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THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: R-00973953 Pennsylvania Public Utility Commission v. PECO Energy Company For approval of its restructuring plan under Section 2806 of the Public Utility Code. Further Prehearing Conference.

Harrisburg, Pennsylvania
May 21, 1997

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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: R-00973953 Pennsylvania Public Utility Commission v. PECO Energy Company For approval of its restructuring plan under Section 2806 of the Public Utility Code. Further prehearing Conference.

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Stenographic report of hearing held in Hearing Room 3, North Office Building, Harrisburg, Pennsylvania,

Wednesday,
May 21, 1997
at 10:00 o'clock a.m.

- - - - -

BEFORE

MARLANE R. CHESTNUT, ADMINISTRATIVE LAW JUDGE
CHARLES E. RAINEY, JR., ADMINISTRATIVE LAW JUDGE

APPEARANCES:

KENNETH L. MICKENS, ESQUIRE
P. O. Box 3265
Harrisburg, Pennsylvania 17105-3265
Appearing on behalf of Pennsylvania Public
Utility Commission Office of Trial Staff

WARD L. SMITH, ESQUIRE
PAUL R. BONNEY, ESQUIRE
2301 Market Street
Philadelphia, Pennsylvania 19101-8699
Appearing on behalf of PECO Energy Company

1 APPEARANCES: (Continued)

2 DANIEL CLEARFIELD, ESQUIRE
3 305 North Front Street
4 Harrisburg, Pennsylvania 17101
5 Appearing on behalf of Enron Corp.

6 STEVEN P. HERSHEY, ESQUIRE
7 PHILIP A. BERTOCCI, ESQUIRE
8 COMMUNITY LEGAL SERVICES
9 1424 Chestnut Street
10 Philadelphia, Pennsylvania 19102
11 Appearing on behalf of CEPA, TAG, John W.
12 Long, Jr.

13 CHRISTOPHER B. CRAIG, ESQUIRE
14 Room 545 Main Capitol Building
15 Harrisburg, Pennsylvania 17120
16 Appearing on behalf of Senator Vincent J.
17 Fumo

18 KAREN OILL MOURY, ESQUIRE
19 Suite 1102, 300 North Second Street
20 Harrisburg, Pennsylvania 17101
21 Appearing on behalf of Office of Small
22 Business Advocate

23 WALTER W. COHEN, ESQUIRE
24 204 State Street
25 Harrisburg, Pennsylvania 17101
Appearing on behalf of Indianapolis Power
and Light Co.

JOSEPH P. MALATESTA, JR., ESQUIRE
MALATESTA, HAWKE & MCKEON
100 North Tenth Street
P. O. Box 1778
Harrisburg, Pennsylvania 17105
Appearing on behalf of Municipal Intervenors
Group

TODD S. STEWART, ESQUIRE
MALATESTA, HAWKE & MCKEON
100 North Tenth Street
P. O. Box 1778
Harrisburg, Pennsylvania 17105
Appearing on behalf of Mid-Atlantic Power
Supply Association

1 APPEARANCES: (Continued)

2 DERRICK P. WILLIAMSON, ESQUIRE
3 MCNEES, WALLACE & NURICK
4 100 Pine street
5 Harrisburg, Pennsylvania 17101
6 Appearing on behalf of Philadelphia Area
7 Industrial Energy Users Group (PAIEUG)

8 PAUL E. RUSSELL, ESQUIRE
9 Two North Ninth street
10 Allentown, Pennsylvania 18101
11 Appearing on behalf of Pennsylvania Power &
12 Light Company

13 ALAN BARAK, ESQUIRE
14 1417 Blue Mountain Parkway
15 Harrisburg, Pennsylvania 17112
16 Appearing on behalf of "Environmentalists"

17 TANYA J. MCCLOSKEY, ESQUIRE
18 STEVEN STEINMETZ, ESQUIRE
19 1425 Strawberry Square
20 Harrisburg, Pennsylvania 17120
21 Appearing on behalf of Office of Consumer
22 Advocate

23 PAUL NORDSTROM, ESQUIRE
24 VERNEN, LIPFERT, BERNHARD, MCPHERSON and HAND
25 901 15th Street, N. W.
Washington, D. C. 20005
Appearing on behalf of Allegheny Power

TERENCE FITZPATRICK, ESQUIRE
DAVID DESALLE, ESQUIRE
RYAN, RUSSELL, OGDEN & SELTZER
800 North Third Street, Suite 101
Harrisburg, Pennsylvania 17102
Appearing on behalf of GPU Energy

CRAIG A. DOLL, ESQUIRE
214 State street
Harrisburg, Pennsylvania 17101
Appearing on behalf of Delmarva Power &
Light Company

1 APPEARANCES: (Continued)

2 JOSEPH DWORETZKY, ESQUIRE
3 HANGLEY ARONCHICK
4 One Logan Square
5 Philadelphia, Pennsylvania 19103
6 Appearing on behalf of New Energy Ventures,
7 Inc.

8 AUDREY VAN DYKE, ESQUIRE
9 National Facilities Engineering Command
10 901 M Street, S.E.
11 Navy Building 218 Litigation Headquarters, OAL
12 Washington, D. C. 20374-5018
13 Appearing on behalf of Washington Navy Yard

14 GARY A. JEFFRIES, ESQUIRE
15 CNG Energy Services Corp.
16 One Park Ridge Center
17 Pittsburgh, Pennsylvania 15244
18 Appearing on behalf of CNG Energy

19 LINDA C. SMITH, ESQUIRE
20 FREDERICK D. OCHSENHIRT, ESQUIRE
21 DILWORTH, PAXSON, KALISH & KAUFFMAN
22 305 North Front Street
23 Suite 403
24 Harrisburg, Pennsylvania 17101
25 Appearing on behalf of American Association
for Retired Persons (AARP)

18 HOLBERT ASSOCIATES
19 EUGENE W. HOLBERT, RPR
20 P. O. Box 6144
21 Harrisburg, Pennsylvania 17112-0144

1 JUDGE RAINEY: Let's go on the record. Good
2 morning. My name is Charles Rainey and I am an
3 Administrative Law Judge for this case along with Judge
4 Marlane Chestnut. This is the matter of the application of
5 PECO Energy Company for approval of the restructuring plan
6 under Section 2806 of the Public Utility Code at Docket
7 Numbers R-00973953C-0001 through C-0007.

8 I note for the record the appearances of Kenneth
9 Mickens on behalf of the Office of Trial Staff, Tanya
10 McCloskey on behalf of the Office of Consumer Advocate,
11 Derek Williamson on behalf of Philadelphia Area Industrial
12 Users Group, Joseph Malatesta on behalf of Municipal
13 Intervenors Group, Ward Smith on behalf of PECO Energy,
14 Paul Bonney on behalf of PECO Energy, Linda C. Smith on
15 behalf of AARP, Dan Clearfield on behalf of Enron.

16 Let me also note for the record that we have Ms.
17 Smith connected by telephone. She is in Philadelphia as a
18 result of a mix-up. She is not present in the hearing room
19 today. Terence Fitzpatrick on behalf of GPU Energy, Craig
20 A. Doll on behalf of Delmarva Power and Light, Alan Barak
21 on behalf of the Environmentalists, Gary Jeffries on behalf
22 of CNG Energy, Joseph Dworetzky on behalf of the New Energy
23 Ventures, Inc., Paul Nordstrom on behalf of Allegheny
24 Power, Paul Russell on behalf of PP&L, Walter Cohen on
25 behalf of Indianapolis Power and Light Company, David

1 DeSalle on behalf of GPU Energy, Todd S. Stewart on behalf
2 of Mid-Atlantic Power Supply Association, Christopher Craig
3 on behalf of Senator Fumo, Steven P. Hershey and Philip A.
4 Bertocci on behalf of CEPA, TAG, ACORN, Action Alliance and
5 John W. Long amounts, and Karen Oill Moury on behalf of the
6 Office of Small Business Advocate.

7 Are there any other parties represented here today
8 whom I have not named?

9 (No response.)

10 JUDGE RAINEY: There were a number of petitions to
11 intervene that were filed since the first prehearing
12 conference that was held on April 15th. Some of those
13 petitions to intervene were addressed through written
14 order. Others, more recently received, were not and I
15 would like to address those at this particular time.

16 We have recently received petition for intervention
17 from Allegheny Power and Allegheny Power's asked to be an
18 active party. CNG Energy Services Corporation, Municipal
19 Intervenors Group and New Energy Ventures. Are there any
20 objections to the intervention of those parties?

21 (No response.)

22 JUDGE RAINEY: If not, their petitions are granted.

23 As a result of the first prehearing order that was
24 issued in this case, a number of prehearing memoranda for
25 the second conference have been submitted and we have

1 received prehearing memoranda from the Mid-Atlantic Power
2 Supply Association, Philadelphia Area Industrial Energy
3 Users Group, Office of Consumer Advocate, CEPA TAG, ACORN,
4 Action Alliance and John W. Long, PECO Energy, CNG Energy
5 Services Corporation, Allegheny Power, New Energy Ventures
6 and Indianapolis Power and Light, PP&L, GPU Energy,
7 Environmentalists, Senator Fumo, Delmarva Power and Light,
8 Municipal Intervenors, Enron and OTS. Have I missed
9 anyone?

10 MS. SMITH: This is Linda Smith. I just have people
11 coming over to bring the prehearing memo.

12 JUDGE CHESTNUT: Thank you, Ms. Smith.

13 JUDGE RAINEY: With regard to settlements and
14 stipulation, since the first prehearing conference, a
15 stipulation for joint settlement was entered into between
16 PECO and CEPA with regard to a customer notice with regard
17 to this restructuring plan proceeding.

18 Are there any other stipulations or settlements that
19 the parties would like to bring to the attention of the
20 Presiding Officers at this juncture?

21 (No response.)

22 JUDGE RAINEY: I notice, Mr. Bonney, from PECO's
23 prehearing memorandum that you are presently seeking
24 additional stipulations in regard to this case, as a matter
25 of fact, you have mentioned that there was going to be a

1 conference that takes place after the second prehearing
2 conference this morning with respect to attempting to
3 resolve issues concerning customer education. Is that
4 correct?

5 MR. BONNEY: Yes, Your Honor, and of course,
6 everyone is welcome to join us in that.

7 JUDGE RAINEY: Thank you. Of course, the Commission
8 encourages stipulations and settlements and we would like
9 to very much encourage the parties to attempt to narrow the
10 issues in this particular proceeding.

11 I also note from PECO Energy's prehearing memorandum
12 its interest in possibly having mediation or some
13 assistance with regard to issues in this particular case so
14 that we will then allow the parties to notify us to the
15 extent that they require or would like any assistance from
16 us with regard to mediation in this particular case.

17 Is there anything else that anyone would like to add
18 on that topic?

19 It's also my understanding the first technical
20 conference has been held with regard to discovery that was
21 held on April 23rd and I gather again from PECO's
22 prehearing memo that that conference did well. It's also
23 my understanding that there have been no objections raised
24 by PECO to date with regard to discovery. Are there any
25 discovery issues which any party would like to take up here

1 today?

2 (No response.)

3 JUDGE RAINEY: Hearing none, we'll move on. Let's
4 go off the record at this particular juncture and talk
5 about the hearing schedule in this particular case.

6 (Discussion off the record.)

7 JUDGE RAINEY: Let's go back on the record. There
8 was a discussion which took place off the record with
9 regard to the hearing schedule in this case. What was
10 first addressed was PECO's agreement upon a request of the
11 Office of Consumer Advocate to extend the period for the
12 Commission's consideration of this case from December 31st,
13 1997 to January 8th 1998.

14 PECO, in its prehearing conference memorandum
15 requested that OCA put its request in writing. The
16 discussion which ensued with regard to that was that the
17 OCA felt that it was unnecessary that it reduce to writing
18 its request that PECO extend voluntarily the time period
19 for Commission consideration of this case.

20 Ms. McCloskey, for the Office of Consumer Advocate,
21 also represented that she had been in contact with the
22 Deputy Executive Director for the Commission, Mr. Otto
23 Hofmann, with regard to this matter and that Mr. Hofmann
24 assured her that necessary adjustments would be made to the
25 Commission's Public Meeting agenda schedule in order that

1 the agreement voluntarily by PECO to extend the
2 Commission's consideration of this case would be
3 accommodated.

4 We will look into this matter further to make sure
5 that that, in fact, has been done. It is also our
6 understanding that the PP&L restructuring plan has a
7 similar extension of the time period for the Commission to
8 consider that matter and that it was not required that a
9 party reduce to writing a request for the voluntary
10 extension by PP&L in that case.

11 That having been said, it is my further
12 understanding from PECO, from Mr. Bonney that they do not
13 believe it is necessary to press the issue. We will assume
14 at this juncture that the schedule in this matter is
15 voluntarily extended by PECO for Commission consideration
16 by January 8th 1998.

17 It's also my understanding that no party present
18 here today objects to the voluntary extension of time for
19 the Commission's consideration of this restructuring plan
20 by PECO. Is that correct?

21 (No response.)

22 JUDGE RAINEY: Hearing nothing, let's move on.
23 There was also discussion with regard to adjustments of the
24 hearing schedule which was adopted following the first
25 prehearing conference. Such revisions to accommodate the

1 new extended schedule and it was agreed, and I am referring
2 to the revisions to the schedule that was adopted after the
3 first prehearing conference, it was agreed that main briefs
4 will now be due on September 19th, that reply briefs will
5 be due on October 3rd, that our recommended decision be due
6 on November 4th.

7 That exceptions are due on November 19th; that reply
8 exceptions are due on November 26th, that the Commission's
9 initial polling will take place on December 18th and that
10 the Commission's order will be rendered on January 8th
11 1998. The dates for submissions are in-hand dates to the
12 Commission and the Presiding Officers; and that the date
13 for reply exceptions is the only date which is not an
14 in-hand date for the parties.

15 Have I correctly recited the understanding that was
16 reached? Yes, Mr. Barak.

17 MR. BARAK: Could you go through each of these.
18 It's very important to our secretaries and us.

19 JUDGE CHESTNUT: What I'll be doing in the second
20 prehearing order that will be issued is providing the new
21 revised schedule.

22 MR. BARAK: This just relates to in-hand service.
23 The September 19 brief in-hand to everyone?

24 JUDGE RAINEY: Yes.

25 MR. BARAK: October 3 reply briefs in hand to ALJ's

1 only?

2 JUDGE RAINEY: In hand to ALJs only.

3 MR. BARAK: Thank you. Exceptions in hand to the
4 parties, not to the ALJs?

5 JUDGE RAINEY: To the Commission in hand.

6 MR. BARAK: But not to your offices.

7 JUDGE RAINEY: You can give them to us, although we
8 won't, of course, be acting on the exceptions.

9 MR. BARAK: So in hand to you as well, and reply
10 exceptions by mail, but of course filed but not in hand to
11 anyone?

12 JUDGE RAINEY: In hand to the ALJs and to the
13 Commission.

14 MR. BARAK: ALJs. Thank you.

15 JUDGE RAINEY: Any other questions with regard to
16 the schedule?

17 (No response.)

18 JUDGE RAINEY: There were also discussions that took
19 place with regard to public input hearings. There was,
20 unfortunately, no consensus reached among the parties with
21 regard to when public inputs should be held. It was stated
22 that public inputs will be held in Philadelphia, Bucks
23 County, Montgomery County, Delaware County and Chester
24 County.

25 The Presiding Officers have discussed among

1 themselves the possibility of holding the public input
2 hearings during the week of July 7th. We do understand
3 that there are parties who believe that the public input
4 hearings should be held during or after the evidentiary
5 hearings in this case.

6 As previously stated, there will be a conference
7 that will take place after this second prehearing
8 conference and during that time, we have requested among
9 the issues that the parties address are public inputs and
10 we are giving the parties until Friday of this week to
11 reach a consensus with regard to the dates and locations --
12 or the dates and the times of public inputs.

13 If the parties are not able to arrive at a
14 stipulated agreement with regard to public inputs, then the
15 Presiding Officers will make that determination. Any
16 questions or comments by any of the parties?

17 (No response.)

18 JUDGE RAINEY: Any questions or comments with regard
19 to the schedule?

20 (No response.)

21 JUDGE RAINEY: There are some housekeeping matters
22 that need to be addressed. We again ask that the parties,
23 for purposes of the service list, include only one
24 address. My understanding is that there are still some
25 multiple addresses for the same parties which appear on the

1 service list. Yes, Mr. Hershey?

2 MR. HERSHEY: When you say that, I know that there
3 are many parties who asked that service be made on their
4 witnesses.

5 JUDGE RAINEY: Yes.

6 MR. HERSHEY: Is that included in your comment or --

7 JUDGE RAINEY: No. What takes place amongst the
8 parties with regard to discovery and other matters is not
9 -- I am addressing the official service list. Are there
10 any other questions with regard to that?

11 Another matter which has arisen is with regard to
12 the responses to Commissioner Hanger's question. It's my
13 understanding, Mr. Bonney, that PECO has provided those
14 responses in response to discovery requests.

15 MR. BONNEY: Yes, Your Honor.

16 JUDGE RAINEY: Is it also your intention to have
17 those responses entered into the record at the appropriate
18 time?

19 MR. BONNEY: We haven't yet made a decision. We'd
20 be happy to do that if those are issues that other parties
21 are raising in the case or if it is otherwise deemed
22 appropriate. We'd be happy to file that as a form of
23 supplemental testimony, if that would be advisable. Why
24 don't we go ahead and do that.

25 JUDGE RAINEY: Yes. Thank you.

1 MR. BONNEY: Thank you, Your Honor. If it's all
2 right with Your Honors and the parties perhaps it would be
3 better if we turned those into questions and answers. They
4 are currently, as you noted, in a discovery format with
5 line numbers, et cetera, so that for cross examination
6 purposes, it would be better but I don't know that it
7 matters much.

8 JUDGE RAINEY: That would be fine.

9 JUDGE RAINEY: Is there anything else that any party
10 would like to have addressed? Yes, Mr. Barak.

11 MR. BARAK: In the PP&L second prehearing, Judge
12 Kashi made some comments about lengths of briefs and in
13 response to his comments on lengths of briefs, I asked him
14 if it wouldn't help to ameliorate that problem if the
15 parties developed a sort of common outline that would not
16 require anybody to write their brief in a certain format
17 but would make it easier for you all if you need to
18 literally pull them apart and put things in stacks. My
19 question, would that be helpful?

20 JUDGE RAINEY: That would be helpful, yes.

21 MR. BARAK: Would that help stave off some problems
22 with lengths of briefs?

23 JUDGE CHESTNUT: Probably not.

24 MR. BARAK: I tried. He left it to us to figure out
25 how to do that. I don't want to give any work to any

1 government employees who are already overworked. I did
2 have a very brief discussion with Paul Bonney this morning
3 about it and I suggest that when we break, maybe the
4 parties can raise that.

5 JUDGE RAINEY: Thank you, Mr. Barak. We will be
6 issuing a notice with regard to --

7 MS. VAN DYKE: My name is Audrey Van Dyke. I am
8 with the Department of the Navy. I am not sure if we are a
9 party or not.

10 JUDGE RAINEY: Yes, you are a party. You'll need to
11 sign the appearance sheet. Is there anything else? If
12 not, I would like to thank everyone for their participation
13 here today, and this second prehearing conference is
14 adjourned.

15 (Whereupon, at 11:10 a.m., the prehearing conference
16 recessed.)

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1 I hereby certify that the evidence and
2 proceedings are contained fully and accurately in the notes
3 taken by me during the hearing of the within cause, and
4 that this is a true and correct transcript of the same.

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9 EUGENE W. HOLBERT
Registered Professional Reporter

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