

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

**ORIGINAL**

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Pennsylvania Public Utility Commission

v. Philadelphia Gas Works

Filing of purchased gas costs pursuant  
to 1307(f).

Initial Prehearing Conference.

:  
: Docket No.  
: R-00016378

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Philadelphia, Pennsylvania

Wednesday, June 13, 2001

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

MARLANE R. CHESTNUT, Administrative Law Judge

*JSM*

APPEARANCES:

JOHNNIE SIMMS, Esquire  
P. O. Box 3265  
Harrisburg, Pennsylvania 17105  
(For the Office of Trial Staff)

WENDELL F. HOLLAND, Esquire  
STEPHEN W. W. CHING, JR., Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
19th Floor  
One Penn Center  
1617 JFK Boulevard  
Philadelphia, Pennsylvania 19103  
(For Philadelphia Gas Works)

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## APPEARANCES (CONTINUED):

DANIEL CLEARFIELD, Esquire  
Wolf Block Schorr & Solis-Cohen  
Suite 300  
212 Locust Street  
Harrisburg, Pennsylvania 17101  
(For Philadelphia Gas Works)

HARRY J. KANE, JR., Esquire  
Philadelphia Gas Works Legal Department  
800 West Montgomery Avenue  
Philadelphia, Pennsylvania 19122  
(For Philadelphia Gas Works)

STEPHEN J. KEENE, Esquire  
Fifth Floor  
555 Walnut Street  
Harrisburg, Pennsylvania 17101  
(For the Office of Consumer Advocate)

STEVEN GRAY, Esquire  
1102 Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101  
(For the Office of Small Business Advocate)

CHARIS BURAK, Esquire  
McNees Wallace & Nurick  
100 Pine Street  
Harrisburg, Pennsylvania 17108  
(For the Philadelphia Industrial and  
Commercial Gas Users Group)

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WITNESS INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
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(None.)

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

1  
2 ADMINISTRATIVE LAW JUDGE MARLANE R. CHESTNUT: This  
3 is the prehearing conference scheduled at Docket Number  
4 R-00016378.

5 For the record, let me state that I am  
6 Administrative Law Judge Marlane R. Chestnut.

7 I am going to ask the parties' Counsel to identify  
8 themselves for the record, stating your name, your  
9 address, your phone number, your E-mail address, your fax  
10 number and on whose behalf you are appearing.

11 Now, everybody please speak slowly and clearly and  
12 identify yourself before you speak for the benefit of the  
13 court reporter.

14 We will start with you, Mr. Holland.

15 MR. HOLLAND: My name is Wendell Holland. My  
16 address is Obermayer Rebmann Maxwell & Hippel, One Penn  
17 Center, Philadelphia, Pa. My phone number is  
18 215-665-3282. My fax number is 215-665-3165. And my  
19 E-mail address is wfh@obermayer.com.

20 MR. CHING: My name is Stephen Ching. Stephen is  
21 spelled with a p-h. I am from the Obermayer firm at the  
22 same address that Mr. Holland is. My direct line is  
23 215-665-3288. My fax number is 215-665-3165. And my  
24 E-mail address is stephen.ching@obermayer.com.

25 JUDGE CHESTNUT: Thank you very much.

1 Mr. Simms.

2 MR. HOLLAND: Your Honor?

3 JUDGE CHESTNUT: Oh, I beg your pardon. Mr. Kane  
4 is here.

5 Mr. Kane, maybe you could sit at the table so I  
6 don't overlook you.

7 MR. KANE: Certainly, Judge.

8 Good morning. My name is Harry Kane, K-A-N-E. I  
9 am in-house Counsel at Philadelphia Gas Works, 800 West  
10 Montgomery Avenue, Philadelphia, Pennsylvania 19122. My  
11 phone number is 215-684-6145. My fax number is  
12 215-684-6798. And my E-mail is harry.kane@pgworks.com.  
13 And I'm here on behalf of Philadelphia Gas Works.

14 JUDGE CHESTNUT: Thank you.

15 Was everybody able to hear that?

16 MR. GRAY: Yes.

17 JUDGE CHESTNUT: Good.

18 Mr. Simms, then, could you please identify yourself  
19 for the record?

20 MR. SIMMS: Yes, Your Honor.

21 My name is Johnnie Simms. My address is P. O. Box  
22 3265, Harrisburg, Pennsylvania 17105. My telephone  
23 number is area code 717-787-1976. My fax number is area  
24 code 717-772-2677. My E-mail address is  
25 simmsj@puc.state.pa.us. And I am appearing on behalf of

COMMONWEALTH REPORTING COMPANY, INC.

1 (800) 334-1063

1 the Office of Trial Staff.

2 JUDGE CHESTNUT: Thank you.

3 Mr. Gray?

4 MR. GRAY: Good morning, Your Honor. This is  
5 Steven Gray, Steven with a v, G-R-A-Y. I am appearing on  
6 behalf of the Office of Small Business Advocate. Our  
7 address is 300 North Second Street, Suite 1102, Commerce  
8 Building, Harrisburg 17101. The main phone number is  
9 717-783-2525. The fax number is 783-2831. And my E-mail  
10 address is sgray@state.pa.us.

11 JUDGE CHESTNUT: Thank you.

12 Mr. Keene.

13 MR. KEENE: Good morning, Your Honor.

14 This is Stephen Keene. That is Stephen with a p-h.  
15 My address is Office of Consumer Advocate, 555 Walnut  
16 Street, fifth floor, Harrisburg, Pennsylvania 17101-1923.  
17 Our telephone number is 717-783-5048. Our fax number is  
18 717-783-7152. And my E-mail address is skeene@paoca.org.

19 JUDGE CHESTNUT: Thank you.

20 Is Ms. Burak there?

21 MS. BURAK: Yes, I am. Good morning, Your Honor.

22 This is Charis Burak and with me I have Adam Long,  
23 who is a summer associate with us this summer. I am here  
24 on behalf of the Philadelphia Industrial and Commercial  
25 Gas Users Group and my address is McNees Wallace &

1 Nurick, 100 Pine Street, Harrisburg, Pennsylvania 17108.  
2 My phone number is 717-237-5437. My fax number is  
3 717-237-5300. And my E-mail address is cburak@mwn.com.

4 JUDGE CHESTNUT: Thank you.

5 Are there any other Counsel present who have not  
6 identified themselves?

7 MR. CLEARFIELD: Yes, Your Honor. This is Dan  
8 Clearfield with Wolf Block Schorr & Solis Cohen, 212  
9 Locust Street, Suite 300.

10 JUDGE CHESTNUT: Mr. Clearfield, you have to speak  
11 a little slower. I am writing this in as you are saying  
12 it.

13 MR. CLEARFIELD: 212 Locust Street, Suite 300.

14 JUDGE CHESTNUT: Okay.

15 MR. CLEARFIELD: 717-237-71 --

16 JUDGE CHESTNUT: Wait, wait. What is your zip  
17 code?

18 MR. CLEARFIELD: 17101.

19 JUDGE CHESTNUT: And now are you giving me your  
20 telephone number?

21 MR. CLEARFIELD: Yes, Ma'am.

22 JUDGE CHESTNUT: Okay. Go ahead.

23 MR. CLEARFIELD: 717-237-7173 is voice.

24 JUDGE CHESTNUT: Okay.

25 MR. CLEARFIELD: And 7161 is the fax.

1 JUDGE CHESTNUT: I'm sorry. 7161?

2 MR. CLEARFIELD: Yes. That is the fax extension.

3 JUDGE CHESTNUT: And your E-mail address?

4 MR. CLEARFIELD: dclearfield@wolfblock.com.

5 JUDGE CHESTNUT: Anybody else?

6 MR. CLEARFIELD: And I am here also on behalf of

7 PGW.

8 JUDGE CHESTNUT: Right. Thank you.

9 Anybody else, then?

10 (No audible response.)

11 JUDGE CHESTNUT: Let me state for the record, then,  
12 I received an E-mail from Mr. Bertocci stating that he  
13 was unable attend on behalf of his client CEPA, I guess.  
14 He will be filing a complaint within the next several  
15 days.

16 Now, I received prehearing memoranda from the  
17 following parties: PICGUG, OTS, OSBA, PGW, OCA. I think  
18 that covers everybody.

19 Let me state also that I will be issuing a  
20 prehearing order that incorporates the decisions made at  
21 this prehearing conference.

22 Now, the parties at this point in addition to PGW,  
23 according to the Commission's computerized docket system,  
24 as of this morning OTS filed a notice of appearance on  
25 May 23rd, OSBA filed a notice after intervention and

1 public statement on May 30, the Philadelphia Area  
2 Industrial and Commercial Gas Users group filed a  
3 petition to intervene on June 7 -- let me state that that  
4 petition is granted.

5 MS. BURAK: Thank you, Your Honor.

6 JUDGE CHESTNUT: And the OCA filed a complaint and  
7 public statement docketed at C-0001 on June 8.

8 I do not have that. Mr. Keene, can you have your  
9 office send me a copy?

10 MR. KEENE: Yes, I will, Your Honor.

11 JUDGE CHESTNUT: Thank you.

12 Now, normally at this point parties are to be  
13 designated as active or inactive. And I will not go  
14 through the difference at this point since you all should  
15 be aware of it. I assume everybody wants to be active  
16 who is present.

17 MR. HOLLAND: Yes, Your Honor.

18 JUDGE CHESTNUT: If we get individual complaints  
19 then we can deal with the inactive versus active aspect.  
20 But at this point all the parties who are present at this  
21 prehearing are deemed to be active.

22 And I assume that Mr. Bertocci will request that  
23 his client have an active status also. Is there any  
24 objection to that? I know you have not seen it yet, but  
25 can you give me some feel at this point, Mr. Holland, if

1 you will be objecting to that?

2 MR. HOLLAND: No, I will not, Your Honor.

3 JUDGE CHESTNUT: Now, my E-mail distribution list.  
4 Let me state first that my E-mail address is  
5 chestnut@puc.state.pa.us. And I think everybody is aware  
6 that the Commonwealth often has E-mail system problems --  
7 constantly. So I have an alternative, which is  
8 marcy\chestnut@hotmail.com.

9 Was everybody able to hear that?

10 MR. CLEARFIELD: Yes, Your Honor.

11 JUDGE CHESTNUT: Okay.

12 Now I will go through my list. The first I have is  
13 Wendell Holland atwfn@obermayer.com.

14 MR. HOLLAND: wfh.

15 JUDGE CHESTNUT: wfh. Sorry. That is just a typo.  
16 I really do have it right.

17 I have Stephen Gray for OSBA and I have a different  
18 E-mail address.

19 MR. GRAY: Yes.

20 JUDGE CHESTNUT: Has it been changed or is this an  
21 alternate?

22 MR. GRAY: It has been changed. We were supposed  
23 to have gotten far superior E-mail software and you know  
24 how that works.

25 I am going to do the same thing that you do, Judge,

1 because our E-mail was really been troublesome the last  
2 couple of months. My personal E-mail address if  
3 necessary is stevencgray@earthlink --

4 JUDGE CHESTNUT: Wait, wait. You are going way too  
5 fast for me. I'm sorry.

6 MR. GRAY: Sorry.

7 JUDGE CHESTNUT: Is it steven dot?

8 MR. GRAY: No, it is all one word. steven -- with  
9 a v -- cgray@earthlink.net.

10 JUDGE CHESTNUT: Okay.

11 Then I have Mr. Simms. And I have your E-mail  
12 address as simmsj@puc.state.pa.us.

13 MR. SIMMS: That's correct, Your Honor.

14 JUDGE CHESTNUT: Mr. Keene I have as  
15 keene@paoca.org.

16 MR. KEENE: That's correct, Your Honor.

17 JUDGE CHESTNUT: Ms. Burak, cburak@mwn.com.

18 MS. BURAK: That's correct, Your Honor.

19 JUDGE CHESTNUT: Now, I have Mr. Bertocci at  
20 pbertocci@clsphila.com. And he seems to be getting the  
21 E-mail so I assume that is correct.

22 Now, Mr. Kane, do you want to be included on that?  
23 I normally don't because Mr. Holland is your Counsel.

24 MR. KANE: That's fine, Your Honor. I am sure I  
25 will receive anything important through Mr. Holland.

1 JUDGE CHESTNUT: Anything else on the E-mail list,  
2 then?

3 (No audible response.)

4 JUDGE CHESTNUT: Then we will move on. There are  
5 some standard procedural requirements that I will go  
6 through briefly.

7 Petitions to intervene and motions for admission  
8 pro hac vici if not defective on their face will be  
9 deemed granted if not objected to within three business  
10 days after filing. If objected to such pleadings will be  
11 addressed by order. And defective on its face includes  
12 defects such as incorrect corporate names, a corporate  
13 entity not represented by an attorney, et cetera.

14 Any questions?

15 (No audible response.)

16 JUDGE CHESTNUT: Second, pursuant to 52 Pa. Code  
17 section 5.61(d) no answer is required for complaints that  
18 may be docketed with this proceeding.

19 Three, pursuant to 52 Pa. Code section 1.55 each  
20 party shall be limited to one entry on the service list,  
21 although there can be more than one name listed. And I  
22 think that is taken care of already.

23 Pursuant to 52 Pa. Code section 5.342(d), the  
24 Commission's regulations relating to discovery will be  
25 modified as follows. Now, these are pretty standard and

1 in fact have become the de facto type of modification.  
2 So we will go through that. I know that OCA has a few  
3 additional ones and we can discuss those.

4 The first is that the response period for replying  
5 to written interrogatories is ten calendar days. It  
6 should be noted that when an interrogatory is served on a  
7 Friday or the day before a holiday the appropriate period  
8 is deemed to start on the next business day.

9 Number two, objections to interrogatories are to be  
10 communicated orally to the propounder of the  
11 interrogatory within three business days of receipt and  
12 unresolved objections in writing within five business  
13 days of the receipt of the interrogatory.

14 Motions to dismiss objections and to compel  
15 response shall be filed with me within three business  
16 days of receipt of the objections.

17 Answers to such motions shall be filed with me  
18 within three business days after filing of the motion.

19 Interrogatories which are objected to but which are  
20 not made the subject of a motion to compel will be deemed  
21 withdrawn.

22 Now, let me add here if you have any comments or  
23 questions jump in.

24 Now, this one is very important. It is very  
25 fundamental but I can't tell you how many people fail to

1 comply. Pursuant to 52 Pa. Code section 5.341(b) neither  
2 interrogatories nor responses are to be filed with the  
3 Commission or served on me, although you may file a  
4 certificate of service with the Commission's secretary.  
5 Now, if you do that I am really going to embarrass you  
6 because you should all know better.

7 Now, there are additional modifications that the  
8 OCA has proposed in its prehearing memorandum: requests  
9 for admissions be deemed to be admitted unless answered  
10 within ten calendar days.

11 There are any objections?

12 MR. HOLLAND: No, Your Honor.

13 JUDGE CHESTNUT: Okay. That shall be included.

14 And answers to on the record data requests be  
15 served in-hand -- I guess that means the date of receipt  
16 -- within seven calendar days of the request.

17 Any problems with that?

18 MR. HOLLAND: No, Your Honor.

19 JUDGE CHESTNUT: Okay.

20 Now, the parties are expected to resolve discovery  
21 issues among themselves. I don't want to see any motions  
22 to compel here. If I do, that means you are not doing  
23 your job. You are all experienced. You are all familiar  
24 with the Commission's regulations. So if I get a motion  
25 to compel that means somebody is not acting reasonably.

1           So please try to resolve these. If you have any  
2 questions or problems with interrogatories or discovery  
3 generally work it out yourselves. Also keep in mind that  
4 there are alternative means of discovery such as  
5 discovery conferences or depositions.

6           Anything else on discovery, then, before I move  
7 onto the schedule?

8           (No audible response.)

9           JUDGE CHESTNUT: Now, the schedule. I know there  
10 was some question on PGW's part but it obviously has to  
11 be a six month schedule. The Commission's order  
12 indicated that the filing was to be made on or before  
13 June 1st. March 1st is before June 1st. You are going  
14 to have to work out the recovery period. But I am not  
15 going to allow parties to be put in a position where they  
16 cannot adequately litigate this case simply because the  
17 company chose to file it late. I am not going to make  
18 any representations or make any kind of finding that it  
19 was done on purpose to prevent parties from having a full  
20 chance to examine the company's filing but that is the  
21 effect if we have a three month schedule. So we are  
22 going to use the schedule that is appropriate for this  
23 type of case and work out the way to implement whatever  
24 is decided over the time period that is left in the GCR  
25 period.

1           This was done last year. And remember last year  
2 was an unusual year because of the timing of the  
3 changeover. It's not that the company is supposed to  
4 file June 1st. It is supposed to file March 1st but  
5 obviously the Commission could not require that to be  
6 done. March 1st is six months before September 1st.

7           And I accept that that is the effective date of the  
8 GCR year, September 1st to August 31st. I also accept  
9 that the gas cost rate as filed includes non-gas cost  
10 items and that is not an issue to be addressed in this  
11 case. I understand it is being addressed in the base  
12 rate case. So I would assume that whatever is decided  
13 there will be implemented here at the appropriate time  
14 and in the appropriate way.

15           Does anybody have any comments or concerns?

16           MR. HOLLAND: Yes, Your Honor. Just a few.

17           JUDGE CHESTNUT: Could you please identify  
18 yourself? I assume everybody knows it is Mr. Holland,  
19 but...

20           MR. HOLLAND: I am Wendell Holland.

21           Of course, we would again ask Your Honor to  
22 reconsider the September 1st date. We feel pretty solid  
23 that the statute, the Commission's order, when read in  
24 conjunction certainly with our tariff certainly permits  
25 us to file as late as June 1st with an effective date of

1 September 1st.

2 Second, I guess, Your Honor, one of the problems  
3 that crops up with the December date is a notice problem.  
4 Additional notice, as you know, is not cheap. It will  
5 cost us about \$80,000, which was one issue. But, second,  
6 we are just unsure and perhaps you could give us some  
7 guidance with respect to how does notice occur now to our  
8 customers of the new December 1st effective date.

9 JUDGE CHESTNUT: Does anybody have any comment or  
10 want to respond?

11 MR. CLEARFIELD: Your Honor, this is  
12 Mr. Clearfield.

13 I just wanted to clarify. You said that you accept  
14 the GCR is going to be effective September 1st, is that  
15 right?

16 JUDGE CHESTNUT: Well, I'm not sure how you are  
17 going to work this out, whether it is effective September  
18 1st and incorporate it so that it would be effective as  
19 if it were effective September 1st. I don't know how you  
20 did it last year. But you are going to have to work that  
21 out.

22 MR. CLEARFIELD: Mr. Holland can explain in detail  
23 but there was an adjustment. When the GCR went into  
24 effect on November -- well, it was a little later than  
25 November 22nd because that was when the order was --

1 there was a factor to account for the fact that the first  
2 three months, two-and-a-half months, the GCR was lower  
3 than the Commission determined it for that period. We  
4 called it compression, as Mr. Simms pointed out. So I  
5 would assume we would have to put in some kind of reverse  
6 compression in this instance since the GCR is going down.

7 JUDGE CHESTNUT: I'm not sure what you would call  
8 it or how you would do it but that is for you to work  
9 out. It is a little unusual here because it is a  
10 decrease.

11 MR. HOLLAND: Can we go off the record for a  
12 moment, Your Honor?

13 JUDGE CHESTNUT: No. I do not go off the record.

14 MR. HOLLAND: All right.

15 MR. KEENE: Your Honor, this is Steve Keene from  
16 the OCA.

17 JUDGE CHESTNUT: Okay.

18 MR. KEENE: I just wanted to make it clear, we are  
19 concerned about the amount of time that we have to  
20 litigate this case. But we also are aware that we are  
21 talking about a decrease of \$1.10 per Mcf that is  
22 proposed to be implemented September 1st. We are willing  
23 to work with the parties to try to get this case  
24 concluded as soon as possible through settlement or even  
25 shortening the schedule if the parties can agree to it so

1 that we can get this rate decrease into effect as soon as  
2 possible.

3 JUDGE CHESTNUT: I think we all want that to  
4 happen. But I am not going to allow myself or the  
5 Commission or the parties to be put in a position where  
6 they have to address this on some kind of an expedited  
7 basis just because the company didn't file in sufficient  
8 time to have a thorough review.

9 Now, last year it was done quickly because of the  
10 circumstances and on the expectation that these issues  
11 would be addressed in this case. And under a compressed  
12 schedule that is just not going to be possible.

13 Don't forget, you have to consider the Commission  
14 having time to address this as well, not just you and not  
15 just me and the company here.

16 We are going to set a schedule that is based on six  
17 months litigation. But I certainly would hope that that  
18 would motivate you to try to settle this, frankly. I  
19 think there is a good chance of this case settling and I  
20 would like it to happen sooner rather than later.

21 MR. HOLLAND: Well, there certainly is, Your Honor,  
22 and I think we will push for that. But let me respond  
23 again to our filing on June 1st.

24 We would like to think that we acted in good faith,  
25 that we followed absolutely every provision in the

1 Commission's prior GCR order. And in fact we have given  
2 the parties as much notice of our intention to file for a  
3 September 1st effective date as early as our May 1st  
4 prefiling. It is on the cover letter itself and it is  
5 actually in the filing. We had that same effective date  
6 given to the parties through our public notice that was  
7 issued, I think, in the middle of May and also in our  
8 cover letter to our June 1st filing. So I am simply  
9 saying, Your Honor, that the parties had sufficient  
10 notice of our intention to file for an effective date of  
11 September 1st.

12 Now, having said that, we genuinely hope that this  
13 case can be settled and we are prepared to sit down and  
14 talk to the parties as to how we might settle the case.  
15 But, again, Your Honor, I think the September 1st date  
16 was one that we have given all parties adequate notice of  
17 and the Commission itself permitted us to certainly file  
18 a GCR on June 1st to be effective September 1st.

19 JUDGE CHESTNUT: That is absolutely untrue.  
20 Absolutely untrue. They said to file on or before June  
21 1st. Had you filed March 1st with a prefiling on  
22 February 1st, then there would have been no problem.  
23 That would have been compliant with the Public Utility  
24 Code. It would have been compliant with the Commission's  
25 order. And it would have been compliant with your

1 tariff.

2 Again, I am not going to make any conclusions that  
3 it was done on purpose here. I think somebody just  
4 didn't realize or didn't read the statute that it  
5 requires a six month period until the effective date.

6 MR. HOLLAND: Perhaps our reading of the statute  
7 was more to 2212, Your Honor.

8 JUDGE CHESTNUT: Well, maybe somebody should have  
9 looked at 1307. Regardless, I'm not going to go back and  
10 assign blame or anything. The fact is we have to deal  
11 with it at this point and my decision is that having a  
12 six month litigation schedule is absolutely required here  
13 and consistent with the Commission's order.

14 Now, given that, you are going to have to work it  
15 out, how to accomplish that. And, again, if it puts some  
16 pressure on you to come to a settlement, then great. But  
17 I don't want any party or the Commission feeling -- or  
18 myself for that matter -- feeling that this was done  
19 quickly simply because the company filed late. We did  
20 that already last year; we are not doing it this year.

21 MR. HOLLAND: Again, Your Honor, your ruling with  
22 respect to the effective date, you are not setting an  
23 effective date today? You are essentially saying that  
24 the parties are to work out what the effective date  
25 should be?

1 JUDGE CHESTNUT: Well, no. I am not saying  
2 anything about the effective date -- well, yes and no.  
3 You have to work it out. Your tariff requires a  
4 September 1st effective date. But this proceeding if it  
5 proceeds to full litigation will not conclude until  
6 December 1st. Now, obviously the Commission can't have a  
7 retroactive ruling but you could have what you did last  
8 time, which is this reverse compression factor as if it  
9 had taken effect on September 1st.

10 You know, that is a technical thing. But I expect  
11 you folks to work that out. And I am also assuming that  
12 you will all exercise good faith in doing that.

13 MR. HOLLAND: Well, I guess that raises another  
14 issue. The December 1st effective date causes the  
15 company tremendous technical problems. And rather than  
16 go through the list of problems that it causes, suffice  
17 it to say it's not as easy as it would appear to change  
18 the effective date from September 1st to December 1st.  
19 And, again, we would ask for that reason that you  
20 consider maintaining the schedule, perhaps maintaining  
21 the schedule with a strong suggestion that the parties  
22 get together and try to settle as soon as possible.

23 JUDGE CHESTNUT: Well, I don't know what you mean  
24 by maintaining the schedule. The schedule at this point  
25 is a six month schedule. So, yes, to that extent the

1 schedule will be maintained.

2 And I do strongly urge the parties to work this out  
3 because as someone pointed out, this is a decrease and I  
4 think we would all like to see that effective as quickly  
5 as possible.

6 But the fact remains that regardless of when it is  
7 effective the people are going to get the same amount,  
8 whether it is a lesser amount over a longer period or  
9 through a compression factor or somehow. I mean, the  
10 fact is that it can be done and I hope it will be done.

11 MR. HOLLAND: Well, it is going to be difficult,  
12 Your Honor. It is going to be difficult.

13 JUDGE CHESTNUT: It is difficult but it is  
14 unnecessary if someone had thought ahead and filed this  
15 in the proper time. But, again, I am not going to go  
16 back and cast blame. Let's take it from here. I have  
17 already decided that it has got to be a six month  
18 litigation schedule but I do strongly urge -- we will set  
19 a six month litigation schedule here, let me say. But I  
20 strongly urge you to work together to resolve this  
21 without the necessity of using all that time.

22 Anything else, then?

23 Mr. Holland, anything further that you have not  
24 said already?

25 MR. HOLLAND: No, Your Honor.

1 JUDGE CHESTNUT: Anybody else?

2 (No audible response.)

3 JUDGE CHESTNUT: Thank you.

4 At this point, then, the only proposed schedule  
5 that I have is one that the OCA supplied. But before I  
6 do that I do have to address one item in the company's  
7 prehearing memorandum concerning their testimony.

8 Now, when the company made its filing on June 1st  
9 it had the testimony of Mr. Durkin.

10 MR. HOLLAND: Yes, Your Honor.

11 JUDGE CHESTNUT: And I think it was only the  
12 testimony of Mr. Durkin, wasn't it?

13 MR. HOLLAND: Yes.

14 JUDGE CHESTNUT: But on your prehearing memo you  
15 also list Mr. White as a potential witness. When were  
16 you anticipating filing his testimony?

17 MR. HOLLAND: Mr. White will probably not file  
18 testimony. To the extent there are issues that  
19 Mr. Durkin cannot cover we were offering Mr. White as an  
20 additional witness.

21 JUDGE CHESTNUT: I don't even begin to understand  
22 that.

23 MR. HOLLAND: I don't know how I could restate it,  
24 Your Honor.

25 JUDGE CHESTNUT: You made the decision what

1 information you needed to put in the record to support  
2 your direct case.

3 MR. HOLLAND: Right.

4 JUDGE CHESTNUT: And I assume that is the testimony  
5 of Mr. Durkin plus the associated exhibits and things.

6 MR. HOLLAND: Right.

7 JUDGE CHESTNUT: Now, are you going to have  
8 Mr. White as a witness or not? Is this something that is  
9 going to be up to the parties?

10 MR. HOLLAND: We would like to reserve the right,  
11 if that is possible, to call Mr. White if there are some  
12 issues that might arise that Mr. Durkin may not be able  
13 to address. If the parties have a problem with that and  
14 Mr. White, that's fine. But this was just an advance  
15 notice to the parties, if you will, that if necessary  
16 Mr. White is available.

17 JUDGE CHESTNUT: Does anybody have a comment on  
18 that?

19 MR. SIMMS: Does Mr. Holland suggest that Mr. White  
20 is going to be called?

21 JUDGE CHESTNUT: I don't understand it, frankly.  
22 You are either going to call him or you are not. You  
23 have to decide.

24 MR. HOLLAND: We can make this real easy, Your  
25 Honor, that we cannot call Mr. White. That's fine.

1 JUDGE CHESTNUT: I mean, you can always present him  
2 on rebuttal.

3 MR. HOLLAND: And that was what we had in mind. If  
4 that is agreeable then we would like to reserve the right  
5 to call Mr. White.

6 JUDGE CHESTNUT: If you want to put in additional  
7 direct testimony, that's okay. But I just didn't know  
8 whether we have to slot in another date here for you to  
9 file.

10 MR. HOLLAND: Absolutely not, no.

11 JUDGE CHESTNUT: So you are not planning on  
12 presenting Mr. White?

13 MR. HOLLAND: Only if necessary for rebuttal, Your  
14 Honor.

15 JUDGE CHESTNUT: Does everybody understand that.

16 (No audible response.)

17 JUDGE CHESTNUT: Since nobody answered, I assume  
18 the answer is yes.

19 And does anybody have a problem with that?

20 (No audible response.)

21 JUDGE CHESTNUT: Because it seems to me that if you  
22 discuss it and have discovery and it turns out that  
23 Mr. White should be an appropriate witness that is fine  
24 as long as his testimony is not done at the last minute  
25 so people have a chance to respond to it.

1 MR. HOLLAND: It will not be done at the last  
2 minute, Your Honor.

3 JUDGE CHESTNUT: Because that was my concern.

4 MR. HOLLAND: Absolutely not.

5 MR. SIMMS: Your Honor, this is Johnnie Simms.

6 I just looked at the testimony very briefly but I  
7 don't recall the witness who had prefiled direct  
8 testimony discussing the projected gas cost at all. Is  
9 Mr. Holland suggesting that if we put on testimony  
10 regarding the projected gas cost questioning the  
11 company's projection that he is going to bring Mr. White  
12 in on the rebuttal stage to support the company's  
13 original filing on suggested gas cost?

14 MR. HOLLAND: Yes, John. That is certainly one  
15 option.

16 JUDGE CHESTNUT: But I don't think that is an  
17 acceptable option.

18 MR. SIMMS: Your Honor, once again this is Johnnie  
19 Simms.

20 If the company is going to support their projected  
21 gas cost I would like to see their reason for the  
22 projected gas cost now, not in the rebuttal stage of the  
23 case, or there is going to be an objection to Mr. White's  
24 testimony for not presenting testimony in the case in  
25 chief.

1 JUDGE CHESTNUT: Why don't we let PGW put in an  
2 additional statement. We can revise this a bit so that  
3 you can address it in your testimony rather than waiting  
4 for the rebuttal stage.

5 Is that okay with you, Mr. Holland?

6 MR. HOLLAND: Yes, Your Honor.

7 JUDGE CHESTNUT: Parties?

8 MR. SIMMS: Yes, Your Honor.

9 JUDGE CHESTNUT: Of course, that would have to be  
10 relatively soon, you know, because it was due June 1st.  
11 That is when you made your filing. Can you give me an  
12 idea about when that could be ready?

13 MR. HOLLAND: Give us two weeks, Your Honor.

14 JUDGE CHESTNUT: That is not going to work because  
15 that is less than two weeks for the intervenors to  
16 respond and be able to do discovery on it.

17 MR. HOLLAND: What does your schedule show?

18 JUDGE CHESTNUT: Well, the proposed OCA schedule  
19 has intervenor testimony being served on July 10.

20 MR. HOLLAND: All right.

21 JUDGE CHESTNUT: Now, given the fact that it should  
22 have been filed two weeks ago, how about by the 22nd?

23 MR. HOLLAND: I don't have a calendar. Is that --

24 JUDGE CHESTNUT: That is next Friday.

25 MR. HOLLAND: That would be fine.

1 JUDGE FORDHAM: Is that okay with everybody?

2 (No audible response.)

3 JUDGE CHESTNUT: We will say supplemental direct.  
4 And it will just be Mr. White's statement. It won't be  
5 anything else, right?

6 (Pause.)

7 JUDGE CHESTNUT: Mr. Holland? It will just be  
8 Mr. White's statement?

9 MR. HOLLAND: Yes, Your Honor.

10 JUDGE CHESTNUT: Now, is everybody okay with that  
11 date?

12 MR. GRAY: Yes. And Your Honor -- this is Steve  
13 Gray -- you are thinking of having the other parties'  
14 direct on July 10?

15 JUDGE CHESTNUT: Yes.

16 MR. SIMMS: Will there be time to respond to  
17 Mr. White's testimony?

18 MR. HOLLAND: What was the question?

19 JUDGE CHESTNUT: About additional time to respond  
20 to Mr. White's testimony.

21 Why don't we say the 10th and leave it open if you  
22 need additional time just to address that, okay?

23 MR. SIMMS: Okay.

24 JUDGE CHESTNUT: Because I'm not sure how extensive  
25 it will be. I'm sure there will be discovery on it. And

1 I would expect the company to try to accommodate people  
2 on this since it's the company's fault it was not  
3 included June 1st. People should have an adequate  
4 opportunity to review it in order to file their testimony  
5 July 10th. But if that is a problem we can talk about  
6 it, okay? But I would like to set the schedule at this  
7 point and then we can see what needs to be done if  
8 anything in the future.

9 So, according to the proposed OCA schedule  
10 intervenor testimony is July 10 and then the company  
11 would file rebuttal testimony July 30. Surrebuttal  
12 testimony on August 3rd. Hearings August 7th and 8th.  
13 Close the record August 8th.

14 And then the other dates were generated by the  
15 spreadsheet that the Commission uses for these kind of  
16 cases. So that would be main briefs August 28, reply  
17 briefs September 7, recommended decision October 12 and  
18 the end of the suspension is December 1st.

19 MR. GRAY: Your Honor, Steve Gray for the OSBA.

20 I actually have not seen that schedule. I am here  
21 home today. My only request is on August 7 at 10:00 a.m.  
22 there is a York Water base rate case with Judge  
23 Weismandel. I am asking that the 7th and 8th be made the  
24 8th and 9th if that is at all possible.

25 JUDGE CHESTNUT: I don't have a problem with that.

1 Does anybody else?

2 MR. HOLLAND: No, Your Honor.

3 JUDGE CHESTNUT: Okay. We could say the hearing  
4 then would be the 8th and 9th.

5 Shall I go through this again just to be sure  
6 everybody understands it? Or does everybody understand  
7 it?

8 MS. BURAK: Your Honor, this is Charis Burak.

9 The only thing I would add just to be on the  
10 complete safe side, I guess, is that all testimony would  
11 be open to all parties. I think you had mentioned the  
12 company's rebuttal testimony. I would just ask that all  
13 parties have the opportunity to file rebuttal or  
14 surrebuttal if that is necessary.

15 JUDGE CHESTNUT: Well, that's a good point. It  
16 seems to me if everybody is filing rebuttal we won't need  
17 surrebuttal then because everybody will have presented  
18 their direct and had a chance to respond to everybody  
19 else's direct at that point.

20 MS. BURAK: It doesn't mean that, Your Honor. We  
21 could discuss that, if you would like. I guess what I  
22 was just suggesting was that if someone were to file  
23 direct testimony that any party would have the  
24 opportunity to file rebuttal testimony to respond to that  
25 direct.

1 JUDGE FORDHAM: Yes. That is a good point,  
2 Ms. Burak, and we will do that. But I am saying in that  
3 case we don't need the surrebuttal.

4 MR. CLEARFIELD: No, Your Honor, we do need it.

5 JUDGE CHESTNUT: Why?

6 MR. CLEARFIELD: Because the other parties are  
7 going to respond to our direct case -- this is PGW's case  
8 -- in their rebuttal on July 30.

9 JUDGE CHESTNUT: Right.

10 MR. CLEARFIELD: We need an opportunity to respond  
11 to that.

12 JUDGE CHESTNUT: Why?

13 MR. CLEARFIELD: Why?

14 MR. SIMMS: No. What is going to happen, Your  
15 Honor, is that on July 10, as I understand it, all the  
16 parties except for the company will file direct  
17 testimony.

18 JUDGE CHESTNUT: Right.

19 MR. SIMMS: On July 30, for example, Ms. Burak's  
20 client may feel it necessary to respond to the Office of  
21 Trial Staff's or the Office of Consumer Advocate's direct  
22 testimony.

23 JUDGE CHESTNUT: Right.

24 MR. SIMMS: And that is what she was talking about.

25 JUDGE CHESTNUT: That's right. That includes the

1 company responding to the intervenor testimony as well.

2 MR. SIMMS: Yes, that's correct, Your Honor. And  
3 then the other parties, OCA and OTS, would have the  
4 opportunity to file surrebuttal testimony to the  
5 company's or Ms. Burak's client's testimony as well,  
6 rebuttal testimony.

7 MR. HOLLAND: Is that August 3rd or July 30?

8 JUDGE CHESTNUT: August 3rd.

9 MR. SIMMS: August 3rd.

10 MR. HOLLAND: All right.

11 JUDGE CHESTNUT: To tell you the truth, I don't see  
12 any need for it. If you all have a chance to present  
13 your testimony, respond to everybody else's direct, I  
14 don't see why you need to respond to everybody's  
15 rebuttal.

16 MR. KEENE: Your Honor, this is Steve Keene for the  
17 OCA.

18 I mean, I have seen it time and time again when the  
19 company will come in with their rebuttal and present new  
20 arguments that we have not had a chance to address. So I  
21 think it is really critical that the intervenors have an  
22 opportunity to file surrebuttal.

23 JUDGE CHESTNUT: Okay. You know, I'm not the one  
24 filing it. It just seems to me that it would be easier  
25 on all of you and it would force you to do a better job

1 in your testimony, frankly, if it weren't in there. But  
2 if you want it in there, it's okay with me.

3 MR. SIMMS: Thank you, Your Honor.

4 MS. BURAK: Thank you, Your Honor.

5 JUDGE CHESTNUT: But I would expect that it would  
6 be very brief at that point since the hearings would be  
7 starting the next week.

8 Then at this point, I have supplemental PGW  
9 testimony June 22nd, intervenor testimony July 10, all  
10 party rebuttal testimony July 30, all party surrebuttal  
11 testimony August 3rd, hearings August 8th to 9th.

12 MR. HOLLAND: The 8th to 9th or the 7th?

13 JUDGE CHESTNUT: I thought it was 8th and 9th to  
14 accommodate Mr. Gray, I think.

15 MR. GRAY: That was my request.

16 JUDGE CHESTNUT: Main briefs August 28, reply  
17 briefs September 7, recommended decision October 12. I  
18 will have to check and see what actually is the date of  
19 the Commission public meeting and see when that slots in.  
20 But to wrap up by December 1st.

21 Does anybody else have any comments on the schedule  
22 at this point?

23 MR. HOLLAND: What date did you have for your  
24 decision, Your Honor?

25 JUDGE CHESTNUT: October 12. But of course there

1 may be slippage there.

2 MR. GRAY: Your Honor, Steve Gray.

3 JUDGE CHESTNUT: Yes?

4 MR. GRAY: Hearings in Philadelphia?

5 JUDGE CHESTNUT: Yes. I am going to address that.

6 Hearings will be in Philadelphia and will start at  
7 10 o'clock on the first day and nine o'clock on the  
8 second day if that's okay with everybody.

9 MR. HOLLAND: Yes, Your Honor.

10 JUDGE CHESTNUT: Or you can make it earlier, if you  
11 want. I am here early. But they will go to four  
12 o'clock.

13 Now, in accordance with that schedule we just  
14 discussed, testimony is to be served and received no  
15 later than 4:30 on the dates indicated. They are dates  
16 of receipt by 4:30, not dates of mailing. And I expect  
17 that you will E-mail them to everybody because I am sure  
18 everybody would like to have it by E-mail so they can  
19 distribute it or do whatever they want.

20 Is that a problem for anybody?

21 MR. HOLLAND: No, Your Honor.

22 JUDGE CHESTNUT: Of course you are free to serve it  
23 on more than the official service list. So if a party  
24 has an expert discuss that amongst yourselves in terms of  
25 how they want to be served. But I would expect everybody

1 to show some good faith here and accommodate each other.

2 Do not file copies of your testimony with the  
3 secretary. It will be made part of the record after it  
4 is adopted by a witness and admitted into the record.

5 Do not fax testimony to me. If you have a problem  
6 getting it to me by the due date call me and it is  
7 usually not a problem. I will take it the next day. But  
8 I don't want these 300 page faxes clogging up our  
9 machine.

10 All testimony should -- and this is basic -- all  
11 testimony should be filed premarked with numerical  
12 sequential statement numbers and they must list on the  
13 cover sheet the issue addressed in that statement.

14 Any motions or objections to the prefiled direct,  
15 rebuttal or surrebuttal testimony must be presented in  
16 writing no later than the day prior to the day the  
17 witness is scheduled to testify. Oral motions other than  
18 for good cause shall not be accepted.

19 Now, after everybody has filed their testimony and  
20 if it seems like we do need to have the hearing we will  
21 talk about how to structure the hearing in terms of  
22 witness presentation.

23 Now briefs. They must be filed with the secretary  
24 and received by all parties no later than 4:30 p.m. on  
25 the dates we discussed. In addition, each party is

1 directed to file with its brief with the secretary and me  
2 a copy of it on a disk in a format compatible with Word  
3 97. Or if you want to E-mail it to me instead of a disk  
4 that's fine. I just put it all on a zip, you know, and  
5 take care of it that was.

6 Now, each brief regardless of length must contain a  
7 table of contents, proposed of findings of fact, a  
8 discussion, proposed conclusions of law and proposed  
9 ordering paragraphs. I can't stress to you how important  
10 it is to have a table of contents.

11 Does anybody have any questions, then, about the  
12 documents, you know, the testimony and briefs that we  
13 just discussed?

14 Mr. Holland?

15 MR. HOLLAND: No, Your Honor.

16 JUDGE CHESTNUT: Anybody else?

17 (No audible response.)

18 JUDGE CHESTNUT: Then I have come to my  
19 miscellaneous section here.

20 Do not send me copies of documents that you have  
21 faxed. Faxing is sufficient. But if you are going to  
22 E-mail something sometimes it is a good idea to follow it  
23 up with a hard copy.

24 Feel free to contact my secretary, Kathy  
25 Niesborella, via phone or E-mail if you have any

1 questions. Her last name is N-I-E-S-B-O-R-E-L-L-A. If  
2 you need to talk to me or contact me I prefer you do it  
3 by E-mail so that everybody is aware of it even if it is  
4 just a procedure question. I am just more comfortable  
5 that way.

6 And that is the end of my agenda here.

7 Mr. Holland, do you have anything further?

8 MR. HOLLAND: No, Your Honor.

9 JUDGE CHESTNUT: Does anybody in Harrisburg?

10 MR. CLEARFIELD: Your Honor, this is Dan  
11 Clearfield. May I indulge just for a second?

12 It occurred to me that I wanted to put on the  
13 record the reason why PGW filed assuming it was going to  
14 be a three month procedure in this GCR process. Because  
15 we were handling that and it really is Wolf Block's  
16 determination I will state for the record.

17 You made a statement about 1307(f) having a six  
18 month procedure. In our last GCR and in this one it is  
19 our view that that procedure does not apply because  
20 section 2212 of the Public Utility Code exempts PGW from  
21 those procedures and those rules until its restructuring  
22 filing. And that is section 2212(d). And it also says  
23 that the ratemaking methodology and requirements that  
24 were in place in front of the Philadelphia Gas Commission  
25 would apply to PGW for some some time. And that is in

1 2212(e).

2 The procedure that was always used for PGW was a  
3 three month review procedure for its GCR. So our view,  
4 our position, when we filed this was that section 1307(f)  
5 did not apply. And the only parts that applied were the  
6 parts that PGW agreed would apply as part of the prior  
7 GCR, Your Honor. If you recall there was a series of  
8 conditions that the Commission applied and that that we  
9 accepted, one of which was that we would file our next  
10 GCR in accordance with the filing requirements that  
11 1307(f) imposes on other companies, non-municipals, that  
12 are covered by that section.

13 So that is why we filed. That is why we believed  
14 that there was a three month process that would be in  
15 place. And I think it is important for you to understand  
16 it was not because we didn't understand what 1307(f) said  
17 or that it was a six month process. We completely  
18 understood it. And for the record, that was discussed  
19 with other parties and with the Commission.

20 Now, I am not trying to reopen the issue or trying  
21 to ask you to reconsider your ruling. We can accommodate  
22 the effective date being, you know, September 1st and the  
23 decision being December as you indicated. But I didn't  
24 want you to think it was because of any lack of  
25 understanding of the Public Utility Code. It is a

1 difference of opinion respectfully as to what sections  
2 apply.

3 JUDGE FORDHAM: Mr. Clearfield, I have heard that  
4 argument over and over and over. And I think it is  
5 important that everybody understand that I am accepting  
6 the ratemaking methodology here. But there is nothing in  
7 2212 that indicates that the Commission has to follow the  
8 Gas Commission's procedural practices. But I don't want  
9 to get into that because I don't think it is appropriate.

10 MR. CLEARFIELD: 2212(d) says that --

11 JUDGE CHESTNUT: Right. Right. But on the other  
12 hand, the statute also indicates which portions of the  
13 Public Utility Code are not to be applied and 1307 is not  
14 one of them.

15 But it is not appropriate for you to make this  
16 argument at this point. If you want to file something or  
17 address it in your brief you are more than welcome to do  
18 that.

19 MR. CLEARFIELD: I just wanted to make sure it was  
20 clear that there is a reasonable difference of opinion  
21 about this issue and that is why we didn't --

22 JUDGE CHESTNUT: Well, why don't you just say there  
23 is a difference of opinion? I will accept that.

24 MR. CLEARFIELD: Okay. There is a difference of  
25 opinion. Somebody's is reasonable and somebody's isn't.

1 JUDGE CHESTNUT: Right.

2 Anything else, then, before we conclude this  
3 prehearing conference?

4 MR. HOLLAND: No, Your Honor.

5 JUDGE CHESTNUT: This prehearing conference is  
6 adjourned and we will be -- I guess you will be receiving  
7 a prehearing order that incorporates the discussion that  
8 we have had here today.

9 Thank you very much.

10 MR. HOLLAND: Thank you, Your Honor.

11 (Whereupon, at 10:55 a.m., the prehearing  
12 conference was concluded.)

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I hereby certify, as the stenographic reporter,  
that the foregoing proceedings were taken  
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