

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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JOINT APPLICATION of PECO  
ENERGY COMPANY AND PUBLIC  
SERVICE ELECTRIC and GAS  
COMPANY for APPROVAL of  
the MERGER of the PUBLIC  
SERVICE ENTERPRISE GROUP  
with and INTO EXCELON  
CORPORATION  
-----

DOCKET No.:  
A-110550F0160

**DOCUMENT  
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Pages: 1 - 67

State Office Building  
1400 Spring Garden  
13th Floor  
Philadelphia, PA

July 26, 2005  
Commencing at 2:10 P.M.

BEFORE:

Marlane R. Chestnut, Administrative Law Judge

REPORTER: Danielle Zamias

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## A P P E A R A N C E S

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2  
3 PAUL BONNEY, ESQ., and KENT D. MURPHY, ESQ., for PECO  
4 RICHARD BONNIFIELD, ESQ., and MARK STEWART, ESQ.,  
5 for PSE&G  
6 SCOTT PERRY, ESQ., and RICHARD MATHER, ESQ., for DEP  
7 SCOTT RUBIN, ESQ., for Exelon Utility Coordinated  
8 Council; Locals 614 and 777 of the International  
9 Brotherhood of Electrical Workers; and Frank  
10 Kuders  
11 TANYA J. MCCLOSKEY, ESQ., and JAMES MULLINS., ESQ.,  
12 Office of Consumer Advocate  
13 CAROL PENNINGTON, ESQ., OSBA  
14 KENNETH MICKENS, ESQ., and ROBERT ECKENROD ESQ., OTS  
15 CHARIS MINCAVAGE, ESQ., Philadelphia Area Industrial  
16 Users Group; City of Philadelphia  
17 CHARLES MCPHEDRAN, ESQ., Citizens for Pennsylvania's  
18 Future  
19 JESSE DILLON, ESQ., and DONALD KAPLAN, ESQ., PPL  
20 DARLENE HEEP, ESQ., City of Philadelphia  
21 THOMAS NIESEN, ESQ., and DENISE ADAMUCCI, ESQ.,  
22 Philadelphia Gas Works  
23 W. EDWIN OGDEN, ESQ., Metropolitan Edison Company;  
24 Pennsylvania Electric Company; Philadelphia Power  
25 Company; and FirstEnergy Solution Corporation

A P P E A R A N C E S (cont'd)

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ROGER CLARK, ESQ., Reinvestment Fund  
JONATHAN STEIN, ESQ., and THU B. TRAN, ESQ., Action  
Alliance of Senior Citizens of Greater  
Philadelphia; Association of Community  
Organizations for Reform Now; and Tenants Action  
Group  
JULIE COLETTI, ESQ., Strategic Energy LLC

INDEX TO WITNESSES

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
NONE PRESENT				



## P R O C E E D I N G S

1  
2 -----  
3 JUDGE CHESTNUT:

4 Is everybody ready to begin? Okay.  
5 Let's go on the record then. This is the further  
6 pre-hearing conference at Docket A-110550F0160. For  
7 the record, let me state that I am Administrative Law  
8 Judge Marlane R. Chestnut.

9 Now, what I'm going to do is I'm going to  
10 go through and read off ---. I have put your  
11 information on the hearing report based on the contact  
12 data that we have. So if there's something wrong or  
13 if I miss people, let me know at the end. Okay?

14 Mr. Bonney?

15 ATTORNEY BONNEY:

16 Yes, Your Honor. Here.

17 JUDGE CHESTNUT:

18 Mr. Bonnifield?

19 ATTORNEY BONNIFIELD:

20 Here, Your Honor.

21 JUDGE CHESTNUT:

22 Mr. Perry or Mr. Mather?

23 ATTORNEY MATHER:

24 Here.

25 JUDGE CHESTNUT:

1                   And who is that?

2                   ATTORNEY MATHER:

3                   Mr. Mather, Your Honor.

4                   JUDGE CHESTNUT:

5                   Okay. Thank you. Mr. Rubin?

6                   ATTORNEY RUBIN:

7                   Yes, I'm here, Your Honor.

8                   JUDGE CHESTNUT:

9                   Ms. McCloskey or Mr. Mullins?

10                  ATTORNEY MCCLOSKEY:

11                  Yes, we're here, Your Honor.

12                  JUDGE CHESTNUT:

13                  Ms. Pennington?

14                  ATTORNEY PENNINGTON:

15                  Yes, Your Honor.

16                  JUDGE CHESTNUT:

17                  Mr. Mickens or Mr. Eckenrod?

18                  ATTORNEY MICKENS:

19                  Both here.

20                  JUDGE CHESTNUT:

21                  Okay. Ms. Mincavage?

22                  ATTORNEY MINCAVAGE:

23                  Here, Your Honor.

24                  JUDGE CHESTNUT:

25                  Mr. McPhedran?

1                   ATTORNEY MCPHEDRAN:

2                   Yes, Your Honor. I'm here.

3                   JUDGE CHESTNUT:

4                   Mr. Dillon or Mr. Kaplan?

5                   ATTORNEY DILLON:

6                   Mr. Dillon. Mr. Kaplan is also on.

7                   JUDGE CHESTNUT:

8                   Okay. Ms. Heep?

9                   ATTORNEY HEEP:

10                  Yes.

11                  JUDGE CHESTNUT:

12                  Mr. Niessen or Ms. Adamucci?

13                  ATTORNEY NIESSEN:

14                  Niessen, Your Honor. And Ms. Adamucci is  
15 on the line also.

16                  ATTORNEY ADAMUCCI:

17                  Yes.

18                  JUDGE CHESTNUT:

19                  Mr. Ogden?

20                  ATTORNEY OGDEN:

21                  Here, Your Honor.

22                  JUDGE CHESTNUT:

23                  Mr. Clark?

24                  ATTORNEY CLARK:

25                  I'm here, Your Honor. I'm also joined by

1 Rob Sanders, of the Pre-Investment Fund.

2 JUDGE CHESTNUT:

3 Is he an attorney?

4 ATTORNEY CLARK:

5 No, he's not.

6 JUDGE CHESTNUT:

7 Then, no offense to Mr. Sanders, I'm not  
8 interested.

9 MR. SANDERS:

10 Okay.

11 ATTORNEY CLARK:

12 Yes, Your Honor.

13 JUDGE CHESTNUT:

14 Mr. Stein or Ms. Tran?

15 ATTORNEY STEIN:

16 We're here, Judge.

17 JUDGE CHESTNUT:

18 Ms. Coletti?

19 ATTORNEY COLETTI:

20 Here.

21 JUDGE CHESTNUT:

22 Is there anybody else? There shouldn't  
23 be because that's all the emails that I received.

24 ATTORNEY STEWART:

25 Mark Stewart with Walt Black is here,

1 Your Honor.

2 JUDGE CHESTNUT:

3 Okay. You're representing PSC&G?

4 ATTORNEY STEWART:

5 Yes, but Mr. Bonnifield will be  
6 representing them on the call.

7 JUDGE CHESTNUT:

8 Mr. Stewart, did you send me an email  
9 with your email address and your --- with your email  
10 address?

11 ATTORNEY STEWART:

12 I will, Your Honor.

13 JUDGE CHESTNUT:

14 Because for some reason you're not in our  
15 ---

16 ATTORNEY STEWART:

17 Right.

18 JUDGE CHESTNUT:

19 --- attorney data base.

20 ATTORNEY STEWART:

21 The email was sent from Mr. Clearfield's  
22 ---

23 JUDGE CHESTNUT:

24 Right.

25 ATTORNEY CHESTNUT:

1 --- so it showed up on that. But I will  
2 get you the information, Your Honor.

3 JUDGE CHESTNUT:

4 Okay. I'm going to add you here, then.  
5 It's Mark Stewart?

6 ATTORNEY STEWART:

7 Yes, Your Honor.

8 JUDGE CHESTNUT:

9 And I assume that same --- or you're not  
10 the same address as Mr. Bonnifield, are you? Oh, send  
11 me all that and I'll add it; okay?

12 ATTORNEY STEWART:

13 Yes, Your Honor.

14 JUDGE CHESTNUT:

15 Thank you. Anybody else? Okay. Before  
16 we get started and to discuss the issues concerning  
17 the Directed Questions. I do have one housekeeping  
18 matter. Ms. Coletti?

19 ATTORNEY COLETTI:

20 Yes, Your Honor.

21 JUDGE CHESTNUT:

22 I'm thinking about changing your status  
23 to --- from active to inactive. You did not appear at  
24 the pre-hearing conference. You didn't file  
25 testimony. So what do you say?

1                   ATTORNEY COLETTI:

2                   That's fine.

3                   JUDGE CHESTNUT:

4                   Okay. Thank you. I'll keep you on my  
5 email list.

6                   ATTORNEY COLETTI:

7                   Thank you, Your Honor.

8                   JUDGE CHESTNUT:

9                   Okay. That's the only real housekeeping  
10 issue I had. Let's talk about the Directed Questions,  
11 then. I assume everybody got the schedule proposed by  
12 Mr. Bonney? And if I don't hear anything I'm going to  
13 assume it's settled. Okay? So if you have something  
14 to say you're going to have to speak up pretty  
15 quickly.

16                  This schedule looks good to me. Does anybody have  
17 any a major problem with it?

18                   ATTORNEY MCCLOSKEY:

19                  Yes, Your Honor. This is Tanya McCloskey  
20 from the Office of Consumer Advocate. And we have a  
21 very major problem with the schedule proposed by Mr.  
22 Bonney. I think the schedule that he proposes really  
23 compromises the protesting and intervening parties'  
24 ability to respond to the Company's rebuttal and to  
25 prepare their surrebuttal, as well as to prepare for

1 the Directed Questions. In particular, the protesting  
2 and intervening parties are now being asked to respond  
3 to rebuttal of --- at now 12 company witnesses in a  
4 three week time period. And at the same time they're  
5 being asked to file answers to five, what we believe,  
6 are fairly complicated issues on Directed Questions  
7 and file responsive testimony on those questions. All  
8 of this is occurring within a very short three-week  
9 time period. So we find the schedule to be very much  
10 compromising to the protesting and intervening party.  
11 And we don't think that it properly provides any of  
12 the appropriate time frame to address these Directed  
13 Questions in the type of comprehensive manner and  
14 creates a proper record for the Commissioners that  
15 they requested.

16 ATTORNEY MICKENS:

17 Your Honor, This is Ken Mickens working  
18 for the Office of Trial Staff. OTS supports the  
19 comments by Ms. McCloskey and adds that we oppose the  
20 schedule by the Company because the Company is not a  
21 moving party in this proceeding. We believe that they  
22 should respond to the questions by the Commission  
23 first, and then have a response from the other parties  
24 to those questions.

25 JUDGE CHESTNUT:

1           Well, I'll tell you right now, just so we  
2 don't have a lot of talk about this. I disagree with  
3 that. I think those questions were directed to  
4 everybody. And they're certainly not the type of  
5 questions that can only be answered by the Applicants.  
6 I also want to state here that I don't think it was my  
7 --- I mean, it's my feeling that it was not the  
8 Commissioners' intention to unnecessarily complicate  
9 this case or to delay its resolution too much. I  
10 mean, they were --- these were specifically called,  
11 what if, questions. And I don't see that they're all  
12 that complicated.

13                         ATTORNEY MATHER:

14           Your Honor, this is Rick Mather from DEP  
15 and I guess I want to echo the concerns raised by the  
16 Office of Consumer Advocate and the Office and Trial  
17 Staff. I believe that the questions do raise issues  
18 that will require, at least, us to look at adding  
19 additional witnesses to address some of the economic  
20 development aspect of the questions. In particular,  
21 we need to reach out to the DCED, who is specifically  
22 referenced in one of the questions to, you know, get  
23 us some additional testimony to support, you know, our  
24 answers to those questions. And I believe that they  
25 are, while not detailed questions, I do believe that

1 they raise relatively complicated issues that we need  
2 to take an appropriate amount of time to address  
3 completely.

4 ATTORNEY NIESSEN:

5 Your Honor, this is Tom Niessen. I'm  
6 representing Philadelphia Gas Works and I must agree  
7 completely with Ms. McCloskey and Mr. Mickens as well  
8 as DEP on this. Especially, I would point out and  
9 emphasize that the scheduled proposed by the Company  
10 coincides directly with our surrebuttal time period.  
11 Again, we have 12, 13 witnesses. It's not clear from  
12 that list which witnesses I will have to respond to,  
13 but it appears that each one and possibly two  
14 additional witnesses are going to be directed at  
15 Market Power question --- Market Power issues.

16 JUDGE CHESTNUT:

17 Which you should have anticipated.

18 ATTORNEY NEISSEN:

19 I know --- well, I ---.

20 JUDGE CHESTNUT:

21 That's not --- those issues weren't a  
22 surprise.

23 ATTORNEY NEISSEN:

24 I didn't anticipate the addition of the  
25 five questions during this time period. And I would

1 point out that question number five is related  
2 directly to my client and information about it. The  
3 suggestion that my client is going to be prepared to  
4 file something on August the 5th to address that  
5 question is totally unrealistic.

6 JUDGE CHESTNUT:

7 Well, you know, all I've heard so far is  
8 why you don't think this proposed schedule will work.  
9 I haven't seen anybody come up with an alternate.

10 ATTORNEY MCCLOSKEY:

11 Well, Your Honor, this is Tanya  
12 McCloskey, and I think there is an alternate schedule.  
13 And as you know, we were trying to accommodate  
14 depositions by the Company yesterday, and I was in  
15 Boston, but I have not had an opportunity to discuss a  
16 schedule with other parties. But I do believe there  
17 is a schedule that can be crafted to work on both the  
18 surrebuttal testimony and these Directed Questions and  
19 accomplish this in the August/September time frame and  
20 this case concluded before even the New Jersey  
21 proceeding goes to hearing. That would still allow  
22 this case to go forward and have a decision before  
23 this Commission --- before the New Jersey Commission  
24 rules on this case which is also something that --- an  
25 approval that is absolutely required.

1 I had started to sketch out some dates, but I have  
2 not had an opportunity to talk with other parties  
3 about it.

4 ATTORNEY DILLON:

5 Your Honor, Jesse Dillon of PPL. We  
6 would also concur with the comments of Trial Staff and  
7 the Consumer Advocate in this matter. It is clear to  
8 us that just looking at the questions, they may  
9 actually be much more complicated and sophisticated  
10 than they appear. Questions two, three and four  
11 relate directly to the virtual divestiture proposal  
12 that the applicant has made in this proceeding.

13 JUDGE CHESTNUT:

14 Look, look. Let's cut --- let's cut a  
15 lot of that out, shall we? Obviously, nobody  
16 anticipated these questions. Nobody anticipated them  
17 being presented at the stage they were. Now, we went  
18 to a lot of work to develop a schedule in this case.  
19 It's a massive scheduling undertaking. We have  
20 several weeks of hearing days that are blocked out  
21 that I, frankly, would like to keep. Now, if we can  
22 do that and add on some supplemental days for  
23 supplemental testimony, that's okay. But, on the  
24 other hand, you should really be prepared to go ahead  
25 with the rest of your case on the schedule that we

1 have.

2 ATTORNEY DILLON:

3 I understand, Your Honor. I just have  
4 one more thing. The schedule proposed by the Company  
5 for the filing of this testimony based upon those  
6 Directed Questions is directly contrary to what's  
7 going on in the rest of the case. For instance, our  
8 witness, Professor Culp, is being deposed on the very  
9 day that our testimony is due and his testimony is due  
10 and the answers to the Directed Questions by the  
11 Company.

12 JUDGE CHESTNUT:

13 Well, remember, everybody, I gave you an  
14 opportunity to develop a way to answer these  
15 questions. And you weren't able to do that. I give  
16 Mr. Bonney a lot of credit for, at least, coming up a  
17 proposal which you may not like and I may not order  
18 you to comply with, but, at least, there's something  
19 to start talking about here.

20 ATTORNEY STEIN:

21 Judge, this is Jonathan Stein here at  
22 Community Legal Services. I mean, I won't go into all  
23 the details of why I think we do disagree with Mr.  
24 Bonney's ---

25 JUDGE CHESTNUT:

1           Okay. First off, Mr. Stein, which of  
2 those questions would you be addressing?

3           ATTORNEY STEIN:

4           The fifth one is really concerning the  
5 Philadelphia Gas Works ---

6           JUDGE CHESTNUT:

7           Right. But what about the other four?

8           ATTORNEY STEIN:

9           What?

10          JUDGE CHESTNUT:

11          The other four?

12          ATTORNEY STEIN:

13          Well, our primary interest would be ---

14          JUDGE CHESTNUT:

15          Because you didn't put any testimony on  
16 about the market shares; did you?

17          ATTORNEY STEIN:

18          I said our primary interest of the five  
19 questions will be the fifth question concerning the  
20 Philadelphia Gas Works. That is a major ---

21          JUDGE CHESTNUT:

22          But isn't that the only one? Because I  
23 think you're all overreacting, a bit here. I really  
24 do.

25          ATTORNEY STEIN:

1 If I could suggest ---.

2 JUDGE CHESTNUT:

3 Mr. Stein, if you ---. Mr. Stein, if you  
4 interrupt me one more time you're not going to be  
5 permitted to participate; okay?

6 ATTORNEY STEIN:

7 Excuse me.

8 JUDGE CHESTNUT:

9 As you know, the court reporter can only  
10 take down one person speaking at a time and when I'm  
11 speaking, that's me. Do you understand that?

12 ATTORNEY STEIN:

13 I do.

14 JUDGE CHESTNUT:

15 Now, I want you to think seriously about  
16 which of these, not you, specifically, but all of you,  
17 and I want you to be a little more positive here. I  
18 don't want to hear a lot of negative talk about why  
19 it's a problem, why you can't do it. What I want to  
20 hear is, yes, it's difficult, but this is what we can  
21 do to accommodate it. So that everybody had a  
22 reasonable chance to address these. But we still can  
23 stick, as much as possible, to the schedule that we  
24 already went through and adopted.

25 Does everybody understand that?

1                   ATTORNEY STEIN:

2                   Judge, this is Jonathan Stein, again.  
3 May I respond?

4                   JUDGE CHESTNUT:

5                   No.

6                   ATTORNEY STEIN:

7                   Excuse me?

8                   JUDGE CHESTNUT:

9                   No. I want you all to think for a minute  
10 and I want you to sit there, in your offices, look at  
11 your calendars, and come up with something. Okay?  
12 Just take a minute and think about what you want to  
13 do.

14                   ATTORNEY PENNINGTON:

15                   Your Honor?

16                   JUDGE CHESTNUT:

17                   Yes?

18                   ATTORNEY PENNINGTON:

19                   Carol Pennington from the OSBA. We have  
20 looked at the schedule and we can go along with the  
21 schedule that's proposed with PECO. I realize we're  
22 in the minority. But we would like to maintain the  
23 original schedule as far as the final case is  
24 concerned. And we, like you, don't believe that the  
25 Directed Questions are going to be all that

1 complicated to answer.

2 JUDGE CHESTNUT:

3 Thank you.

4 ATTORNEY MCCLOSKEY:

5 Your Honor, this is Tanya McCloskey. Can  
6 I perhaps, at least, propose the alternate schedule  
7 that I had been trying to work on this morning.

8 JUDGE CHESTNUT:

9 Well, what I was going to suggest was,  
10 I'll leave and let you talk amongst yourselves for ten  
11 minutes. How's that? And maybe you can come with  
12 some consensual schedule that will accommodate  
13 everybody instead of all this back-and-forth. How's  
14 that sound to you, Ms. McCloskey?

15 ATTORNEY MCCLOSKEY:

16 Your Honor, maybe --- well ---.

17 JUDGE CHESTNUT:

18 A waste of time?

19 ATTORNEY MCCLOSKEY:

20 That would be fine.

21 ATTORNEY BONNEY:

22 Your Honor, this is Mr. Bonney. If it  
23 would be better for --- or if the parties would prefer  
24 that the Company drop off, as well, we're happy to do  
25 that and circle back. Whatever the parties'

1 preference is in terms of talking off line.

2 ATTORNEY NEISSEN:

3 This is Tom Neissen. I think that would  
4 be a good idea.

5 JUDGE CHESTNUT:

6 All right. I'm going to leave for ten  
7 minutes and I'll come back. Okay?

8 ATTORNEY BONNEY:

9 This is Mr. Bonney. I will likewise.

10 OFF RECORD DISCUSSION

11 JUDGE CHESTNUT:

12 This is Judge Chestnut. Have you had  
13 enough time to discuss this?

14 ATTORNEY MCCLOSKEY:

15 This is Tanya McCloskey. Yes, we've  
16 discussed it and we've not discussed it with Mr.  
17 Bonney. He just rejoined the call.

18 JUDGE CHESTNUT:

19 Maybe you should run it by him. Well,  
20 since I'm back, why don't we just talk about it if you  
21 ---. Were you able to come up with something?

22 ATTORNEY MCCLOSKEY:

23 Well, Your Honor, this is Tanya  
24 McCloskey, again. And, I guess, the parties have  
25 discussed it and we did --- we came up with a proposal

1 for an alternative approach to proceeding. And just  
2 to make the point that we think that these Directed  
3 Questions are difficult to bifurcate from the question  
4 of the substantial affirmative benefits of the merger,  
5 because this is part of that consideration and that  
6 package. And what we're trying to do is keep this  
7 together so that it makes sense in terms of a whole  
8 consideration. What we came up with was --- this is  
9 the schedule we would propose that on July 29th, the  
10 Company would file its rebuttal testimony.

11 JUDGE CHESTNUT:

12 Well, excuse me. It's all parties'  
13 rebuttal testimony; isn't it?

14 ATTORNEY MCCLOSKEY:

15 Or all parties, I'm sorry. Yes.

16 JUDGE CHESTNUT:

17 Okay.

18 ATTORNEY MCCLOSKEY:

19 All parties' rebuttal testimony.

20 JUDGE CHESTNUT:

21 Okay. That's the date in the current  
22 schedule.

23 ATTORNEY MCCLOSKEY:

24 Yes, that's the current schedule.

25 JUDGE CHESTNUT:

1           Okay.

2           ATTORNEY MCCLOSKEY:

3           On September 2nd, parties would file  
4 their surrebuttal testimony to that rebuttal, and all  
5 parties would simultaneously file their answers to the  
6 Directed Questions.

7           JUDGE CHESTNUT:

8           Okay. That's ---

9           ATTORNEY MCCLOSKEY:

10          On ---. I'm sorry.

11          JUDGE CHESTNUT:

12          That's changing from August 19th and  
13 pushing it back ---.

14          ATTORNEY MCCLOSKEY:

15          Yes. On ---

16          JUDGE CHESTNUT:

17          Okay.

18          ATTORNEY MCCLOSKEY:

19          --- September 13th all parties would file  
20 their reply to the Directed Question and ---

21          JUDGE CHESTNUT:

22          Okay.

23          ATTORNEY MCCLOSKEY:

24          --- and we would also suggest that since  
25 --- that the Company file written rejoinder to the

1 surrebuttal, so that we could more efficiently use  
2 hearing time rather than taking lengthy oral  
3 rejoinder.

4 JUDGE CHESTNUT:

5 Well ---.

6 ATTORNEY MCCLOSKEY:

7 And then we would suggest that the time  
8 frame between ---

9 JUDGE CHESTNUT:

10 Wait ---.

11 ATTORNEY MCCLOSKEY:

12 --- September 14th ---

13 JUDGE CHESTNUT:

14 Wait. Wait. Excuse me for a second, Ms.  
15 McCloskey.

16 ATTORNEY MCCLOSKEY:

17 Yes.

18 JUDGE CHESTNUT:

19 On the 13th that would be ---

20 ATTORNEY MCCLOSKEY:

21 I think that's a Tuesday.

22 JUDGE CHESTNUT:

23 --- replies to the Directed --- to the,  
24 basically, Direct testimony on the Directed Questions.

25 ATTORNEY MCCLOSKEY:

1                   Yeah, I'm calling it replies to the  
2 Directed Questions ---

3                   JUDGE CHESTNUT:

4                   Right.

5                   ATTORNEY MCCLOSKEY:

6                   --- and answers.

7                   . JUDGE CHESTNUT:

8                   And the Company files oral surrebuttal or  
9 rejoinder, I guess?

10                  ATTORNEY MCCLOSKEY:

11                  Written rejoinder. Have the Company file  
12 written rejoinder to the surrebuttal.

13                  JUDGE CHESTNUT:

14                  Okay.

15                  ATTORNEY BONNEY:

16                  Do you have a date for that in mind,  
17 Tanya?

18                  ATTORNEY MCCLOSKEY:

19                  That was September 13th.

20                  JUDGE CHESTNUT:

21                  Well, I don't know if that's really fair  
22 to the Company's, though, is it, to have them do it on  
23 that same day?

24                  ATTORNEY MCCLOSKEY:

25                  We could ---

1                   JUDGE CHESTNUT:

2                   Maybe ---

3                   ATTORNEY MCCLOSKEY:

4                   --- push that back.

5                   JUDGE CHESTNUT:

6                   Yeah. Okay.

7                   ATTORNEY MCCLOSKEY:

8                   I just was trying to ---

9                   JUDGE CHESTNUT:

10                  Okay. Sure.

11                  ATTORNEY MCCLOSKEY:

12                  --- pick out some general dates. And  
13 then if there was written rejoinder we thought we  
14 could use the hearing time more effectively and use  
15 the time between September 14th and close to the end  
16 the month for hearing days. We realize we'll have to  
17 accommodate witness schedules and lawyer availability,  
18 so rather than take each and every day try to,  
19 perhaps, do what we've done in past cases with some  
20 sequencing of the hearing. But to use as many of  
21 those days as we can to accommodate the hearing.

22                  JUDGE CHESTNUT:

23                  Well, not many of those days are going to  
24 be available.

25                  ATTORNEY MCCLOSKEY:

1 I'm sorry. You broke up. I didn't hear  
2 the question.

3 JUDGE CHESTNUT:

4 Not many days in the last half of  
5 September are available. I'm not even talking  
6 sequential days.

7 ATTORNEY MCCLOSKEY:

8 From the ---

9 JUDGE CHESTNUT:

10 But there's ---

11 ATTORNEY MCCLOSKEY:

12 If we went from the 14th through the 30th  
13 or you could even go into October 5th, you would have  
14 approximately 14 to 21 days.

15 JUDGE CHESTNUT:

16 Right. But I'm telling you, I'm not  
17 available for a lot of those days.

18 ATTORNEY MCCLOSKEY:

19 That's what I'm saying is we could try to  
20 find those in that time frame when --- to accommodate  
21 availability.

22 JUDGE CHESTNUT:

23 I mean the big thing is not just my  
24 availability. For example, there's an ALJ conference  
25 --- a multi-day conference that I have to attend and

1 that's September 19th to the 21st.

2 ATTORNEY PENNINGTON:

3 And Your Honor, this is Carol Pennington  
4 again. I have an availability problem with the 26th  
5 to the 30th of September. I'll be out of the country,  
6 and we have a very small office.

7 ATTORNEY MCCLOSKEY:

8 We could go into the first week in  
9 October and still be concluded before the hearings  
10 begin in New Jersey.

11 JUDGE CHESTNUT:

12 When do they start in New Jersey?

13 ATTORNEY MCCLOSKEY:

14 October 11th.

15 JUDGE CHESTNUT:

16 Hmm.

17 ATTORNEY MCCLOSKEY:

18 And then they run through the end of the  
19 month.

20 ATTORNEY BONNEY:

21 They start the 7th, for what it's worth.

22 ATTORNEY MCCLOSKEY:

23 The 7th is a Friday, Paul.

24 ATTORNEY BONNEY:

25 Yep, that's when they start in New

1 Jersey. That's right.

2 JUDGE CHESTNUT:

3 Okay. Now, are we --- are we talking  
4 about expanding the number of days we need for the  
5 hearings?

6 ATTORNEY MCCLOSKEY:

7 I don't know that we need to expand the  
8 number of days. I was just trying to give a larger  
9 time frame so we could find the right dates within  
10 that time frame.

11 JUDGE CHESTNUT:

12 If ---

13 ATTORNEY MCCLOSKEY:

14 If we have written rejoinder from the  
15 Company and written replies to the Directed Questions  
16 and answers rather than oral, I think we can save on  
17 some hearing time.

18 JUDGE CHESTNUT:

19 Well, we could save on some hearing time  
20 if you people would organize yourselves into groups,  
21 too.

22 ATTORNEY MCCLOSKEY:

23 That is true.

24 ATTORNEY BONNEY:

25 Your Honor, it's Mr. Bonney. May I

1 ---

2 JUDGE CHESTNUT:

3 Yeah,

4 ATTORNEY BONNEY:

5 --- reply to the proposal?

6 JUDGE CHESTNUT:

7 Of course. Sure.

8 ATTORNEY BONNEY:

9 If I understand it correctly, Ms.  
10 McCloskey is suggesting a two week delay in  
11 surrebuttal. I just don't see a need for that. We  
12 have a schedule set here and she's asking for an  
13 additional two weeks in the schedule to respond to the  
14 testimony that we're putting in this Friday. And I  
15 understand her argument about wanting to interrelate  
16 these. I think that can be done in supplemental  
17 testimony. It certainly can be done in briefs. And  
18 there's no reason to delay the bulk of this case for  
19 that reason.

20 In addition, we don't see a need for  
21 written rejoinder. We think the normal process of  
22 limited oral rejoinder and the hearings will be fine  
23 in this case. And there's no justification of a delay  
24 to have that. What we sound like we're talking about  
25 is a five-week extension of the schedule. Keeping to

1 the schedule is critically important to the Company  
2 for a variety of reasons. Not the least of which is,  
3 we want to consummate this transaction as quickly as  
4 we can. The customers and service that we anticipate  
5 in the transaction are great.

6 JUDGE CHESTNUT:

7 Right. But on the other hand, Mr.  
8 Bonney, it seems to me that even if we split the  
9 schedule, the process in New Jersey won't be  
10 completed.

11 ATTORNEY BONNEY:

12 Well, let me comment on that, Your Honor.  
13 In New Jersey the process is a bit different than in  
14 Pennsylvania. The expectation is the settlement  
15 discussions will commence, in earnest, at the  
16 conclusion of the hearings. And, in fact, that's been  
17 the practice and process in merger cases in New  
18 Jersey. Indeed, that discussion period is built  
19 exclusively into the schedule for the last week of  
20 October. The schedule that Ms. McCloskey is talking  
21 about would have us extend into February for a  
22 Commission decision, which would put Pennsylvania on  
23 the critical path, possibly by a couple of months.

24 JUDGE CHESTNUT:

25 Assuming you settled in New Jersey.

1                   ATTORNEY BONNEY:

2                   Correct. But that's the expectation of  
3 how the process proceeds in New Jersey.

4                   JUDGE CHESTNUT:

5                   Well, I would like to point out that you  
6 could settle here, too.

7                   ATTORNEY BONNEY:

8                   We hope that we're able to do so, Your  
9 Honor.

10                  JUDGE CHESTNUT:

11                  In fact, I would hope that these  
12 questions might assist you. You meaning all the  
13 parties in arriving at a settlement. I don't want to  
14 get off track here, but I'm going to ask you about  
15 where you are in terms of that.

16                  Obviously, if you're able to resolve even  
17 some of these issues, much less all of them, the  
18 schedule could be a lot easier for everybody to deal  
19 with. Is there any kind of settlement on anything,  
20 Mr. Bonney?

21                  ATTORNEY BONNEY:

22                  We have had a substantial settlement  
23 discussion, Your Honor, and we're awaiting a response  
24 from the opposing parties.

25                  ATTORNEY MICKENS:

1           Your Honor, this is Ken Mickens of OTS.  
2 I found it interesting that Mr. Bonney is apparently  
3 looking optimistically towards settling matters in New  
4 Jersey. It hasn't appeared the Company's been that  
5 optimistic about things in Pennsylvania. I found that  
6 interesting.

7           JUDGE CHESTNUT:

8           Well ---

9           ATTORNEY MCCLOSKEY:

10           Your Honor, is Tanya McCloskey. Just to  
11 be clear, Mr. Bonney, at this time there is no  
12 proposal that you're awaiting a response on from the  
13 other party nor are ---

14           ATTORNEY DILLON:

15           Nor are ---. This is Mr. Dillon. Nor  
16 are we aware of such a proposal in any other state.

17           ATTORNEY BONNEY:

18           Well, I just would make clear that the  
19 Company put a formal proposal on the table and we're  
20 awaiting a response from the opposing parties which  
21 has not been forthcoming.

22           ATTORNEY MCCLOSKEY:

23           Mr. Bonney, I don't believe reflects at  
24 all the --- the opposing parties put a formal proposal  
25 on the table, as well, to which the Company rejected.

1 So --- just so ---. Your Honor, I don't want to talk  
2 to much about settlement, but I don't believe that's  
3 an accurate representation of where these proceedings  
4 stand.

5 JUDGE CHESTNUT:

6 Well, I just was --- the reason I even  
7 brought it up was, I was just hoping to nudge you into  
8 continuing to discuss settlement if at all possible.

9 ATTORNEY BONNEY:

10 And to that end, Your Honor, if I may, I  
11 don't mean to interrupt you, but I think I speak for  
12 the company and from my discussions with the parties I  
13 would hope that we would at a point in the process be  
14 able to solve this case.

15 JUDGE CHESTNUT:

16 Well, obviously that would be great. But  
17 in the mean time, I guess, we'll have to deal with  
18 this as if there were no settlement, either whole or  
19 partial settlement. I also want to remind you, too,  
20 about stipulations perhaps that could be entered too  
21 that could short-circuit some of this. Again, I'll be  
22 honest with you, I don't see why we couldn't bifurcate  
23 this to deal with the Directed Questions. I don't see  
24 why you couldn't file supplemental testimony addressed  
25 to those questions and make that --- and have a couple

1 days of hearing to address that and then incorporate  
2 it into your --- you know, have one brief to address  
3 everything, I really don't.

4 ATTORNEY MCCLOSKEY:

5 Your Honor, this is Attorney McCloskey,  
6 just by way of brief explanation, I think it does all  
7 go to the question of what is the set of affirmative  
8 benefits that people think are --- they should be  
9 supporting for bringing to Pennsylvania ---

10 JUDGE CHESTNUT:

11 Well, wait. You already fought ---.

12 ATTORNEY MCCLOSKEY:

13 And I don't know what folks are going to  
14 say about these questions and what benefits they may  
15 bring.

16 JUDGE CHESTNUT:

17 Well, these are Commission-Directed  
18 Questions that were generated at this point in a  
19 proceeding. Obviously, you all have some other basis  
20 for the position that you took in your Direct  
21 testimony, and I don't know if you're going to back  
22 off from that or not, but the fact is, you should  
23 really be prepared to address this as if these  
24 questions weren't even there. I think what you're  
25 trying to do is here, is you got scared by the number

1 of rebuttal witnesses that Mr. Bonney indicated in his  
2 letter.

3 ATTORNEY MCCLOSKEY:

4 Your Honor, this Tanya McCloskey, I mean,  
5 we began discussions of this the minute the questions  
6 came out. I don't think it was related to Mr.  
7 Bonney's letter.

8 ATTORNEY MICKENS:

9 Judge, this is Ken Mickens, OTS.  
10 Whatever schedule is determined in this case, OTS will  
11 respond to on time. And we're not intimidated by any  
12 party or witness, and never have been.

13 ATTORNEY BONNEY:

14 Your Honor, it's Mr. Bonney. If I may  
15 propose an alternative to our initial schedule that  
16 may be somewhere in between what we initially proposed  
17 and what Ms. McCloskey suggested, or the collective  
18 parties suggested. And that is August 19th,  
19 simultaneous initial answers on the Directed  
20 Questions. That would be some five weeks from when  
21 the questions were issued by the Commissioners.  
22 September 7th, responsive testimony on the Directed  
23 Questions and then an additional day of hearings, say,  
24 on September 12th, on the Directed Questions only.  
25 And keep the briefing schedule as it's currently

1 scheduled, the 23rd and the 30th.

2 ATTORNEY DILLON:

3 Mr. Bonney, could you state the --- go  
4 over the dates again, please?

5 ATTORNEY BONNEY:

6 Certainly. August 19, for simultaneous  
7 initial answers to the Directed Questions. That's the  
8 date of the surrebuttal testimony.

9 JUDGE CHESTNUT:

10 You're talking about keeping the current  
11 schedule and adding this to it?

12 ATTORNEY BONNEY:

13 Correct, Your Honor. September 7th for  
14 responsive testimony on the Directed Questions.

15 ATTORNEY DILLON:

16 September 7th?

17 ATTORNEY BONNEY:

18 September 7th. September 12th, or  
19 thereabouts for an additional hearing day on the  
20 Directed Questions. And then to keep the briefing  
21 schedule as set forth in the original schedule.

22 ATTORNEY MCCLOSKEY:

23 Your Honor, this is Tanya McCloskey.  
24 Again, Mr. Bonney is compromising the protestors' and  
25 intervenors' ability to file surrebuttal, which we

1 already knew was going to be a tight schedule by also  
2 requiring simultaneous initial filings. Then we have  
3 to work on our replies while we're actually in  
4 hearings to that. And then we have to add a hearing  
5 day while we're trying to write our briefs. I just  
6 don't find that to be fair to the intervening parties  
7 when there's a way to do this without compromising the  
8 Company's schedule due to other cases that are pending  
9 about this merger.

10 JUDGE CHESTNUT:

11 I see the points that you're all making  
12 here, and I certainly hope you understand mine, which  
13 is that we have a schedule, and while this happened,  
14 none of us anticipated it, but we do have to address  
15 it. Mr. Bonney, I don't --- I understand your point  
16 about New Jersey, but the fact is, there is no  
17 settlement there, and the way that I see it, even if  
18 Pennsylvania issues its decision last, it won't be  
19 that much later than whatever comes out, and plus, the  
20 other federal proceedings. So it seems to me that if  
21 we flip the schedule date it's not going to be that  
22 big a problem for you. I hope it's not that big a  
23 problem for you. On the other hand, it is a tremendous  
24 challenge to me, personally, in terms of making sure  
25 we have adequate hearing space and time to do this.

1 Now, I can live with throwing out the hearing days  
2 that we have scheduled and pushing them back a bit,  
3 but it's going to be very difficult to do, and if we  
4 have to do that, I really don't want to hear  
5 individuals saying they can't make it on a particular  
6 date. You're just going to have accept the fact that  
7 this is what you're giving up. So if somebody has a  
8 vacation or is going to be out of the office, that's  
9 just too bad. Okay. Mr. Bonney, can you live with  
10 the schedule that --- generally that Ms. McCloskey has  
11 proposed on behalf of the other parties?

12 ATTORNEY BONNEY:

13 Your Honor, I have discussed it with my  
14 clients and they were strenuously opposed to an  
15 extension for the reason I articulated.

16 JUDGE CHESTNUT:

17 Extension of what, though? I mean, it  
18 seems to me we're talking different things. You  
19 should be concerned about extending the briefing  
20 schedule and getting a final decision. Whereas my  
21 concern is extending the hearing schedule, I guess,  
22 basically. The fact is that, these are complicated  
23 --- this is a complicated case because of the  
24 underlying requirement that there be a substantial  
25 benefit.

1                    ATTORNEY BONNEY:

2                    Your Honor, I presumed, although we  
3 didn't hear a specific schedule for briefing proposed,  
4 but I presumed that that would be pushed back if the  
5 hearings were pushed back.

6                    JUDGE CHESTNUT:

7                    Well, obviously, you folks are going to  
8 have to sacrifice somewhere.

9                    ATTORNEY MCCLOSKEY:

10                   Your Honor, this is Tanya McCloskey. The  
11 briefing would be pushed back, but I had not picked  
12 specific dates, I thought once we locked in some  
13 hearing dates we could try to accommodate the briefing  
14 schedule.

15                   JUDGE CHESTNUT:

16                   Well, I think you're right about that, I  
17 think we can't talk about briefs until we know  
18 approximately when the hearings are going to be.  
19 Again, I'll tell you the truth, I really don't see  
20 that you need all this time to deal with those  
21 additional questions. Yes, they're interesting  
22 questions and yes, you could probably follow up, but  
23 you know, it seems to me that quite a bit of it is  
24 already addressed in your testimony, or in your  
25 mitigation testimony, or whatever. These to me look

1 like generalized questions that do not need a whole  
2 lot of analysis to answer the way the Commission wants  
3 them answered. I mean, obviously, the more time, the  
4 more thorough job you can do, but there has to be some  
5 recognition here that these questions came in late. I  
6 know the that Secretary's letter refers to them being  
7 proposed early in the proceeding, but that's just not  
8 where we are, or maybe we should just throw everything  
9 out and start over.

10 ATTORNEY BONNEY:

11 Your Honor, I'd just like to point out,  
12 with respect to the timing, that the schedule that Ms.  
13 McCloskey proposed would have surrebuttal for a five  
14 week period or so, longer than a month, or about a  
15 month, if I have the dates right. Which would be  
16 longer than the company had to respond to some 25 or  
17 26 witnesses. And I just think in terms of the  
18 orderly processing of this case, there's not a  
19 compelling reason to delay the remainder of the case  
20 which is already --- we have initial testimony filed  
21 and we'll have rebuttal testimony this Friday.

22 JUDGE CHESTNUT:

23 Well, I agree with you, Mr. Bonney. I  
24 don't see why parties couldn't file surrebuttal  
25 testimony and then file supplemental testimony. And

1 even then have one set of hearings, if that's what you  
2 want to do.

3 ATTORNEY MCCLOSKEY:

4 I guess, Your Honor, I was just trying to  
5 again, sort of keep it together. Sure we're  
6 responding to the surrebuttal, but we're also trying  
7 to, at the same time, do whatever is necessary to  
8 answer the questions if we do a simultaneous filing.  
9 And I just think keeping these pieces together is  
10 going to provide a more comprehensive and coherent  
11 presentation.

12 JUDGE CHESTNUT:

13 Well, I'll be honest with you, I really  
14 don't care when you file your testimony, because  
15 that's something, obviously, you're all in the best  
16 position to deal with. But if you can't agree on it,  
17 then, obviously, I'll have to impose a deadline or  
18 some dates here. Now, let me see that I understand  
19 this. The current schedule is, surrebuttal is due, I  
20 should say everybody's rebuttal is due the 29th, which  
21 is when, this Friday? And I assume everybody is  
22 ready to file; right?

23 ATTORNEY BONNEY:

24 The company is, Your Honor.

25 ATTORNEY PENNINGTON:

1 Yes, Your Honor, OSBA is.

2 ATTORNEY MCCLOSKEY:

3 Yes, Your Honor OCA is.

4 JUDGE CHESTNUT:

5 So then we have three weeks to file  
6 surrebuttal. Now, what you've done, Ms. McCloskey, is  
7 added two weeks that that's --- see, I'm not sure  
8 where you really need to add the extra time, to have  
9 the five weeks there. I think you might be  
10 shortchanging yourself. Well, how about this? If we  
11 move the surrebuttal --- if we do as Ms. McCloskey  
12 suggested and move the surrebuttal, will be filed the  
13 same time as the answers to the Directed Questions,  
14 would make it August 26th, instead of September 2nd.  
15 And then your reply, just move it all up a week. Does  
16 that accommodate everybody?

17 ATTORNEY MCCLOSKEY:

18 Would you do written rejoinder, Your  
19 Honor, or ---?

20 JUDGE CHESTNUT:

21 No, I don't think we should make the  
22 Company do that --- if they can do it, great, but I  
23 don't think I'm going to require them to do it. I  
24 would certainly hope that at that stage there's not  
25 much.

1                   ATTORNEY PENNINGTON:

2                   If I could direct a question to Your  
3 Honor? This is Carol Pennington.

4                   JUDGE CHESTNUT:

5                   Yes. I'm sorry, I didn't get the first  
6 part of that Ms. Pennington.

7                   ATTORNEY PENNINGTON:

8                   When would the response to the answer to  
9 the Direct Questions be due?

10                  JUDGE CHESTNUT:

11                  Well, move everything up a week, make it  
12 --- you'll have it the 13th, and I think the 5th is a  
13 holiday; right? So make it the 8th.

14                  ATTORNEY PENNINGTON:

15                  The 8th.

16                  JUDGE CHESTNUT:

17                  I mean, that's only a couple of days  
18 difference here. But does that accommodate you, Mr.  
19 Bonney? Because you were talking about having  
20 responses, Directed Question testimony filed September  
21 7th. So say we make it the 9th instead.

22                  ATTORNEY BONNEY:

23                  Yeah, the 26th for surrebuttal and  
24 answers, initial answers to the Directed Questions,  
25 Your Honor, if I understand it correctly?

1                   JUDGE CHESTNUT:

2                   Yes.

3                   ATTORNEY BONNEY:

4                   And hearings would be pushed back ---.

5                   JUDGE CHESTNUT:

6                   Wait. Wait. I'm sorry, 26th and what?

7                   ATTORNEY BONNEY:

8                   26th and 8th, is that what you said?

9                   JUDGE CHESTNUT:

10                  Yes.

11                  ATTORNEY DILLON:

12                  And hearings could begin as early as the  
13 12th of September?

14                  JUDGE CHESTNUT:

15                  Yes. Or later that week. And the deal,  
16 as Ms. McCloskey suggested, just kind of slot them in  
17 here and there through the beginning of October.

18                  ATTORNEY MCCLOSKEY:

19                  Yes, I think if we are able to start on  
20 the 12th, Your Honor, we can use as much time as we  
21 can in those two weeks. I realize you're going to be  
22 out the 19th, 20th, and 21st but if we use as much  
23 time as we can in those --- in that week and the  
24 following week we may be on a good target to finish.

25                  JUDGE CHESTNUT:

1                   There's certain other dates that are  
2 unavailable in that time, but there's single dates.

3                   ATTORNEY MCCLOSKEY:

4                   Yes.

5                   ATTORNEY BONNEY:

6                   So the hearings would commence, if I  
7 understand it, the 12th or thereabouts?

8                   JUDGE CHESTNUT:

9                   Yes.

10                  ATTORNEY BONNEY:

11                  And the briefing would be ---.

12                  JUDGE CHESTNUT:

13                  Well, let's talk about how long we need  
14 for the hearings. From the 12th, basically, to the  
15 end of the month of September or first week in  
16 October, are we talking about?

17                  ATTORNEY MCCLOSKEY:

18                  Your Honor, I would --- at this point  
19 maybe hold into the first part of October, but just to  
20 be sure that folks can get scheduled.

21                  ATTORNEY BONNEY:

22                  Your Honor, I would ---.

23                  ATTORNEY MCCLOSKEY:

24                  We might be able to shorten the briefing  
25 because if we're doing --- you know, sort of topically

1 doing a couple of days on a topic, folks don't have to  
2 wait until the end of the hearing to brief the case,  
3 they can begin briefing the case.

4 JUDGE CHESTNUT:

5 That's a good point.

6 ATTORNEY BONNEY:

7 Your Honor, I would strongly oppose that.  
8 I would propose that we move as quickly through the  
9 hearings as we can, and not shortchange ourselves on  
10 the briefing. Just a reminder that the company had 24  
11 parties to respond to.

12 JUDGE CHESTNUT:

13 Yes, that's true. I'm actually very  
14 concerned about the number of hearing days here. And  
15 I would certainly hope that given the extensive  
16 discovery that I assume has been done, and the  
17 substantive testimony that's been filed, I would hope  
18 that the hearings don't take all that long. I would  
19 think that you could stipulate to things, you could  
20 coordinate your Cross. I would really like to see the  
21 hearing days minimized if you can. And I'd rather see  
22 you use that time for your briefs.

23 ATTORNEY PENNINGTON:

24 Your Honor, this is Carol Pennington,  
25 again. You said you're not available the 19th through

1 thru the 21st?

2 JUDGE CHESTNUT:

3 Right.

4 ATTORNEY PENNINGTON:

5 What other days until the end of the  
6 month are you not available?

7 JUDGE CHESTNUT:

8 Other days that are not good would be the  
9 30th, September 30th, and --- that really is it. I  
10 mean, there are hearings scheduled here all those days  
11 but they can be moved if we have to. They're not  
12 these multi-case things. So we could have it from the  
13 12th --- nine days in September and then a couple of  
14 days in October?

15 ATTORNEY MCCLOSKEY:

16 Yes, if we needed them. I would hope  
17 not.

18 JUDGE CHESTNUT:

19 Yes. Right. Although, I have to say I  
20 got pretty scared when I saw all the intervenor  
21 testimony, because there is a lot of it there.

22 ATTORNEY BONNEY:

23 Your Honor, it's Mr. Bonney. I would  
24 just encourage us to try to conclude the hearings in  
25 September, otherwise, I think, we're pushing the

1 briefing back and then the rest of the schedule in the  
2 case.

3 JUDGE CHESTNUT:

4 Okay. I don't disagree with that. Do we  
5 have agreement on this? A grudging agreement?

6 ATTORNEY MCCLOSKEY:

7 Your Honor, this is Tanya McCloskey for  
8 the OCA. We would agree and I would commit to be able  
9 to try to work with the parties and Mr. Bonney to work  
10 on the hearing dates. Picking out which dates might  
11 work for folks.

12 JUDGE CHESTNUT:

13 Ms. McCloskey, let me take this chance to  
14 thank you very much for your efforts here, I know it's  
15 not easy, and I certainly appreciate it. I don't want  
16 you to feel like I've put a lot of pressure on you.  
17 But I understand you're speaking for other parties as  
18 well as yourself and --- thank you.

19 ATTORNEY MCCLOSKEY:

20 Thank you, Your Honor.

21 ATTORNEY NIESSEN:

22 Your Honor, this is Tom Niessen, again.  
23 What's being proposed is a surrebuttal testimony and  
24 answers to Directed Questions on August the 26th,  
25 testimony on the five questions on September the 8th,

1 and then hearings beginning around September 12th?

2 JUDGE CHESTNUT:

3 Yes.

4 ATTORNEY BONNEY:

5 Your Honor, it's Mr. Bonney. I, too,  
6 will work with Ms. McCloskey to come up with a  
7 schedule for the hearing days. I will be happy to do  
8 that. I should say, that I'm under instructions from  
9 my clients not to agree to an extension of the  
10 schedule.

11 JUDGE CHESTNUT:

12 Well, again, I don't know how you define  
13 extension of the schedule. If we can kind of keep to  
14 this and keep to the briefing --- well, I mean the  
15 ---. You're going to have to recognize that there is  
16 going to be slight delay and I'm sorry, and I'm sure  
17 your clients will understand that you've done  
18 everything possible here, Mr. Bonney. But the fact  
19 is, we're only pushing this back, I'd say very shortly  
20 because --- if we can wrap up by the end of September,  
21 your main briefs could be due October 21st, for  
22 example, and reply briefs would be due November 2nd,  
23 I'm sorry, November 4th, as opposed to September 30th  
24 which is --- oh, my gosh, you're right, that is like a  
25 month back; isn't it? That is more time than I

1 thought was involved but maybe we can move the  
2 hearings up earlier. I don't see what else we can do  
3 here to accommodate everybody, I really don't.

4 ATTORNEY MCCLOSKEY:

5 Your Honor, this Tanya McCloskey.  
6 Depending on --- I think we had a shorter time by the  
7 way on reply briefs, and depending on how the hearings  
8 work out, we may be able to move the main brief date  
9 as well. We can work on that once we nail those down.

10 JUDGE CHESTNUT:

11 Yes, because I guess your problem, Mr.  
12 Bonney is, we're pretty close to the schedule that ---  
13 actually the revised schedule that you proposed,  
14 except that we're going to be taking hearing days, the  
15 bulk of the hearing days, are going to be in  
16 September, not August.

17 ATTORNEY BONNEY:

18 That's correct, Your Honor.

19 JUDGE CHESTNUT:

20 So we're going to be starting them on the  
21 12th not ending them, I guess. But I don't --- I  
22 really don't know what else to do here.

23 ATTORNEY PENNINGTON:

24 Your Honor, this is OSBA again. I just  
25 simply appreciate it if the parties can manage to

1 schedule as much as possible during the week of the  
2 12th, so I can participate at that time.

3 JUDGE CHESTNUT:

4 Well, like I said, you're going to have  
5 to work that out with your office. Given the  
6 constraints here, it's really not --- it's not going  
7 to be able to accommodate everybody's individual  
8 schedule except as much as we can here. Again, maybe  
9 this --- perhaps this will get you to think about ---  
10 I'm afraid that you're going to be so busy getting  
11 ready for the --- to do your testimony and getting  
12 ready for the hearings, you're not even going to think  
13 about settling, I don't see how you could have time.  
14 But I think that's a much better way to approach this.  
15 If you can't settle everything, maybe you could at  
16 least settle part of it and cut down on the hearing  
17 days we need. And the briefing time that you'll need.  
18 And the time that I'll need. I can assure you that  
19 I'll do my part and get the decision out as quickly as  
20 I can and get it processed through Harrisburg as  
21 quickly as I can. But Mr. Bonney, do you have  
22 anything to contribute at this point?

23 ATTORNEY BONNEY:

24 No, Your Honor, other than thank you for your  
25 consideration.

1                   JUDGE CHESTNUT:

2                   Yes, right.

3                   ATTORNEY PENNINGTON:

4                   Your Honor?

5                   JUDGE CHESTNUT:

6                   Yes.

7                   ATTORNEY PENNINGTON:

8                   Carol Pennington, again. May I pose just  
9 one question for clarification. We all understand  
10 that you want to receive your copy of the brief and  
11 testimony, and everything on the due date. But  
12 everybody else gets electronic service. Is it  
13 permissible, then, if all the other parties get  
14 electronic service to --- to serve the hardcopy ---?

15                   JUDGE CHESTNUT:

16                   It's okay. You can serve me  
17 electronically on the due date and I'll get it the  
18 next day. Would that make it easier?

19                   ATTORNEY PENNINGTON:

20                   Okay. But for the other parties, would it  
21 be overnight mail or first class mail?

22                   JUDGE CHESTNUT:

23                   Well, it would have to be overnight,  
24 wouldn't it. Well, look ---.

25                   ATTORNEY MCCLOSKEY:

1           Your Honor, this is Tonya McCloskey. I  
2 think in the last round of testimony the parties had  
3 agreed to accept the e-mail services in hand and to  
4 accept first class mail to themselves. And we had  
5 sent ours overnight service to you. And I guess  
6 that's the question that Carol is getting at. Did you  
7 want testimony, hardcopy, in your hands for example on  
8 July 29th, or could we send that FedEx on Friday, July  
9 29th for the Monday delivery, if we e-mailed it to  
10 everyone and can we e-mail it to you?

11           JUDGE CHESTNUT:

12           Yes.

13           ATTORNEY PENNINGTON:

14           Do you want e-mail copies, Your Honor?

15           JUDGE CHESTNUT:

16           Do I want it? No.

17           ATTORNEY PENNINGTON:

18           That's what I thought.

19           JUDGE CHESTNUT:

20           Will I accept it, yes. I mean, I'd  
21 rather have it, yeah. And if you're going to be e-  
22 mailing to everybody, you might as well e-mail it to  
23 me, too.

24           ATTORNEY MCCLOSKEY:

25           And then would a Federal Express

1 Overnight for the next day delivery or Monday delivery  
2 be acceptable to you?

3 JUDGE CHESTNUT:

4 For me, yes. Again, you're free to make  
5 whatever arrangements amongst yourself as you wish.  
6 If it's okay to receive it by first class mail, that's  
7 fine. But I would like my copy as quickly as  
8 possible.

9 ATTORNEY MCCLOSKEY:

10 Okay. Thank you.

11 ATTORNEY PENNINGTON:

12 Thank you.

13 JUDGE CHESTNUT:

14 Well, here's another idea. I'm looking  
15 at these questions again, and I'm not sure they really  
16 go to --- obviously they go to the ultimate issues in  
17 the case, but would it be possible to have hearings on  
18 the portions of testimony that these issues are not  
19 addressed to, have them in August?

20 ATTORNEY MCCLOSKEY:

21 Your Honor, this is Tanya McCloskey. I  
22 think that just --- I feel this is a package, or a  
23 comprehensive review of what are the full array  
24 affirmative benefits.

25 JUDGE CHESTNUT:

1                   Because other benefits are just --- I  
2 mean, there are issues that are addressed that ---.

3                   ATTORNEY MCCLOSKEY:

4                   Yes, that's right. But they're --- it's  
5 sort of a --- looking at it as what is the appropriate  
6 package an you have to consider all of those issues.  
7 I just think breaking it up in that manner would ---.

8                   JUDGE CHESTNUT:

9                   But you don't have to consider it at the  
10 hearing, you can consider it as a package in your  
11 brief. I mean, I know you don't like my idea about  
12 staying to the original schedule and adding a couple  
13 days on to address these questions and I accept that,  
14 but I'm just wondering if there couldn't be some  
15 issues that could be --- that it could bifurcated a  
16 different way. But that's something to think about,  
17 at least.

18                   ATTORNEY BONNEY:

19                   Your Honor, it's Mr. Bonney. We strongly  
20 agree with that concept and think that while these  
21 issues --- that parties may want to present these in  
22 an interrelated fashion, they can do so in their brief  
23 or in their responsive testimony.

24                   ATTORNEY MCCLOSKEY:

25                   This is Tanya McCloskey. I just think

1 our witnesses --- we need to consider them as well,  
2 because it is their testimony.

3 ATTORNEY DILLON:

4 Your Honor, as to the virtual divestiture  
5 question --- this is Mr. Dillon. As to the virtual  
6 divestiture question they really are integrally  
7 related, we would have to have our witness come back  
8 for a second set of hearings and they are really  
9 integrally related to the whole point that we are  
10 trying to make.

11 JUDGE CHESTNUT:

12 Well, maybe that you are, but I think  
13 that there are other issues that are raised by parties  
14 that don't seem to be encompassed by any of these  
15 questions. And I'm not going to talk about specifics,  
16 because frankly, I don't remember your testimony well  
17 enough to know what's what here, but that might be  
18 something to think about.

19 ATTORNEY BONNEY:

20 I agree, Your Honor. There are questions  
21 regarding staffing and labor issues, reliability,  
22 customer service and rate making and a host of other  
23 issues that are at best tangentially related to these  
24 questions. In any event, the PGW question number five  
25 seems ---.

1                   JUDGE CHESTNUT:

2                   Seems what?

3                   ATTORNEY BONNEY:

4                   Fairly unrelated to the rest of the case.

5                   JUDGE CHESTNUT:

6                   Yes, I'll say.

7                   ATTORNEY DILLON:

8                   Mr. Dillon. We would agree with Mr.  
9 Bonney's observation that there are substantial parts  
10 of the case not related.

11                   JUDGE CHESTNUT:

12                   Why don't we do this? I will issue an  
13 order that contains the schedule that we've discussed  
14 this afternoon. But in the meantime, why don't you  
15 see if you can work together and see if there's  
16 something that we could deal with in August. Okay?  
17 And let me know.

18                   ATTORNEY BONNEY:

19                   That's fine, Your Honor. This is Mr.  
20 Bonney.

21                   JUDGE CHESTNUT:

22                   Nobody wants to do that.

23                   ATTORNEY BONNEY:

24                   But I'm afraid that the schedule you put  
25 out, as we have previously discussed, will be the one

1 that remains.

2 ATTORNEY PENNINGTON:

3 Your Honor, this Carol Pennington, again.  
4 I can agree with Mr. Bonney about keeping some of the  
5 days for hearings that are already scheduled in  
6 August.

7 JUDGE CHESTNUT:

8 Except that I'm not prepared at this  
9 point to identify this specifically, and I don't know  
10 if anybody else is either. Why don't ---.

11 ATTORNEY MICKENS:

12 Your Honor, Ken Mickens from OTS.

13 JUDGE CHESTNUT:

14 Yes.

15 ATTORNEY MICKENS:

16 Your Honor, we discussed it quite  
17 extensively this afternoon. I think that we sort of  
18 prepped a schedule that --- that while many of the  
19 parties don't like it, but they can live with it, I  
20 would suggest at this point that we try to work with  
21 the schedule that we've painstakingly come up with and  
22 proceed.

23 JUDGE CHESTNUT:

24 Well, it seems like everybody is happy  
25 here except for Mr. Bonney.

1                   ATTORNEY BONNIFIELD:

2                   Your Honor, This is Rich Bonnifield. We  
3 agree with Mr. Bonney, and I think your suggestion of  
4 us getting the issues that we've already worked on for  
5 these many months heard in August will clear the deck  
6 for the Directed Questions, and I think it's a good  
7 suggestion and we support it.

8                   JUDGE CHESTNUT:

9                   Okay. Then why don't you discuss it  
10 amongst yourself. I'll hold off on issuing any kind  
11 of scheduling order for a couple of days, because I  
12 want you to think about that as an option. Even if,  
13 you know --- well, I think that would be a good way to  
14 accommodate people if it can be done, if it can't be  
15 done, it can't be done. But I would certainly like to  
16 investigate the possibility of doing it that way and  
17 let me know. But I think we should concluded this  
18 prehearing conference at this point.

19                   Does anybody have anything they want to  
20 say before we conclude? Mr. Bonney?

21                   ATTORNEY BONNEY:

22                   No, Your Honor.

23                   JUDGE CHESTNUT:

24                   Ms. McCloskey?

25                   ATTORNEY MCCLOSKEY:

1           Just thank you very much for your  
2 consideration, Your Honor.

3           JUDGE CHESTNUT:

4           Thank you, for your efforts. Like I  
5 said, I recognize that --- I don't think any of us  
6 anticipated this. And let me add one thing. I did  
7 check with the offices and they do not plan to issue  
8 any further questions.

9           ATTORNEY NIESSEN:

10          Your Honor, this is Tom Niessen. I'm  
11 just not clear on what it is that we're hoping that we  
12 discuss. There are certain issues that might be  
13 considered that are scheduled presently for August?

14          JUDGE CHESTNUT:

15          Yes. I think ---.

16          ATTORNEY NIESSEN:

17          The testimony schedule that we've  
18 discussed is that in place at the moment, or are we  
19 discussing that still?

20          JUDGE CHESTNUT:

21          No. Well, the schedule that we've talked  
22 about will be having surrebuttal August 26th as well  
23 as the --- your answers to the Directed Questions.  
24 But there could be perhaps --- we could have a hearing  
25 at the end of August, you know, by the end of August

1 and early September. And then that way we don't need  
2 to take a lot of days at the end of September.

3 ATTORNEY NEISSEN:

4 But again, the schedule for the testimony  
5 that we've talked about, that --- when we conclude  
6 this call, that schedule is in place?

7 JUDGE CHESTNUT:

8 No, it's not in place until I issue an  
9 order. But it sounds like you're not willing to work  
10 on this so ---.

11 ATTORNEY BONNIFIELD:

12 Mr. Bonney, we'd be willing to think  
13 about it. We continue to believe that there are  
14 variety of issues, low income questions,  
15 environmental questions, reliability, service issues,  
16 that could be addressed on the current schedule and  
17 with respect to which hearings could be held in the  
18 August time period.

19 JUDGE CHESTNUT:

20 Okay. I'm not sure what to say, to me  
21 that's not a bad approach, since I suggested it. And  
22 I think it would go a long way to making this thing a  
23 more efficient process but --- you know, it takes  
24 everybody to tango here.

25 ATTORNEY HEEP:

1                   This is Darlene Heep, from the City of  
2 Philadelphia. And I would support the position that  
3 all of this testimony is going to be interrelated and  
4 it would be more beneficial to all the parties and our  
5 understanding of the case to have them all done at  
6 once.

7                   JUDGE CHESTNUT:

8                   Well, Ms. Heep, which of these issues are  
9 you going to address?

10                  ATTORNEY HEEP:

11                  We're going to address all of them.

12                  JUDGE CHESTNUT:

13                  All of them? Because I don't think you  
14 put testimony on concerning the market penetration,  
15 did you?

16                  ATTORNEY HEEP:

17                  We mentioned it.

18                  JUDGE CHESTNUT:

19                  Okay. All right. Then I'll go ahead and  
20 issue this with the schedule. But in the meantime,  
21 why don't you see if you can resolve some issues? See  
22 if you can come up with something, and keep talking.

23                  ATTORNEY MCCLOSKEY:

24                  Your Honor, this is Tanya McCloskey.  
25 We'll continue to talk with the other parties and the

1 Company.

2 JUDGE CHESTNUT:

3 All right. Well, thank you very much  
4 then. This Prehearing is adjourned.

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7 HEARING CONCLUDED AT 3:17 P.M.

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