

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

v. :

Docket No. R-00974104

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

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FIFTH PREHEARING ORDER

I canceled the third prehearing conference scheduled in this proceeding for December 9, 1997 after I determined that neither I nor the parties had any special problems or concerns to raise. This Third Prehearing Order addresses a number of matters relating to the upcoming hearings commencing December 15, 1997.

Settlements & Stipulations

The parties are reminded of the Commission's policy to encourage settlements. 52 Pa. Code §5.231(a). I understand that, because of the condensed litigation schedule of this case, the opportunity may not have existed before now for the parties to pursue settlement. However, the parties should explore this possibility.

If settlement of part or all of this case is not feasible, the parties are nonetheless encouraged to stipulate to any matters they reasonably 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

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

Discovery

Until now, there have been very few discovery disputes requiring the attention of the presiding Administrative Law Judge. The time for conducting discovery is rapidly closing as the hearings in this case approach. From copies of certain correspondence I have received (i.e., David Hughes), I note that not all discovery requests have been answered with complete satisfaction. Accordingly, the parties are reminded that informal discovery is the preferred method of obtaining information in this proceeding. Should informal discovery prove unsatisfactory, the more formal procedures for obtaining discovery under the Commission's Rules and Regulations of Administrative Procedure, 52 Pa. Code §§5.321, et seq., as modified in the initial Prehearing Order, are available to resolve any remaining discovery disputes.

Generic Issues

A preliminary review of the prefiled written testimony of certain witnesses in this case discloses the parties have raised a number of issues, which could be considered in generic proceedings before the Commission. Specifically, these issues may include, for example: (a) code-of-conduct; (b) unbundled metering, billing and customer information services; (c) sign-up procedures for customers and changing customer suppliers (i.e., slamming); (d) handling default customers (i.e., customers who “choose not to choose”); (e) service quality, complaints and service termination; and (f) a state-wide program of consumer education. The parties should be prepared to explain why these issues, among others, should be considered in this particular restructuring proceeding, rather than more generic proceedings.

The parties are on notice that testimony about how the Commission’s generic guidelines or interim generic guidelines are lacking is not relevant to the restructuring plan filed at this docket, is not useful and I will give it very little, if any, consideration. Testimony about how this restructuring plan does not meet the generic guidelines, however, is relevant and useful. Therefore, during the hearings, I may not allow cross-examination related to the first type of testimony, but I will allow cross-examination related to how this restructuring plan does or does not meet generic guidelines.

Merger Testimony

Pursuant to the Fourth Interim Order issued in this case, I shall closely scrutinize all proffered testimony relating to the proposed merger of DQE, Inc. and Allegheny Power System, Inc. at Docket No. A-110150F0015 to determine if it relates directly to issues proper

for consideration under the Electric Generation Customer Choice and Competition Act. 66 Pa. C.S. §§2801, et seq. A party presenting testimony touching on the proposed merger must show that it relates directly to issues of concern under the Act. If the connection is not made directly by the testimony and it is properly objected to, I shall strike that testimony.

Rejoinder Testimony

The original schedule the parties proposed for litigation of this case omitted rejoinder testimony from the Company. Upon due consideration, the Company shall have the opportunity to present brief oral rejoinder testimony, when a witness appears for cross-examination at the hearing. No oral surrejoinder testimony will be allowed.

Order of Cross-examination

After discussion among the parties, all parties have agreed that hearings during the week of December 15-19, 1997 will be devoted primarily to cross-examining expert witnesses for Duquesne Light Company. Two exceptions are hereby made for witnesses representing the Commission's Office of Trial Staff, who have scheduling conflicts for times other than the first week of hearings. These two witnesses for the OTS will be available during the first week of hearings as noted in the attached schedule. Hearings held during the week of January 5-9, 1997 will be devoted to cross-examining expert witnesses for the intervenors.

Based upon their discussions, the parties have submitted a schedule of witnesses available for cross-examination during the hearings. The schedule is hereby approved. This schedule is attached hereto, incorporated herein by reference and referred to as Appendix A.

Designation of an appearance by a witness on a certain day does not mean the witness' cross-examination must be concluded by the end of that day.

Also pursuant to their discussions, the parties have submitted a proposed order of cross-examination of witnesses during the hearings. This proposed order is hereby approved. The order for cross-examination is attached hereto, incorporated herein by reference and referred to as Appendix B.

The schedule contemplates continuing testimony until all parties have concluded cross-examination of each witness. All parties will have a fair opportunity to cross-examine witnesses. However, all cross-examination must be concise and to the point. All parties are hereby on notice that the presiding ALJ will interrupt an attorney's cross-examination of a witness, if in the judgment of the ALJ, the cross-examination continues on for an excessive period of time or continuing cross-examination will interfere with the ability to give all parties an opportunity to cross-examine a witness within the constraints of the schedule.

While it is difficult to predict exactly the amount of time it will take to cross-examine each witness, all parties should note the objective will be to move the hearings along as quickly as possible, consistent with basic principles of fairness and due process. Accordingly, witnesses should be available, as needed, to fill otherwise "dead time." The parties should endeavor to make their witnesses available earlier than scheduled to fill such dead time. If it appears that dead time on a particular day cannot otherwise be filled by available witnesses, the parties will attempt to bring in their witnesses earlier to fill the allotted time, if it is possible to do so. This rescheduling may entail having additional witnesses for the intervenors testify during the week of December 15-19, 1997. When any change is made in the schedule, all

parties of record and the presiding ALJ must be notified as soon as the change is contemplated. Such notification will allow a party not present throughout the hearings with the opportunity to cross-examine a witness called out-of-turn. Otherwise, the parties must have their witnesses available for cross-examination no later than the date specified in Appendix A.

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

Hearings

All hearings will begin promptly at 9:00 a.m. All parties should arrive at the hearing location sufficiently in advance of that time to exchange greetings, converse, unpack and prepare for the day's agenda. One ten minute recess will be taken in the morning session, while one or two ten minute recesses will be taken during the afternoon session each day. Lunch will be taken for one hour at approximately 12:30 p.m. Each hearing day will conclude no later than 5:30 p.m. The Pittsburgh State Office Building is physically locked at 5:45 p.m. each day.

Prefiled Written Testimony

Written testimony filed with the Prothonotary for the Commission, when served upon the other parties, will not find its way into the record in this proceeding. Instead, the parties are reminded that two copies of all testimony, together with the exhibits to which it relates, must be presented to the court reporter at the time of the hearing. 52 Pa. Code §5.412(g).

Briefs

Pursuant to the initial Prehearing Order, group coordinators should now begin consideration of a common brief outline, which they will submit to the presiding ALJ and all parties within a week after the last hearing in this case. They should also consider joint briefs, if possible.

The parties are to comply with 52 Pa. Code §§5.501, et seq., regarding the preparation and filing of briefs. The main brief for the Company must be limited to 150 pages, while the main briefs for each of the intervenors must be limited to 100 pages. The reply brief for the Company must be limited to 75 pages, while reply briefs for each of the intervenors must be limited to 50 pages. The greater page limitation on briefs allowed for the Company recognizes its need to respond to all of the intervenors.

All parties are encouraged to write their briefs in a clear and concise manner so as to adequately cover the issues. However, brevity will receive favorable treatment. The parties need not use the full allotment of their page limitation when writing briefs, if a shorter version will do. Lengthy discourses on a subject that can be covered in a more concise manner must be avoided.

Where possible, parties must submit to the presiding ALJ one hard copy of their briefs and one copy on computer disk. If a party can not submit a copy on computer disk, it must submit two hard copies of briefs.


Computer Disks

The presiding ALJ has WordPerfect 6.1 and Word 6.0 software. Submissions on disks using later versions of these software applications cannot be used, while submissions using earlier versions of these software applications can be converted for use. If in doubt, you may call my office for clarification. No submissions using Excel software should be made, since I have no way of using it. If a party has the capability of doing so, it must submit one copy of its brief on computer disk in the requested format. All discs must be marked to identify its sponsor, the format used and its contents.

Active Parties Service List

All parties should check the enclosed service list. The attached service list is the most current active parties service list for this case.

Dated: December 9, 1997



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Administrative Law Judge

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

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(Self)

December

1997

1997

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
<p>14</p> <p>DUQUESNE</p>	<p>Marshall Clayton Schnitzer</p>	<p>15</p> <p>Metro (OTS) O'Brien Nelson Duckworth</p>	<p>16</p> <p>LaGuardia Lahtinen Irwin Gill (OTS)</p>	<p>17</p> <p>Allison Karl Nelson</p>	<p>18</p> <p>Flynn Hoffman Malkolm (Volunteering Participants)</p>	<p>19</p> <p>20</p>
<p>WEST PENN</p>	<p>Morrell Benson Ault</p>	<p>Howells Metro (OTS) Klick</p>	<p>Avera Costelnock LaGuardia Gill (OTS)</p>	<p>Luciani Menhorn Baier</p>	<p>OPEN DATE NO HEARING</p>	

Note: Designation of an appearance by a witness on a particular day does *not* mean that the witness' cross-examination must be concluded by the end of that day; the schedule contemplates continued testimony until cross-examination has concluded.

1998

January

1998

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
4 DUQUESNE	Van Jeschke Yarolin Muehl Russell Kalcic	5 Falkenberg Baron Kollen Hughes Wilson Kuennan	6 Kahal Catlin D. Smith Alexander Brockway	7 Moran Biewald Schoengold Weisenmiller Seiple Boonin Day	8 Reising Brown Coles Steffes Muench Albrecht Colton	9 10a
WEST PENN	Speyer Pfifer Falkenberg D. Smith Kirkwood Jones Yarolin	Kahal Catlin L. Smith Alexander Brockway Knecht Russell	Galatic Baron Kollen Selecky Wilson Kuenan Kleinginna	Reising Brown Coles Steffes Muench Albrecht Colton	Biewald Schoengold Weisenmiller Seiple Boonin Day	

List of Duquesne Parties
Order of Cross Examination for Company Witnesses
(c)=coordinators

Statutory

Office of Trial Staff
Office of Consumer Advocate (c)
Office of Small Business Advocate

Government

City of Pittsburgh (c)
Allegheny County
Pittsburgh School District

Industrials

Duquesne Industrial Intervenors (c)
Allegheny-Teledyne
Allegheny Ludlum Corporation
Teledyne Industries, Inc.
ARMCO

Large Commercials

Hospital Shared Services (c)
Administrative Resources, Inc.

Small Commercials

Pa. Retailers Association (c)

Public Interest

Environmentalists (c)
David Hughes
NAACP, Pittsburgh Chapter
Low Income Advocate Party
Community Action Association of Pennsylvania
Citizens Power

Alternative Suppliers

Enron (c)
MAPSA
Skipping Stone
Electric Clearinghouse, Inc.
Mc2, Inc.
GPU Energy
QST Energy, Inc.
NorAm Energy Management
Cogentrix Energy Power Marketing

CNG Energy Services Corp.
Duke Energy Trading and Marketing
New Energy Ventures
MidCon Gas
The Eastern Group
Wheeled Electric Power Company

Other Utilities

Peoples
PECO
PP&L
Met-Ed/Penelec
Penn Power

NUGs

Washington Power (WPP)

Labor

IBEW (Duq)