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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission v. :
PP&L For approval of its restructuring : Docket No.
 plan under Section 2806 of the Public : R-00973954
 Utility Code. :
 :
 Second Prehearing Conference. :
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Pages 43 through 57

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Hearing Room 1
North Office Building
Harrisburg, Pennsylvania

Friday, May 16, 1997

Met, pursuant to adjournment, at 10:17 a.m.

BEFORE:

GEORGE M. KASHI, Administrative Law Judge

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C O N T E N T S

WITNESS

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(None.)

E X H I B I T S

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(None.)

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FORM 2

P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE GEORGE M. KASHI: This is
3 the time and place set for a second prehearing conference in
4 the matter of Pennsylvania Public Utility Commission v. PP&L
5 for the approval of its restructuring plan under Section
6 2806 of the Public Utility Code.

7 This matter has been set down today as the second
8 prehearing conference and possible settlement conference.

9 There are a couple items that I would like to address
10 first, and that is that this week and since the last
11 prehearing, there were a number of further interventions
12 that were filed.

13 There has been no opposition to any of those
14 interventions, and they will all be granted by one order as
15 were the first ones granted by one order.

16 There was another motion for admission of counsel pro
17 hoc vice. That was granted. The schedule for the public
18 inputs has been set. Notice of that I believe went out last
19 night or this morning. I have provided copies here in the
20 hearing room should anybody want to see it before it gets
21 out, and it also will be posted on the Internet. It looks
22 like we're going to have a real busy week, from Allentown to
23 Williamsport.

24 Finally, I had a question for Mr. Russell. Early in
25 the proceeding, you had proposed a protective order that you

1 thought was going to be finalized and submitted to me by the
2 end of a particular week.

3 I don't think I have received that. One of my
4 problems is I'm without a secretary until, I think she's
5 going to come back on the 28th, or she may not.

6 Has that, to your knowledge, been submitted?

7 MR. RUSSELL: It has not been submitted, Your Honor.
8 We have exchanged drafts with a number of the parties. We
9 have had some telephone conversations with the parties.

10 What we would suggest is, after the formal part of
11 the prehearing conference is completed, that we stay in the
12 room, the lawyers stay in the room and try to work out the
13 details of the protective order.

14 I think we have been able to address most of the
15 issues. There are one or two open issues yet. It would be
16 our hope and expectation that we would have a generally
17 agreed upon proposed order that we could submit to you early
18 next week.

19 JUDGE KASHI: We now have a schedule for hearings.
20 We have a schedule for discovery. We have a schedule for
21 the public input hearings. Would you like to address the
22 record at this time, Mr. Russell?

23 MR. RUSSELL: Your Honor, I had a list of issues to
24 raise at the prehearing, and you've raised them all. I
25 guess there's only one open issue.

1 The environmentalists, represented by Mr. Barak and
2 the company are in discussions regarding some discovery by
3 the environmentalists and some objections that we had filed.

4 There have been agreed upon extensions of time for
5 the environmentalists to file a motion to compel. We are
6 still in discussions and I am optimistic we will be able to
7 work out most of our disagreements, and I would hope there
8 will be no need to involve you in this matter.

9 JUDGE KASHI: Mr. Barak has kept me informed of that,
10 and has been filing, I think we're up to the 12th or the
11 19th now as far as the extension goes on the motion to
12 compel.

13 MR. BARAK: Your Honor, I wonder if, without
14 objection of counsel, if we can extend that date. My sense
15 is that everybody has been so busy that if we just let
16 things sit with that 19th date, I'll be in the position of
17 having to file a motion to compel and I don't think that
18 would serve anybody's interests.

19 JUDGE KASHI: It works for me.

20 MR. BARAK: Can we extend that without a further
21 date, but we will status you sometime next week on it?

22 JUDGE KASHI: Let's do it this way: Let's status me
23 within two weeks of that date, and if we don't have anything
24 worked out by that time, we will sit down and see what we
25 can work out on a conference call.

1 MR. RUSSELL: That's agreeable to the company, Your
2 Honor.

3 MR. BARAK: Thank you, Your Honor.

4 MR. RUSSELL: I have nothing else, Your Honor.

5 JUDGE KASHI: Office of Trial Staff?

6 MR. SIMMS: Nothing, Your Honor.

7 JUDGE KASHI: Consumer Advocate?

8 MR. BURGRAFF: Nothing additional, Your Honor.

9 JUDGE KASHI: Commission on Economic Opportunity?

10 MR. VOUGH: Nothing additional, Your Honor.

11 JUDGE KASHI: Mr. Rubin?

12 MR. RUBIN: Nothing, Your Honor.

13 JUDGE KASHI: Mr. Nordstrom?

14 MR. NORDSTROM: Nothing, Your Honor.

15 JUDGE KASHI: Mr. Hladik?

16 MR. HLADIK: Nothing, Your Honor.

17 JUDGE KASHI: Mr. Barak?

18 MR. BARAK: Nothing, Your Honor.

19 JUDGE KASHI: I like this.

20 Ms. Ramsey?

21 MS. RAMSEY: Nothing, Your Honor.

22 JUDGE KASHI: Mr. Haynes?

23 MR. HAYNES: Nothing, Your Honor.

24 JUDGE KASHI: Ms. Miller?

25 MS. MILLER: Nothing, Your Honor.

1 JUDGE KASHI: Mr. Kleppinger?

2 MS. POLACEK: Mr. Kleppinger is not here. It's Ms.
3 Polacek, but we have nothing, Your Honor.

4 JUDGE KASHI: Mr. McCormick?

5 MR. McCORMICK: Nothing, Your Honor.

6 JUDGE KASHI: Mr. Fitzpatrick?

7 MR. FITZPATRICK: Yes, Your Honor. I hate to ruin
8 this when you're on such a good roll, but GPU Energy filed a
9 prehearing memorandum this morning -- we tried to get
10 everybody in the room; I hope we have; if not, we have some
11 extra copies -- just stating our intentions with respect to
12 this proceeding, Your Honor.

13 And as stated in the prehearing memorandum, there is
14 nothing in the filing or in the testimony that PP&L has
15 submitted that at this point would cause GPU to want to file
16 testimony or become I guess very actively involved in the
17 litigation other than to monitor it.

18 However, there could well be things raised in the
19 answering testimony of the other parties that would be of
20 concern to us because of the precedential impact that they
21 could have when the GPU Energy companies make their own
22 restructuring filings on June 2nd.

23 So as indicated in the prehearing memorandum, our
24 intention is not to file answering testimony on July 2nd,
25 the date set for filing such testimony, but to evaluate that

1 testimony when it comes in and, if the companies believe
2 that it is necessary to protect their interest, to submit
3 rebuttal testimony on August 5th.

4 JUDGE KASHI: All right, sir.

5 MR. FITZPATRICK: Thank you.

6 JUDGE KASHI: Mr. Longwell?

7 MR. LONGWELL: Nothing, Your Honor.

8 JUDGE KASHI: Mr. Doll?

9 MR. DOLL: Now that Mr. Fitzpatrick broke the ice, I
10 also filed a prehearing memo on behalf of Delmarva Power and
11 Light.

12 We do not anticipate presenting any witnesses and,
13 through some discussions with the company, we may be able to
14 resolve what few differences that we have.

15 If anyone did not receive a copy -- we tried to get
16 everybody today. If not, I have extra copies available.
17 Thank you, Your Honor.

18 JUDGE KASHI: Mr. Gallagher?

19 MR. GALLAGHER: Nothing, Your Honor.

20 JUDGE KASHI: Ms. Moury?

21 MS. MOURY: Nothing, Your Honor.

22 JUDGE KASHI: Mr. Tubbs?

23 MR. TUBBS: Nothing, Your Honor.

24 JUDGE KASHI: Mr. Epstein?

25 MR. EPSTEIN: Just a brief point of clarification.

1 During the rate base hearings, there was some I think
2 confusion whether or not a party to these hearings could
3 also testify at the public input hearings.

4 And I was just wondering if it's appropriate, if
5 you're intervening in this proceeding, to also make comments
6 at the public input hearings.

7 JUDGE KASHI: I don't have a problem with that. I
8 see no reason why you can't. I guess the question is,
9 what's the purpose?

10 Given that public input hearings are designed
11 primarily to give people an opportunity who aren't going to
12 necessarily have an opportunity to do that, and we go to the
13 public input hearings trying to get as much from these
14 people as possible on the record, I guess what comes to me
15 is, why should we take up their time.

16 MR. EPSTEIN: What I would ask is, I'm also the
17 chairman of two different environmental organizations who
18 may have comments they'd like me to present, and that's why
19 I was asking.

20 JUDGE KASHI: You understand that it's not that I
21 wouldn't want to give you two bites of the apple, but we're
22 only going to have X number of hours to get all these people
23 who want to take a shot at it in, and everybody here is
24 going to get their shot.

25 MR. EPSTEIN: As long as there's not a worm in the

1 apple.

2 JUDGE KASHI: Mr. Russell?

3 MR. RUSSELL: Your Honor, I have no objection to Mr.
4 Epstein putting in a statement or two at the public input
5 hearings. The one issue that did arise during the rate case
6 was submittal of expert testimony in a public input hearing,
7 and we would object to that.

8 JUDGE KASHI: I won't take it. I don't think the
9 forum is proper. I don't think that there will be proper
10 notice to the parties as to what that expert testimony will
11 be, if we're talking about somebody just getting up and we
12 want to direct and cross-examination of a purported expert.
13 No.

14 We have significant hearings set up for that. I
15 think that can be well taken care of at that particular
16 time.

17 MR. EPSTEIN: I learned my lesson from Judge
18 Christianson. I would not introduce expert testimony.

19 JUDGE KASHI: All right.

20 I'd like to talk about the public input hearing, if I
21 could, just for a moment. In fact, I'd like to do that off
22 the record.

23 (Discussion off the record.)

24 JUDGE KASHI: Back on the record.

25 Having discussed with the parties the purpose and

1 intent of the public input, as far as offering to the public
2 an opportunity to be able to express their views on this
3 record for us to consider, it will be in fact done in a
4 manner that we have done in the past.

5 I have also offered the parties opportunities to
6 present some sort of documentary presentation which they
7 could leave for parties should they wish, that might help
8 express or expand their positions.

9 I guess that's the only thing that I have on my list.
10 Does anybody have anything on their list that we have to
11 talk about yet today? Mr. Russell?

12 MR. RUSSELL: Nothing, Your Honor.

13 JUDGE KASHI: Mr. Burgraff?

14 MR. BURGRAFF: No.

15 JUDGE KASHI: Mr. Simms?

16 MR. SIMMS: No, Your Honor.

17 JUDGE KASHI: Are the parties going to take the
18 opportunity of spending some time here and seeing what you
19 can do as far as issue recognition or consolidation or
20 things like that? I'm not going to insist on it, but I
21 would suggest that you do it if it's at all possible.

22 One of the things -- and I'm not there yet because we
23 still have a third prehearing conference -- and listen to
24 me: I will be limiting briefs. I will be limiting the
25 number of briefs.

1 There is no way I can read a brief from every one of
2 you people in this room and get that decision out. There
3 will be combinations identified. I think there are common
4 interests that can be shared, consolidated and addressed in
5 one brief or a number of briefs, depending on what the
6 issues are or what the interests are of the people that are
7 involved in it.

8 And there will be then an opportunity for a
9 particular party to address what he or she insists is
10 peculiar to their position.

11 But I just think it's -- I've never been quite sure
12 where notice and opportunity runs to the number of briefs,
13 so I think everybody is going to have their notice and
14 opportunity, but we may see more of a shared, common brief.

15 Mr. Barak, sir?

16 MR. BARAK: I wonder if we could help you in terms of
17 the mass of the briefs by developing some kind of common
18 outline so that if you have briefs that literally can be
19 pulled apart, you can almost have stacks of issues.

20 JUDGE KASHI: That sounds good to me, but also the
21 stacks can be limited, I think. I'm positive that there are
22 certain issues where you are all going to have the same
23 positions or real close to the same positions, in various
24 groups, not everybody in the room, but various groups.

25 And I think we can limit that. That's something that

1 you're going to have to work at. I think you can work at
2 that between now and the time we get closer.

3 Answering testimony is not due until sometime in
4 July.

5 MR. KAPLAN: July 2nd, Your Honor.

6 JUDGE KASHI: We have another prehearing yet, before
7 that time.

8 MR. KAPLAN: It is tentatively set for July 15th,
9 although we noted in our proposed --

10 JUDGE KASHI: I will make an offer that I always make
11 in these proceedings. I am not offended by the principle of
12 a settlement judge, a singular judge as opposed to different
13 judges being brought in and mediating here, mediating there.

14 If I can try a case without a jury and be convinced
15 that I can ignore anything I'm not supposed to hear in that
16 proceeding, I guarantee you I can do the same thing here.

17 I know there are certain parties who have objections
18 to that. My position always is, I will remain available to
19 help parties evaluate issues and see what we can do to
20 smooth it on down the way, see what it is we can do to come
21 up with joint stipulations and work from there.

22 I will, however, take note of any party who objects
23 to that. I might even say in my decision that they objected
24 to this. However, I see that as a valid way of getting
25 through some things.

1 Anything further this morning?

2 (No response.)

3 JUDGE KASHI: Hearing nothing, we will adjourn and
4 leave the parties to their own devices here.

5 Mr. Russell, are you sending out for lunch?

6 (Laughter.)

7 MR. RUSSELL: If that's the parties' desire, we'll
8 send out for lunch.

9 JUDGE KASHI: Speaking of sending out for lunch, how
10 did we do with setting up that other conference as far as in
11 town or -- we're looking for the technical hearings, I
12 guess. There was a possibility that it's going to be here
13 or it's going to be in some other place in the city.

14 MR. RUSSELL: We had the technical conference here a
15 couple weeks ago. I think the schedule contemplates a
16 technical conference after answering testimony has been
17 filed.

18 We haven't undertaken to do anything with that yet.
19 Why don't I do that next week?

20 JUDGE KASHI: All right.

21 Thank you very much. We stand adjourned.

22 (Whereupon, at 10:38 a.m., the proceedings were
23 concluded.)

24

25

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me or under my direction, and that this transcript is a true and accurate record to the best of my ability.

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By: John A. Kelly

John A. Kelly,
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FORM 2