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

BOROUGH OF LANSDALE,	:	
BOROUGH OF BLAKELY	:	CIVIL ACTION
BOROUGH OF CATAWISSA,	:	NO. 02-8012
BOROUGH OF DUNCANNON,	:	
BOROUGH OF HATFIELD,	:	
BOROUGH OF KUTZTOWN,	:	
BOROUGH OF LEHIGHTON,	:	
BOROUGH OF MIFFLINBURG,	:	
BOROUGH OF OLYPHANT,	:	
BOROUGH OF QUAKERTOWN,	:	
BOROUGH OF SCHUYLKILL HAVEN,		
BOROUGH OF ST. CLAIR,		
BOROUGH OF WATSONTOWN,		
BOROUGH F WEATHERLY,		
PENNSYLVANIA		
Plaintiffs,		
v.		
PP&L, INC., PPL ELECTRIC UTILITIES CORP., PPL ENERGY PLUS, L.L.C., and PPL GENERATION, L.L.C.,		
Defendants.		

MEMORANDUM

YOHN, J. March _____, 2006

The Boroughs of Lansdale, Blakely, Catawissa, Duncannon, Hatfield, Kutztown, Lehighton, Mifflinburg, Olyphant, Quakertown, Schuylkill Haven, St. Clair, Watsontown, and Weatherly, Pennsylvania ("the Boroughs") bring this action against PP&L, Inc., PPL Electric Utilities Corp., PPL Energy Plus, L.L.C., and PPL Generation, L.L.C. (collectively, "PPL") alleging various antitrust violations and asserting claims for breach of contracts approved by the Federal Energy Regulatory Commission ("FERC"). Compl. ¶¶ 13-19, 20-22. Defendants asserted counterclaims for breach of contract as to all plaintiffs, Counterclaims ¶¶ 19-24, and

tortious interference with existing and ongoing contractual relations as to Olyphant,[1] Counterclaims ¶¶ 25-36. Currently pending before the court is defendants' motion for partial summary judgment on their breach of contract counterclaims as to each plaintiff, except the Borough of Olyphant.[2] For the reasons set forth below, defendants' motion for summary judgment will be granted.

BACKGROUND

The facts of this case have been set forth at length in the court's order granting in part and denying in part defendants' motion for summary judgment on plaintiffs' claims, which will be filed shortly and in ***Borough of Olyphant v. PP&L Inc., et al***, Civ. No. 03-4023, 2004 U.S. Dist. LEXIS 16684, at *1 (E.D. Pa. Aug. 19, 2004). Only those undisputed facts pertinent to the resolution of this motion for summary judgment on defendants' counterclaims will be reiterated

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[1]These same counterclaims were asserted by PPL against the Borough of Olyphant, as an individual plaintiff, in ***Borough of Olyphant v. PP&L Inc., et al***, Civ. No. 03-4023, 2004 U.S. Dist. LEXIS 16684, at *1 (E.D. Pa. Aug. 19, 2004). This court granted defendants' motion for summary judgment dismissing Olyphant's breach of contract claims and antitrust claims. ***Borough of Olyphant v. PP&L Inc., et al***, Civ. No. 03-4023, 2004 U.S. Dist. LEXIS 8958, at *1 (E.D. Pa. May 14, 2004). Defendants' motion for summary judgment on their counterclaims against Olyphant was granted as to the breach of contract claim, but denied as to their claim of tortious interference. *Borough of Olyphant*,2004 U.S. Dist. LEXIS 16684 at *2 (Aug. 19, 2004). On September 27, 2005, the Third Circuit affirmed this court's decision as to both motions for summary judgment in *Borough of Olyphant*. *See Borough of Olyphant v. PPL Corp*, 153 Fed. Appx. 80, 82 (3d Cir. 2005) ("We have carefully considered Olyphant's arguments on this appeal and find that they lack merit. For the reasons stated in the District Court's well-reasoned and thorough opinion, we find that summary judgment was properly granted.")

[2]Pursuant to Fed. R. Civ. Pro. 41(a)(1) and (c) and as part of a settlement agreement reached by defendants and plaintiff, the Borough of Olyphant, PPL's breach of contract counterclaim againt Olyphant was dismissed. *See* "Stipulated Dismissal of Count I of Defendants' Counterclaims Against Olyphant and Counts II and III," Oct. 20, 2004 (Dkt. no. 51). PPL's other counterclaims in this litigation (Counts II and III) for tortious interference were alleged only against Olyphant and these claims were also dismissed by agreement. *Id.*

here.

The Boroughs are municipal corporations organized and existing under the laws of the Commonwealth of Pennsylvania. PPL Corporation is an energy and utility holding company of: (1) PPL Electric Utilities Corporation, a subsidiary that provides electric delivery service in Pennsylvania; (2) PPL Energy Plus, L.L.C., a subsidiary that markets wholesale electricity and acts as an EGS in Pennsylvania; and (3) PPL Generation L.L.C., a subsidiary that owns and operates generating facilities.

In December 1998, PP&L, Inc. Entered into separate power supply agreements with the plaintiffs in this case ("Power Supply Agreements"). Each borough's individual Power Supply Agreement incorporates a settlement agreement, dated January 29, 1998, ("Settlement Agreement") pursuant to which the Boroughs settled longstanding litigation with PP&L, Inc. that had been pending before FERC. Def. Exh. 2. As the result of a corporate realignment on July 1, 2000, PPL Electric Utilities Corporation assumed the rights and obligations of PP&L, Inc. under each of the Power Supply Agreements.

Section 9 of the Power Supply Agreements provides a dispute resolution provision, which reads:

> In the event of a dispute between the Parties arising under this Agreement, the Parties will work together in good faith to resolve the dispute. If the Parties are unable to resolve such dispute between themselves within five days after written notification by one Party to the other of the existence of such dispute, they shall immediately refer such matter to their internal upper management for resolution. If the management of the Parties is unable to resolve the dispute within ten days after the matter is brought to that level for review[,] either Party may bring a claim or suit in accordance with applicable law.

Def. Exh. 2.

In 2001, a dispute arose between the Borough of Olyphant and PPL regarding the furnishing of retail energy to customers in the Mid-Valley Industrial Park, which is located almost entirely within the borders of Olyphant. At the time, PPL sold electricity directly to many Park customers and Olyphant sought to be the electricity provider for all Park customers. After a series of letters and attempts to work out an agreement, the Borough of Olyphant filed suit against PPL on December 5, 2001 in the United States District Court for the Middle District of Pennsylvania, asserting antitrust violations and breach of contract claims. On February 25, 2001, PPL filed its answer, including defenses and counterclaims. On October 17, 2002, PPL filed a petition for a declaratory order with the Pennsylvania Public Utility Commission ("PUC") seeking an order that Pennsylvania law allowed PPL to impose retail stranded costs on retail customers, even if such customers in the future received service from Olyphant instead of PPL. On October 18, 2002, PPL filed a petition for a declaratory order with FERC, seeking a determination that the Settlement Agreement did not preclude PPL from charging retail customers for stranded costs.

The Boroughs of Lansdale, Blakely, Catawissa, Duncannon, Hatfield, Kutztown, Lehighton, Mifflinburg, Olyphant, Quakertown, Schuylkill Haven, St. Clair, Watsontown, and Weatherly, filed this lawsuit on October 22, 2002 against PPL alleging almost identical claims of antitrust violations and breach of contract as asserted by the Borough of Olyphant in it's individual lawsuit.[3]

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[3]This court denied a motion made by Olyphant, and the boroughs who are parties to this action, including Olyphant, to consolidate the two cases because discovery in the *Olyphant* case had been closed for nearly a year, while fact discovery in this action had just begun. *See* "Order Denying Plaintiffs' Joint Motion to Consolidate," *Borough of Lansdale v. PP&L, Inc.,* Civ. No. 02-8012, Dkt. #22 (E.D. Pa., filed Nov. 10, 2003).

STANDARD OF REVIEW

Either party to a lawsuit may file a motion for summary judgment, and the court will grant it "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." *Ideal Dairy Farms, Inc. v. John Lebatt, LTD.*, 90 F.3d 737, 743 (3d Cir. 1996) (citation omitted). When a court evaluates a motion for summary judgment, "[t]he evidence of the non-movant is to be believed," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), and "all justifiable inferences are to be drawn in [the non-movant's] favor." *Id*. Additionally, "[s]ummary judgment may not be granted . . . if there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed." *Ideal Dairy*, 90 F.3d at 744 (citation omitted). However, "an inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment." *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990).

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. *Williams v. Borough of W. Chester*, 891 F.2d 458, 460 (3d Cir.1989) (citing *Celotex v. Catrett*, 477 U.S. 317, 325 (1986)). Once the moving party has met the initial

burden of demonstrating the absence of a genuine issue of material fact, the non-moving party must establish the existence of each element of its case. *J.F. Feeser, Inc. v. Serv-A-Portion, Inc.*, 909 F.2d 1524, 1531 (3d Cir. 1990) (citing *Celotex*, 477 U.S. at 323). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citations omitted).

DISCUSSION

Defendants claim the Boroughs breached the dispute resolution provision of the Power Supply Agreement between the parties. Def. Exh. 2 at 10, Sec. 9. More specifically, PPL alleges that the Boroughs never made a formal "written notification" to PPL identifying the existence of a dispute prior to filing this lawsuit. Consequently, the matters at issue were never referred to PPL's upper management, and, hence, the parties' upper management did not work together in an attempt to resolve the dispute. Def. Br. 1.

To state a claim for breach of contract, defendants must show that (1) a contract existed; (2) there was a breach of a duty imposed by the contract; and (3) damages resulting from the breach. *Cooper v. Broadspire Servs., Inc.*, 2005 U.S. Dist. LEXIS 14752, at *6 (E.D. Pa. Jul. 20, 2005). PPL's Memorandum presents evidence satisfying each element of a breach of contract claim. The parties do not contest that the Power Supply Agreements, signed by PPL and the Boroughs, are binding contracts. To prove there was a breach of the dispute resolution clause, defendants provide the affidavit of PPL's Manager of Pricing and Contract Administration, Oliver G. Kasper, where he attests that no plaintiff in this lawsuit sent written notification to PPL about the existence of a dispute before filing the complaint. Def. Exh. 1, ¶ 6. Additionally,

defendants provide the depositions of each borough's designated representative. The representatives either explicitly testified that no written notification was given[4] to PPL or that they do not know of any such written notification. Def. Exh. 3. Defendants' assert they were damaged by the breach by incurring attorneys' fees and costs in defending this action that could have been avoided if the boroughs had complied with Section 9 because if the boroughs had engaged in good faith negotiations before suing PPL, some of the boroughs' claims could have been narrowed, saving time and expense in discovery. Answer, p. 15; Def. Reply, p. 5.

The Boroughs' response addresses one issue: whether they breached the dispute resolution clause. They first argue that there was no breach of contract as to the Borough of Olyphant because Olyphant fully complied with the dispute resolution clause, or if Olyphant didn't fully comply, PPL had actual notice of the dispute which substituted for written notification. Pl. Br. 2-7. However, as the defendants correctly point out, PPL does not have a counterclaim pending against Olyphant for breach of Section 9 because this counterclaim was voluntarily dismissed by stipulation of both parties pursuant to a settlement agreement. *See* "Stipulated Dismissal of Count I of Defendants' Counterclaims Against Olyphant and Counts II and III," Oct. 20, 2004 (Dkt. no. 51). Defendants' pending motion for summary judgment on their counterclaims is against all plaintiffs *except* Olyphant. Def. Br. 1. Additionally, this court

[4]The representatives of the Boroughs of Catawissa, Hatfield, Lansdale, Leighton, Quakertown, St. Clair, Watsontown, and Weatherly, explicitly testified that no written notification was given. See Def. Exh. 3 (Deposition of Catawissa, p. 135; Deposition of Hatfield, p. 65; Deposition of Lansdale, p. 173; Deposition of Lehighton, p. 97; Deposition of Quakertown, p. 56; Deposition of St. Clair, p. 54; Deposition of Watsontown, p. 62; Deposition of Weatherly, p. 67)

already decided in *Borough of Olyphant v. PP&L, Inc.*, that Olyphant did not comply with the dispute resolution clause prior to filing suit and the Third Circuit affirmed this court's decision. *See* 2004 U.S. Dist. LEXIS 16684, at *21-27, *aff'd* 153 Fed. Appx. 80, 82 (3d Cir. 2005).

As to the other thirteen boroughs, plaintiffs provide no evidence that any of these boroughs gave written notification of the existence of a dispute over the terms of the Power Supply Agreement. Plaintiffs provide no evidence of any form of communication between these boroughs and PPL regarding a dispute. Instead, plaintiffs respond by claiming that even if there was a breach, the thirteen boroughs are excused from complying with the dispute resolution clause because it was futile or meaningless for these boroughs to comply prior to filing suit on October 22, 2002, or because PPL waived any right to compliance. Pl. Br. 7-10. Plaintiffs claim they were aware of the history of negotiations between PPL and Olyphant, the pending lawsuit filed by Olyphant against PPL alleging antitrust violations and breach of contract claims, PPL's defenses and counterclaims in the Olyphant lawsuit, and the pending petitions for declaratory orders before the PUC and FERC regarding stranded cost obligations. Pl. Br. 9. Plaintiffs believe that "by rejecting Olyphant's efforts to resolve disputes and repeatedly demonstrating the intransigency of its position on stranded costs and "firm" power, PPL waived any right it had to insist on compliance with the dispute resolution clause and gave the remaining plaintiffs ample reason justifiably to conclude that any attempt to invoke that clause in their contracts with PPL would be utterly futile." Pl. Br. 1-2.

Plaintiffs rely on *Irving Trust Co. v. Nationwide Leisure Corp.*, 95 F.R.D. 51, 74 (S.D.N.Y. 1982) to support their futility argument. In *Irving Trust Co.*, the court was concerned with certifying a class action and discussed applying a sixty-day notice period to class

participants, even though this notice period was not part of the contract between the plaintiffs, tour participants, and defendant, the tour operator; the sixty-day notice period was part of a surety contract between the tour operator and its insurer. *Id.* at 67. In dicta, the court discussed the application of the notice provision as part of a recommendation on how to determine what sort of notice would satisfy the sixty-day period in case "for some reason it does become necessary to do so in the interest of quickly resolving all issues relative to class certification." *Id.* at 74. The court stated:

> to the extent that the notice provision is a condition precedent to some claims, compliance could be excused if, under the circumstances, compliance would be meaningless, add nothing or be a gesture in futility. See, e.g., Restatement of Contracts, Second § 255. . . . Nationwide's rejection of one type of claim as to one tour participant might have to be viewed as a waiver of notice of the same type of claims from other tour participants.

Id. In concluding that a notice provision may be excused if compliance would be meaningless, the court in *Irving Trust Co.* relied upon Restatement (Second) of Contracts § 255 (1979), which states, "where a party's repudiation contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused."[5] Thus, for the thirteen boroughs' failure to comply with the dispute resolution provision to be excused, PPL must have repudiated the contract and this repudiation must have materially contributed to the boroughs' failure to comply

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[5]The Restatement defines repudiation as:

> (a) a statement by the obligor to the obligee indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach under § 243, or
>
> (b) a voluntary affirmative act which renders the obligor unable or apparently unable to perform without such a breach.

Restatement (Second) of Contracts § 250 (1979). Section 243 discusses when the effect of a breach by non-performance gives rise to a claim for damages for total breach of contract.. Id. at § 243.

with Section 9.

In Pennsylvania, for there to be a repudiation of a contract there must be an absolute and unequivocal refusal to perform or a distinct and positive statement of an inability to do so. *McCloskey & Co. v. Minweld Steel Co.,* 220 F.2d 101 (3d Cir. 1955). A statement by a party that he will not or cannot perform in accordance with the contract will suffice; a "[m]ere expression of doubt as to his willingness or ability to perform is not enough to constitute a repudiation." *Oak Ridge Constr. Co. v. Tolley,* 351 Pa. Super. 32, 38 (Pa. Super. Ct. 1985).

Here there is no indication that PPL repudiated the Power Supply Agreements. Plaintiffs provide no evidence that PPL unequivocally refused to negotiate with the thirteen other boroughs or that PPL stated that it was unable to do so. Though the fact that litigation ensued after negotiations between PPL and Olyphant did not resolve that dispute (e.g. PPL didn't agree to put in a second transmission line based on Olyphant's "firm power" argument) might raise a doubt as to PPL's willingness to negotiate with the other thirteen plaintiffs, such actions do not rise to the definiteness necessary to constitute repudiation. Plaintiffs fails to show that PPL did not intend to negotiate with the other thirteen boroughs. Thus, there is no indication that PPL was repudiating the Power Supply Agreement so that the plaintiffs were excused from providing written notice prior to bringing this lawsuit.

Other cases cited by the Boroughs do not support their futility argument. In the present case plaintiffs furnish no evidence that the thirteen boroughs gave any notice to PPL regarding the contract dispute prior to filing suit. However, the courts in the cases cited found that strict compliance with a notice provision was futile only where the plaintiff *substantially complied*

with the contractual notice provisions by giving some form of actual notice to the defendants, the defendants were given an opportunity to remedy the dispute, and yet the defendants made it clear they would not do so. *See Mills v. Pennsylvania Mut. Live Stock Ins. Co.*, 57 Pa. Super. 483, 490 (Pa. Super. Ct. 1914) (plaintiff's failure to provide written notice was waived because plaintiff gave actual notice over the phone and defendants acted on this notice by directing a surgeon to do a post mortem and informing plaintiff that they denied liability); see also *Midwest Payment Systems, Inc. v. Citibank Federal Sav. Bank*, 801 F. Supp. 9, 11 (D. Ohio 1992) (plaintiff's failure to provide thirty-days written notice was waived where plaintiff gave eight-days written notice and no opportunity to cure was necessary because defendant had repudiated the contract), *Irving Trust Co. v. Nationwide Leisure Corp.*, 95 F.R.D. 51, 71 (S.D.N.Y. 1982) (class members failure to give written notice within sixty-days was not necessary where they gave actual notice via a signed petition directly to defendant's representative and where four class members' travel agents wrote a letter to defendant about the dispute that named these class members).

The essential purpose of a notice provision can be given effect so long as the party to be protected by the provision "received actual notice and was given an opportunity to cure." *Government Guar. Fund of Fin. v. Hyatt Corp.*, 960 F. Supp. 931, 940 (D.V.I. 1997). However, plaintiffs provide no evidence that PPL had actual notice that the thirteen boroughs disputed the retail stranded costs and firm power provisions of the Power Supply Agreements. There is no indication that these boroughs gave oral notice to PPL of the contract disputes that form the basis for this suit or that PPL was even aware of any dispute with these thirteen boroughs prior to their filing of this lawsuit. Here, any actual notice of a dispute over firm power or retail stranded costs was given by the Borough of Olyphant; PPL remained unaware that the other thirteen boroughs

planned on joining in the dispute.

Plaintiffs fail to show how compliance with the dispute resolution clause would have been futile. Plaintiffs argue that "any efforts on the part of [a] member of the [Borough] Group, who included all of the boroughs who [sic] became plaintiffs in the instant action, would have been futile, in part because Olyphant had already complied with the disputes-resolution clause - identical to the one in each of the other boroughs' supply contracts - to no avail, and in part because PPL could not take a position at odds with the one to which it had committed in federal district court, before FERC and before PUC." Pl. Br. 9 First, Olyphant did not comply with the dispute resolution clause. *See Olyphant,* 2004 U.S. Dist. LEXIS 16684, at *21-27, *aff'd* 153 Fed. Appx. 80, 82 (3d Cir. 2005). But even if Olyphant had complied with the dispute resolution provision, this does not make compliance with the dispute resolution clause on the part of the thirteen other boroughs' futile or meaningless. Though plaintiffs provide evidence showing that PPL was aware Olyphant disputed some of the terms in the Power Supply Agreement, this does not mean that PPL knew that the other boroughs also disputed these terms, prior to their filing suit on October 22, 2002. Thus, written notice would have informed PPL that the dispute with Olyphant extended to the other boroughs.

Written notice would have given PPL an opportunity to negotiate the firm power and stranded cost disputes with each borough and attempt a resolution. Though PPL's negotiations with Olyphant were not fruitful, this does not mean that dispute negotiations with the thirteen boroughs would not have led to an agreement or at least a narrowing of the claims brought in this suit. Plaintiffs do not fully explain why they believe PPL could not take a position in negotiations with the thirteen boroughs that differed from the one it took in federal district court

in *Olyphant* or the agency proceedings and cite no case law for support. If informed of the dispute with these boroughs prior to their filing suit, PPL could very well have decided that it was in its best interest to work out the dispute rather than risk a second lawsuit.

Additionally, under the circumstances of this case, PPL's ongoing dispute with Olyphant does not constitute a waiver of notice as to the claims brought by the other boroughs. In Pennsylvania, for the written notice requirement in a contract to be impliedly waived "there must be a clear, unequivocal and decisive act of the party with knowledge of such right and an evident purpose to surrender it." *Brown v. City of Pittsburgh*, 186 A.2d 399, 401 (Pa. 1962), *See also Goodwin v. Hartford Life Ins. Co.*, 491 F.2d 332, 333, n.1 (3d Cir. 1974). "In the absence of an express agreement a waiver will not be presumed or implied contrary to the *intention* of the party whose rights would be injuriously affected thereby, unless by his conduct the opposite party has been misled, to his prejudice, into the honest belief that such waiver was intended or consented to." *Brown*, 186 A.2d at 401 (emphasis added).

Plaintiffs provide no evidence that PPL became aware, prior to the filing of this lawsuit, that the thirteen boroughs each had a dispute under the Power Supply Agreement, so that PPL should be estopped from requiring compliance with the written notice requirement. Moreover, plaintiffs have failed to provide any evidence that PPL acted in a clear or unequivocal manner which showed an intent to relieve the thirteen boroughs from their duty to comply with the dispute resolution provision. Plaintiffs claim they were aware of the *Olyphant* litigation and knew PPL had filed counterclaims against Olyphant on February 25, 2002, thus they believed it was futile to comply with Section 9 prior to instituting their lawsuit on October 22, 2002. Pl. Br. 7-9. If plaintiffs were aware of these counterclaims, then they knew that one of the

counterclaims against Olyphant was for failure to comply with the dispute resolution clause. Counterclaims ¶¶ 30-35, *Olyphant v. PP&L*, et al, Civ. No. 01-02308, Dkt. # 9 (M.D. Pa., filed Feb. 25, 2002). Thus, the thirteen boroughs were aware that PPL brought a claim against one of their group for failure to comply with the dispute resolution clause and they can not now argue that they were misled into thinking written notice was waived.

In sum, the Boroughs have failed to show that there is a genuine issue of material fact regarding whether or not they breached the dispute resolution provision of the power supply agreement. The Boroughs' legal arguments to excuse their non-compliance with the dispute resolution clause are unavailing and plaintiffs have failed to provide any evidence that they did comply with the dispute resolution clause. Therefore, defendants are entitled to summary judgment on their breach of contract counterclaim.

CONCLUSION

Defendants' motion for summary judgment on its counterclaim for breach of contract will be granted as to the Boroughs of Blakely, Catawissa, Duncannon, Hatfield, Kutztown, Lansdale, Lehighton, Mifflinburg, Quakertown, Schuylkill Haven, St. Clair, Watsontown, and Weatherly, as there is no genuine issue of material fact and it is clear that judgment is warranted as a matter of law. An appropriate order follows.

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

BOROUGH OF LANSDALE,	:	
BOROUGH OF BLAKELY	:	
BOROUGH OF CATAWISSA,	:	CIVIL ACTION
BOROUGH OF DUNCANNON,	:	NO. 02-8012
BOROUGH OF HATFIELD,	:	
BOROUGH OF KUTZTOWN,	:	
BOROUGH OF LEHIGHTON,	:	
BOROUGH OF MIFFLINBURG,	:	
BOROUGH OF OLYPHANT,		
BOROUGH OF QUAKERTOWN,		
BOROUGH OF SCHUYLKILL HAVEN,		
BOROUGH OF ST. CLAIR,		
BOROUGH OF WATSONTOWN,		
BOROUGH F WEATHERLY,		
PENNSYLVANIA		
Plaintiffs,		
v.		
PP&L, INC., PPL ELECTRIC UTILITIES CORP.,		
PPL ENERGY PLUS, L.L.C., and		
PPL GENERATION, L.L.C.,		
Defendants.		

ORDER

And now, this _____ day of March, 2006, upon consideration of the motion for summary judgment of defendants PP&L, Inc., PPL Electric Utilities Corp., PPL Energy Plus L.L.C. and PPL Generation, L.L.C. (Doc. # 77), the accompanying memoranda of law, and statements of facts, the plaintiffs' responses in opposition thereto, plaintiffs' accompanying statements of facts,

and defendants' reply memoranda in further support of their motions for summary judgment, it is hereby ORDERED that the defendants' motion is GRANTED. Judgment is ENTERED in favor of PP&L, Inc., PPL Corporation, PPL Electric Utilities Corporation and PPL Generation, L.L.C. and against the Boroughs of Blakely, Catawissa, Duncannon, Hatfield, Kutztown, Lansdale, Lehighton, Mifflinburg, Quakertown, Schuylkill Haven, St. Clair, Watsontown, and Weatherly, Pennsylvania, as to liability on the breach of contract counterclaim.

/s William H. Yohn, Jr., Judge

William H. Yohn, Jr., Judge