

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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 :  
Application of Duquesne Light Company :  
 for a Certificate of Public Convenience : Docket No.  
 Under Section 1102(a)(3) of the Public : A-110150F0035  
 Utility Code Approving the Acquisition of :  
 Duquesne Light Holding, Inc. by Merger :  
 :  
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 :  
Application of DOE Communications Network :  
Services LLC for a Certificate of Public : Docket No.  
 Convenience Under Section 1102(a)(3) of : A-311233F0002  
 the Public Utility Code Approving the :  
 Acquisition of Duquesne Light Holding, :  
 Inc. by Merger :  
 :  
 Initial Pre-Hearing Conference :  
 ----- X

Pages 1 through 19

Hearing Room 3  
Commonwealth Keystone Building  
Harrisburg, Pennsylvania

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Tuesday, November 28, 2006

Met, pursuant to notice, at 10:02 a.m.

BEFORE:

ROBERT MEEHAN, Administrative Law Judge

*J.M.*

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WITNESS INDEX

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FORM 1

EXHIBIT INDEX

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FOR IDENTIFICATION IN EVIDENCE

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FORM 1

P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE ROBERT MEEHAN: This is the  
3 date set by the Pennsylvania Public Utility Commission for a  
4 pre-hearing conference on the Application of Duquesne Light  
5 Company at Docket No. A-110150F0035 and the Application of  
6 DQE Communications Network Services at Docket No.  
7 A-311233F0002.

8 I am Robert Meehan, the Administrative Law Judge  
9 assigned by the Commission to preside over the matter and  
10 render an initial decision in this case.

11 For everyone's benefit in Harrisburg, with me here in  
12 Pittsburgh is Erin Creahan for Strategic Energy and Gary  
13 Jack from Duquesne Light Company.

14 If I could, starting with counsel for the applicants,  
15 if they would please identify themselves so I know who is  
16 present in Harrisburg. Mr. Gang?

17 MR. GANG: Good morning, Your Honor. Michael W. Gang  
18 with Post & Schell for Duquesne Light Company and the  
19 Macquarie Consortium. I'll spell that for the reporter:  
20 M-A-C-Q-U-A-R-I-E.

21 MR. TUBBS: Good morning, Your Honor. This is Andrew  
22 Tubbs, also for Duquesne and Macquarie, Post & Schell.

23 MR. ASMUS: Good morning, Your Honor. This is Dan  
24 Asmus with the Office of Small Business Advocate.

25 MS. SANTOLLA: Good morning, Your Honor. Jennedy

1 Santolla with the Office of Consumer Advocate.

2 MR. LAWRENCE: Good morning, Your Honor. Darryl  
3 Lawrence for the Office of Consumer Advocate.

4 MR. ECKENROD: Good morning, Your Honor. This is  
5 Robert Eckenrod with the Office of Trial Staff and also  
6 Charles Daniel Shields is here with me as well.

7 MR. VULLO: Good morning, Your Honor. Joe Vullo for  
8 Community Action Association of Pennsylvania.

9 MR. RUBIN: Good morning. Scott Rubin representing  
10 IBEW Local 29.

11 MR. STEWART: Good morning, Your Honor. Todd Stewart  
12 with Hawke, McKeon, Sniscak & Kennard for Dominion Retail.

13 MR. BENSHOFF: Good morning, Your Honor. Adam  
14 Benshoff with McNeese, Wallace & Nurick on behalf of the  
15 Duquesne Industrial Intervenors.

16 MR. FORSHAY: Good morning, Your Honor. Paul  
17 Forshay, Sutherland, Asbill and Brennan on behalf of the  
18 Pennsylvania Large Energy Users Coalition.

19 MR. McCAFFREY: Good morning, Your Honor. John  
20 McCaffrey with the law firm of Stinson, Morrison and Hecker  
21 on behalf of Citizen Power, Inc.

22 MR. MOODY: Good morning, Your Honor. Kevin Moody of  
23 Wolf Block on behalf of the Retail Energy Supply  
24 Association.

25 JUDGE MEEHAN: Okay. Have we got everybody?

1 MR. GANG: That's it, Your Honor.

2 JUDGE MEEHAN: All right. I noted a number of  
3 petitions to intervene in this proceeding, none of which  
4 appear to have been opposed by the company. To clear up  
5 that formality, those petitions will be granted and  
6 everything consolidated with these two dockets.

7 I also noted a motion for the admission of Mr.  
8 McCaffrey pro hac vice. I have not seen any objection to  
9 that motion. That request then is granted.

10 MR. McCAFFREY: Thank you, Your Honor.

11 JUDGE MEEHAN: With those two bookkeeping items, I  
12 have noted that the parties have generally agreed on a  
13 proposed schedule which was submitted with the pre-hearing  
14 memorandum by Post & Schell, and I am presuming, not having  
15 received any objections or comments on that, that that  
16 proposed schedule remains acceptable to the parties. Am I  
17 correct on that?

18 MR. ASMUS: I believe you are, Your Honor.

19 JUDGE MEEHAN: All right. The pre-hearing order then  
20 will incorporate that schedule and I will let you all know  
21 that I already had reserved the days of January 30 through  
22 February 1 inclusive as hearing dates on the Commission's  
23 calendar.

24 I also noted in the pre-hearing memorandum from the  
25 Office of Consumer Advocate there appears to have been some

1 agreement as to a modification to the Commission discovery  
2 regulations and I am presuming, no objection being received  
3 to the contrary, that that proposed modification remains  
4 acceptable to all parties.

5 MR. GANG: Your Honor, this is Mr. Gang. I spoke to  
6 Mr. Lawrence and Mr. Eckenrod just briefly this morning  
7 about one possible modification of the discovery schedule.

8 The time period for the company to file, or for that  
9 matter anybody to file testimony in response to the direct  
10 testimony of parties other than the company is a relatively  
11 short period and covers the holidays.

12 I have requested and Mr. Eckenrod and Mr. Lawrence  
13 have agreed that the time period for answering discovery for  
14 the period following the direct testimony of other parties  
15 be seven days but no less than five business days, which is  
16 exactly what Mr. Lawrence proposed in OCA's pre-hearing  
17 memorandum for answering discovery after rebuttal.

18 So at least, I haven't had a chance this morning to  
19 talk to all parties about that, and so maybe we should open  
20 the floor to any comments on that, assuming my explanation  
21 is clear.

22 JUDGE MEEHAN: In other words, you're proposing that  
23 after rebuttal testimony has been submitted, answers to  
24 interrogatories be five business days and/or seven calendar  
25 days?

1 MR. GANG: I think I must have misspoke, Your Honor.  
2 After the direct testimony of other parties is submitted --  
3 Mr. Lawrence proposed that after rebuttal, and I'm asking  
4 that that be made the rule once the direct testimony of  
5 other parties is submitted as well as for rebuttal, so it  
6 would be seven calendar days but no less than five business  
7 days.

8 And that's a little bit unusual rule, but I'm trying  
9 to account for the fact that there are holidays following  
10 December 21st and I'm sure I could come up with an  
11 interrogatory that was due effectively in two business days  
12 during that period if I tried hard enough. Do you follow me  
13 now, Your Honor?

14 JUDGE MEEHAN: I do. Let me first check with the  
15 people sitting here with me in Pittsburgh. Are there any to  
16 objections to that discovery proposal?

17 (No response.)

18 JUDGE MEEHAN: Anybody in Harrisburg have an  
19 objection to that proposal?

20 (No response.)

21 JUDGE MEEHAN: Hearing none, then that will be the  
22 modification to the regulations, that beginning with the  
23 21st of December, then answers to interrogatories will be  
24 due within seven calendar days but no less than five  
25 business days after service.

1           Let me just ask at this point, a couple things that I  
2 wish to bring up. One, everyone has my e-mail address and I  
3 believe from all the certificates of service that I've  
4 received I probably have everybody else's.

5           We're going to use electronic service. Date of  
6 service will be date of transmittal. What used to be  
7 referred to as the mailbox rule, that if things were served  
8 first class mail, you had three extra days to get your  
9 answers then will not be applicable except, any submittal  
10 made after twelve noon on a Friday will be deemed served on  
11 the next following business day. With that exception, then,  
12 date of service is date of transmittal.

13           Also, in case it wasn't clear on the dates listed for  
14 the service of testimony and the service of briefs, I intend  
15 to require that to be in-hand service dates. Those are the  
16 dates that the parties are to be in receipt of the document  
17 in question, not the date that it's deposited in the mail.  
18 If it's done electronically, that's fine.

19           When sending me documents electronically, please send  
20 them in Word format. It's much easier on my system. But as  
21 I found out with the problems the other day, please do not  
22 try to include them in a .zip file. Our system will  
23 automatically reject .zip documents. And if they're under  
24 the three megabyte limitation, I should have no problem  
25 receiving anybody's transmittal.

1 Other than that, I really have nothing that I  
2 intended to bring up this morning, and I wondered if anybody  
3 else wished to raise anything during this pre-hearing  
4 conference.

5 MR. GANG: Mr. Gang, Your Honor.

6 JUDGE MEEHAN: Yes?

7 MR. GANG: We have not addressed objections to  
8 interrogatories. I would be curious as to -- well, let me  
9 first say that we've been working very constructively with  
10 the parties, have answered I believe most of their  
11 interrogatories, worked out problems where we encountered  
12 them and the process has gone fairly well as least from the  
13 applicants' perspective. Others can speak to it if they  
14 wish.

15 But I wanted to get a sense of whether you wished to  
16 follow the standard rules, if it gets to objections to  
17 interrogatories, or if you had some other procedure in mind.

18 JUDGE MEEHAN: What I have generally done in cases  
19 like this, I don't want to see the interrogatories unless  
20 they become a matter of contention.

21 If there's an objection, I of course want to be  
22 served with a copy of the objection. I expect the parties  
23 involved, the serving party, the objecting party to try to  
24 resolve the matter informally, but if a motion to compel is  
25 filed, part of that motion will require a statement by the

1 moving party that reasonable efforts were made to resolve  
2 the dispute prior to submitting the motion.

3 Given the time frames involved, I would suggest that  
4 any objection be given orally three days after receipt and,  
5 if it's unresolved, a motion to compel may be filed five  
6 days thereafter.

7 MR. GANG: I think you may have misspoke there, Your  
8 Honor.

9 JUDGE MEEHAN: Yes?

10 MR. GANG: An objection would be filed?

11 JUDGE MEEHAN: I'm sorry, the objection be  
12 communicated orally within three days. If unresolved, the  
13 objection must be filed in writing five days after receipt  
14 of the interrogatory. Within five days after receipt of the  
15 objection, motion to compel may be filed and I will make my  
16 ruling as quickly as possible thereafter.

17 MR. GANG: That's certainly acceptable to the  
18 applicants, Your Honor. I just would ask that those rules  
19 be applied today since they are a shortening of the periods  
20 under the Commission's regulations.

21 JUDGE MEEHAN: They will be incorporated in the pre-  
22 hearing order, but starting today, those will be the time  
23 frames for objections and motions or interrogatories,  
24 requests for production and the like.

25 MR. GANG: Thank you, Your Honor.

1 JUDGE MEEHAN: Any further matters anyone wishes to  
2 bring up?

3 MR. GANG: One moment, Your Honor. May I go off-line  
4 and ask Mr. Lawrence -- well, I'll just ask out loud. The  
5 pre-hearing memorandum of OCA indicates that there has been  
6 no indicated interest in public input hearings. At this  
7 point, Your Honor, do you want to address that or do we just  
8 leave that unaddressed at this point?

9 JUDGE MEEHAN: I am looking at the time frame that's  
10 given here, and if public input hearings have not already  
11 been put up on the schedule, I sincerely doubt it's going to  
12 be possible to have any scheduled prior to January 30th  
13 commencement of the technical hearings.

14 If someone wants to make that request, I can  
15 certainly see if it's possible, but I'm questioning the time  
16 frame. Here it is the 28th of November and it usually  
17 requires a number of weeks to try and get these things  
18 scheduled.

19 MR. LAWRENCE: Your Honor, Darryl Lawrence for the  
20 OCA. As we put in our pre-hearing memorandum, at this time  
21 the OCA has had no request for public input hearings in this  
22 matter. In fact, I believe we've had absolutely no request  
23 from anyone in the public relative to this matter, so at  
24 this time we do not feel that it is necessary.

25 Should the situation change significantly in the very

1 near future, I would let Your Honor and the parties know of  
2 that. However, we do not expect that to be the case.

3 JUDGE MEEHAN: All right. Well, thank you for that,  
4 and with that information, then I am not going to make any  
5 request to the scheduling office to try and get any of those  
6 scheduled at this point in time.

7 The one item I guess we need to address is the  
8 location for the formal hearings. I am presuming that they  
9 would be in Harrisburg, given the number of parties in the  
10 various parts of Pennsylvania and from D.C., that counsel  
11 would be traveling. If I am incorrect in that, please let  
12 me know.

13 (No response.)

14 JUDGE MEEHAN: Hearing nothing to the contrary, then,  
15 I will arrange to have these hearings set for the  
16 Commission's offices in one of the rooms there in  
17 Harrisburg.

18 Is there any other item that anyone wishes to address  
19 at this point in time?

20 MR. SHIELDS: Mr. Shields for OTS, Your Honor. I  
21 think I heard you say this. I just wanted to clarify.  
22 Would I be correct that electronic delivery of documents  
23 would satisfy the in-hand requirements as long as there was  
24 a follow-up hard copy provided by regular first class mail?

25 JUDGE MEEHAN: Correct.

1 MR. SHIELDS: Thank you, Your Honor.

2 JUDGE MEEHAN: I usually always try to -- sometimes I  
3 forget, so if that happens, let me know, but I usually try  
4 to always send out a hard copy of anything I send  
5 electronically.

6 From my office, unless someone tells me there's a  
7 tremendously urgent need, my orders and my communications I  
8 limit strictly to counsel of record. Unless you feel  
9 there's some urgent need that any particular witness be made  
10 aware of a ruling I make, let me know, but generally it  
11 would just be to counsel of record and not to every name on  
12 the service list.

13 MR. SHIELDS: Mr. Shields again. Thank you for that  
14 clarification, Your Honor. We'll gladly forward over  
15 anything that you issue. I would ask the parties to, as  
16 we've requested in our OTS pre-hearing conference  
17 memorandum, I would ask as a matter of course you copy the  
18 identified OTS expert witnesses in any and all e-mails sent  
19 to Prosecutor Eckenrod and myself in the course of this  
20 proceeding. That's all I have, Your Honor. Thanks very  
21 much.

22 JUDGE MEEHAN: I would make that for all parties,  
23 that there are a number that have indicated names and  
24 addresses, electronic and otherwise, for witnesses, advisers  
25 and the like. All parties are to keep each other's experts

1 and witnesses on their service list and provide copies of  
2 all documents sent to that particular party.

3 I would just say that my practice is, I usually do  
4 send that only to counsel unless there's a specific request  
5 on a certain document otherwise.

6 Anything further?

7 (No response.)

8 JUDGE MEEHAN: All right, then. Hearing none, I will  
9 reduce today's discussion to a pre-hearing order and send it  
10 out to all counsel as quickly as possible. Thank you very  
11 much for your participation and everyone being available in  
12 Harrisburg.

13 (Whereupon, at 10:18, the proceedings were  
14 concluded.)

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C E R T I F I C A T E

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

COMMONWEALTH REPORTING COMPANY, INC.

By: *John A. Kelly*

John A. Kelly,  
Certified Verbatim Reporter

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FORM 1