

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

97 SEP 15 AM 8:59

PA.P.U.C.  
PROTHONOTARY'S OFFICE

Pennsylvania Public Utility Commission :

v. :

Duquesne Light Company :  
Application for approval of a :  
Restructuring Plan pursuant to :  
66 Pa. C.S. §2806(d) :

Docket No. R-00974104

**DOCKETED**  
SEP 15 1997

DOCUMENT  
FOLDER

PREHEARING ORDER

The Pennsylvania Public Utility Commission ("Commission") held a telephonic prehearing conference in the above-captioned matter on September 4, 1997. Counsel for the following parties attended the conference:

Duquesne Light Company ("Duquesne Light"), the Commission's Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Office of Attorney General, Allegheny County, the City of Pittsburgh, the School District of Pittsburgh, Duquesne Industrial Intervenors, Allegheny Electric Cooperative, Inc., Allegheny Teledyne, Inc., Mid Atlantic Power Supply Association, Hospital Shared Services, Administrative Resources, Inc., Armco, Inc., The Peoples Natural Gas Company, mc2, Inc., MidCon Gas Services Corporation, Pennsylvania Power Company, The Eastern Group, Dollar Energy Fund, Low Income Advocate Parties, IBEW Local 2357, Pennsylvania Power & Light Company, New Energy Ventures, IBEW System Council U-10, GPU Energy, the Skipping Stone, Enron Power Marketing, Inc., and the Environmentalists.

Duquesne Light, the OTS and the OCA submitted prehearing memoranda. When agreement could not be reached at the prehearing conference, the parties held an informal telephonic conference on September 10, 1997 to discuss a litigation schedule. This Order sets forth the matters discussed, decided and agreed upon by the parties during the prehearing conference and the informal telephonic conference.

**Schedule**

During the informal telephone conference, the parties in attendance agreed upon the following litigation schedule:

<b>Date</b>	<b>Event</b>
August 1, 1997	Duquesne Light filed its testimony
September 4, 1997	First Telephonic Prehearing Conference
September 10, 1997	Informal Telephone Conference
October 21, 1997	Second Prehearing Conference
November 7, 1997	Answering Testimony
November 10-14, 1997	Public Input Hearings
December 2, 1997	Rebuttal Testimony
December 9, 1997	Third Prehearing Conference
December 11, 1997	Surrebuttal Testimony
December 15-19, 1997 January 5-9, 1998	Evidentiary Hearings (start 9:00 a.m. and conclude 5:30 p.m.) All Hearings in Pittsburgh
February 10, 1998	Main Briefs
February 16, 1998	Reply Briefs
March 30, 1998	Recommended Decision
May 29, 1998	Statutory Deadline as Extended

Recognizing that the foregoing litigation schedule exceeds the nine-month requirement for the Commission to review this restructuring plan, 66 Pa. C.S. §2806(f), all parties have agreed, to the extent they have the legal right to do so, to waive noncompliance with this requirement and will not object to a failure to meet the statutory deadline, provided a Commission decision is issued by May 29, 1997. Any party objecting to this extension of the statutory deadline must do so on or before September 22, 1997.

The above dates are in-hand dates, except that Reply Briefs can be mailed on the due date to the parties, but the Reply Brief due date is an in-hand date for service on the presiding Administrative Law Judge ("ALJ"). The parties are also reminded of the Commission's requirements for the preparation and filing of written testimony. 52 Pa. Code §5.412. Written testimony must be accompanied by all exhibits to which it relates.

Please note: this proceeding is not consolidated with the restructuring plan that West Penn Power Company ("West Penn") filed with this Commission at Docket No. R-00973981. Therefore, I am not to be served with any documents filed in that latter proceeding.

The Commission's response to the Pennsylvania Office of Attorney General's ("OAG") request that it modify its Order entered August 29, 1997 in the DQE, Inc., Allegheny Power System, Inc. and AYP Sub, Inc., joint application for merger proceeding at Docket No. A-110150F.0015 may affect this litigation schedule. The OAG requests that the Commission extend the statutory due date in this proceeding by ninety days or free the merger proceeding from the statutory time frame of the West Penn and Duquesne Light restructuring proceedings. This Prehearing Order is being issued before Commission action on the OAG's request.

### Parties

Duquesne Light was given five days from the date of the prehearing conference to object to any petitions or letters of intervention which had been filed on or before September 4, 1997, failing which the intervention requests would be deemed granted without

further Order. The following parties filed petitions or letters to intervene on or before September 4, 1997:

Allegheny Electric Cooperative, Inc., David Hughes, pro se, IBEW, System Council U-10, Electric Clearinghouse, Inc., Pennsylvania Retailers' Association, Pennsylvania Power Company, Armco, Inc., Noram Energy Management, Inc., Enron Power Marketing, Inc., PECO Energy Company, the Environmentalists, Low Income Advocate Parties, Duke Energy Trading & Marketing LLC, MidCon Gas Services Corporation, mc2, Inc., QST Energy, Inc., the City of Pittsburgh, the Peoples Natural Gas Company, Hospital Shared Services, Administrative Resources, Inc., CNG Energy Services Corporation, Allegheny Teledyne, Inc., and New Energy Ventures East LLC.

Duquesne Light has filed no answer nor any objection to any of the foregoing petitions for intervention. Therefore, these named entities or persons are parties to this proceeding.

The following parties filed petitions to intervene, but did not appear at the prehearing conference and, pursuant to the notice for this prehearing conference, will not be included on the active parties list:

PECO Energy Company, Noram Energy Management, Inc., Pennsylvania Retailers' Association, Duke Energy Trading & Marketing LLC, QST Energy, Inc., Electric Clearinghouse, Inc., and CNG Energy Services Corporation.

If these latter parties wish to assume active status, they have until September 15, 1997 to request reinstatement to active status. Answers thereto must be filed within five days of service of the request.

For petitions or letters of intervention filed after September 4, 1997, Duquesne Light has five days from the date of service upon it to file objections and serve me with a copy of the same, failing which the intervention requests will be deemed granted without further Order. To date, I have received no further petitions to intervene after the prehearing

conference. The following parties, which appeared at the prehearing conference, have not submitted petitions to intervene or have submitted petitions which I have not received:

Allegheny County, the School District of Pittsburgh, Duquesne Industrial Intervenors, MidAtlantic Power Supply Association, the Eastern Group, Dollar Energy Fund, IBEW Local 2357, Pennsylvania Power & Light Company, GPU Energy, and the Skipping Stone.

These entities will become active parties to this proceeding unless Duquesne Light files objections within five days of the date of this Order and serves me with copies of the same.

**Motions Pro Hac Vice**

All motions pro hac vice will be deemed granted, unless I receive an objection within five days of service of the same.

**Party Groupings**

The parties will group themselves into the following categories or other categories that they may determine to be appropriate:

Alternate Supplier  
Electricity Distributor  
Labor  
Large Customer  
Non-utility Generator  
Public Interest  
Statutory  
Utility

No party should be grouped with another organization or other parties if it affects its rights in this proceeding. Disputes relating to the groupings of parties are to be resolved

informally, failing which I will hold an informal conference with the affected parties to resolve the matter.

Each group will select a coordinator. On or before noon of Monday, October 20, 1997 (the day before the scheduled second prehearing conference) the coordinators of each group shall submit to me and to all active parties, a list of the members in their groups.

As soon as possible after rebuttal testimony is filed, the coordinators shall meet to assign a subject matter for each day of hearing. They shall assign witnesses by subject matter and list the cross-examiners of each witness. They shall indicate how long each attorney proposes to cross-examine each witness, classifying under 15 minutes as "brief" and 15-30 minutes as "moderate." This information shall be submitted, in table form, to me and served on each active party on or before noon of Monday, December 8, 1997 (the day before the scheduled third prehearing conference).

### Issues

In their prehearing memoranda or their petitions to intervene, some parties indicated issues they intend to litigate. The reader is directed to these documents to review the statements of these issues. Additional issues may arise as the discovery process unfolds.

### Testimony

See the material under the heading "Briefs and Common Brief Outline" below for instructions about submitting testimony to me on computer disk.

## Discovery

The parties shall engage in informal discovery whenever and wherever possible and attempt to resolve any discovery disputes amicably. 52 Pa. Code §5.322. If this process fails, the parties shall telephone me for an informal conference during which I shall dispose of the dispute, rendering an Order only if requested to do so. If this procedure fails, the parties have recourse to the Commission's procedures for formal discovery, as herein modified. 52 Pa. Code §§5.321, et seq. The parties must not send me discovery material or cover letters unless attached to a motion to compel. All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel does not contain such a certification, I shall return it and direct the parties to pursue informal discovery or dispute resolution, whichever is appropriate.

The request of the OTS during the prehearing conference for modification of the Commission's procedures for formal discovery was granted in substantial part, after discussion among the parties. The following modified discovery procedure applies to this case:

1. A good faith effort rule applies throughout the discovery process. The parties shall endeavor in good faith to avoid propounding discovery requests on a Friday or on the day before a legal holiday. Likewise, the parties shall refrain, where possible, from serving multiple discovery requests upon a single party on the same day. The responding party shall, in good faith, notify the propounding party of any problems in responding to the discovery request as soon as possible, but no later than three days after service of the discovery request should the parties begin their informal discussions relating to potential discovery problems.
2. Answers to written interrogatories shall be served in-hand within ten calendar days of service. A good faith effort rule applies where, for example, there is service on a Friday, or where voluminous requests are filed on the same day, or where some other occurrence engenders a hardship.

3. Objections to interrogatories shall be communicated orally within five days of service.

4. The parties must, in good faith and on an informal basis, attempt to resolve any discovery dispute amicably among themselves, before coming to the presiding ALJ for resolution. The presiding ALJ will be available during regular business hours to confer informally with the parties by telephone to resolve any discovery dispute that the parties themselves cannot resolve. No Order shall be issued thereafter, unless the parties request it.

5. Motions to dismiss objections and/or direct the answering of interrogatories (motions to compel) must be filed within three days of receiving an oral objection.

6. Answers to motions to compel must be filed within three days of service of those motions.

7. If possible, rulings on motions to compel will be issued within seven days of the filing of the motion.

8. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within ten days.

9. Requests for admissions shall be deemed admitted unless answered within ten days of service or objected to within five days of service.

10. Answers to on-the-record data requests shall be served in-hand within seven days of the requests.

11. After rebuttal and surrebuttal testimony is filed, discovery will be limited to that testimony, unless related to a discovery dispute which arose before the filing of such testimony.

All time periods established in the foregoing discovery schedule will be calculated using calendar days.

### **Technical Conferences**

The parties should schedule technical conferences at such times and places as they may deem appropriate. If scheduling disputes arise and the parties can not resolve them informally, I am available to resolve them by telephone. Before filing its testimony, a party intending to use information obtained at a technical conference shall alert the providing party of its intent in writing. The same rule applies if experts communicate directly and exchange information. If during an expert-to-expert conference an attorney for one of the experts attends the conference, the attorney for the other expert must be notified and given an opportunity to attend also.

### **Electronic Communication**

The parties are encouraged to use whatever form of electronic communication they have available, such as E-mail and fax. My fax number shall not be used for briefs or lengthy documents. When in doubt, call my office before faxing a document to me.

### **Proprietary Order**

Duquesne Light indicated it will submit a *proprietary order* for approval. I shall issue one proprietary order for the entire proceeding.

### **Settlements & Stipulations**

The parties are reminded of the Commission's policy to encourage settlements. 52 Pa. Code §5.231(a). The parties should explore this possibility. Duquesne Light does not request a "two-judge" system for the purpose of settlement or litigation.

If settlement is not feasible, the parties are encouraged to stipulate to any matters they can to expedite the proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa. Code §§5.232 and 5.234. All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this proceeding. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible if it is followed by a reduction to writing as herein directed.

### **Settlement Conferences**

The parties should schedule settlement conferences at a time and place of their convenience. I am available to resolve scheduling disputes should any arise. Parties participating in a settlement conference shall submit their litigation positions to other participants in advance of the settlement conference. 52 Pa. Code §69.405.

### **Public In-Put Hearings**

Duquesne Light, the OTS, the OCA and any other interested party shall notify me of the appropriate places to hold public in-put hearings by noon of Monday, September 29,

1997. These hearings will be held during the week of November 10-14, 1997. If the merger proceeding schedule permits, the public in-put hearings in this proceeding will be held concurrently with the merger proceeding public in-put hearings.

### **Cross-Examination**

Friendly cross-examination or cumulative cross-examination will not be allowed. The coordinators shall attempt to ensure that members of their groups do not contemplate cumulative cross-examination.

### **Briefs & Common Brief Outline**

The parties are to comply with 52 Pa. Code §§5.501, *et seq.*, regarding the preparation and filing of briefs. Page limitations on briefs will be discussed on or before the last day of hearing. Where possible, parties shall submit to me one *hard copy of their* statements and briefs and one copy on computer disk. If a party cannot submit a copy on computer disk, it is to submit one hard copy of statements, but two hard copies of briefs. The computer disk version of the statements and briefs should be in WordPerfect 6.1 or Microsoft Word 6.0 or in an earlier version of those software programs.

After evidentiary hearings end, the coordinators shall determine an outline of issues which all parties will use for their main and reply briefs. The parties should consider filing joint briefs, if their positions are similar. The coordinators should help in determining where joint briefs should be filed.

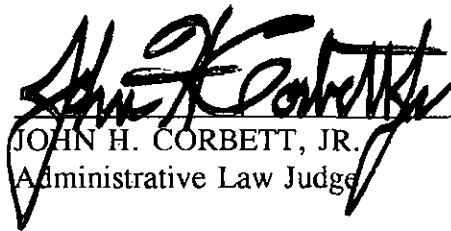
**Further Prehearing Conferences**

I must receive any submissions related to further prehearing conferences by noon on the day before the prehearing conference is held.

**Modification**

This Prehearing Order may be modified upon motion and good cause shown by any party.

Dated: September 10, 1997

  
\_\_\_\_\_  
JOHN H. CORBETT, JR.  
Administrative Law Judge

PA Public Utility Commission v. Duquesne Light Company  
R-00974104

Larry R. Crayne, Esquire  
Richard S. Herskovitz, Esquire  
Duquesne Light Company  
411 Seventh Avenue  
Pittsburgh, PA 15219  
(412) 393-6645  
(412) 393-6645 FAX

James P. Dougherty, Esquire  
Robert A. Weishaar, Jr. Esquire  
Pamela C. Polacek, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108  
(717) 237-5446  
(717) 237-5300 FAX  
(Duquesne Industrial Intervenors)

Kandace F. Melillo, Esquire  
Wayne T. Scott, Esquire  
PA Public Utility Commission  
Office of Trial Staff  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-1976

Jacqueline R. Morrow, Esquire  
Rodney R. Akers, Esquire  
Assistant City Solicitor  
313 City County Building  
414 Grant Street  
Pittsburgh, PA 15219  
(412) 255-2015  
(412) 255-2285 FAX  
(City of Pittsburgh)

John S. Moot, Esquire  
Kurt Bilas, Esquire  
1440 New York Avenue NW  
Washington DC 20005  
(202) 371-7310  
(202) 393-5760 FAX  
(Duquesne Light Company)

Stephen J. Baron  
J. Kennedy and Associates, Inc.  
Suite 475  
35 Glenlake Parkway  
Atlanta, GA 30328  
(770) 395-1288  
(770) 396-0151  
(Duquesne Industrial Intervenors)

Karen Oil Moury, Esquire  
Office of Small Business Advocate  
Suite 1102  
300 North 2nd Street  
Harrisburg, PA 17101  
(717) 783-2525

Howard M. Louik, Esquire  
Allegheny County Law Department  
300 Fort Pitt Commons  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219  
(412) 350-1182  
(Allegheny County)

Irwin A. Popowsky, Esquire  
Marisa A. Sifontes, Esquire  
Steven K. Steinmetz, Esquire  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120  
(717) 783-5048  
(717) 783-7152 FAX

Deneice Covert Zeve, Esquire  
Terry Lupia, Esquire  
Office of Attorney General  
14th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 787-4530  
(717) 787-1190 FAX  
(Commonwealth of Pennsylvania)

Steven Baicker-McKee, Esquire  
Wanda Schiller, Esquire  
Babst, Calland, Clements & Zomnir PC  
8th Floor, Two Gateway Center  
Pittsburgh, PA 15222  
(412) 394-5400  
(412) 394-6574 FAX  
(Allegheny Teledyne, Inc. and Subsidiaries)

Kenneth L. Wiseman, Esquire  
Andrews & Kurth, LLP  
1701 Pennsylvania Avenue NW  
Washington DC 20006  
(202) 662-2700  
(202) 662-2739 FAX  
(Hospital Shared Services)

Mark F. Sundback, Esquire  
Andrews & Kurth, LLP  
1701 Pennsylvania Avenue NW  
Washington DC 20006  
(202) 662-2755  
(202) 662-2747 FAX  
(Administrative Resources, Inc.)

Exeter Associates, Inc.  
Suite 350  
12510 Prosperity Drive  
Silver Spring, MD 20904  
(301) 622-4500  
(301) 622-2686 FAX  
(Office of Consumer Advocate)

Michael L. Kurtz, Esquire  
David F. Boehm, Esquire  
Boehm, Kurtz & Lowry  
2110 CBLD Center  
36 East Seventh Street  
Cincinnati, OH 45202  
(513) 421-2255  
(513) 421-2764 FAX  
Armco, Inc.

Terrance J. Fitzpatrick, Esquire  
Ryan, Russell, Ogden & Seltzer, LLP  
Suite 101  
800 North Third Street  
Harrisburg, PA 17102-2025  
(717) 236-7714  
(717) 236-7816 FAX  
(GPU Energy)

Robert B. Weisenmiller  
MRW & Associates, Inc.  
Suite 1440  
1999 Harrison Street  
Oakland, CA 94612-3517  
(510) 834-1999  
(510) 834-0918 FAX  
(Hospital Shared Services)

Michael Reid, Director  
Materials Management Services  
Administrative Resources, Inc.  
500 Commonwealth Drive  
Warrendale, PA 15086-7513  
(412) 772-7223  
(412) 772-6969 FAX

Robert J. Stefanko, Esquire  
341 South Bellefield Avenue  
Pittsburgh, PA 15213  
(412) 622-3780  
(Pittsburgh School District)

Margaret Peters, Esquire  
The Peoples Natural Gas Company  
625 Liberty Avenue  
Pittsburgh, PA 15222-3197  
(412) 497-6892  
(412) 497-6838 FAX

John Stember, Esquire  
Low Income Advocate Parties  
1705 Allegheny Building  
429 Forbes Avenue  
Pittsburgh, PA 15219  
(412) 338-1445  
(412) 232-3730 FAX

Stephen L. Feld, Esquire  
Pennsylvania Power Company  
1 East Washington Street  
P.O. Box 891  
New Castle, PA 16103-0891  
(412) 656-5382

Donald R. Ayersman, Jr., Esquire  
1125 Denver Avenue  
Morgantown, WV 26505  
(304) 296-3958  
(IBEW Local 2357)

Mark J. McGuire, Esquire  
Ronald N. Carroll, Esquire  
Jenner & Block  
Suite 1200, 601 13th Street NW  
Washington DC 20005  
(202) 639-6000  
(202) 639-6066 FAX  
(mc<sup>2</sup>, Inc.; MidCon Gas Services Corp.)

Tim Merrill, Esquire  
Suite 200, 4 Penn Center West  
Pittsburgh, PA 15276  
(412) 490-0925  
(The Eastern Group)

Kevin J. McKeon, Esquire  
Malatesta, Hawke & McKeon LLP  
P.O. Box 1778  
Harrisburg, PA 17101  
(717) 236-1300  
(717) 236-4841 FAX  
(The Peoples Natural Gas Company)

Thomas P. Gadsden, Esquire  
Morgan, Lewis & Bockius  
2000 One Logan Square  
Philadelphia, PA 19103  
(215) 963-5234  
(215) 963-5299 FAX  
(Pennsylvania Power Company)

Cindy Datig, Esquire  
\$1 Energy Fund  
P.O. Box 42329  
Pittsburgh, PA 15203  
(412) 431-2800

David Hughes  
4037 Ludwick Street  
Pittsburgh, PA 15217  
(412) 421-6072  
(Self)

Thomas J. Augspurger, Esquire  
MidCon Corporation  
Office of General Counsel  
701 East 22nd Street  
Lombard, IL 60148

William T. Hawke, Esquire  
Mid Atlantic Power Supply Association  
100 North 10th Street  
Harrisburg, PA 17105  
(717) 236-1300  
(717) 236-4841 FAX

Joseph A. Dworetzky, Esquire  
John P. Lavelle, Jr., Esquire  
Hangley, Aronchick, Segal & Pudlin  
12th Floor  
One Logan Square  
Philadelphia, PA 19103  
(315) 496-7037  
(215) 568-0300 FAX  
(New Energy Ventures)

Alan J. Barak, Esquire  
Environmentalists  
1417 Blue Mountain Parkway  
Harrisburg, PA 17112  
(717) 540-5106  
(717) 541-1970

Scott J. Rubin, Esquire  
3 Lost Creek Drive  
Selinsgrove, PA 17870-9357  
(717) 743-2233  
(717) 743-8145 FAX  
(IBEW, System Council U-10)

Patricia Armstrong, Esquire  
Thomas, Thomas, Armstrong & Niesen  
Suite 500  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17106-9500  
(717) 255-7600  
(717) 236-8278 FAX  
(Allegheny Electric Cooperative, Inc.)

Paul E. Russell, Esquire  
Pennsylvania Power and Light Company  
2 North 9th Street  
Allentown, PA 18101  
(610) 774-4254  
(610) 774-6726 FAX

David M. Boonin  
New Energy Ventures East, LLC  
Suite 800  
200 South Broad Street  
Philadelphia, PA 19102  
(215) 545-5058  
(215) 545-5811 FAX

Roger Clark, Esquire  
The Environmentalists  
905 Denston Drive  
Andler, PA 19002-3901  
(215) 643-2364  
(215) 628-2630 FAX

John O'Brien, Esquire  
Wheeled Electric Power Company  
Suite 207  
50 Charles Lindburgh Boulevard  
Uniondale, NY 11553  
(516) 390-7600

Daniel Clearfield, Esquire  
Gerald Gornish, Esquire  
Alan Kohler, Esquire  
Robert J. Longwell, Esquire  
Wolf, Block, Schorr & Solis-Cohen, LLP  
Suite 401  
305 North Front Street  
Harrisburg, PA 17101-1236  
(717) 237-7181  
(717) 237-7161 FAX  
(Enron Power Marketing, Inc.)

James D. Steffes  
Enron Power Marketing, Inc.  
1400 Smith Street  
P.O. Box 4428  
Houston, TX 77002  
(713) 853-7500  
(713) 646-8169 FAX

Albert M. Benincasa, Esquire  
Director, Regulatory Affairs  
Skipping Stone  
46 9th Avenue  
Sea Cliff, NY 11579  
(516) 674-4186

Brian Kalcic  
Excel Consulting  
Suite 720-T  
225 S. Meramec Avenue  
St. Louis, MO 63105