Answer Of West Penn Power Company d/b/a Allegheny Power To Joint Petition For Declaratory Order.

1. WPP's Claim That "Joint Petitioners' Request Would Impair the Commission's Irrevocable Qualified Rate Orders and Violate the Electric Competition Act"

Please see the Joint Petitioners' Answer at II.D.

³ October OCA Electric Shopping Statistics.

2. WPP's Claim That "The Commission Recognized that Stranded Cost Determinations Should be Afforded Full and Complete Recovery"

Please see the Joint Petitioners' Answer at II.B. and at II.C.

3. WPP's Claim That "The Joint Petitioners' Proposed 'Second Look' at Stranded costs Would violate the Electric Competition Act"

Please see the Joint Petitioners' Answer at II.B.

4. WPP's Claim That "The Joint Petitioners Incorrectly Interpret Section 2808(c)(4) as Providing Hindsight Review of Stranded Cost Determinations."

Please see the Joint Petitioners' Answer at II.C.

5. WPP's Claim That "The Joint Petitioners Improperly Request Review of One Item of a Multi-Faceted Settlement"

Please see Section II.A.4. of this Reply.

6. WPP's Claim That "As a Party and Beneficiary in Allegheny Power's 1998 and 2005 QROs Citizen Power Should be Estopped from Requesting a Re-determination of Stranded Costs."

Please see Section II.A.4. of this Reply.

7. WPP's Claim That "The Joint Petition is Unspecific About the Interest and Standing of the Joint Petitioners."

Pennsylvania Steel and Cement Manufacturers Coalition members operate facilities served by PPL Utilities, West Penn Power Company, Duquesne Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and PECO Energy Company. As such, Joint Petitioners have a right to request the Commission to investigate the mitigation efforts and assess the level of stranded costs after the mitigation efforts that have been implemented by the various EDCs. To the extent that PSCMC members have paid stranded costs that in fact mitigated after the initial determinations of

stranded costs and not in fact stranded, then members may be entitled to refunds to the extent that such are necessary to insure that overall rate levels are just and reasonable.

E. Reply To The Answer Of Duquesne Light To Joint Petition For Declaratory Order.

1. Duquesne's Claim That "Petitioners Are Estopped From Bringing This Action."

Please see Section II.A.4. of this Reply.

2. Duquesne's Claim That "There is no legal mechanism permitting a review of stranded cost calculations, as requested by Petitioners"

Please see the Joint Petitioners Answer at II.B.

3. Duquesne's Claim That "An EDC's ability pursuant to 66 Pa. C.S. 2812 to obtain irrevocable rate orders based upon stranded costs is an indication that no after-the-fact review was contemplated or possible"

Please see the Joint Petitioners Answer at II.F.

4. Duquesne's Claim That "Petitioners' claim against Duquesne Light is barred by the four-year limitation on the time period for which refunds can be ordered, set forth in 66 Pa. C.S. 1312, as Duquesne Light's stranded cost recovery ended in 2002 for the majority of Duquesne's Residential Customers, and Duquesne's transition period ended on August 23, 2004"

The Joint Applicants agree that this statute would bar recovery from Duquesne Light for overpayments after August 24, 2006.

5. Duquesne's Claim That "Petitioners argument that stranded cost recovery was inaccurate and should be updated because competition has not flourished and prices have not been reduced is incorrect as it applies to Duquesne Light"

The Joint Applicants are asking for an investigation into mitigation efforts by the EDCs.

The Current percentage of residential customers served by alternative supplier for Duquesne Light is only 18.4%.⁴

6. Duquesne's Claim That "Petitioner's arguments with respect to generation and wholesale prices in PJM are inapplicable to Duquesne Light"

⁴ October OCA Electric Shopping Statistics.

Since Duquesne Light Divested their generation in 2000 to a third party at market price, Duquesne could not have over-recovered stranded costs after 2000.

F. Reply To The Answers Of PECO Energy Company and Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company To Joint Petition For Declaratory Order.

The Answers of PECO and Met-Ed, Penelec, and Penn Power are substantially the same and both incorporate the Answer of EAP.

III. CONCLUSION

For the reasons stated above, and in the Answer referenced in this Reply, the Joint Petition should not be denied and the Commission should proceed with an investigation as requested in the Joint Petition.

Respectfully submitted,

/s/ David Hughes

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Dated: November 1, 2010

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Cost Collection and Mitigation Efforts	:	

VERIFICATION

I, Paul R. Williams, hereby state that the facts above set forth in the REPLY OF CITIZEN POWER AND PENNSYLVANIA STEEL & CEMENT MANUFACTURERS COALITION are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

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Dated this 1st day of November, 2010.

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Steel and Cement Manufacturers Coalition for a	:	Docket No. P-2010-2195426
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the REPLY OF
CITIZEN POWER AND PENNSYLVANIA STEEL & CEMENT MANUFACTURERS
COALITION, which was electronically filed today, in accordance with the requirements of §
1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 1st day of November, 2010.

/s/ David Hughes_____

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