[J-1-2011][M.O. – Castille, C.J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

MERCURY TRUCKING, INC., Appellee	:	No. 103 MAP 2009
v.	:	Appeal from the Order of the Commonwealth Court at No. 248 MD 2007, dated November 16, 2009
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Appellant	:	ARGUED: March 8, 2011

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: November 21, 2012**

I respectfully differ with the majority's portrayal of Section 510(d) as a "vestigial remnant" of repealed laws, as well as with its suggestion that the repeated reenactment of the statute has been a mere "drafting oversight." Majority Opinion, slip op. at 32. In my view, the statute embodies what is, in effect, a qualified de novo appeal avenue before a statewide tribunal.[1]

As the majority relates, the assessment procedure to which Section 510(d) is attached is a unique one, by which the Commission arranges to capture revenues from the companies which it regulates to secure funding for its own expenditures. See 66

[1] The de novo aspect is qualified, since the procedure entails an evidentiary overlay affording an initial prima facie effect to certain Commission documents and findings. See 66 Pa.C.S. §510(d).

Pa.C.S. §510(a). The scheme also involves the allocation of the assessment among various categories of utilities according to Commission estimates of expenditures which are deemed attributable to each. See id. §510(b). Furthermore, the process relies substantially on self-reporting of revenues by individual utilities. See id.

In such a regime, it seems apparent to me that individual utilities bearing the assessment burden could rationally be concerned with the potential that self-interest might come into play on the part of the Commission (in advancing its own expenditures) or other utilities or utility groups (competing to minimize the assessment burden falling to each). In my view, Section 510(d) serves a meaningful role in reducing the potential for appearances of impropriety through the maintenance of a unique process of judicial oversight triggered by a direct action at law, with an extended time period allowed for continuing investigation and scrutiny. The prescribed process contrasts substantially with the deferential review of general agency adjudications under the Administrative Agency Law and associated Rules of Appellate Procedure, which must be invoked within a more compressed timeframe. Section 510's self-contained refund process also is plainly structured as a quid pro quo for the requirement that utilities must pay contested assessments in the first instance without delay or restraint. See 66 Pa.C.S. §510(d) ("Any public utility making any such payment may, at any time within two years from the date of payment, sue the Commonwealth in an action at law to recover the amount paid, or any part thereof, on the ground that the assessment was excessive, erroneous, unlawful, or invalid . . ..").

For the above reasons, I am unable to support the majority's decision to treat 510(d)'s specialized procedure for judicial redress as an irrelevancy.