

R-00973953
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

Docket No.

v.

R-00973953

PECO Energy Company

000335

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PREHEARING ORDER #1

A prehearing conference in this proceeding was held in Harrisburg on April 15, 1997. The presiding officers were Administrative Law Judges Marlane R. Chestnut and Charles E. Rainey, Jr. Present were PECO Energy Company (PECO), the Commission's Office of Trial Staff (OTS), Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Enron Corp. (Enron), Consumers Education and Protective Association (CEPA), Tenants' Action Group (TAG), John W. Long, Jr. (through counsel), State Senator Vincent J. Fumo, Jr. (through counsel), Indianapolis Power & Light Company (IPL), Mid-Atlantic Power Supply Association (MAPSA), Philadelphia Area Industrial Energy Users Group (PAIEUG), Pennsylvania Power & Light Company (PP&L), "Environmentalists" consisting of the Delaware Valley Citizens' Clean Air Council (Clean Air Council), the Sierra Club, Citizen Action, Pennsylvania Public Interest Research Group (PennPIRG), Grass Roots Alliance for a Solar Pennsylvania (GRASP), Nonprofit Energy Savings Investment Program (NESIP), and the Philadelphia Solar Energy Association (PSEA), Allegheny Power, GPU Energy, Delmarva Power & Light Company (DP&L), Lance Haver

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(pro se) and New Energy Ventures. Prehearing Memoranda were submitted by PECO, OTS, OCA and OSBA.

The following procedural matters were addressed:

- (1) The Application for Leave to Intervene filed by Senator Fumo was granted. Tr. 10.
- (2) The Petition to Intervene (included with a Formal Complaint and Protest) filed by the Environmentalists was granted. Tr. 10.
- (3) The Petition to Intervene filed by DP&L was granted. Tr. 10.
- (4) The Petition to Intervene filed by PP&L was granted. Tr. 11.
- (5) Motions for Admission Pro Hac Vice filed by PP&L on behalf of Lisa M. Helpert, Esq., and Donald A. Kaplan, Esq., were granted. Tr. 11.
- (6) The Motion to Intervene of Enron was granted. Tr. 11.
- (7) The Petition to Intervene filed by IPL was granted. Tr. 12.
- (8) The following hearing and briefing schedule was adopted:

| <u>DATE</u> | <u>ACTIVITY</u> |
|-------------|--|
| April 1 | PECO filing |
| April 15 | 1st prehearing conference |
| April 23* | 1st informal discovery/technical conference |
| May 21 | 2nd prehearing conference |
| June 20 | Opposing party testimony |
| June 27* | 2nd informal discovery/ technical conference |
| July 18 | Rebuttal testimony |
| August 1 | Surrebuttal testimony |
| August 4-22 | Evidentiary hearings |

| | |
|----------|----------------------|
| Sept. 15 | Initial briefs |
| Sept. 29 | Reply briefs |
| Oct. 31 | Recommended Decision |
| Nov. 14 | Exceptions |
| Nov. 21 | Reply exceptions |
| Dec. 4 | Polling |
| Dec. 18 | Commission Order |
| Dec. 31 | End 9-month period |

* May be changed by agreement of the parties

The following should be noted with respect to the schedule:

(A) At the prehearing conference, OCA noted that it had requested that PECO agree to voluntarily extend the suspension period to the first public meeting in January 1998. PECO indicated that it would be willing to consider such an extension if a specific proposal were presented. Tr. 14-15. At the prehearing conference, OCA was unable to present a specific proposed schedule incorporating such an extension because of uncertainty as to when such a public meeting would be scheduled (Tr. 16); therefore, the above schedule was adopted. No modifications to the schedule have been suggested; therefore, unless there is a specific, revised schedule presented for consideration on or before May 14, 1997, all participants can assume that the above schedule will remain in effect.¹

(B) The dates listed above for the filing of testimony and pleadings are dates of receipt, not dates of service. Pursuant to the Commission's regulations, faxing

¹ It is not necessary to address this in detail now, but I will repeat my stated concern that given the mandatory language of 66 Pa. C.S. §2806(F) ("The Commission shall . . . issue an order accepting, modifying or rejecting such plan at the earliest date possible, but no later than nine months from the filing of such restructuring plan.") an extension, even if agreed to by PECO, may not be legally permissible.

is not permitted as a means of filing. The presiding officers will not accept faxed briefs, testimony or long documents. Tr. 38-39.

(C) All hearings will be held in Philadelphia, and will start each day at 10:00 a.m. unless changed by order of the presiding officers. Tr. 22.

(D) Public input hearings will be scheduled at various locations throughout the service territory, during the period of time that the technical hearings will be held. Tr. 22, 25. OCA offered to take the lead in coordinating with the Commission as to appropriate dates and locations. Tr. 26. PECO is directed to publish a notice in a newspaper of general circulation at least three weeks in advance of the scheduled public input hearings. This notice must be in plain language, and must include the date, time and location of each public input hearing, a toll-free company contact number to call to request information and a statement that persons with disabilities may contact the Commission if they need alternative arrangements to participate in the public input hearing.

(E) Daily witness lists are to be provided three days prior to each hearing day. Tr. 23.

(9) PECO agreed to prepare a plain language statement of the filing, which will be available on its web site. Tr. 29.

(10) CEPA's Motion Objecting to Proposed Notice, presented at the prehearing conference, was taken under advisement as PECO had had no opportunity to review or respond to it, and the parties were directed to resolve the matter themselves. Tr.

36. On April 23, 1997, a Joint Stipulation of Settlement concerning the Motion was filed by PECO and Community Legal Services (CLS), representing CEPA. In it, the parties agreed that a revised notice would be sent to PECO customers starting no later than May 1, 1997. As stated at the prehearing conference, further objections to the revised notice will not be accepted. Tr. 38.

(11) In response to a request by Mr. Barak (representing the Environmentalists), I agreed to investigate whether it would be possible to post transcripts on the Commission's Bulletin Board Service or web site. After discussion with appropriate Commission personnel, I have determined that it is not possible to do so. The service list for this proceeding, however, will be posted on the Commission's Bulletin Board (717-783-9577).

(12) *Petitions to intervene will be granted unless objected to within 10 days.* If there is an objection raised to a particular petition to intervene, it will be addressed by order.

(13) Participants will be considered to be either active or inactive. Active parties will receive all documents and must copy all other active parties on documents they send to the Commission or the presiding officers. They are expected to attend hearings, present witnesses and conduct discovery and cross-examination. Inactive parties will receive only hearing notices, the recommended decision, and the Commission order. They may

participate and give testimony at public input hearings which will be held at various locations in PECO's service territory. Tr. 41.

As of this date, the active parties (by virtue of their attendance at the first prehearing conference, where the parties were asked to designate their preferred status) are: PECO, OTS, OCA, OSBA, Senator Fumo, Enron, a group jointly represented by CLS consisting of CEPA, TAG and John W. Long, Jr., IPL, MAPSA, PAIEUG, PP&L, the Environmentalists, Allegheny Power, GPU Energy, DP&L, and New Energy Ventures. It should be noted that at the time of the prehearing conference, a number of these entities (the CLS group, IPL, MAPSA, PAIEUG, Allegheny Power, GPU Energy, and New Energy Ventures) had not filed the requisite petition to intervene. If they have not done so already, each of these entities is directed to file a complaint or petition to intervene no later than May 1, 1997 or they will be removed from the service list. Tr. 42.

As described in more detail below, the American Association of Retired Persons and DuPont Power Marketing, Inc. also should be included on the active service list. Any party which files a petition to intervene or complaint and was not present at the first prehearing conference can be granted active party status only upon written request to the presiding officers.

Mr. Haver indicated that he would like to be considered inactive, with the right to participate in hearings. Tr. 43. This request is granted, so it is not necessary for the active parties to serve him with documents unless he specifically requests a copy. Mr. Haver has

not filed a petition to intervene in this proceeding; therefore, he is directed to file a petition to intervene no later than May 1, 1997 or he will be removed from the service list.

Each party is limited to one entry on the service list, although there can be more than one name listed. Tr. 42. Each party with more than one address listed in its Petition to Intervene (or similar pleading) must designate one listing, as well as the appropriate contact person on or before May 1, 1997.

Again, the service list for this proceeding, will be posted on the Commission's Bulletin Board (717-783-9577), or the Philadelphia Administrative Law Judge Office can be contacted to obtain a current service list.

(14) Do not send copies of interrogatories or responses to interrogatories to the Commission or to the presiding officers. Tr. 44. Also, do not send copies of testimony to the Commission; the statements are to be introduced into the record at the hearing at which they are authenticated and adopted. Tr. 44.

(15) In the Recommended Decision at Docket No. R-00973877, pending Commission consideration, the Administrative Law Judge recommended that the record of that case be incorporated in this proceeding. All parties present at the prehearing conference agreed that, in light of the common issues, it would be a good idea to do so. Tr. 50-53. Therefore, the record at Docket No. R-00973877 is incorporated into the record of this proceeding. Any party which intends to rely on any portion of that record is directed to

identify the relevant portion in their testimony and to supply copies for the benefit of the parties who were not served in that case.

(16) The Commission's regulations are modified to provide that the response period for replying to written interrogatories is 10 working days (recognizing that the company may need more time to respond to interrogatories which are received on Friday afternoons or if numerous interrogatories are received on the same day), that objections to interrogatories are to be communicated orally to the propounder of the interrogatory within three working days of receipt and in writing within five working days of receipt of the interrogatory, that motions to dismiss objections and to compel response shall be filed with the presiding officers within three working days of receipt of the objections. Interrogatories which are objected to but which are not made the subject of a motion to compel will be deemed withdrawn. The parties are expected to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed. Tr. 54-55. Also, where possible, interrogatories are to be provided on diskette as well as on paper.² Tr. 59.

(17) The parties are directed to undertake settlement discussions, with a view toward resolving all or some of the issues in this proceedings. Tr. 61.

(18) The parties are directed to address the issues identified by Commissioner Hanger in his statement attached to the February 13, 1997 Order at Docket No. M-00960890F0003.

² Mr. Bonney indicated that he would send a letter to all parties identifying PECO's e-mail address, web site and diskette format.

(19) The parties are directed to file prehearing memoranda at or before the second prehearing conference, scheduled for May 21, 1996, which identify issues and witnesses they expect to present.

The above issues were addressed at the April 15, 1997 prehearing conference. Subsequent to that date, several matters have occurred which are appropriately addressed in this Prehearing Order.

(1) On April 17, 1997, CEPA (represented by CLS) filed a Complaint, docketed at R-00973953C0002.

(2) On April 17, 1997, TAG (represented by CLS) filed a Complaint, docketed at R-00973953C0003.

(3) On April 17, 1997, the Action Alliance of Senior Citizens (represented by CLS) filed a Complaint, docketed at R-00973953C0004.

(4) On April 17, 1997 John W. Long, Jr. (represented by CLS) filed a Complaint, docketed at R-00973953C0005.

(5) On April 18, 1997, a Petition to Intervene was filed by MAPSA (Mid-Atlantic Power Supply Association). This Petition is granted.

(6) On April 21, 1997, a Petition to Intervene was filed by Allegheny Power. This Petition is granted.

(7) On April 21, 1997, PAIEUG (Philadelphia Area Industrial Energy Users Group) filed a Complaint.

(8) On April 21, 1997, a Motion for Admission Pro Hac Vice was filed by Allegheny Power on behalf of Clinton A. Vince, Esq., Paul E. Nordstrom, Esq., and Deborah A. Swanstrom, Esq. This Motion is granted.

(9) On April 22, 1997, a Petition to Intervene was filed by the American Association of Retired Persons (AARP). This Petition is granted. Also, AARP, pursuant to its letter dated April 23, 1997, is granted active party status.

(10) On April 22, 1997, DuPont Power Marketing, Inc. Filed a Motion for Leave to Intervene, and requested active party status. This Motion is granted.

The procedure provided in the Commission's regulations at 52 Pa. Code §5.61(d) relieving a utility of the obligation to file answers to complaints in Commission-instituted rate proceedings should be followed in this proceeding as well. Therefore, it is not necessary for PECO to file answers to any complaint filed in this matter.

DATE: April 25, 1997

Marlane R. Chestnut
MARLANE R. CHESTNUT
Administrative Law Judge

CHARLES E. RAINEY, JR.
Administrative Law Judge

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Docket No. R-973953
April 24, 1997

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