

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission :

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

v. :

Docket No. R-00974104

Duquesne Light Company :

Application for approval of a :

Restructuring Plan pursuant to :

66 Pa. C.S. §2806(d) :

KJF

DOCUMENT  
FOLDER

**EIGHTH INTERIM ORDER  
SUR  
MOTION TO RECONSIDER**

On January 16, 1998, Enron Power Marketing, Inc. ("Enron") filed a motion to reconsider the Seventh Interim Order, which I issued on January 15, 1998. In that Order, I denied the admission of Enron Cross-examination Exhibits 6-10. These Exhibits are copies of responses by the Office of Consumer Advocate ("OCA") to interrogatories Enron propounded, asking the OCA to recalculate the numbers contained in certain exhibits, assuming changes in certain inputs to those exhibits.

Duquesne Light Company ("Duquesne") objected to the admission of Enron's Cross-examination Exhibits 6-10, inter alia, because it had not had the opportunity to cross-examine the sponsors of the proposed Exhibits nor respond to them. Accordingly, the Seventh Interim Order denied their admission into the record. Whereupon, Enron filed its motion to reconsider that Order on January 16, 1998. By letter dated January 19, 1998, the Duquesne Industrial Intervenors ("DII") notified all parties of their support for Enron's motion.

Duquesne answered the motion on January 20, 1998. As part of its answer to Enron's motion, Duquesne proposed, as an alternative, that its Exhibit PIC-27, which

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accompanied its answer, also be admitted into the record. Duquesne's proposed Exhibit DJC-27 purportedly responds to Enron's Cross-examination Exhibits 6-10.

While taking no position on the admission of Enron's Cross-examination Exhibits 6-10, the OCA filed an objection to Duquesne's proposed Exhibit DJC-27 on January 22, 1998.<sup>1</sup> The OCA argues Duquesne's proposed Exhibit DJC-27 simply reiterates the disagreements Duquesne has had with the OCA's positions as stated in the OCA's direct and surrebuttal testimonies. The OCA contends Duquesne had every opportunity to address these matters earlier in this proceeding. Finally, the OCA characterizes Duquesne's proposed Exhibit DJC-27 as an attempt to introduce corrections to Duquesne's case, to which the OCA cannot respond. On the same date, the DII notified all parties of its objection to the admission of Duquesne's proposed Exhibit DJC-27. At the same time, Enron notified all parties that it was unable to accept Duquesne's conditional offer to withdraw its objection to the admission of Enron's Cross-examination Exhibits 6-10 in return for admission of Duquesne's Exhibit DJC-27.

Since Enron, the OCA and the DII have all rejected the condition precedent which Duquesne established for withdrawing its objection to admission of Enron's Cross-examination Exhibits 6-10, Duquesne's offer to settle this matter must be considered inoperative. Since Enron, the OCA and the DII have all objected to the admission of Duquesne's Exhibit DJC-27 and they have not had the opportunity to cross-examine the sponsor of this Exhibit nor the chance to respond to it, Duquesne's Exhibit DJC-27 cannot be admitted into the record.

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<sup>1</sup> Duquesne answered the OCA's objection on January 22, 1998. However, due to the manner of disposition of the objection and Enron's motion, no exposition of that answer nor any action thereon needs to be taken in this Order.

For the same reason, Enron's Cross-examination Exhibits 6-10 cannot be admitted into the record of this proceeding. Enron's motion to reconsider my ruling in the Seventh Interim Order fails to adequately respond to Duquesne's due process concerns. On this subject, Enron states at ¶9 of its motion:

The admission of these exhibits does not deny the parties their due process rights any more than would the usual procedure of introducing them during cross-examination of the same witnesses. (Duquesne would not have had a right to keep the answers out of the record if the witnesses had been presented at the hearing.) The parties they still comment upon them in their briefs, just as they would have done had a hearing been held. It is noteworthy that the parties who actually provided the answers, OCA and DII, do not object to their being entered into the record. If Duquesne feels that this information prejudices it or believes that it is grossly inaccurate, Enron has no objection to Duquesne's being permitted to enter a limited statement on the record in response to the specific information contained in those exhibits. Further, Enron has no objection to DII and OCA placing additional information concerning the exhibits into the record, or Duquesne supplementing these exhibits with additional data requests.

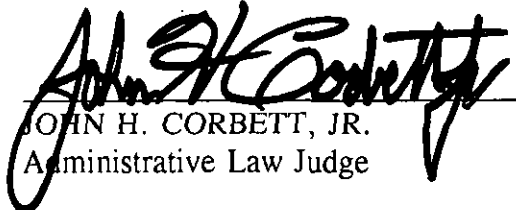
The fact of the matter is that the witnesses sponsoring Enron's Cross-examination Exhibits 6-10 are not available for cross-examination, no hearings can now be held due to the lateness of the litigation schedule with the impending close of the record, and no party will have the opportunity to respond to the proposed Exhibits since Enron, the OCA and the DII now object to Duquesne's proposed Exhibit DJC-27. Since it cannot overcome these due process concerns, Enron's motion for reconsideration must be denied.

Upon due consideration, IT IS ORDERED:

1. That the motion for reconsideration of the Seventh Interim Order of Enron Power Marketing, Inc., is hereby denied.

2. ALL PARTIES ARE HEREBY NOTIFIED THAT, UNLESS I RECEIVE AN OBJECTION OR NOTIFICATION OF THE NEED TO CONDUCT FURTHER BUSINESS BY NOON, FRIDAY, JANUARY 23, 1998, I INTEND TO ISSUE A FURTHER ORDER CLOSING THE RECORD IN THIS CASE BY THE CLOSE OF BUSINESS ON THAT DATE.

Dated: January 23, 1998

  
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JOHN H. CORBETT, JR.  
Administrative Law Judge

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OFFICE OF C.A.L.J.  
PUBLIC UTILITY COMMISSION