

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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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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SEVENTH INTERIM ORDER

Pursuant to the Sixth Interim Order entered on December 30, 1997, Enron Power Marketing, Inc. submitted eight cross-examination exhibits for admission into the record of this case on January 12, 1998. Duquesne Light Company objects to the admission of the exhibits designated as Enron's Cross-examination Exhibit Nos. 6-10.¹ The challenged exhibits are responses to interrogatories, which Enron propounded upon witnesses for the Office of Consumer Advocate and the Duquesne Industrial Intervenors. Admission of Exhibit Nos. 6-10 are improper for several reasons.

Pursuant to the aforementioned Sixth Interim Order, all active parties joined in and filed a First Joint Stipulation, whereby, each party, including Enron, agreed, inter alia, to admit into the record of this case the prepared written testimony, together with the accompanying exhibits, of all intervenors and specifically waived cross-examination thereon. To admit into the record Enron's cross-examination exhibits of other intervenor witnesses contravenes the specific terms of the Sixth Interim Order and the First Joint Stipulation of the

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¹ Duquesne Light Company has no objection to the admission of Enron's Cross-examination Exhibit Nos. 3-5.

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parties. More importantly, such action would deny other parties, including Duquesne Light Company, their due process rights to cross-examine witnesses on the lines of inquiry raised by these exhibits.

Since they are answers to interrogatories, the challenged exhibits are not "responses to on-the-record data requests" within the contemplation of the procedures outlined in the Sixth Interim Order for submission of the intervenors' documentary evidence into the record of this case. Therefore, the challenged exhibits should have been included in the proposed index of the intervenors' testimony and exhibits that was attached to the First Joint Stipulation. As noted in ¶5 of the Sixth Interim Order, "Failure by any party to follow the procedures outlined in [that] Order for filing testimony, exhibits or responses to data requests shall constitute sufficient grounds for striking the offending document from the record of this proceeding." Since Enron failed to abide by the procedure outlined in that Order, the proposed exhibits will not be admitted into the record of this case.

Finally, the challenged exhibits appear to be friendly cross-examination, which was proscribed by the Prehearing Order issued in this proceeding on September 10, 1997.

For all of these reasons and upon due consideration,

IT IS HEREBY ORDERED:

That the objection of Duquesne Light Company to the admission into the record in this proceeding of the Cross-examination Exhibit Nos. 6-10 of Enron Power Marketing, Inc. is sustained.

Dated: January 15, 1998



JOHN H. CORBETT, JR.
Administrative Law Judge

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R-00974104

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