

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

ORIGINAL

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: Application of PECO Energy Company :
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Pursuant to Chapters 11, 19, 21, 22
and 28 of the Public Utility Code, for
approval of (1) a Plan of Corporate
Restructuring, including the creation
of a holding company, and (2) the
merger of the newly formed holding
company and Unicom Corporation.

: Docket No.
: A-110550F0147
:

Initial Prehearing Conference.

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: DOCUMENT
: FOLDER
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Pages 1 through 59

Hearing Room No. 1
State Office Building
Broad and Spring Garden Streets
Philadelphia, Pennsylvania

Thursday, January 20, 2000

Met, pursuant to notice, at 10:16 a.m.

BEFORE:

CHARLES E. RAINEY, JR., Administrative Law Judge

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WITNESS INDEX

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EXHIBIT INDEX

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FOR IDENTIFICATION

IN EVIDENCE

(None.)

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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE CHARLES RAINEY: Good
3 morning. My name is Charles Rainey and I'm the
4 Administriave Law Judge who's been assigned to this matter.

5 This is the matter of the application of PECO
6 Energy Company for Chapters 11, 19, 21, 22 and 28 of the
7 Public Utility Code for approval of, one, a plan of
8 corporate restructuring including the creation of a
9 holding company and, two, the merger of the newly formed
10 holding company and Unicom Corporation. This matter is
11 at Docket Number A-00110550F0147.

12 At this time I would like the parties to identify
13 themselves for the record. And we will start with you,
14 Mr. Gadsden.

15 MR. GADSDEN: Tom Gadsden, Morgan Lewis,
16 representing PECO Energy.

17 JUDGE RAINEY: Thank you.

18 MR. BONNEY: Paul Bonney, Counsel for PECO Energy.

19 I wanted to mention that with us today is Emmitt
20 George, Vice-President of Regulatory Affairs for
21 Commonwealth Edison.

22 JUDGE RAINEY: Very well.

23 MR. SMITH: Ward Smith, representing PECO Energy.

24 MR. MURPHY: Kent Murphy, representing PECO Energy.

25 MR. MACHLIN: Mark Machlin, Pepper Hamilton,

1 representing Amtrak.

2 MR. DOWNEY: Brian Downey, also with Pepper
3 Hamilton, also with Amtrak.

4 MR. HAMERESH: Matthew Hameresh with Mid-Atlantic
5 Power Supply Association, Hanglely Aronchick Segal &
6 Pudlin.

7 JUDGE RAINEY: Thank you.

8 MR. MEPHEDLAN: Charlie Mephedlan, Pennfuture.

9 MR. FIORENTINO: Michael Fiorentino, Clean Air
10 Council.

11 MR. HAWKE: William Hawke, Your Honor, representing
12 Unicom Corporation.

13 JUDGE RAINEY: In the next row?

14 MS. HOPPER: Mary Hopper, PECO Energy.

15 MR. DeCUSATIS: Anthony DeCusatis with Morgan Lewis
16 on behalf of PECO.

17 JUDGE RAINEY: Anyone in the back row there?

18 MR. WOOD: Michael Wood from PECO Energy Company.

19 MR. JAFFE: Robert Jaffe for Councilman David
20 Cohen.

21 MR. PASTORE: Gregory Pastore, pro se.

22 MR. RAU: Andrew Rau, Gawthrop Greenwood & Halsted,
23 for East Brandywine Township in Chester County.

24 MR. MUNSCH: Jack Munsch, Allegheny Power and
25 Allegheny Energy Supply Company.

1 MR. GORNISH: Gerald Gornish, with Wolf Block
2 Schorr & Solis-Cohen, for Enron Energy Services, Inc.

3 MR. RUSSELL: Paul Russell representing PP&L.

4 MR. RYAN: Bernard Ryan, for the Office of Small
5 Business Advocate.

6 MR. DOLL: Craig Doll, representing Connecticut
7 Energy.

8 MR. MCCOOL: Ed McCool for the Plaintiffs
9 represented by Community Legal Services.

10 MR. OGINSKY: Dan Oginsky from Sutherland Asbell &
11 Brennan representing Shell Energy Services Company.

12 MR. CRAIG: Christopher Craig representing
13 Pennsylvania State Senator Vincent J. Fumo.

14 MR. BERTOCCI: Philip Bertocci, Community Legal
15 Services, representing the Consumers Education Protective
16 Association, ACORN, Tenants Action Group and Action
17 Alliance of Senior Citizens.

18 MR. MULLINS: James L. Mullins, Office of Consumer
19 Advocate.

20 MS. McCLOSKEY: Tanya McCloskey, Office of Consumer
21 Advocate.

22 MR. DWORETZKY: I am Joe Dworetzky from Hangley
23 Aronchick Segal & Pudlin for MAPSA.

24 MR. ADELS: Peter Meadows Adels for Pennfuture and
25 individual intervenors.

1 MR. EPSTEIN: Eric Epstein, pro se, from Harrisburg
2 but physically in Philadelphia.

3 MS. McNAMARRA: Your Honor, Patricia McNamarra,
4 pro se, from Philadelphia.

5 JUDGE RAINEY: Thank you.

6 Mr. Mickens.

7 MR. MICKENS: Thank you, Your Honor. Kenneth L.
8 Mickens, Senior Prosecutor, Office of Trial Staff. Also
9 with me is Kandace F. Melillo, Prosecutor with the Office
10 of Trial Staff.

11 JUDGE RAINEY: Thank you.

12 Mr. Kleppinger.

13 MR. KLEPPINGER: Good morning, Your Honor. David
14 Kleppinger with McNess Wallace & Nurisk, representing the
15 Philadelphia Area Industrial Energy Users Group and the
16 Industrial Energy Consumers of Pennsylvania.

17 JUDGE RAINEY: Thank you very much.

18 A number of protests and petitions to intervene
19 have been filed in this case. Are there any objections
20 to the participation of any of those persons or entities
21 as formal parties to this proceeding?

22 (No audible response.)

23 JUDGE RAINEY: Hearing none, those parties or
24 entities who have filed either protests and/or petitions
25 to intervene in these proceedings are granted to right to

1 participate in these proceedings as formal parties.

2 With respect to the prehearing conference
3 memoranda, they have been filed by or submitted in this
4 case by PECO Energy Company, the Office of Consumer
5 Advocate, Mid-Atlantic Power Supply Association, Connecticut
6 Energy, Allegheny Power and Allegheny Energy Supply
7 Company, LLC, the Office of Trial Staff, Senator Vincent
8 J. Fumo, National Railroad Passenger Corporation, the
9 Office of Small Business Advocate, Philadelphia Area
10 Industrial Energy Users Group, the Industrial Energy
11 Consumers of Pennsylvania, Enron Energy Services,
12 Incorporated, Citizens for Pennsylvania's Future, Wallace
13 Township, the Clean Air Council, Eric Epstein, PP&L,
14 CEPA, Shell Energy Services Company and East Brandywine
15 Township.

16 The prehearing conference memoranda were submitted
17 in response to my prehearing conference order dated
18 December 28, 1999, in which I requested that the
19 participants respond to a number of questions. And I
20 want to get to that now.

21 The first matter which I inquired about was with
22 respect to settlement discussions. And I notice from
23 reading the prehearing conference memoranda that at least
24 preliminary discussions have taken place between PECO
25 Energy Company and one or more of the parties.

1 Is there any update at this time with regard to
2 where settlement discussions stand?

3 Mr. Bonney.

4 MR. BONNEY: Thank you, Your Honor.

5 You are correct that preliminary settlement
6 discussions are beginning with various parties. PECO
7 welcomes that with all of the parties, and you may have
8 noticed in our proposed schedule we suggested that we set
9 a time in early March, maybe a day or two at a convenient
10 place, to try to convene all of the parties with the hope
11 or expectation that we will have had sufficient enough
12 discussions that we can aim to a global settlement at
13 that time.

14 JUDGE RAINEY: Thank you.

15 Any parties have any response or have anything they
16 want to add to what Mr. Bonney has stated?

17 Yes, Mr. Adels.

18 MR. ADELS: Thank you.

19 We very much want to encourage participation of all
20 parties in settlement discussions. My concern is that
21 settlement discussions should not lead right up to any
22 initial filing date for Intervenor direct testimony,
23 especially for small parties, but for any party. We have
24 found in the past that it is very difficult to engage in
25 serious intensive settlement discussions at the same time

1 as preparing to file direct testimony. So I would like
2 to emphasize the importance of adopting a schedule which
3 includes an ending period for settlement discussion in
4 relation to the commencement period for the filing of the
5 direct testimony.

6 JUDGE RAINEY: You may want to reiterate that when
7 we get to the point where we are talking about the
8 schedule in this case, Mr. Adels.

9 The next matter which I raised had to do with
10 discovery. And I know that discovery has commenced and
11 several parties in their prehearing conference memoranda
12 have proposed modification of the Commission's discovery
13 rules. In review of the various proposals let me share
14 with you what I have proposed, and this is open for
15 discussion.

16 I have essentially adopted what has been proposed
17 by the Office of Consumer Advocate and additionally some
18 of what has been proposed by the Office of Trial Staff.
19 And that proposal is this:

20 A, answers to written interrogatories shall be
21 served within ten calendar days after service of the
22 interrogatories.

23 B, the answering participant must make any
24 objections orally to the participant submitting the
25 interrogatories within three calendar days after service

1 of the interrogatories.

2 C, written objections shall be served on the
3 parties, filed with the Commission and a copy submitted
4 to me within five calendar days after service of the
5 interrogatories.

6 D, motions to compel answers to the interrogatories
7 shall be served on the parties, filed with the Commission
8 and submitted to me within five calendar days after
9 service of the written objections.

10 E, responses to written requests for document
11 production, entry for inspection or other purposes shall
12 be served within ten calendar days after the written
13 request was made.

14 F, written requests for admissions shall be deemed
15 admitted unless answered within ten days or objected to
16 within five days after service of the written request.

17 G, answers to on the record data requests shall be
18 served within five days of the request.

19 H, discovery may be conducted until the close of
20 evidentiary hearings.

21 I, the parties are encouraged to exchange
22 information on an informal basis.

23 J, the parties are encouraged to amicably resolve
24 discovery disputes among themselves.

25 K, parties seeking protective orders must comply

1 with 52 Pa. Code, Section 5.362 or Section 5.423,
2 whichever is applicable.

3 Any discussion?

4 MR. EPSTEIN: Your Honor, can you repeat J again?
5 I'm sorry.

6 JUDGE RAINEY: J is the parties are encouraged to
7 amicably resolve discovery disputes among themselves.

8 Thank you for having me repeat that. I cannot
9 stress that enough.

10 MR. DWORETZKY: Your Honor, I would like to suggest
11 that the three day period for filing motions to compel be
12 extended to either five calendar days or three business
13 days. If you get something served on a Friday it just
14 isn't enough time.

15 JUDGE RAINEY: Any other comments? Thoughts?

16 MR. ADELS: Your Honor, I would like to encourage
17 service by E-mail in lieu of written except when a party
18 specifically requests written materials. That is both
19 for time convenience and paper reasons.

20 JUDGE RAINEY: The parties are welcome to work out
21 between themselves however they want the discovery
22 exchange to take place. And certainly those who are able
23 to use electronic mail, they may do so. But that is left
24 up to the parties.

25 I just want to make sure that I have the suggestion

1 by Mr. Dworetzky clear. Mr. Dworetzky, you have proposed
2 with respect to motions to compel answers --

3 MR. DWORETZKY: That's correct, Your Honor.

4 JUDGE RAINEY: Right. And your suggestion was that
5 they be serve within five calendar days?

6 MR. DWORETZKY: Or three business days.

7 JUDGE RAINEY: I'm sorry. What was your proposal?

8 MR. DWORETZKY: It should be either five calendar
9 days or three business days.

10 JUDGE RAINEY: Five calendar days or three business
11 days. Okay. So we would add, then, to what I proposed
12 "or three business days".

13 MR. FIORENTINO: Your Honor?

14 JUDGE RAINEY: Yes.

15 MR. FIORENTINO: Your Honor, with the exception of
16 the issue raised by Mr. Dworetzky all the rest of the
17 time periods are by calendar days, is that correct?

18 JUDGE RAINEY: That's correct.

19 MR. FIORENTINO: Thank you.

20 MR. JAFFE: Your Honor, if I could clarify before
21 we move on, there was previously discussion of settlement
22 discussions, and possibly because we are intervening now
23 are those settlement discussions scheduled to be solely
24 in Harrisburg? In contrast, if they are to be in
25 Harrisburg, the Councilman would urge the Court to have

1 the settlement conferences or meetings in Philadelphia so
2 that there would be access where PECO is located to the
3 public.

4 JUDGE RAINEY: Well, I will not be engaged in those
5 settlement discussions and the parties are welcome to
6 work out among themselves wherever they want the
7 settlement discussions to take place. So I would suggest
8 that you raise that with Mr. Bonney. And as Mr. Bonney
9 has stated, he has made a suggestion which appears in his
10 prehearing conference memorandum for holding such
11 discussions.

12 MR. BONNEY: If I may, we would be happy to meet
13 with you wherever it is convenient if you would like.

14 MR. JAFFE: In Philadelphia. Thank you.

15 JUDGE RAINEY: Anything else with regard to this
16 matter?

17 MR. BONNEY: Yes, Your Honor. In our prehearing
18 conference memo we proposed that we set some informal
19 cutoff date initially for discovery for the case in
20 chief. We have no objection to discovery continuing
21 until the close of the record but we want to encourage
22 the parties to conduct discovery, and they have taken us
23 up on that, informal or formal, but to get their initial
24 questions out so that they can begin to form their
25 positions and have more meaningful settlement positions.

1 We have proposed an initial date of February 3rd and I
2 would ask that that be considered as an informal date as
3 a target.

4 If someone has additional follow-up questions after
5 that, what have you, I don't think we will object on a
6 timeliness basis. But we don't want to wait until well
7 into February to get initial sets of discovery.

8 JUDGE RAINEY: And your case in chief, you are
9 referring to the documents which you have filed thus far
10 in this case?

11 MR. BONNEY: Yes, Your Honor.

12 JUDGE RAINEY: Any discussion?

13 MS. McCLOSKEY: Your Honor, the Office of Consumer
14 Advocate would oppose setting a formal date for the
15 cutoff of discovery on the case in chief. I think an
16 information date to try to encourage participants is an
17 useful idea, but often times the discovery leads to
18 questions that you realize may not have been asked on the
19 case in chief as you start to receive answers and you
20 will often need to go back to the case in chief and do
21 some follow-up questions as well. So we would object to
22 a formal date but I don't disagree with Mr. Bonney on
23 setting an informal date to try to encourage participants
24 to conduct that discovery.

25 JUDGE RAINEY: Any other comments or response?

1 MR. EPSTEIN: I just would concur with what was
2 said previously and would concur with Tanya. For some of
3 us who may be disadvantaged in terms of resources there
4 are three conflicting deadlines. There is discovery,
5 interrogatories and settlement negotiations. And I just
6 got responses to interrogatories yesterday. So I would
7 concur informally it is good to have a benchmark but
8 things are developing so that hopefully PECO will have
9 some flexibility for us to follow up.

10 MR. BONNEY: That sounds reasonable from our end.

11 JUDGE RAINEY: Mr. Dworetzky?

12 MR. DWORETZKY: I support what was said by the two
13 on this side.

14 MR. MACHLIN: Your Honor, Marc Machlin on behalf of
15 Amtrak.

16 I think we would support as well some sort of
17 informal cutoff for discovery on the case in chief. My
18 concern would be that February 3rd is awfully soon and I
19 think many of the Intervenors are still in the midst of
20 analyzing the testimony and the voluminous exhibits that
21 have been submitted. I would propose if there is to be
22 an informal cutoff, you know, perhaps the end of February
23 or early March would be more appropriate.

24 JUDGE RAINEY: I understand. I don't know what the
25 force or effect of an informal cutoff date would be.

1 Again, the parties are encouraged to act professionally
2 and to work with each other in order to make sure that
3 they have the information that they need in order to make
4 their case. So whatever informally you do is fine.
5 Formally discovery will continue until the end of
6 evidentiary hearings in this particular case.

7 MR. BONNEY: Your Honor, one additional thought.

8 JUDGE RAINEY: Yes.

9 MR. BONNEY: In that same spirit, in connection
10 with the ten day period for answers, we will do our best
11 to meet that but in some cases we get a number of
12 questions at the same time and it becomes difficult to
13 meet that.

14 To date we have received some 300 questions. One
15 hundred of them will be answered by today. The practice
16 has been that people are understanding when we get a
17 couple of hundred that are due at one time it is
18 sometimes difficult to meet the ten days. So I would
19 just note that.

20 JUDGE RAINEY: Again, I would encourage all the
21 parties to be accommodating and to do what is necessary
22 for the efficient resolution of this application.

23 MR. EPSTEIN: Your Honor, just one technical
24 question. Now that Unicom's Counsel is here, it seems
25 Unicom, PECO, Com Ed is a fluid concept. All

1 interrogatories and all information is to be directed to
2 PECO and not to Com Ed? Would that be the correct venue?

3 MR. BONNEY: Yes.

4 MR. EPSTEIN: Okay.

5 JUDGE RAINEY: Anything else with regard to
6 discovery?

7 MR. DWORETZKY: Your Honor, I wanted to make a
8 suggestion. I know that there are various other
9 jurisdictions in which filings in connection with this
10 matter will be made, including FERC, the SEC, the Nuclear
11 Regulatory Commission and I think the Illinois
12 Commission. I don't know the schedule in each of those
13 venues and I don't know the filing requirements. I
14 wondered if it would be possible for PECO to provide by
15 just an E-mail notice when there is a filing in those
16 jurisdictions.

17 I am not suggesting that they have to provide
18 copies of that filing automatically to people who don't
19 request it, but just so that we know throughout this
20 process when there is a filing related to this matter in
21 another jurisdiction it would not seem a lot of trouble
22 just to get out an E-mail notice of that. And then if we
23 think it is appropriate we can follow up and request
24 that.

25 JUDGE RAINEY: Mr. Bonney.

1 MR. BONNEY: We have no objection to that, Your
2 Honor. And there is a discovery request outstanding that
3 asks for a listing of all of the other proceedings, so we
4 will be providing that information to the parties along
5 with -- I think it is a good suggestion to send an
6 E-mail.

7 The only exception to that is some of the filings
8 are not public. For examples, the Hartz Gabardino filing
9 is not a public filing. The preliminary proxy filing
10 with the SEC is by SEC rules not public. So we would
11 anticipate not sending copies of that or advising the
12 parties. So that folks know we will indicate that those
13 filings have been made or are being made but, you know,
14 they are a little bit different status than, say, the
15 FERC file or the SEC filing, which are public documents.

16 JUDGE RAINEY: I would ask that you make that
17 information available to me as well, Mr. Bonney.

18 Mr. Machlin.

19 MR. MACHLIN: Your Honor, those are all good
20 points. We just want to be clear that we are not
21 acquiescing now in terms of the discoverability of the
22 Hartz Scott filing or any SEC filings. If a party does
23 make a request for a Hartz Scott filing and if there are
24 objections those can be dealt with appropriately in the
25 future.

1 JUDGE RAINEY: Yes, consistent with the procedure
2 which we set forth just a short while ago.

3 Any other comments? Mr. Bonney?

4 MR. BONNEY: Related to discovery, we have
5 circulated this morning a confidentiality agreement for
6 review by the parties. We anticipate that some of the
7 questions will be answered subject to that and look for
8 whatever comments there are on that and we will work out
9 a process.

10 JUDGE RAINEY: Very well.

11 Anything else with regard to discovery?

12 (No audible response.)

13 JUDGE RAINEY: The next matter had to do with
14 admissions or stipulations. From my reading of the
15 prehearing memoranda which were submitted last week,
16 there are none. Is there any update to that?

17 Mr. Bonney.

18 MR. BONNEY: There are none as of this date, you
19 are correct, Your Honor. But we would hope that as we
20 move through settlement that we would come up with
21 stipulations or broader settlement terms.

22 JUDGE RAINEY: Very well.

23 The next matter had to do with issues to be
24 addressed in this case. Are there any comments with
25 regard to that in terms of those which appeared in the

1 prehearing conference memoranda which were served?

2 MR. EPSTEIN: I just would comment -- and I don't
3 know if this is the appropriate time -- that I would
4 strenuously object to PECO's trying to dismiss the
5 nuclear safety issue. I think it falls within the
6 purview of the PUC. I don't know if it is time to argue
7 or discuss that now, but I wanted to raise that issue
8 with you.

9 MS. McCLOSKEY: For the Office of Consumer
10 Advocate, I know PECO in its prehearing memo identified
11 issues that PECO believes might not be relevant to this
12 proceeding but I don't think now is the time to make
13 those decisions. As we move forward in the discovery and
14 the presentation of our testimony is the more appropriate
15 time to discuss them. Obviously we don't agree with
16 PECO's interpretation.

17 JUDGE RAINEY: Very well.

18 Any further response?

19 (No audible response.)

20 JUDGE RAINEY: With regard to the hearing schedule,
21 Mr. Bonney, I noted that PECO Energy Company in its
22 prehearing conference memorandum stated that it would be
23 making an appropriate filing with the Commission
24 requesting that this matter, should it proceed to full
25 litigation, be briefed directly to the Commission without

1 resort to an initial round of briefs to the presiding
2 Administrative Law Judge, the issuance of a recommended
3 decision and the filing of exceptions and replies to
4 exceptions.

5 Has such a filing been made?

6 MR. BONNEY: No, Your Honor. We were waiting until
7 this prehearing conference. But we have circulated
8 earlier this week to the parties a draft of that filing.

9 JUDGE RAINEY: Can you tell me when that filing
10 will be made?

11 MR. BONNEY: Depending on the outcome of the
12 discussion today, I would think probably tomorrow.

13 MR. DWORETZKY: Excuse me. I don't think anybody
14 got that.

15 MR. BONNEY: Oh. Then I withdraw the comment. I
16 thought it had been distributed. But I will do that. I
17 actually have copies here and can distribute them.

18 JUDGE RAINEY: Obviously, not knowing the outcome
19 of the filing, if the filing in fact is going to be made,
20 I think we can address the schedule up to the point that
21 either I would have to render a decision in this case or
22 the Commission would have to render a decision in this
23 case.

24 Let me just state that the reason that I would even
25 ask that the parties propose a date for my recommended

1 decision as well as a date for the final decision in this
2 matter is just to get the parties talking about their
3 sense of the timing in this particular matter. To my
4 understanding there is no statutory deadline associated
5 with this matter, but I did want to have the parties
6 consulting with each other and getting some sense amongst
7 each other with regard to timelines in this particular
8 case. That having been said, I think we can put to get a
9 schedule.

10 There were a number of schedules which appeared in
11 the prehearing conference memoranda. Some of them were
12 very similar or in cases actually were the same. I would
13 propose to adopt the schedule that was agreed to by a
14 number of the parties, and that would be the schedule
15 which appears in the Office of Consumer Advocate's as
16 well to a significant degree in PECO Energy Company's
17 prehearing conference memoranda.

18 That hearing schedule -- let me just back up a
19 minute with regard to discovery. The rules that were set
20 forth will be effective as of today. Again, for those
21 who have some outstanding interrogatories which they
22 would like to have answered on a quicker basis than as
23 required under the standing Commission rules, again, I
24 would ask that you make that known to the company, PECO
25 Energy Company, and that PECO Energy Company work with

1 those parties to get that information to them.

2 Now, getting back to the hearing schedule in this
3 case, again, I will propose it and we can discuss it.

4 March 24, 2000, would be the date that Intervenor
5 direct testimony would be due in hand.

6 April 10, 2000, would be the date that PECO/Unicom
7 rebuttal testimony would be due in hand.

8 April 21, 2000, would be the date that Intervenor
9 surrebuttal testimony would be due in hand.

10 April 25 through 28, 2000, are the days on which
11 evidentiary hearings would be held, and they would be
12 held here in the Philadelphia State Office Building on
13 the 13th floor in an available hearing room, all hearings
14 beginning at 10 o'clock a.m.

15 MR. EPSTEIN: Was that the 25th through the 28th?

16 JUDGE RAINEY: Yes, it was.

17 That public input hearings be held sometime in
18 March and April and that they be held in each of the five
19 county areas which PECO Energy Company serves, and that
20 would be Philadelphia, Chester County, Montgomery County,
21 Delaware County and Bucks County.

22 I am open to suggestions with regard to location.
23 I did note that the Township of Wallace has proposed a
24 couple of township buildings in that area.

25 MR. EPSTEIN: Your Honor, this is not the same

1 company it was a year ago. I am from central
2 Pennsylvania. PECO still has a base in York. They
3 operate the Peach Bottom nuclear facility and have a
4 share in the Three Mile Island facility. In my
5 prehearing memo I suggested, if possible, perhaps a
6 hearing in that location, either in York or Dauphin
7 County. Clearly the merger will have an effect on
8 people's rates in York and jobs in both locations.

9 JUDGE RAINEY: I will take that into consideration.
10 Why don't we go into talking about the rest of this
11 proposed schedule.

12 May 18, 2000, would had been the date that main
13 briefs would be due in hand.

14 And May 31, 2000, would be the date that rely
15 briefs would be due in my hands and filed with the
16 Commission.

17 Discussion?

18 MR. EPSTEIN: I'm sorry. I don't know if this is
19 the time or the place, but also in the prehearing memo I
20 asked that same-day evidentiary testimony that is
21 transcribed be available in Philadelphia and Harrisburg
22 for people that don't have the ability or the resources
23 to pay for the transcripts.

24 JUDGE RAINEY: Well, there are a couple of points.
25 The transcript is available in Harrisburg in the

1 Secretary's bureau in the North Office Building. We will
2 make a transcript available here for viewing. But it
3 cannot leave here and it cannot not be copied.

4 MR. EPSTEIN: I would suggest that in the 1995 PP&L
5 case what we were able to do also is to gain, if it is
6 agreeable with other parties, after hour access because
7 the Secretary's office is only open for a limited period
8 of time. I was wondering if that is something you may
9 take into consideration.

10 JUDGE RAINEY: I am not sure about the details of
11 that, but -- what were the details of that?

12 MR. EPSTEIN: We were able to work an agreement
13 with Judge Christianson to have access to the documents.
14 He had flexible hours. It was essentially through his
15 discretion.

16 JUDGE RAINEY: I will raise that with Chief
17 Administrative Law Judge Christianson. Thank you.

18 MR. EPSTEIN: Thank you.

19 MR. CRAIG: Your Honor, Christopher Craig for
20 Senator Fumo.

21 We share Mr. Epstein's concern about the access of
22 the public parties to the transcript. It is a difficulty
23 we have run into and the cost is rather prohibitive. We
24 would make the suggestion that the Commission consider
25 purchasing an extra transcript to provide and to loan to

1 requesting parties.

2 JUDGE RAINEY: I think the problem is with the
3 contract that we have with the court reporting services
4 that I believe --

5 MR. CRAIG: I think the Commission has the
6 authority -- I am not certain, though -- it is my
7 understanding has the authority under the contract to
8 purchase for its use transcripts and it could have that
9 transcript available after hours or loan out to parties
10 representing the public interest.

11 Otherwise, the Commission's contract that precludes
12 parties representing the public interest from having
13 access to that same-day transcript tends to preclude our
14 ability to keep track of the testimony when we are not
15 able to be physically present.

16 This is a particular concern to the Senator. It is
17 a problem we have experienced and we actually support
18 Mr. Epstein's efforts. We just tend to think that he is
19 settling for less, that he should be given or other
20 parties should be actually provided a copy of the
21 transcript.

22 JUDGE RAINEY: Would it be a problem for you to
23 come to the Philadelphia State Office Building in order
24 to review the transcript here in these offices?

25 MR. CRAIG: I have no doubt that it would be a

1 problem for to both Mr. Epstein and myself.

2 JUDGE RAINEY: Well, Mr. Epstein is in Harrisburg.

3 MR. CRAIG: We are in Harrisburg as well.

4 JUDGE RAINEY: Is it a problem for you to access
5 the transcript through the file room?

6 MR. CRAIG: The rest of us have other duties and
7 would like to be able to take it out of the office
8 building in the evening or take it home with us.

9 JUDGE RAINEY: Okay. I am not aware of that ever
10 having been done or whether or not that is something that
11 can be done.

12 MR. CRAIG: We are asking if that possibility could
13 be explored.

14 JUDGE RAINEY: I will raise that as well with Chief
15 Administrative Law Judge Christianson.

16 MR. MACHLIN: Mr. Machlin, Your Honor, coming back
17 to the proposed schedule, it is a fairly compressed
18 schedule and I think that Amtrak can support it. There
19 seems to be a consensus for it. But I would just suggest
20 that perhaps the Judge and the Commission ought to retain
21 the ability to adjust the schedule in the future and that
22 that be stated on the record because my experience in
23 these matters is unanticipated events can occur,
24 settlement talks can come to various points where the
25 parties might wish to postpone a date. So I would just

1 urge that we retain some degree of flexibility.

2 JUDGE RAINEY: Thank you, Mr. Machlin.

3 I believe that is always the case. But, again,
4 this is a matter which needs to have a schedule less it
5 never be resolved. So to the extent that there are a
6 series of settlement discussions that are likely to lead
7 to a full settlement of this matter, then that can be
8 communicated by the parties.

9 MR. FIORENTINO: Your Honor, Michael Fiorentino for
10 the Clean Air Council.

11 I would concur with the gentleman from Amtrak about
12 the schedule being compressed. We had asked for a
13 schedule that provided more of an opportunity for public
14 interest parties in particular with limited resources to
15 be able to take the time to develop our responses in the
16 schedule.

17 And specifically I know there is not a lot of
18 disagreement with the schedule as it stands, but there
19 are a couple of windows in here that if we could get an
20 extension on those it would make it easier for us to
21 handle.

22 It seems to us that the distance between the
23 rebuttal testimony from PECO to our required surrebuttal
24 being 10 or 11 days, that would be a rather tight
25 timeframe to turn around. There could be a lot of new

1 issues raised or issues that any experts would have to
2 take time to analyze and turn around. If we could have
3 an extension on that and perhaps extend to a weeks time
4 or ten days perhaps between the actual surrebuttal
5 testimony from the actual hearings so that we would have
6 time to retool ourselves for any examination that might
7 take place there. If you could take that into
8 consideration we would appreciate it.

9 JUDGE RAINEY: You are proposing an April 28th date
10 as opposed to an April 21st date for Intervenor
11 surrebuttal testimony?

12 MR. FIORENTINO: That's correct, Your Honor. And
13 then an additional week from that date to the beginning
14 of hearings.

15 JUDGE RAINEY: Any response?

16 MR. BONNEY: My only response, Your Honor -- I'm
17 sorry. Go ahead.

18 MR. ADELS: I think that this schedule as you
19 originally accepted it from the OCA/PECo proposal is
20 clearly acceptable but extremely aggressive. I do
21 completely agree with Mr. Fiorentino that those
22 extensions would be useful and appropriate without
23 burdening -- in order to not burden the smaller parties
24 in the case with fewer resources and should not be any
25 significant change for PECo or the other parties.

1 JUDGE RAINEY: So the proposal, then, would be that
2 Intervenor surrebuttal testimony would be due in hand on
3 April 28, 2000, and that the evidentiary hearings would
4 be held May 1st through 5, 2000.

5 MR. DWORETZKY: Your Honor, MAPSA would support
6 that.

7 MS. McCLOSKEY: Would we retain the briefing date
8 of May 18?

9 JUDGE RAINEY: I am open to comment.

10 MR. ADELS: I would suggest they should be pushed
11 back comparably.

12 JUDGE RAINEY: A week?

13 MR. DWORETZKY: That would be the 25th of May for
14 the opening brief and the 7th of June for the reply.

15 MR. GADSDEN: Could we have the proposed hearing
16 dates again?

17 JUDGE RAINEY: The proposed hearing dates would be
18 May 1st through 5th, 2000. And I guess the suggestion as
19 made by Mr. Dworetzky was to push the briefs back a week.

20 MR. DOLL: Your Honor, Craig Doll for Conectiv
21 Energy.

22 The 1st, I believe, is a Monday and perhaps it
23 could be set for Tuesday people coming from out of town.

24 But that led me to another issue as to the type of
25 hearing -- and maybe this isn't appropriate right now --

1 as to whether we are going to have a FERC panel-type
2 discussion by issue or whether we are going to deal with
3 company witnesses first and then Intervenor witnesses, et
4 cetera. That may affect the number of hearing days. It
5 is just a thought that we can discuss.

6 JUDGE RAINEY: Any other comments?

7 MR. FIORENTINO: Yes, Your Honor.

8 JUDGE RAINEY: I'm sorry. Mr. Fiorentino.

9 MR. FIORENTINO: I appreciate your ruling to adjust
10 the schedule. I just note --

11 JUDGE RAINEY: I have not made the ruling yet.

12 MR. FIORENTINO: I'm sorry to presume.

13 To discuss the schedule change. But I do note and
14 I would concur with Mr. Dworetzky about pushing the
15 briefs back comparably, which is the other request that I
16 had made. But I also note that I had requested that
17 there be a week's time between the surrebuttal and the
18 beginning of evidentiary hearings.

19 I think the dates that you have mentioned as
20 proposed would be 4/28 and May 1, which would only allow,
21 for, I believe, a weekend. If that could be extended to
22 4/28 and to begin on the 5th -- if the hearings could
23 begin on the 5th that would provide the buffer that I had
24 been contemplating and I think it would be useful and,
25 again, not prejudicial to PECO.

1 MS. McCLOSKEY: I'm sorry, Your Honor, but I think
2 May 5 is a Friday.

3 MR. FIORENTINO: It is.

4 JUDGE RAINEY: May 5 is a Friday.

5 MR. FIORENTINO: Perhaps on a Wednesday, the 3rd.

6 MR. EPSTEIN: May 1st is International Workers Day,
7 so we can't make it.

8 MR. BONNEY: Your Honor.

9 JUDGE RAINEY: Yes, Mr. Bonney.

10 MR. BONNEY: Thank you, Your Honor.

11 I think we understand the sentiments that are
12 expressed and don't necessarily disagree with them.
13 However, the schedule that we have laid out here does
14 involve a number of compromises. The principal one is
15 starting the Intervenor testimony on March 24, which is,
16 in my view, significantly longer than we normally take in
17 cases for the filing of testimony. The principal reason
18 we set it at that time was to permit the parties to
19 engage in settlement discussions, but I think if we are
20 going to talk about increasing the days in the middle of
21 the schedule we should accomplish it by moving the March
22 24 date earlier.

23 What I propose is a judgement by the parties that
24 want more time in the middle of the schedule to take that
25 out of the time that we have allotted up front. We now

1 have over four months to the filing of initial testimony,
2 which is quite a long period. So if we move the March 24
3 date up a week or ten days that might give sufficient
4 room in the schedule to allow more room between the
5 filing of PECO's rebuttal and the surrebuttal of the
6 intervenors.

7 JUDGE RAINEY: Mr. Adels.

8 MR. ADELS: My concern with that brings us back to
9 the point that I previously raised, at the wrong time in
10 these proceedings, and what I believe is the sincere
11 commitment by all the parties to attempt to settle the
12 case. I would encourage an adoption of a specific date
13 for all the parties to communicate the status of
14 settlement discussions. In particular, I don't want any
15 party to have an incentive to cut off settlement
16 discussions that otherwise appear to be productive
17 because we have to get to work on filing our direct
18 testimony.

19 Some parties can do two of those simultaneously. I
20 believe from experience I know that most parties cannot
21 adequately put sincere effort into very productive
22 settlement discussions at the same time as they are
23 filing -- preparing to file direct testimony.

24 So what I would suggest there is, A, in response to
25 Mr. Bonney's suggestion that there probably isn't a whole

1 lot of room for moving up the March 24 filing date and,
2 B, that we do adopt a specific date -- I had suggested
3 one month before; that can change a little bit -- to
4 communicate to you the status and at that point we make a
5 decision to, you know, comparably move every date -- you
6 know, either leave it as is if that is perhaps
7 appropriate or move it a week later to accommodate
8 continuing settlement discussions.

9 MR. EPSTEIN: Your Honor, I'm sorry I wasn't
10 standing before but it was a long train ride from
11 Harrisburg.

12 Two things that I wanted to bring out. One is that
13 my expert witness is a theoretical physicist who is in
14 the country as much as he's out of the country. So
15 hopefully we can resolve this as expeditiously as
16 possible. I don't want to buy an airline ticket for
17 someone who is not going to have to travel. So in terms
18 of producing my witnesses, that is a particular hardship.

19 The other thing that I don't think has been
20 factored in, and perhaps I want to help PECO on this
21 particular issue, is they will also need time to prepare
22 for the public input hearings, to put notices out, to get
23 the information out. Some of the organizations here also
24 have to get people -- you know, get the information out.
25 So hopefully we can factor that into the fray as well.

1 JUDGE RAINEY: Thank you.

2 MS. McCLOSKEY: In response to Mr. Bonney, I think
3 the March 24 date is very important at least to our
4 office, that we need that time to prepare the testimony.
5 The discovery period was 20 days until today so we still
6 have a lot of discovery that is outstanding. And it
7 gives us an opportunity to pursue settlement negotiations
8 in a reasonable fashion.

9 JUDGE RAINEY: Mr. Machlin.

10 MR. MACHLIN: We would echo those comments. We
11 would be strongly opposed to moving up the March 24 date.
12 That is roughly, what, two months from today as it is.
13 For a case of this complexity, I would be fearful that it
14 would not give the parties enough time to think through
15 their positions and give the Commission the kind of
16 testimony that will ultimately be useful.

17 MR. BONNEY: Your Honor, just one final follow-up.
18 Not to belabor it, but the dates that are in the
19 compromise schedule are consistent with what we have had
20 in electric restructuring, gas restructuring and rate
21 cases, which I would argue have been significantly more
22 complicated than what I would expect this case to be.
23 While we have worked hard through the cases they have
24 been dates that we have been able to meet. So while I
25 understand the parties' desire to have time in between,

1 these are not dates that are inconsistent with what we
2 have done in even more complicated cases.

3 MR. EPSTEIN: But we are dealing with assets that
4 some of us are not familiar with, for instance, Com Ed's
5 assets in Illinois. So there is a learning curve
6 associated with becoming familiar with those assets, Your
7 Honor.

8 JUDGE RAINEY: I am going to adopt the schedule
9 which I originally set forth, which is a schedule which
10 was agreed to by a number of the parties prior to today's
11 prehearing conference.

12 Now, with respect to settlement discussions,
13 Mr. Bonney said this earlier and I also see in PECO
14 Energy Company's proposed schedule which is set forth in
15 their prehearing conference memoranda that they have
16 proposed dates March 1st through 2nd for settlement
17 meetings in Philadelphia.

18 I will assume that serious settlement discussions
19 will take place at that time. I am loathe to set an
20 arbitrary date for cutting off settlement.

21 MR. ADELS: Just to clarify, I am not suggesting
22 that we cut off settlement. I am suggesting that we
23 consider the status of settlement at that time and see if
24 adjustment of the dates in the schedule is appropriate in
25 order to continue facilitating settlement discussions.

1 MR. CRAIG: Your Honor, Christopher Craig for
2 Senator Fumo's office.

3 It is the position of Senator Fumo that settlement
4 is probably the most effective avenue for an equitable
5 resolution of this case for ratepayers. That is really
6 our principal interest.

7 As we indicated in our prehearing memorandum, our
8 concern is that we don't want the settlement process and
9 the timing of the settlement process to be used as a
10 mechanism to alter the schedule. In other words, the
11 existing schedule, which we support and the Consumer
12 Advocate's office and PECO supported, should not be used
13 as a tool for punishing parties if Senator Fumo, for
14 example, has not come to an agreement with the company on
15 settlement issues, or other parties for that matter. I
16 don't think that it is appropriate to have a linkage.

17 Our primary concern is to create an atmosphere in
18 which settlement negotiations would take place and not to
19 adjust the schedule that has already been agreed to. The
20 Senator is not interested in a protracted case that would
21 involve a lot of his resources that we are aiming at
22 another company right now.

23 JUDGE RAINEY: To a degree what has been said is
24 speculation that the settlement discussions which take
25 place will not be something desirous, necessarily, of all

1 parties involved. I would hope that it would be and that
2 there would be continuing updates to myself with regard
3 to the status of settlement discussions. And certainly
4 at the March 1st through 2nd settlement meetings the
5 parties will have a good feel for exactly where
6 settlement possibilities are. A significant amount of
7 discovery should be accomplished by that particular time.

8 MR. DWORETZKY: Your Honor, were you anticipating
9 having a second prehearing conference? And if so would
10 it make sense to schedule it some time there in early
11 March so that without predicting what will happen then at
12 least there will be a time set and we can come and talk
13 to Your Honor about the status of settlement and whatever
14 the situation is at that time?

15 JUDGE RAINEY: No, I had not contemplated a second
16 prehearing conference. Would the second prehearing
17 conference be solely for the purpose of updating me with
18 regard to settlement discussions?

19 MR. DWORETZKY: I imagine there might be other
20 outstanding issues then but I can't today predict what
21 they would be.

22 JUDGE RAINEY: Do any other parties believe there
23 is a need for a second prehearing conference? Again, I
24 want the parties to have ample time to actually engage in
25 the discovery they need to engage in both on a formal and

1 informal basis and also to engage in settlement
2 discussions. I don't know that taking that time out for a
3 prehearing conference is possibly the best use of our
4 time, particularly if it is only going to be to update me
5 with regard to the status of settlement discussions. I
6 mean, I believe that the parties can do that in writing.
7 They can designate a spokesperson who will represent
8 accurately exactly where settlement discussions are.

9 Mr. Machlin, you were up and now you are down.

10 MR. MACHLIN: Your Honor, I was going to say I
11 would just echo Mr. Dworetzky's suggestion. I think
12 setting a second date is something that is sometimes
13 helpful and certainly if appropriate you could ask the
14 parties to submit some sort of brief or report one week
15 in advance and then you could, if appropriate, cancel
16 that. But certainly we could also come to you with that
17 request later so it's not critical necessarily to be
18 decided today.

19 JUDGE RAINEY: I just can't see right now how the
20 second prehearing conference would be much more than to
21 update me with regard to settlement discussions.

22 I would imagine, Mr. Dworetzky, you are talking
23 about sometime between March 2nd and March 24.

24 MR. DWORETZKY: Yes.

25 MR. MICKENS: Your Honor.

1 JUDGE RAINEY: Yes, Mr. Mickens.

2 MR. MICKENS: I would just like to weigh in on
3 this. I tend to agree with you, Your Honor, that a
4 second prehearing conference at this point, at this
5 juncture, is really not critical and perhaps we should be
6 spending more time focused on the hearings that have been
7 scheduled and the settlement dates that have already been
8 set out.

9 Obviously we can easily update you without having a
10 formal hearing. I really think that there will be enough
11 opportunities for us to move around and be present in
12 various locations that we perhaps don't need to create
13 additional opportunities at this point especially when we
14 are so early in the process.

15 JUDGE RAINEY: Thank you, Mr. Mickens.

16 MR. EPSTEIN: Your Honor, I would make an
17 alternative suggestion that may be amenable to folks. I
18 believe the settlement negotiations are scheduled for the
19 1st and 2nd of March. Perhaps if you could be available
20 during that time and there if is a prehearing conference
21 that we could schedule during that time you might have to
22 whack somebody over the head to bring them into
23 compliance -- or I could do that for you. But what I'm
24 suggesting is I know in previous negotiated settlements
25 just the presence of somebody like yourself or somebody

1 from the PUC at least if you are available --

2 JUDGE RAINEY: Well, I think the problem is if I am
3 going to adjudicate this case I should not be a part of
4 the settlement in this case. I am not assigned as a
5 settlement judge.

6 MR. EPSTEIN: I wasn't suggesting that. That if we
7 are here at that time perhaps that would be a time if
8 there is a going to be prehearing conference we can do it
9 at that time since everybody is physically together.

10 JUDGE RAINEY: Well, I don't know that PECO Energy
11 Company was necessarily contemplating that the settlement
12 meetings would physically take place here in the hearing
13 rooms here in the Philadelphia State Office Building.

14 I would say unless there is a real groundswell of
15 parties in this case believing there is a need for a
16 second prehearing conference following the March 1st
17 through 2nd settlement meetings in this case that there
18 not be one. Again, I think that the resources in this
19 case will best be used by the parties in both engaging in
20 settlement discussions and also preparing their
21 litigation case. So I don't want to add to the burden of
22 a schedule which some parties have already complained
23 about here today.

24 MR. BERTOCCI: Your Honor, maybe it is a little
25 premature to mention this and it may be a question of

1 trying to have a date that is kept open, but I am looking
2 at this mainly from the point of view of the public.
3 There are going to be public input hearings scheduled
4 probably in March and early April and before that we have
5 settlement hearings. So we have sort of the situation
6 where we have heard that there is a PECO merger going on
7 and we know that there are a lot of closed doors and
8 discussions going on behind closed doors, as is
9 appropriate. But there is nothing to focus the public
10 interest on what is actually going on. So at the point
11 at which you have public input hearings there will have
12 been no event which shows any institutional involvement
13 of the PUC in Philadelphia in an important discussion to
14 be decided.

15 To my mind one of the reasons that you have public
16 input hearings is you have a situation where the public
17 realizes there is an important issue out there and that
18 they should be reminded that there are parties like the
19 Public Utility Commission, PECO Energy and many others
20 who are working very hard to try to resolve those issues
21 and they need some kind of public input. And the holding
22 of some kind of public meeting involving the person who
23 has been assigned to decide this case, at least to take
24 testimony in this case, you are really the center of
25 focus for the public event of this decision going

1 forward. I think that the holding of a meeting, if
2 nothing else, to get a kind of report as to what has
3 happened up to now, what kind of discovery has gone on,
4 what issues have surfaced very similar to what we had
5 today, would serve the public interest in focusing the
6 issue and helping everybody become involve in the making
7 of this decision.

8 JUDGE RAINEY: Well, I am not sure that those
9 statements couldn't be made by the parties at the public
10 input hearings that are held to the extent that you want
11 to inform the parties. That would be probably the best
12 way of informing the public. The public would not
13 necessary be here for a second prehearing conference.

14 MR. BERTOCCI: One of the issues, Your Honor, I
15 suppose, has to do with the notice. We have not spoken
16 about the notice of the public input hearings but I think
17 that, you know, there are notices and then there are
18 notices. If we have a statement which says, well, the
19 PUC has to find out whether this is in the public
20 interest, I mean, it is such a neutral form of expression
21 and I think it understates what the legal standard is.
22 So I do have an interest in -- CEPA, ACORN, TAG, Action
23 Alliance have an interest in the notice really providing
24 to people an idea that there is a fairly high standard
25 that has to be met, that the standard is affirmatively

1 promote the public interest, not just a matter of no harm
2 to the public from the merger which is being
3 contemplated. That is connected, really, to my sense
4 that there really needs to be an effort to focus and
5 provide some focus for the public in considering the
6 issues that are going to be before the Commission.

7 JUDGE RAINEY: Mr. Bonney, will PECO be providing
8 public notice with regard to the public input hearings?

9 MR. BONNEY: Yes, through newspaper notice in the
10 various counties where they are scheduled would be the
11 normal practice. We would be happy to share the text of
12 that Mr. Bertocci or other parties.

13 JUDGE RAINEY: Would you do that in advance of
14 issuing the public notice?

15 And would you work with Mr. Bonney in that regard?

16 MR. BERTOCCHI: Yes. Thank you.

17 MR. EPSTEIN: I would suggest you could alert the
18 PUC Office for Educational Outreach as well.

19 JUDGE RAINEY: I'm sorry?

20 MR. EPSTEIN: I don't know who at the PUC but we
21 have worked with them in the past to -- Maureen Mulligan,
22 I believe, is the point person at the PUC. I would
23 suggest Paul work with her as well to get the information
24 out in terms of consumer education. She can work with
25 Verna and other people to proactively get this stuff out.

1 JUDGE RAINEY: Mr. Bonney, do you have any problems
2 with that?

3 MR. BONNEY: No, Your Honor.

4 MR. EPSTEIN: The material, not the stuff.

5 JUDGE RAINEY: Anything else?

6 MR. BONNEY: Your Honor, one other thought about
7 the schedule. In the spirit of some of our earlier
8 discussions we would ask that the parties make a good
9 faith effort to identify witnesses perhaps during the
10 first week of February. I know it had been requested in
11 the prehearing conference memos but we understand people
12 are in the process of doing that. Again, not a specific
13 date but rather a good faith date in the next week or so.

14 JUDGE RAINEY: Very well.

15 Is there anything further which we need to take up
16 at this prehearing conference?

17 MS. McCLOSKEY: Your Honor.

18 JUDGE RAINEY: Yes, Ms. McCloskey.

19 MS. McCLOSKEY: Also somewhat related to
20 scheduling, given the expedited nature of the scheduling
21 of the briefing I was going to request that Your Honor
22 direct expedited transcripts. I believe the turnaround
23 on this type of case would be 15 days and the way we have
24 the schedule set up our briefs will be due pretty much
25 before we receive the transcripts.

1 JUDGE RAINEY: Off the record.

2 (Discussion off the record.)

3 JUDGE RAINEY: Back on the record.

4 There was a discussion which took place with the
5 court reporter in this case. Ms. McCloskey's request was
6 primarily aimed at the receipt of transcripts for the
7 public agencies involved in this particular case. And
8 the court reporter stated that it would no problem to
9 have transcript delivered on overnight or one day
10 service, and so that is what will be directed here.

11 The other parties are able to let the court
12 reporter know exactly what type of turnaround they need
13 and the court reporter has stated that he will be
14 accommodating.

15 We will go off the record just briefly so I can
16 make sure that that is what the court reporter has
17 stated.

18 MS. McCLOSKEY: Your Honor, just so I'm clear, I
19 was talking about the evidentiary hearing part, not the
20 prehearing conference.

21 JUDGE RAINEY: Not the prehearing and not the
22 public input?

23 MS. McCLOSKEY: I don't think the public input
24 would be needed. Maybe we when we see when they are
25 exactly scheduled we could contact Your Honor.

1 JUDGE RAINEY: With that adjustment, is there
2 anything else that needs to be taken up here today at
3 this prehearing conference?

4 MR. ADELS: I would like some clarification on the
5 service list. In particular, when folks filed petitions
6 to intervene at various times they didn't know whoever
7 else might have been in the case and there have been many
8 filed afterwards. In preparing the prehearing memo it
9 become quite clear that there was not a single accurate
10 service list. I just want to encourage Your Honor to put
11 out an official service list that we can all use.

12 JUDGE RAINEY: So noted.

13 In stating that, I notice that a number of parties
14 have Counsel -- a number of Counsel. I would say that
15 for the purposes of an official hearing service list that
16 we need to know -- we need to have one designated Counsel
17 or law firm for the official service list.

18 Now, the parties among themselves can send copies
19 of things to numerous individuals that are associated or
20 representing a party, but I think that for purposes of an
21 official service list that we need to know where or who
22 is going to be the representative or lead Counsel to whom
23 all things should go to. This, of course, also saves on
24 resources so that parties would not have to send out a
25 number of documents where it could go to one particular

1 attorney and then that attorney, to the extent that he
2 needs to, can make sure that the other attorneys receive
3 it as well.

4 So I am going to ask that the parties who are
5 represented by numerous Counsel designate one attorney
6 and one address. And I would ask that you make that
7 filing -- file such a statement with the Commission and
8 that you do that within five days and make sure that that
9 is circulated or that that is served on all the parties
10 as well served on myself.

11 MR. EPSTEIN: Your Honor, would that be exclusive
12 of the expert witness list? For instance, would Office
13 of Consumer Advocate get one or would they get one with
14 the three expert witnesses that they articulated in their
15 memo?

16 MS. McCLOSKEY: Your Honor, it might be useful to
17 have an expert service list for certain filings such as
18 the testimony. Given the tightness of the schedule,
19 obviously we would like PECO to serve our expert
20 witnesses --

21 JUDGE RAINEY: That's fine. The OCA's witnesses
22 would not be on the official service list.

23 MR. BONNEY: We would be happy to send copies to
24 whoever you designate, whether it is separate Counsel or
25 witnesses.

1 MR. ADELS: One clarification?

2 JUDGE RAINEY: Yes.

3 MR. ADELS: I presume that what we are filing
4 within five days is what the Commission would produce its
5 service list from.

6 JUDGE RAINEY: I would hope.

7 MR. ADELS: So do we need to serve that on all
8 parties?

9 JUDGE RAINEY: Yes. Serve that on all parties just
10 so that all parties have that in case that there is a
11 problem with the translation of what currently exists as
12 a service list within the Commission and what we are
13 desirous of having within it with regard to a service
14 list. If there is some lag between that, at least the
15 parties will have an official document that says that
16 this is the designated person to whom things should be
17 served.

18 Mr. Doll.

19 MR. DOLL: Thank you, Your Honor.

20 One question, and it is kind of a follow-up to what
21 Tanya said. Throughout the schedule we are talking about
22 in-hand dates. I know in past proceedings the in-hand
23 date has been the date that the parties would receive it
24 electronically with a hard copy the next day. Has any
25 thought been given by Your Honor to that process here?

1 JUDGE RAINEY: Mr. Doll, you are saying that the
2 actual in-hand date will be the date on which the matter
3 would be received electronically?

4 MR. DOLL: Yes. For example, the Intervenor direct
5 testimony would be due electronically by the close of
6 business, March 24, with a hard copy furnished the next
7 day. That in a sense would overcome some of the mail
8 problems.

9 JUDGE RAINEY: So electronically, you are talking
10 about by E-mail?

11 MR. DOLL: Yes.

12 JUDGE RAINEY: I don't know that all the parties
13 have access to E-mail. And then there are transmission
14 problems too. Sometimes there are transmission problems
15 with regard to E-mail.

16 What are your thoughts with regard to that?

17 MR. DWORETZKY: I think either E-mail or fax.
18 We've got two cities here. Instead of getting somebody
19 to drive up to Harrisburg on a day it would be better if
20 we could do it either by E-mail or fax with a hard copy
21 the next day, or the official copy the next day.

22 MR. BONNEY: Your Honor, my only thought on that is
23 if we could do E-mail and fax. We sometimes have
24 difficulty downloading schedules and whatnot. If we get
25 things on Friday, I think -- particularly if we are

1 getting testimony immediately before the hearings -- we
2 may have difficulty with that. I would prefer that it be
3 some form of hard copy the day that we have it. If it is
4 faxed or if somebody wants to E-mail it and see if we got
5 that, I would be happy to cooperate that day. In the
6 past we have had some transmission problems.

7 MR. ADELS: If I could add, for the prehearing memo
8 I attempted to fax around hard copies and every single
9 line was busy at the end of the day, which I presume was
10 every party faxing. And only a couple were trying to
11 fax.

12 JUDGE RAINEY: I think for all practical purposes
13 that Mr. Doll's suggestion actually just pushes back by a
14 day the real in-hand date, realizing that there may be
15 problems with regard to either E-mail transmission or fax
16 transmission. If the parties are amenable to doing that,
17 we can push back the dates on which everyone must have
18 the documents in-hand. But I don't want people bringing
19 problems to me with regard to not receiving faxes and not
20 receiving E-mails by the due dates.

21 And there is silence.

22 MS. McCLOSKEY: The other problem that Mr. Bonney
23 is pointing out that we had with E-mail both in sending
24 and receiving was with schedules or attachments that
25 cannot be placed on E-mail.

1 JUDGE RAINEY: Sometimes it's is a problem with the
2 service of the E-mail in terms of not being able to get
3 in and all kinds of problems.

4 We will keep the dates as they are for in-hand for
5 hard copies. I just don't want to have to deal with
6 problems with people not receiving things.

7 MR. ADELS: I guess my request on that -- and I
8 certainly don't disagree with that result for, let's call
9 it, formal acceptance -- is if you have gotten it somehow
10 that we don't particularly focus on the physical receipt
11 on the next day. So, for example, if somebody has in
12 fact received it by E-mail or fax that they are okay with
13 that.

14 JUDGE RAINEY: You make sure that the person has
15 received it. And I do want all of my copies in-hand on
16 the dates due.

17 Is there anything else?

18 Mr. Russell.

19 MR. RUSSELL: Your Honor, Paul Russell for PP&L.

20 With our petition to intervene we submitted two
21 motions for admission pro hac vice of Donald A. Kaplan
22 and Leanne M. Bober, and I would ask that you grant those
23 motions.

24 JUDGE RAINEY: Any objections?

25 (No audible response.)

1 JUDGE RAINEY: So granted.

2 MR. RUSSELL: Thank you.

3 MR. EPSTEIN: Your Honor, I would just point out
4 and I think it is pretty obviously that there is
5 inclement weather today and the majority of us are coming
6 from Harrisburg. So hopefully all the parties would have
7 some flexibility insomuch as maybe some of the meetings
8 can be held in Harrisburg as well. I note for the two
9 gentlemen on the phone clearly it was a hardship.

10 Being as that may, we are all subsidizing Amtrak so
11 I would like to formally request that Amtrak could
12 somehow stipend our transportation.

13 JUDGE RAINEY: Mr. Machlin.

14 MS. McCLOSKEY: I wish we could help with this
15 request but regreably we, too, are a public service
16 entity.

17 JUDGE RAINEY: Thank you. The parties will work
18 together with regard to where meetings are to be held,
19 their informal meetings.

20 MR. OGINSKY: Your Honor, attached to Shell Energy
21 Service's petition to intervene was a motion pro hac vice
22 for Paul Forshey and Gregory Lawrence. I would ask that
23 you approve that motion.

24 JUDGE RAINEY: Any objections?

25 (No audible response.)

1 JUDGE RAINEY: So granted.

2 Anything further?

3 MR. EPSTEIN: I just want to say you have done a
4 swell job today.

5 JUDGE RAINEY: Thank you, Mr. Epstein. And thank
6 you all.

7 This prehearing conference is adjourned.

8 (Whereupon, at 11:55 a.m., the prehearing
9 conference was concluded.)

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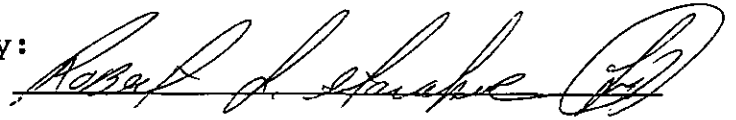
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