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FORM 2

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WITNESSES

DIRECT   CROSS   REDIRECT   RECROSS

(None.)

E X H I B I T S

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IDENTIFICATION       EVIDENCE

(None.)

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FORM 2

1 ADMINISTRATIVE LAW JUDGE KASHI: This is a  
2 prehearing conference in the matter of the Pennsylvania  
3 Public Utility Commission vs. PP&L. It is an  
4 application for approval of a restructuring plan, which  
5 has been docketed to R-00973954.

6 This is the first of hopefully what will be a  
7 number of prehearing conferences, to keep this matter  
8 on track, and as is the custom and habits, I would like  
9 to give counsel an opportunity to address the record,  
10 keeping in mind what a large crowd we have here this  
11 morning. At that time I would like to go off the  
12 record to discuss the scheduling of the matter and then  
13 come back on and put it on the record.

14 While we are doing this, there are a couple of  
15 matters that we will likely be thinking of. There are  
16 a couple of things that have come to me as far as the  
17 various industries and the various groups, as far as  
18 whether, when we get down to the line, it would not be  
19 more efficient to have lead counsel, rather than having  
20 all counsel, having cross-examination of the parties.  
21 I think that would be helpful. I do not know what you  
22 think about it.

23 The other thing is the question of whether or  
24 not the nature of this beast is such that it requires a  
25 complaint to be filed against it or whether a petition

1 for intervention is sufficient enough to take care of  
2 everyone.

3 One of the concerns that I had is the amount of  
4 the paper that is required when complaints are filed  
5 and cross-filed. I do believe that the rules have now  
6 just provided for that the complaint is automatically  
7 deemed denied by the company without filing anything  
8 else, as of, perhaps, yesterday. I have not seen it;  
9 I have been told. My preference on that is, not trying  
10 to deny anybody what they perceive to be their  
11 substantive rights, that a petition to intervene is  
12 sufficient in the case before us today. But, again,  
13 that is something to think about.

14 I would like you to address a short list and a  
15 long list for, one, for discovery purposes, so that  
16 everybody in our office and our experts can serve  
17 papers and not have to call all these people, that we  
18 can just file to one counsel in your office. So, in  
19 this sense I would like you to have that person  
20 identified for the notices.

21 Also, if we had some public input hearings, as  
22 far as how we are going to line them up. What I have  
23 in mind is, having taken a look at the last rate case,  
24 there were nine public input hearings in the last PP&L  
25 rate case. I believe there were only seven sites.

1 There were two that were held in Lancaster, two held in  
2 Harrisburg.

3 And, finally, is the idea of intervening in this  
4 case. I guess we will have to talk to the company  
5 about that as to what they are going to do, whether  
6 they want to look at each petition separately and  
7 respond to it, whether we want to do everybody who  
8 intervened separately, or whether we will take them in  
9 groups of histories or interests and do it that way.  
10 Again, what I am trying to say is, I do not object to  
11 issuing an order on each and every petition to  
12 intervene the six or ten, or whatever we have.

13 I need to consider the concept of active and  
14 inactive parties, and that will need to be discussed.

15 Now what we need to do is come up with a  
16 proposed schedule. I have been provided with a  
17 proposed schedule from the company. Can you tell me,  
18 Mr. Russell, whether anybody has that?

19 MR. RUSSELL: Yes, Your Honor. We attached that  
20 proposed schedule to our prehearing conference  
21 memorandum and I believe all the parties in the room  
22 have a copy of that.

23 JUDGE KASHI: I have not read all of the  
24 prehearing memoranda. They usually got faxed sometime  
25 or another. They were coming in last night and some

1 this morning; but, I would like to take the time to ask  
2 counsel; Mr. Russell, do you care to address the  
3 record in response?

4 MR. RUSSELL: Your Honor, I guess a couple  
5 points I would like to make initially.

6 The company is aware of the difficulty that will  
7 be faced by the parties and by Your Honor in scheduling  
8 this proceeding. We are aware of the complexity of the  
9 proceeding and we have tried to work out a schedule  
10 that addresses those concerns and at the appropriate  
11 time in the prehearing conference we would like to  
12 discuss that and try to arrive at something that would  
13 accommodate everybody's needs as much as possible.

14 We have also made a proposal on public input  
15 hearings, which is patterned after the public input  
16 hearings in our last rate case, where we had, I  
17 believe, nine hearings in cities that were paired,  
18 nearby cities, so that we could have an afternoon  
19 hearing and another one in an evening hearing.

20 In our prehearing conference memorandum we  
21 discuss some suggested approaches to discovery that,  
22 again, at an appropriate point, I would like to address  
23 at this prehearing.

24 Finally, Your Honor, we have two motions for  
25 admission pro hoc nisi that were filed as part of the

1 original filing of our restructuring plan, one for  
2 Donald Kaplan and another for Lisa Helpert, and I would  
3 request that you rule on those at the appropriate time.

4 JUDGE KASHI: I believe I already issued an  
5 Order.

6 MR. RUSSELL: I apologize. I had not received  
7 the Order.

8 JUDGE KASHI: It is my understanding that I  
9 issued an Order within a short period of time.

10 MR. RUSSELL: I am sorry, Your Honor; I had not  
11 seen the Order.

12 JUDGE KASHI: It went out on April 7, 1997,  
13 granting the motion.

14 MR. RUSSELL: Thank you, Your Honor.  
15 I have nothing further at this point.

16 JUDGE KASHI: Mr. Simms.

17 MR. SIMMS: Thank you, Your Honor.

18 For the purpose of this proceeding, I will be  
19 representing the Office of Trial Staff. Along with me  
20 will be Scott DeBroff.

21 With respect to the schedule, I did have an  
22 opportunity, along with some other parties, yesterday  
23 to try to reach some understanding or agreement on the  
24 schedule. So, the schedule you have before you  
25 included in the PP&L prehearing memorandum is a

1 schedule that the Office of Trial Staff can work with.

2 Thank you, Your Honor.

3 JUDGE KASHI: Thank you.

4 Ms. McCloskey.

5 MS. McCLOSKEY: Thank you, Your Honor.

6 My name is Tonya McCloskey, and accompanying me  
7 today is Attorney Craig Burgraff and James Mullins. We  
8 will be representing the Office of Consumer Advocate in  
9 the proceeding.

10 We also had an opportunity to discuss the  
11 procedural schedule with PP&L, and it is a schedule  
12 that we can work with at the OCA. We also had an  
13 opportunity to discuss the public input procedure that  
14 Mr. Russell outlined, and we find that to be an  
15 acceptable procedure to our office.

16 Thank you.

17 JUDGE KASHI: Thank you.

18 Ms. Moury.

19 MS. MOURY: Good morning, Your Honor.

20 I am Karen Moury for the Office of Small  
21 Business Advocate.

22 Your Honor, the Office of Small Business  
23 Advocate was not consulted when this particular  
24 proposed schedule was developed and we do, in fact,  
25 have some difficulties with the hearing date and I can

1 address this later off the record, if you prefer.

2 JUDGE KASHI: Yes.

3 MS. MOURY: Thank you, Your Honor.

4 JUDGE KASHI: Mr. Kleppinger.

5 MR. KLEPPINGER: Thank you, Your Honor.

6 My name is Dave Kleppinger, with the law firm of  
7 McNees, Wallace & Nurick. We represent the PP&L  
8 Industrial Customer Alliance, affectionately known as  
9 PPLICA.

10 In this proceeding, we have not yet filed our  
11 complaint. We will be doing so shortly. Our  
12 preference is to proceed with a formal complaint, as  
13 opposed to an intervention, for reasons that we stated  
14 on the record in the PECO prehearing conference on  
15 Tuesday. We understand that even if a complaint is  
16 filed, it will be treated in the filing office as a  
17 petition to intervene anyway; but, for procedural  
18 protections, we prefer to file a complaint.

19 We have reviewed the proposed schedule, along  
20 with the PECO proposed schedule, and we participated  
21 in the conference call regarding it, and we can abide  
22 by that schedule.

23 JUDGE KASHI: Thank you.

24 Mr. Newton.

25 MR. NEWTON: Yes. I am here on behalf of

1 Allegheny Power. My law firm is Verner, Liipfert,  
2 Bernhard, McPherson & Hand. I also would like to enter  
3 an appearance on behalf of my partner Clint A. Vince  
4 and Paul Nordstrom and also Deborah A. Swanstrom. In  
5 addition, I would like to enter an appearance on behalf  
6 of John L. Munsch, with Allegheny Power.

7 JUDGE KASHI: Mr. Vough.

8 MR. VOUGH: My name is Michael Vough, and I  
9 represent the Commission on Economic Opportunity.  
10 I looked at the schedule provided by PP&L this morning.  
11 I did not have any input. The schedule seems like it  
12 is a reasonable schedule.

13 We will be filing a formal complaint on behalf  
14 of the Office of CEO very shortly. I enter an  
15 appearance for myself and co-counsel Jeff Tokach.

16 JUDGE KASHI: Mr. Kobler.

17 MR. KOBLER: Good morning, Your Honor. Alan  
18 Kobler on behalf of Enion Corp.

19 We filed a Petition to Intervene in this matter,  
20 I believe yesterday. I looked at the schedule and we  
21 can live with the schedule that I looked over.

22 JUDGE KASHI: Mr. McCormick.

23 MR. MCCORMICK: My name is David McCormick, the  
24 Federal executive Agency of the DOD.

25 We will be filing a formal complaint later. We

1 had also filed comments, sir, in earlier phases of this  
2 proceeding.

3 JUDGE KASHI: Mr. Doll.

4 MR. DOLL: I am Craig Doll. I represent  
5 Delmarva Power & Light Company in this proceeding.

6 I have reviewed the proposed schedule and I have  
7 no problem with that schedule. There may be some  
8 additional calendars made because two of our hearings  
9 -- an offer had not been made as of yet -- seem to be  
10 overlapping other hearings.

11 JUDGE KASHI: Mr. Rubin.

12 MR. RUBIN: Good morning, Your Honor. My name  
13 is Scott Rubin. I am counsel for the International  
14 Brotherhood of Electrical Workers, Local 1600.

15 We filed a petition to intervene on Wednesday.  
16 I discussed this very briefly with Mr. Russell this  
17 morning and it appears that PP&L has no objection to  
18 that intervention.

19 JUDGE KASHI: Mr. Barak.

20 MR. BARAK: Thank you, Your Honor. Alan Barak  
21 on behalf of a group of organizations of  
22 environmentalists.

23 We had filed our petition, which is a formal  
24 complaint today, and we faxed, Your Honor, Mr. Russell's  
25 office a copy of it. As I understand it, he did not

1 have a chance to see it yesterday. I am hoping there  
2 will not be any objections.

3 JUDGE KASHI: Did you file a formal complaint?

4 MR. BARAK: As with Mr. Kleppinger, we very  
5 purposefully filed the document as a Complaint to  
6 ensure certain procedural protection, and I would at  
7 this time enter an objection to the Commission's  
8 treatment of the document as anything other than what  
9 we called it, again, just do protect ourselves  
10 procedurally.

11 We have no objections to the schedule as  
12 proposed, with on exception. That is, we would like  
13 the Bench to consider whether if the public input  
14 hearings can follow the evidentiary phase of the case,  
15 if that would be appropriate. At that point the  
16 parties in the case have crystallized all of their  
17 positions, the issues have been narrowed, and the  
18 comments of the public would be much more meaningful  
19 than at the beginning of a roughly 3,000 page record  
20 that is going to be dropped on us all.

21 There is no criticism to anybody who negotiated  
22 this, but we would like to see that considered.

23 Thank you.

24 JUDGE KASHI: In addressing that question, did  
25 you include the thought, in a context of a public input

1 hearing, after the 3,000 and some odd pages, how is the  
2 public going to get that information?

3 MR. BARAK: I represent a series of  
4 organizations and there will be an amendment to add  
5 others in the next couple of weeks. They have members  
6 throughout the service territory. So, my anticipation  
7 and past experience is that as we go forward with our  
8 analysis of the case and develop the filed testimony  
9 and review the other parties' testimony, they will come  
10 to understand those issues and they will then choose as  
11 to how they wish to communicate with their members what  
12 the live issues are on the case, what the contentious  
13 ones are and where we come to some agreements.

14 JUDGE KASHI: Mr. Epstein.

15 ERIC EPSTEIN: Eric Epstein, pro se.

16 Consistent with my involvement in a rate case, I  
17 am interested in the administrative costs involved with  
18 nuclear heat conditioning, specifically the testimony  
19 of Mr. Kleha and Mr. Schadt.

20 I looked at the schedule. As a history  
21 professor, my teaching schedule is rather light in  
22 the summer and that should not be a problem, and I did  
23 not file a petition. I presumed I was involved in the  
24 proceeding since I got the mailings; but, if I do need  
25 to, I will file with the Commission a complaint. I

1 would be more than happy to do so.

2 JUDGE KASHI: I would appreciate that.

3 MR. EPSTEIN: Sure. I will do that.

4 JUDGE KASHI: Mr. Geller?

5 MR. GELLER: Yes, Your Honor. I am Harry  
6 Geller. I am here on behalf of the Pennsylvania  
7 Utility Law Project.

8 I have not been involved up to this point, but  
9 we will be filing a petition to intervene, and at this  
10 time we have no objection to the proposed schedule.

11 JUDGE KASHI: Okay.

12 Ms. Ramsey?

13 MS. RAMSEY: Yes, Your Honor. My name is  
14 Billie Ramsey. I am representing the Anthracite Region  
15 Independent Power Producers Association.

16 We will be filing either a petition to intervene  
17 or a complaint, whatever is appropriate. We have not  
18 seen the proposed schedule.

19 I would suggest that you direct copies of the  
20 prehearing memoranda to counsel of parties who  
21 appeared today who have not filed a petition or  
22 complaint, because so far I have not received all  
23 of them.

24 JUDGE KASHI: You have not filed anything yet?

25 MS. RAMSEY: No, I have not.

1 JUDGE KASHI: You have not filed a petition to  
2 intervene?

3 MS. RAMSEY: No, we have not.

4 JUDGE KASHI: Janet Miller.

5 MS. HENDRICKSON: I apologize, Your Honor; Miss  
6 Miller is not here. She represents MAPSA. I am aware  
7 that she has done a procedural brief memo and would  
8 like that served upon counsel.

9 JUDGE KASHI: Has the organization filed any  
10 sort of petition to intervene or a complaint?

11 MS. HENDRICKSON: I am not aware of that at this  
12 point in time.

13 JUDGE KASHI: Thank you.

14 MR. KLEPPINGER: Your Honor, what was that  
15 party?

16 JUDGE KASHI: MAPSA.

17 MR. KLEPPINGER: Could we be informed what that  
18 organization is.

19 JUDGE KASHI: The organization is?

20 MS. HENDRICKSON: It's Mid Atlantic Power.

21 JUDGE KASHI: Mr. Huntoon.

22 MR. HUNTOON: Good morning, Your Honor. My name  
23 is Stephen Huntoon, appearing for PECO Energy Company.  
24 I also would like to enter the appearance of Marion  
25 Hopper, also with the company.

1 We had filed a petition to intervene on  
2 Wednesday and served it on the list that was appended  
3 to the April 2nd Notice of this prehearing conference  
4 and we also believe it would be helpful if parties  
5 could file prehearing memoranda and also serve copies  
6 of the filings on either everyone on that list or on  
7 the entered appearances this morning.

8 Thank you, Your Honor.

9 JUDGE KASHI: Thank you.

10 With the appearances that have been here  
11 today, I think that we will establish some sort of a  
12 procedure that those people who have not appeared here  
13 this morning, will be considered inactive parties  
14 unless they file a petition.

15 MR. HAYNES: Your Honor, Bob Haynes. I will be  
16 entering an appearance like in the last rate case.  
17 There will be a change of the name that has not been  
18 presented, but it's the Pennsylvania Electric Customers  
19 Counsel.

20 Your Honor, I forget the name of the last  
21 one, but the last decision changed the name to  
22 Southeastern Fuel Oil Dealers.

23 JUDGE KASHI: Is there any other counsel who  
24 has not had an opportunity to sign the appearance  
25 sheet who wishes to enter an appearance and wishes to

1 participate?

2 MS. HUWALDT: Your Honor, if I may.

3 JUDGE KASHI: Go ahead.

4 MS. HUWALDT: My name is Mary Huwaldt. I did  
5 sign the appearance sheet and I would like to enter an  
6 appearance on behalf of myself and Richard Caplan;  
7 and we represent Schuylkill Energy Resources, Inc. and  
8 Gilberton Power Company.

9 We will file shortly either a petition to  
10 intervene or a complaint for both those entities.

11 JUDGE KASHI: I am sorry. I missed your  
12 appearance. I apologize.

13 Mr. Fitzpatrick.

14 MR. FITZPATRICK: Yes, Your Honor. I am  
15 Jerry Fitzpatrick of Ryan, Russell, Ogden & Seltzer,  
16 and we are counsel for GPU Energy. With me today is  
17 David DeSalle, also of our office.

18 I want to let you know that our company has not  
19 yet made a final determination as to whether or not  
20 we are going to file a petition to intervene. We will  
21 be making that decision shortly and, of course, we will  
22 serve all parties.

23 JUDGE KASHI: Thank you.

24 Is there anyone else?

25 Let the record show there is no indication.

1           Why do we not go off the record at this  
2 particular point and discuss the procedural schedule  
3 and go back on the record and establish that.

4           Off the record.

5           (Discussion had off the record.)

6           JUDGE KASHI: Back on the record.

7           The proposed schedule provided to us by PP&L  
8 that is attached to their prehearing memorandum, the  
9 schedule in fact I will be adopting and will be  
10 set forth in the order from me.

11           We had noted the problems faced by the Office  
12 of Small Business Advocate, who had wished to back up  
13 the start of the evidentiary hearings. It is my belief  
14 that we have already pushed back the start of the  
15 evidently hearings from the beginning of August to the  
16 middle of August and I do not want to see it pushed  
17 back any further. While I realize there is some  
18 conflict, that the parties have to deal with two sets  
19 of hearings, the PECO matter and the PP&L matter, I am  
20 quite confident that the Office of Small Business  
21 Advocate can spare more than one attorney for this  
22 simple matter.

23           MS. MOURY: Your Honor, I would just like to  
24 have it on the record as well that I will be requesting  
25 and hope to be receiving a significant amount of

1 cooperation from the other parties in scheduling  
2 witnesses so that we will be able to accommodate my  
3 witnesses' vacation schedule that is now on for the  
4 last week of August.

5 JUDGE KASHI: I think all you people should be  
6 telling your witnesses what is going on here and that  
7 they better start thinking about taking a winter  
8 vacation.

9 (Laughter.)

10 MS. MOURY: Your Honor, he is available for one  
11 entire week and I would expect the cooperation of the  
12 parties on that.

13 JUDGE KASHI: Sure. I am sure that everyone  
14 here will all cooperate with each other when we all  
15 realize the difficulty to try and get this through.

16 MR. KLEPPINGER: Your Honor, before we leave the  
17 schedule, just a clarification so that it is clear that  
18 the August 5 date for rebuttal testimony applies to all  
19 parties, including their cross-rebuttal and any direct  
20 that would be filed July 2nd.

21 JUDGE KASHI: That is how I read it.

22 MR. KLEPPINGER: Thank you.

23 JUDGE KASHI: Let's turn our attention to  
24 discovery at this point. Mr. Russell, you had a  
25 comment early in your address as to issues relating to

1 discovery. Any problems with the discovery?

2 MR. RUSSELL: Thank you, Your Honor.

3 We had discussed discovery issues in our  
4 prehearing conference memorandum, starting on page 7,  
5 and maybe the thing to do would be to work through that  
6 and I will present what our proposals are and see if  
7 there are objections and see if we can develop our  
8 procedure for discovery in this case.

9 We are suggesting that responses to the  
10 discovery be due 10 working days after the request has  
11 been received. We are looking at working days in this  
12 instance because there are a number of holidays that  
13 are going to occur during the pendency of this  
14 proceeding and I believe it would be more appropriate  
15 to count working days to avoid getting into the problem  
16 with a long holiday and the clock running during that  
17 time.

18 Related to that, we are suggesting objections  
19 within 7 working days and then a motion to compel  
20 within 7 working days. Maybe I will stop at that  
21 point. Those are our proposals on the timing for  
22 discovery.

23 JUDGE KASHI: Does anybody have a problem with  
24 that, in changing that to working days?

25 MS. MOURY: Yes, Your Honor. We do have a

1 problem with the working days.

2 The rules presently provide for 15 calendar  
3 days, and 10 working days, depending on the time, could  
4 actually end up being 14 days if you end up with two  
5 weekends. That does not provide much expedience of  
6 the discovery schedule. We would prefer to leave it at  
7 10 calendar days. That is what we adopted with the  
8 PECO case. We said that there are holidays that create  
9 problems. I think the parties would be willing to work  
10 with the company over those holiday weekends. We all  
11 recognize that and could work in a cooperative  
12 agreement around the holidays.

13 JUDGE KASHI: Does anybody else have a problem  
14 with that?

15 MR. SIMMS: We support it.

16 MR. RUSSELL: Your Honor, our primary concerns  
17 that I indicated was the holidays, and if we can have  
18 some cooperation among the parties to accommodate the  
19 holiday periods, I think we could work with that.

20 JUDGE KASHI: When we are talking about holiday  
21 periods, they would be Memorial Day and the 4th of  
22 July?

23 MR. RUSSELL: During the discovery phase, yes.

24 JUDGE KASHI: So would it be possible for us to  
25 use calendar days with a specific stipulation for those

1 two holidays, how to handle them?

2 MS. MOURY: We just agree to cooperate over the  
3 holidays.

4 JUDGE KASHI: If that is what we can do, what  
5 do you want to change it to?

6 MS. MOURY: I would recommend we keep it at  
7 10 calendar days and if Memorial Day or the 4th of July  
8 fall within that time period, it would be for 11 days.

9 JUDGE KASHI: You delete the holidays --

10 MS. MOURY: You delete the holidays to count  
11 for 10 calendar days.

12 JUDGE KASHI: How many days do you want  
13 on the holidays?

14 MR. RUSSELL: Just for those two holidays, could  
15 we delete the weekend that is associated with them,  
16 because it is more than the holiday. We run into  
17 our people, our witnesses, experts just not being  
18 available. Those are the only two periods we are  
19 concerned about.

20 JUDGE KASHI: The 4th of July, I would expect, is  
21 a Monday off.

22 MR. RUSSELL: It is Friday.

23 JUDGE KASHI: So your proposal would be  
24 that it would be Friday, Saturday and Sunday?

25 MR. RUSSELL: That is correct, for the 4th of

1 July, and Saturday, Sunday and Monday for Memorial Day,  
2 and those are the only two.

3 JUDGE KASHI: Can you live with that?

4 MS. MOURY: Your Honor, I think that now  
5 we are up to 13 days if you have problems with a  
6 holiday.

7 I think with this ongoing nature of discovery, we  
8 are starting technical conference in May, that may  
9 not be practical. In fact, the company, I assume, will  
10 be filing discovery over the holidays, seeking our  
11 testimony on July 2nd.

12 JUDGE KASHI: Let me consider this. My  
13 sense is that the company's request for the extended  
14 time period is not unreasonable, given that we are only  
15 talking about two holidays; but, let me think about  
16 that for awhile. Since this is not coming up real  
17 quick, we can agree to the fact that we are talking  
18 about 10 calendar days and then 7 calendar days, and  
19 give me time to make up my mind and issue an order  
20 involving the holidays.

21 Anything else under discovery?

22 MR. RUSSELL: Your Honor, still working from the  
23 prehearing conference memorandum, we are suggesting  
24 that discovery following the filing of rebuttal and  
25 surrebuttal be limited to that testimony, to avoid late

1 filed discovery of material that has been available for  
2 months, so that the company does not get converted to  
3 answering that discovery and it can focus its attention  
4 to discovery that deals with the issue at hand at that  
5 point in the proceeding.

6 Finally, we are suggesting, which I think  
7 actually is standard practice, that if we have  
8 voluminous documents that would be very expense to  
9 duplicate, we will make them available to the  
10 requesting party and to the Commission, but that other  
11 parties would either examine them in Allentown or, on  
12 request, we will make them available.

13 JUDGE KASHI: Let me ask for clarification.  
14 You said that is discovery that has been out there for  
15 months. How close to the rebuttal and the surrebuttal  
16 do you propose that to be restricted?

17 MR. RUSSELL: If I said discovery, I misspoke.  
18 I meant discovery on the original filing which has been  
19 there for months.

20 We are simply trying to narrow the discovery  
21 late in the proceedings to the rebuttal and surrebuttal  
22 testimony at that point.

23 JUDGE KASHI: I understand.

24 Problems from counsel?

25 MS. MOURY: Just a clarification. As long as

1 it is through, that the discovery would be fairly  
2 related to the rebuttal, for example, if the company  
3 comes up with something new in rebuttal that we will  
4 need to go back and track to the initial filing and we  
5 have to ask some questions about the initial filing, as  
6 long as it is clear that that would be acceptable. We  
7 do want to make sure that we do have that ability if  
8 there is somebody that we were unable to pursue and  
9 follow up on, as long as it is fairly related to that.

10 JUDGE KASHI: I would not expect that the  
11 company in rebuttal testimony would desire to look  
12 forward in the case.

13 MS. MOURY: I would certainly hope not, if they  
14 were issues clarified or further developed that may be  
15 technical at the initial filing.

16 JUDGE KASHI: I think one of the issues that I  
17 always like followed is, if you have a problem, pick up  
18 the telephone and call me and we can work out discovery  
19 problems, rather than sitting back for a time period  
20 and filing papers. It just takes longer to do it  
21 that way. I have yet to have a discovery problem that  
22 cannot be worked out over the telephone.

23 MS. MOURY: Given clarification on the one we  
24 covered on voluminous materials, when you state that  
25 someone "joining in the request", I assume that what

1 Mr. Russell means is that if another party asks a  
2 question, we could then request that voluminous  
3 materials if we needed those materials from Mr. Russell  
4 directly?

5 MR. RUSSELL: That is what I meant, and we would  
6 provide them under those circumstances.

7 JUDGE KASHI: Mr. Barak.

8 MR. BARAK: Forgive me, because I didn't  
9 quite understand the entirety of your conversation.  
10 If where we are going is that discovery is open without  
11 limitation until we have a problem, that is wonderful,  
12 and I will shut up at this point. But, if we are  
13 inclined to issue some kind of limitation, I urge you  
14 to let us see if we can solve the problem down the road  
15 before we start jumping through the hoops to meet  
16 whatever the terminology is. I just did not understand  
17 your last decision.

18 JUDGE KASHI: On the calendar days?

19 MR. BARAK: No, just on the issues that the  
20 company has asked for limitations on.

21 I am thinking of, we might ask for a standard  
22 monthly report later on in the rebuttal phase and one  
23 could argue, well, gosh, they should have asked for  
24 this back in the beginning. However, the reason we  
25 asked for it is because an expert says, look, I need to

1 see whether this number applies here in rebuttal; but,  
2 because we have language now that says, as the ALJ,  
3 hey, I am limiting discovery now on surrebuttal or  
4 rebuttal issues, then we will go back and forth between  
5 counsel that they think it was unnecessary. I think a  
6 phone call would do.

7 I am sure if Mr. Russell or his people think  
8 that what we are doing is burdensome or oppressive,  
9 they will let us know immediately and we will back off  
10 if we think we cannot justify it to you.

11 JUDGE KASHI: I think, as a starting point in  
12 the contest, it is making sure that all of us are  
13 thinking, are sure that we are not going to have  
14 rebuttal or surrebuttal and then think that it can then  
15 be taken care of afterwards, after it is burdensome or  
16 it does not appear to relate to the rebuttal or the  
17 surrebuttal. The mere fact that maybe a document that  
18 could have been asked for at an earlier date arises  
19 that was not made an issue until rebuttal, I do not  
20 think counsel is objecting to that.

21 MR. RUSSELL: Not at all, Your Honor. That is  
22 what we intended,

23 JUDGE KASHI: Thank you.

24 MR. EPSTEIN: I just need a clarification to  
25 point four. Some of us have limited resources, and I

1 am not asking for any special privileges to be granted,  
2 but, I am not clear what voluminous documents means.  
3 Is that 45, 10, 15 pages? Just to get an idea what  
4 voluminous means.

5 MR. RUSSELL: I did not have a specific page  
6 number in mind. It is certainly much, much greater  
7 than 5 or 10. I am thinking in terms of several  
8 inches of paper.

9 JUDGE KASHI: We are talking, then, about boxes.

10 MR. RUSSELL: Small boxes.

11 MR. EPSTEIN: Just one other point. Is it  
12 possible that we can have materials available out  
13 of Harrisburg?

14 MR. RUSSELL: Your Honor, we have considered  
15 that and we would be happy to make materials available  
16 in Harrisburg. Two concerns:

17 One is, it's to find the right location. We do  
18 have an office at the Pennsylvania Electric Association  
19 where we could put materials. We could put materials  
20 somewhere in the Commission, although I do not want to  
21 burden the Commission personnel with record maintenance  
22 on our behalf. We do not have any other offices here  
23 in Harrisburg.

24 The second concern is it is hard enough to keep  
25 one set of files up-to-date, and to try to keep a

1 second set in Allentown totally current with the latest  
2 discovery responses, and that sort of thing, is  
3 burdensome.

4 We certainly could make the filing available at  
5 a convenient location for any party and discovery, but  
6 probably on a slightly delayed basis.

7 JUDGE KASHI: In the two locations?

8 MR. RUSSELL: In somewhere in Harrisburg, yes.

9 JUDGE KASHI: I think it is a good idea. I  
10 think it gives the public more access that way and they  
11 would have an opportunity should they wish to be able  
12 to go and see it.

13 MR. RUSSELL: Would you prefer that that be a  
14 location other than the Commission?

15 JUDGE KASHI: I do not know. Let me talk to our  
16 prothonotary about that and see if he loses any hair  
17 over it.

18 MR. RUSSELL: What I would propose is, if it  
19 is acceptable to have it in the Commission location, we  
20 will put it there. If that would cause concerns and  
21 you would like it off site, I would like to talk to the  
22 people at PEA before I volunteer their offices, but we  
23 will make arrangements to find an off site location,  
24 which we will communicate to the parties as soon as it  
25 is arranged.

1 JUDGE KASHI: We will address that, sir. We  
2 could talk about that now, having it in another  
3 location.

4 MR. EPSTEIN: Thank you, Your Honor.

5 MR. BARAK: Your Honor.

6 JUDGE KASHI: Mr. BARAK.

7 MR. BARAK: Another matter related to discovery  
8 -- you may want to discuss this off the record -- I was  
9 wondering about the possibility of electronic transfer  
10 service of documents and whether that is feasible and  
11 for how many parties that is feasible?

12 JUDGE KASHI: Why do we not talk about that off  
13 the record.

14 Off the record.

15 (Discussion had off the record.)

16 JUDGE KASHI: Back on the record.

17 We had an off-the-record discussion about the  
18 possibility of some sort of wholesale electronic  
19 transmissions of discovery requests and information,  
20 and it has been determined that while the company is  
21 willing to make individual, to consider individual  
22 requests, that starting a wholesale transmission of  
23 documents and information via the Internet is not  
24 necessarily what we want to do in this particular case.

25 I will not direct any sort of electronic

1 transmission. Instead, we will rely on the company  
2 and its statements that, in fact, it will attempt to  
3 accommodate those parties whenever it is appropriate.  
4 Is that satisfactory?

5 MR. RUSSELL: That is satisfactory for the  
6 company, Your Honor.

7 MR. BARAK: Thank you, Your Honor.

8 JUDGE KASHI: Any other discovery problems?

9 MR. RUSSELL: There are two minor issues on  
10 discovery. We note that we will develop a protective  
11 order, a protective agreement to send around to the  
12 other parties. There will be, I'm sure, information  
13 requested in this case that is confidential and  
14 sensitive, and we would just like to get an order in  
15 place, and we will undertake to do that in the next  
16 week or so.

17 JUDGE KASHI: All right.

18 MR. RUSSELL: And the final issue we have on  
19 discovery we had asked off the record and I want to  
20 place it on the record.

21 We had requested that discovery that comes to us  
22 also comes on a diskette, and the reason we are  
23 requesting that is, of course, we repeat the question  
24 before we answer it and it is very, very helpful in  
25 voluminous discovery to have the questions on

1 diskette because we don't have to rekey them then,  
2 we can just print them out and put the answer in.

3 JUDGE KASHI: Does anybody have any problem  
4 with that?

5 MR. BARAK: Can that be a general rule, to send  
6 it on a diskette?

7 JUDGE KASHI: Yes.

8 MR. BARAK: That would help us a lot. We  
9 will have at least a couple witnesses and we'd like to  
10 get discovery on diskette.

11 JUDGE KASHI: All right.

12 MR. RUSSELL: Any discovery we're asked, Your  
13 Honor, we would be happy to provide a diskette with it.

14 JUDGE KASHI: Going back to a couple of my  
15 problems as far as lead counsel, is there any thought  
16 from anybody here that if, in fact, we can organize  
17 groups into various interest groups, I guess, and  
18 if lead counsel can pursue the matter more efficiently  
19 from trying to cross-examine from this vantage? Mr.  
20 Kleppinger, what do you think?

21 MR. KLEPPINGER: Your Honor, based on the  
22 experience in the PECO case, which was an even more  
23 compressed time frame and had, given the time frame,  
24 probably as much complexity and as many issues as we  
25 have in the restructuring case. The parties seemed to

1 work very well with that style of schedule, but the  
2 cross-examination collapsed noticeably due to that.  
3 So, I guess from PPLICA'S standpoint, we are reluctant  
4 to put any undue constraints on it prematurely. If  
5 after the first 3 days of hearings we find that we are  
6 way behind, then maybe we need to reassess; but, at  
7 this point I think that while there are a lot of  
8 parties here today, by the time we get to the hearings  
9 and actual cross-examination the time should be  
10 sufficient without undue constraint put on it.

11 JUDGE KASHI: Anybody else? Mr. Doll.

12 MR. DOLL: Instead of lead counsel, I would  
13 think those parties would pretty much identify as to  
14 a commonality of interest and I think maybe what we  
15 should do is try to get together so that we do not  
16 obviously overlap on cross-examination, rather than do  
17 it independently, and that could be handled amicably.

18 JUDGE KASHI: I will say that I am going to  
19 prefer that petitions be filed as vested complaints.  
20 However, I have no problems with the filing of a  
21 complaint, given that our people downstairs are going  
22 to treat it as a petition and protect those people who  
23 believe that they do not want to give up any  
24 substantive rights.

25 Public input hearings. Are you prepared to tell

1 us where to have public input hearings?

2 MS. MOURY: I believe PP&L identified locations  
3 in its prehearing memorandum, and they were fairly well  
4 taken from the locations from their base rate case and  
5 there was sort of a combining of Harrisburg and  
6 Lancaster in one day, and given the attendance during  
7 the base rate case, those should be workable.

8 I believe we had fairly good attendance at all  
9 the locations in the prior base rate case that  
10 we identified, and the mechanism that we utilized in  
11 that case was the afternoon at one site and the  
12 evening at another site. This seemed to work out  
13 pretty well.

14 JUDGE KASHI: So you have no problem with that  
15 as proposed?

16 MS. MOURY: That is correct.

17 I will put on the record, the one request we did  
18 make of PP&L was to continue to work with our office  
19 and with the Commission's office to assure that  
20 adequate publicity and information at the locations  
21 are made available to consumers early on so they are  
22 prepared to come to the public input hearings.

23 JUDGE KASHI: Okay.

24 All of you have been involved in rate cases and  
25 at the present time there is a standard format that

1 goes out regarding hearings and the type of charts and  
2 documents that are supposed to be filed with briefs for  
3 the record. We have taken a look at that and we are  
4 not too sure that we are happy with that proceeding and  
5 at the present time we are having our technical staff  
6 take a look at that. So, I am not going to get into  
7 that phase yet. It is something that I think can be  
8 dealt with at the next prehearing conference farther  
9 down the road, but that is something that we want to  
10 take a look at as to what those attachments to  
11 briefs should look like.

12 MR. RUSSELL: Your Honor, related to that issue,  
13 we discussed, near the bottom of page 8 of our  
14 prehearing conference memo, that we may be able to  
15 develop a common issue and briefing outline, and I  
16 think that dovetails with what you just discussed and I  
17 would agree that we can address that later. I just  
18 wanted to note for the record that we are in agreement  
19 in suggesting that we try to create a uniform approach  
20 to the extent possible.

21 JUDGE KASHI: That is something that has  
22 bothered me for a number of years. I guess the last  
23 one was the MCI v. Bell case where, depending on who  
24 wrote the brief, whether it was somebody that Attended  
25 the hearings or somebody from another city, I mean, I

1 could not identify the issues from one page to another.  
2 It was like somebody walked in from one city and in  
3 another city someone thought something else.

4 If that is what you have in mind, yes, I would  
5 like to deal with it to come up with some  
6 commonalities. It makes it easier for us to go back  
7 and forth through them.

8 Anything else?

9 MR. HUNTOON: Your Honor, I just had a question  
10 regarding this period while petitions to intervene  
11 are pending before you and who is entitled at this  
12 point to receive materials that are filed for discovery  
13 requests and other pleadings and a protective order  
14 draft proposal. For example, is anyone that appeared  
15 here considered to be an active party for purposes of  
16 receiving service?

17 JUDGE KASHI: Yes.

18 MR. BARAK: Along that same line, can  
19 arrangements be made to get the parties a copy of the  
20 active service list? I checked in the file room  
21 this morning and the only name they had was Mr.  
22 Russell's, so they are running behind.

23 JUDGE KASHI: I will have them take care of  
24 that.

25 MR. BARAK: Thank you.

1 JUDGE KASHI: My secretary will take care of  
2 that; not today, but maybe Monday.

3 MR. EPSTEIN: Your Honor, I will file a petition  
4 by the end of today. I forgot that I have a telephone  
5 conference with my publisher and I am wondering  
6 if I could get it to you by the end of the business day  
7 on Monday?

8 JUDGE KASHI: Sure.

9 MR. BARAK: Your Honor, there was discussion  
10 in the PECO case -- it is a different history there,  
11 but, about summarizing a very voluminous filing for the  
12 purpose of the Commission's recently opened web site so  
13 that people go in there without being faced with the  
14 option of downloading all the files, if counsel were to  
15 write a cogent summary. I wonder if that could be  
16 explored in this case? I wondered if the Commission  
17 was going to work with the company on that subject?

18 JUDGE KASHI: Is there anyone here who was at  
19 that PECO hearing that is familiar with that?

20 MS. MOURY: Your Honor, I was at a prehearing  
21 and I believe that your public liaison was going to  
22 work with PP&L to develop a plain language summary. I  
23 believe there was some discussion that PP&L had already  
24 begun the process.

25 MR. RUSSELL: That is correct, Your Honor. There

1 are two comments.

2 One, we would like to think our Statement of  
3 Reasons is a fairly cogent summary of the filing; but,  
4 I have already talked to the public liaison and they  
5 have asked us to write a summary that is in somewhat  
6 more plain language and we are working with them right  
7 now to do that primarily for the purpose of the public  
8 input hearings, but I think that once we get something  
9 that everybody is happy with for that purpose, it would  
10 work for the web site as well.

11 JUDGE KASHI: Thank you.

12 MR. BARAK: Thank you, Your Honor.

13 On the other issue of transcripts, I assume they  
14 will be available here at the Commission. As you are  
15 probably aware, I am representing the Sierra Club in  
16 that company's base rate case. We ran into some  
17 difficulties in timely availability of transcripts  
18 during the briefing phase. For other reasons there is  
19 a case pending in Commonwealth Court. I wonder if  
20 there are any ways to have transcripts available  
21 somewhere else in the service territory so customers do  
22 not have to travel to Harrisburg during business hours.

23 JUDGE KASHI: I am not sure yet what control I  
24 have. Let me say that if, in fact, it is possible  
25 and it can be done, I will see what I can do; but, I

1 do not know whose they are, who has the right at this  
2 time.

3 MR. BARAK: Without getting into that, whether  
4 it's the public's property; but, I do wonder to what  
5 extent the company could make a set available. I am  
6 not sure what the appropriate town would be,  
7 Wilkes-Barre or Williamsport. If they do have copies  
8 of transcripts, they can make those available, unless  
9 you want to fight with the court reporter.

10 MR. RUSSELL: Your Honor, I guess my initial  
11 thought is that I am not sure there would be a fight  
12 with the court reporter if we made transcript copies  
13 available. I am not sure --

14 MR. BARAK: I just need a review copy if the  
15 company would only -- I'm sorry, I was misunderstood.

16 MR. RUSSELL: Can I suggest, Your Honor, that  
17 maybe the first step would be, on the Commission's  
18 part, that you would undertake that, and if that is not  
19 successful, maybe at the next prehearing conference we  
20 can look into the issue of what constraints we would be  
21 under as a party in making the transcripts available.  
22 If it is not a problem vis-a-vis the court reporter, we  
23 would be willing to try to accommodate that request.

24 JUDGE KASHI: Thank you, sir.

25 MR. BARAK: Thank you, Your Honor.

1 JUDGE KASHI: That was it, sir?

2 MR. BARAK: Yes.

3 JUDGE KASHI: Anyone else?

4 MS. RAMSEY: There was an earlier suggestion  
5 that whatever pleadings or documents that are going to  
6 be filed should be filed and to enter an appearance  
7 today. I think that almost all the parties that are  
8 here are represented in a petition to intervene or they  
9 already filed a complaint. I think it is 50/50.

10 JUDGE KASHI: It is my understanding that  
11 most of the parties that were involved in the last rate  
12 case have already been served.

13 MR. RUSSELL: They have been served with a copy  
14 of the filing itself, Your Honor, but I don't know what  
15 service they received with subsequent documents like  
16 petitions to intervene or discovery.

17 MS. RAMSEY: We have a copy of the other filing,  
18 which we had requested back in January, and we have a  
19 couple of copies of petitions to intervene from Enion,  
20 OSBA, OCA. That's pretty much it.

21 JUDGE KASHI: It is going to be difficult for  
22 the parties to file those on everybody until we get out  
23 the active list, but I think that is a reasonable  
24 request, that everybody exchange their paper on the  
25 active parties list.

1 Anything else?

2 MR. NEWTON: Your Honor, for purposes of the  
3 active parties list, would you list Paul Norstrum of my  
4 office. He will be active.

5 JUDGE KASHI: Fine.

6 Anything further, Mr. Russell?

7 MR. RUSSELL: I have one final thing, Your  
8 Honor.

9 We had proposed in the schedule for the  
10 technical conference to be held on May 2nd, and would  
11 you prefer we try to workout some of the details on the  
12 record or do that on the side off the record?

13 JUDGE KASHI: I think we can do that off the  
14 record.

15 MR. RUSSELL: Thank you.

16 JUDGE KASHI: Do you want to do that now?

17 MR. RUSSELL: That would be fine.

18 JUDGE KASHI: Off the record.

19 (Discussion had off the record.)

20 JUDGE KASHI: Back on the record.

21 We have discussed off the record the technical  
22 conference to be held on May 2nd, which will be held at  
23 an earlier time and at a location that has not yet been  
24 specified, but the company will attempt to come up with  
25 that location and the agenda that is to be set for that

1 conference. The parties will have an opportunity to  
2 make requests of the company prior to that so if  
3 that is something that you would like to address,  
4 the company will address if it finds that to be an  
5 acceptable procedure.

6 Anything further this morning?

7 (No response.)

8 JUDGE KASHI: Hearing nothing, thank you, very  
9 much. We are adjourned.

10 MR. RUSSELL: Thank you, Your Honor.

11 (Whereupon, at 11:25 a.m. the hearing was  
12 concluded.)

13

14

15 C E R T I F I C A T E

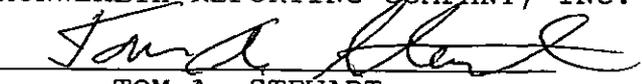
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17 I hereby certify, as the stenographic reporter, that  
18 the foregoing proceedings were taken stenographically by me,  
19 and thereafter reduced to typewriting by me or under my  
20 direction; and that this transcript is a true and accurate 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

22

COMMONWEALTH REPORTING COMPANY, INC.

23

BY: 

TOM A. STEWART

24

25