

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In the Matter of :
Application of Hidden Valley :
Utility Services, LP - Water; :
Application of Hidden Valley :
Utility Services, LP - Wastewater. : Docket Nos. A-210117
For approval to offer, render, : A-230101
furnish, or supply water and waste- :
water services to the public in :
Hidden Valley, PA. :
(Initial Telephonic Pre-Hearing :
Conference) :
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Pages 1 through 61

Hearing Room 1
Pittsburgh State Office Building
300 Liberty Avenue, Suite 1112
Pittsburgh, Pennsylvania 15222

DOCUMENT

Thursday, August 5, 2004

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

BEFORE:

ADMINISTRATIVE LAW JUDGE JOHN H. CORBETT, JR.

APPEARANCES:

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WITNESS INDEX

WITNESSES:

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EXHIBIT INDEX

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FOR IDENTIFICATION IN EVIDENCE

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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE JOHN H. CORBETT: This is the
3 time and place scheduled for a telephonic pre-hearing
4 conference on two applications of Hidden Valley Utility
5 Services, LP. The first application is docketed at A-00210117;
6 this is for the provision of water service. The second
7 application is at Docket Number A-00230101; this application is
8 for wastewater service.

9 I should note for the benefit of the parties and for the
10 record that I'm sitting in a hearing room in Pittsburgh with a
11 court reporter. The court reporter is running tape recording
12 equipment; so, I'd alert the parties to the fact that
13 everything that we say while we're on the record is being tape
14 recorded.

15 This morning we have a number of parties on the line,
16 and I'll try to go through these parties for the benefit of the
17 record. Representing Hidden Valley, we have Carl Engleman and
18 James Beener. Representing the Commission's Office of Trial
19 Staff, we have Charles Daniel Shields. Representing the Office
20 of Consumer Advocate, we have Erin Gannon and a representative
21 of the OCA by the name of Marilyn Kraus. And we have Angela
22 and David Boyter.

23 Before anyone speaks this morning I would ask the
24 speaker to identify themselves for the benefit of the court
25 reporter; because, I may recognize certain voices but my

1 recognition is not the important one; it's the court
2 reporter's; the court reporter may not recognize a voice; it's
3 important that we get a clear record of what transpires here
4 this morning.

5 I've identified the parties named in this action so far.
6 I also acknowledged receiving pre-hearing conference memoranda
7 from Hidden Valley; the Office of Trial Staff; and also, the
8 Office of Consumer Advocate. I've reviewed those pre-hearing
9 memoranda.

10 The purpose of this morning's pre-hearing conference is
11 to see where we are at in the litigation, and then see what
12 needs to be done to move this case forward, and perhaps
13 expedite this matter to a swift and reasonable conclusion.

14 While we have been waiting to go on the record, the
15 parties have been discussing certain matters with regard to a
16 possible litigation schedule and possibly a referral to the
17 Office of Administrative Law Judge Mediation Unit. And my
18 thoughts on that are extremely favorable. We have had a great
19 of success in the past with our mediation efforts. And we can
20 certainly do that.

21 At this point, however, the parties are somewhat -- I
22 want to say -- not in disarray, but in somewhat disagreement as
23 to whether to establish a litigation schedule or proceed -- or
24 ask for a mediation or proceed on this -- on a parallel course
25 at the same time. So, let me just turn to the parties and ask

1 them -- since that seems to be the predominate issue at this
2 point -- what their thoughts are and where they would like to
3 go at this point with this litigation.

4 Mr. Engleman, we'll begin with you, sir.

5 MR. ENGLEMAN: Your Honor, we do not have clearance from
6 our clients to consent to mediation at this point. We can --
7 you know, we can make a couple of phone calls and get back to
8 the parties in, you know, in a very quick -- in very short
9 order on that. We do have authority to discuss scheduling a
10 global settlement conference between the parties. However,
11 it's the desire of Hidden Valley Utility Services, if possible,
12 to set a litigation schedule today as the company is very
13 interested in concluding this proceeding as quickly as possible
14 so that they can have, at least, you know, some type of
15 forecast as to -- you know, as to operations and the like in
16 the event that we are not able to resolve these issues either
17 via settlement or via mediation after we obtain our client's
18 consent for that.

19 Today, if possible, Your Honor, we'd also like to have a
20 discussion regarding the issues that are going to be the
21 subject of this litigation as certain things have transpired
22 and I believe the parties have a bit of a different take on the
23 issues that are pertinent to this litigation.

24 JUDGE CORBETT: Okay.

25 Mr. Shields, what your thoughts?

1 MR. SHIELDS: Yes, good morning, Judge.

2 As Your Honor has correctly characterized our off-the-
3 record discussions, I was the party who suggested the
4 mediation; that, we avail ourselves to the Office of
5 Administrative Law Judges' mediation schedule. While I
6 understand that the company wants some sort of finite date
7 inasmuch as this is not a base rate proceeding where there is
8 some sort of statutory deadline for the Commission to act, I
9 understand and I respect that. And that's precisely the
10 reason, Judge, why I suggested mediation. The company has also
11 indicated that they're interested in narrowing down the issues.
12 And, quite frankly, I'm not sure that we are either willing or
13 capable to do that at this point. In my experience the
14 mediation process -- one of it's particular advantages is it
15 establishes a date certain in the not so near future where all
16 the parties need to gather their resources and focus their
17 energies and clarify their issues so that we can go to the
18 mediation session and hash out -- and, quite frankly, find out
19 exactly what the issues are.

20 As Your Honor is aware, these applications -- the
21 filings of these applications were prompted via settlement of
22 an Office of Trial Staff complaint. I don't know how thorough
23 our office intends to present issues in this proceeding. Since
24 the initiation of the Office of Trial Staff, I know the OCA has
25 been involved in application dockets. But, to my knowledge,

1 the Office of Trial Staff has never fully litigated an
2 application docket. But, obviously, since the OTS complaint
3 spurred these applications, we want to keep a hand in; we want
4 to make sure that the rates established as a result of these
5 application dockets are appropriate and that the tariff
6 provisions are specific enough to anticipate and avoid the
7 types of problems that water and wastewater companies have had
8 in our experience.

9 What I'd like to suggest is: We establish immedi--we
10 immediately contact the Office of Administrative Law Judge, if
11 we get the consent from Mr. Engleman's clients, and establish a
12 mediation session within the next several weeks. At which
13 point I can represent that I will come to the table with as
14 much specificity as I possibly can. And hopefully one
15 mediation session will do it. As an alternative to that:
16 Maybe we could also establish a date for the filing of any
17 company testimony.

18 One of the things that concerns me, I received the
19 copies -- as Your Honor indicated, the parties had distributed
20 electronically -- I've received hard copies of pre-hearing
21 memorandum from the Office of Consumer Advocate and from the
22 company; and they seem to be talking about direct testimony,
23 rebuttal testimony, surrebuttal testimony. And, at this point,
24 our office is not necessarily certain that it's in the best
25 interest of expediency or Your Honor's time, our time, the

1 other parties' time, to fully -- and to have a fully blown
2 litigation when the distinct possibility exists that one
3 mediation session may, hopefully, resolve a number of the
4 issues, perhaps not all.

5 So, having said all that, Judge, I'm prepared to agree
6 to mediation, uh -- if it's Your Honor's pleasure, to establish
7 a full litigation schedule. At this time, I have my calendar
8 here before me. I'd be certainly willing to do that, although
9 I'm not particularly enthusiastic about doing that -- or the
10 necessity for doing that at this time.

11 That's all I have, Judge. Thanks for the opportunity to
12 speak.

13 JUDGE CORBETT: Sure.

14 MR. ENGLEMAN: Excuse me, Your Honor, this is Carl
15 Engleman again. Would it be helpful if either myself or Mr.
16 Beener contacted our client to see if we can get clearance to
17 consent to mediation prior to the end of this conference call?

18 JUDGE CORBETT: Oh, you want to take a short recess and
19 do that at this point?

20 MR. ENGLEMAN: Yes, Your Honor----

21 JUDGE CORBETT: I don't----

22 MR. ENGLEMAN: if that would be allowable. I think we
23 could probably -- Mr. Beener, how long do you think we're going
24 to need?

25 MR. BEENER: Knowing that our client -- our primary

1 contact is out of town -- I mean, I'm hoping we could do it in
2 a half-an-hour.

3 JUDGE CORBETT: Oh. Well, see, I'm not sure -- I'm
4 rather hesitant to do that because we're engaged with a
5 conference operator this morning. And I don't want to----

6 MR. ENGLEMAN: Well, Mr. Beener -- Jim, this is Carl
7 again. Do you----

8 MR. BEENER: Do you want me to jump off, Carl, and see
9 if I can do it while you guys talk?

10 MR. ENGLEMAN: That'd be fine, if you don't mind that.

11 MR. BEENER: No, I was going to say I can jump----

12 MR. ENGLEMAN: Then just give my office a call and get
13 me a message.

14 MR. BEENER: Yeah, I can, uh -- can I dial back in after
15 we -- or do you want me to call? I'm also wondering about
16 where you are at the moment, Carl, for reasons you know. Are
17 you back in your office?

18 MR. ENGLEMAN: I am back in my office. We had a bit of
19 a -- we had a fire alarm here where we had to clear our
20 building earlier this morning, but thankfully everything is
21 okay.

22 JUDGE CORBETT: Okay. Good.

23 MR. BEENER: Okay. Do you want me to call you back,
24 Carl, at your office?

25 MR. ENGLEMAN: Well, we're -- I mean, Your Honor, is it

1 possible for Mr. Beener to get back on this pre-hearing
2 conference call?

3 JUDGE CORBETT: To be honest with you, I'm not sure how
4 long that window is open, but we're -- I know our conference
5 call, I believe, is scheduled 'til -- let me just seen here
6 what our memo says. One moment, please. One moment. [Appears
7 to examine file.] We have this time set aside until noontime.
8 So, I don't want to go that far -- that long, that's for sure,
9 but...

10 MR. BEENER: Well, let me try, Your Honor----

11 JUDGE CORBETT: You could try that. And if you can't
12 get back in, then you can possibly get----

13 MR. BEENER: I'll get to Carl, through his office----

14 JUDGE CORBETT: Yeah.

15 MR. BEENER: and get you the message that way.

16 JUDGE CORBETT: And maybe Mr. Engleman can then hook you
17 in through his office.

18 MR. BEENER: Okay, very good.

19 JUDGE CORBETT: All right. Thank you, Mr. Beener.

20 MR. ENGLEMAN: Thank you.

21 MR. BEENER: Bye-bye.

22 JUDGE CORBETT: All right.

23 Do you want to proceed to get the thoughts of the other
24 parties while Mr. Beener is off the line? Hello?

25 MR. ENGLEMAN: Yes, Your Honor.

1 JUDGE CORBETT: You have no problem with that, Mr.
2 Engleman?

3 MR. ENGLEMAN: No, Your Honor; we do not.

4 JUDGE CORBETT: Okay.

5 Ms. Gannon, would you -- we're at the point where we'd
6 like to hear from you; what comments you have concerning your
7 thoughts on the litigation process at this point.

8 MS. GANNON: Sure, Your Honor. The OCA would be happy
9 to participate in mediation if the company is amenable to that.
10 We are also amenable to setting up a schedule or, um -- I
11 believe Mr. Shields suggested, perhaps just -- at least
12 starting by setting a time for the company to file direct
13 testimony. Either/or, um, we also can set a litigation
14 schedule and try to, as we do with all cases, settle on a
15 parallel schedule as well----

16 JUDGE CORBETT: All right.

17 MS. GANNON: if possible.

18 Before we got on the line, we had discussed a public
19 input hearing and whether we are mediating or litigating. We
20 would want to have a public input hearing in the service
21 territory at some point, definitely prior to the non-company
22 parties filing any direct testimony, or before any settlement
23 was finalized as a result of mediation.

24 JUDGE CORBETT: Okay, that -- if I could interrupt for a
25 minute. That public input hearing that you are requesting,

1 that would come at some point, perhaps, after the company filed
2 its testimony, but before the other parties filed their
3 testimony?

4 MS. GANNON: Yes.

5 JUDGE CORBETT: Okay.

6 MS. GANNON: And, as I said, if we don't end up setting
7 a litigation schedule, we would still want to have a public
8 input hearing prior to finalizing any settlement.

9 JUDGE CORBETT: Okay. All right.

10 MS. GANNON: With regard to Mr. Engleman's request to
11 try to narrow issues during this pre-hearing: I agree with Mr.
12 Shields; that, it's really premature at this point. As the OCA
13 indicated in our pre-hearing memo, as we continue to conduct
14 discovery, and as we move forward in this case, we will be able
15 to narrow the issues in the testimony that we present.

16 If we are mediating the case, we'll certainly come to
17 the table with our issues as clearly defined as possible. And
18 I agree that we will be able to narrow them through mediation.
19 It may be that we are not able to resolve all of the issues and
20 perhaps we need to preserve one or two of them or how ever many
21 for litigation, but I think we can definitely limit them
22 through mediation and through the filing of testimony.

23 JUDGE CORBETT: Okay. All right.

24 Finally, Ms. Boyter, do you have any comments?

25 MS. BOYTER: Yeah, uh, I -- I'm -- yes, Your Honor. I

1 certainly haven't had any experience with any of the processes
2 so I'm at a disadvantage there. But, I just wanted to make two
3 comments. One was, as far as the public input hearing goes, I
4 would really very much suggest that that be as early as
5 possible; because, if there is going to be any utility to the
6 hearings, they -- it may be that it would raise issues or
7 provide the relevant information that wouldn't otherwise be
8 available and that would effect either mitiga--litigation or
9 any mediation process. I do like the idea of a mediation
10 process or something similar where there is an outside
11 independent party that could just help keep things organized
12 and flowing efficiently. I'm wondering, though, since I
13 haven't had experience with this particular process, whether it
14 would be limited; because, it seems to me that what we've been
15 hearing the issues are -- where there seems to be the most
16 controversy and the biggest differences of opinion involve
17 rates. And the primary determiner of that, it seems, are going
18 to be data. And I don't know how useful the mediation process
19 would be when you really have a data-driven decision to make.
20 And that would be my only comment.

21 JUDGE CORBETT: Okay. I think those were very, very
22 insightful comments, and somewhat follow the line that I was
23 thinking about in this case also.

24 MR. ENGLEMAN: Your Honor, this is Carl Engleman, if I
25 may?

1 JUDGE CORBETT: Yes.

2 MR. ENGLEMAN: Hidden Valley Utility Services agrees
3 with Ms. Boyter; that, a public input session in this
4 proceeding should be held as early as possible. I personally
5 do not see any benefit in a mediation that is potentially
6 finalized and then we have a public input session and all of a
7 sudden there are new issues to be raised. I mean, the
8 mediation proceeding is going to be a give-and-take proceeding
9 on all sides. And for a public input session to be scheduled
10 after a medication where new issues can come up, that is going
11 to effectively, um -- effectively nix any deal that would be
12 reached between the parties, if I may use the vernacular.
13 Secondly, with respect to the issues: The one issue that I
14 believe that should be discussed, if we could today, is the
15 issue of refunds. That seems to be a bit of a bone of
16 contention between the Office of Consumer Advocate and Hidden
17 Valley Utility Services. And, as a basis for Your Honor
18 dismissing the Miller, et al, protest: It was stated as a
19 conclusion of law that the issue of a refund for providing a
20 legal service is irrelevant to any of the cognizable issues in
21 the pending applications of Hidden Valley Utility Services.

22 JUDGE CORBETT: Okay.

23 MR. ENGLEMAN: So, if -- I think that it would benefit
24 the parties if we can resolve the issue of whether refunds are
25 going to be addressed in this case. I think that would make

1 the mediation proceeding much more productive.

2 JUDGE CORBETT: All right.

3 MS. GANNON: Your Honor, if I may weigh in on that?

4 JUDGE CORBETT: Yes. This is Ms. Gannon?

5 MS. GANNON: Yes, this is Erin Gannon.

6 JUDGE CORBETT: Sure.

7 MS. GANNON: With regard to the refund issue: It was my
8 reading of the order that Mr. Miller's complaint was dismissed
9 because his complaint was against Hidden Valley Resort; and
10 that, Your Honor indicated that a refund from Hidden Valley
11 Resort, who is not a party to this proceeding, is irrelevant to
12 the disposition of the Hidden Valley Utility application. And,
13 if that is, in fact, correct, um -- well, that's my
14 understanding of the order. But, with regard to refunds as an
15 issue: In a very recent case, Magee [phonetic] Water Company
16 Application Proceeding, where the company filed an application
17 and also simultaneously sought to set their initial rates,
18 refunds were specifically a part of that case. And the
19 Commission specifically held that the refund issue should be
20 addressed in the same proceeding.

21 JUDGE CORBETT: Right.

22 MR. ENGLEMAN: Your Honor, this is Mr. Engleman, if I
23 may?

24 JUDGE CORBETT: Sure.

25 MR. ENGLEMAN: You know, this case involves a totally

1 separate entity: Hidden Valley Utility Services. Which is,
2 you know, totally separate and distinct from Hidden Valley
3 Resort. Hidden Valley Utility Services was formed with the
4 express intention of offering water and wastewater service to
5 the public. So, therefore, it's the position of Hidden Valley,
6 as we stated in the motion to dismiss Mr. Miller's complaint,
7 and as we need to restate here, that, that was a totally
8 separate entity; it was a separate operating entity. Even the
9 billing that was done -- the selling of the water and
10 wastewater service was done by the Hidden Valley Foundation not
11 by Hidden Valley Resort. So, Hidden Valley Utility Services,
12 LP, is totally removed from any issue of refund.

13 JUDGE CORBETT: Okay.

14 MS. GANNON: Your Honor, I'm sorry...

15 JUDGE CORBETT: Yes, Ms. Gannon.

16 MS. GANNON: This is Ms. Gannon. Two things, really.
17 One is that part of the test for an application for a
18 certificate of service is the financial fitness of a company.
19 And, in this case, Hidden Valley Utility has been providing
20 service without a certificate since February of this year.
21 Understanding that that was with an intent to file this
22 application, however, it's been held in other cases that it's
23 still a defacto utility service up until the point that the
24 application is approved. So, there is a refund issue with
25 respect to Hidden Valley Utility Services. Secondly, it's the

1 OCA's intention, based on information that we've received
2 through discovery, to file a written motion to join
3 indispensable parties to this proceeding; namely, that would be
4 Hidden Valley Resort and Hidden Valley Foundation. And, our
5 basis for that, we will -- we will put in our written motion;
6 but, in general, there is certainly evidence to suggest that
7 there is an ongoing affiliative relationship between those
8 entities.

9 JUDGE CORBETT: Okay.

10 MS. GANNON: And the refund issue for that company would
11 start as of February of this year, going back.

12 JUDGE CORBETT: All right.

13 So far as the issue of refunds: In my view, that is
14 still an open question in this litigation.

15 In reviewing my decision, while the parties have been
16 discussing this matter -- Conclusion of Law Number 6, I
17 believe, sets forth the language that we're looking at here.
18 This refers to the initial decision that I drafted on July
19 14th, 2004, dismissing the complaint of Edwin C. Miller, et al,
20 versus Hidden Valley Resort, LP.

21 At this point, Hidden Valley Resort, LP, is not a party
22 to this proceeding and has not been made -- no one has, as of
23 today, filed an applicat--or a motion to join Hidden Valley
24 Resort, LP, as an indispensable party. Mr. Miller did not file
25 such an applic--or motion.

1 Conclusion of Law Number 6 reads, as follows:, "The
2 contention of the protest complaint of Edwin C. Miller, et al,
3 that Hidden Valley Resort, LP, owes customers a refund for
4 providing illegal service is irrelevant to any of the
5 cognizable issues in the pending application of Hidden Valley
6 Utility Services, LP, to provide public utility water and
7 wastewater service."

8 Okay, that -- in my mind, that leaves open the question
9 of whether or not there is an issue involving refunds from
10 Hidden Valley Utility Services; and it also leaves open the
11 issue of whether or not Hidden Valley Resort, LP, should be
12 made an indispensable party to this proceeding and then asked
13 for some type of refund. So, those issues are still open in my
14 mind. And the parties can convince me at some point, whether
15 at the end of litigation or at some point as to the relative
16 merits, of their positions vis-a-vis those entities and the
17 issue of refunds. So, I hope that gives some light on what my
18 thinking is on the issue. And perhaps you can frame your -- or
19 point your litigation in the appropriate way to advance the
20 interests of your respective clients accordingly.

21 So, with those comments in mind, let's go back to the
22 issues of: Litigation schedule versus mediation; and also, the
23 OCA's request and the company's request for an early public
24 input hearing.

25 On the issue of the public input hearing, let me just

1 say that, normally our scheduling unit needs at least 6 weeks
2 to set up a public input hearing in the service territory of
3 the utility. Quite frankly, we have new schedulers who have
4 just been hired within the last several months to our
5 scheduling unit for the Office of Administrative Law Judge, I'm
6 not sure how many of these public input hearings they have
7 done, and it may take them a little longer to set up a public
8 input hearing. If the parties are contemplating a public input
9 hearing, which seems to be the consensus this morning, then I
10 will go to the scheduling unit and ask them to do so, to set up
11 a public input hearing.

12 Before I do that, what I would like to do is ask the
13 company and OCA if they have any particular site in mind; if
14 they have talked to anyone about the scheduling of a public
15 input hearing, you know, so far as a location of facilities,
16 accessibility of facilities, accessibility of facilities by the
17 generally public, and so on.

18 Mr. Engleman, do you have any thoughts on the matter?

19 MR. ENGLEMAN: Your Honor, I've spoken with our clients
20 regarding the availability of the venue of a Hidden--of
21 somewhere in the Hidden Valley Resort, such as, you know, a
22 conference facility or auditorium or something like that----

23 JUDGE CORBETT: All right.

24 MR. ENGLEMAN: for a public input hearing. They do not
25 have any problem with consenting to host that. However, they

1 do need some advance notice as far as possible dates, to avoid
2 any conflicts with previously scheduled commitments. I'm
3 assuming also, for the purposes here, the company realizes
4 that, you know, folks work during the day. The company does
5 not have a problem with scheduling an evening public input
6 session if that is, uh -- if that is going to be acceptable to
7 the Office of Consumer Advocate. We're just going to need some
8 dates that we can clear this with representatives of Hidden
9 Valley Resort, because, you know, obviously, there are other
10 parties that may have booked the facilities in advance.

11 JUDGE CORBETT: Sure, I understand.

12 Perhaps what we can do -- I think we had talked -- it
13 seems to me that we had talked in the prior case involving the
14 complaint of the OTS and the Boyters against Hidden Valley
15 Resort; that, there was some talk of a public input hearing at
16 that time, and there was a facility available for a public
17 input hearing, I believe. If there is, perhaps, a contact
18 person at Hidden Valley that our schedulers can talk to, to see
19 if the facility meets our needs, perhaps we can begin that way,
20 Mr. Engleman.

21 MR. ENGLEMAN: Very well, Your Honor. I can get you the
22 contact person.

23 JUDGE CORBETT: Okay. Can you email me that
24 information?

25 MR. ENGLEMAN: Yes, Your Honor, we can do that.

1 JUDGE CORBETT: Okay.

2 What we'll do, then, is -- I believe everyone is on the
3 same wave length; that, they'd like to set this public input
4 hearing up as soon as possible.

5 Am I correct in that assumption?

6 MS. BOYTER: Yes, Your Honor. And, um -- however, Mr.
7 Engleman mentioned the possibility of an evening hearing. And
8 given the fact that Hidden Valley is primarily a second home
9 community, I think we have -- pushing 150 full-time residents,
10 uh, when people are coming from an hour or more away, I'd very
11 much like to suggest a weekend hearing, a Saturday, which----

12 JUDGE CORBETT: Oh, boy. That is so bad.

13 MS. BOYTER: I -- I -- Your----

14 MR. ENGLEMAN: Your Honor...

15 JUDGE CORBETT: That is a very, very difficult thing to
16 do.

17 MS. BOYTER: Okay.

18 MR. ENGLEMAN: Your Honor, Hidden Valley Resort is --
19 that's going to be -- for Hidden Valley Resort and Hidden
20 Valley Utility Services, that is going to increase the costs of
21 this exponentially----

22 JUDGE CORBETT: Okay.

23 MR. ENGLEMAN: as far as getting, you know, experts,
24 company personnel, facilities available, um -- you know, normal
25 business is conducted Monday through Friday 8:00 to 5:00.

1 We're willing to be reasonable and do this during the evening
2 because we realize that folks have other commitments, but a
3 weekend is in -- in Hidden Valley Utility Services' view is
4 unreasonable and out of the question.

5 MS. BOYTER: Okay. My neighbors would have -- would
6 have beaten me up if I hadn't tried.

7 JUDGE CORBETT: Okay. That was Ms. Boyter.

8 MS. BOYTER: Yes.

9 JUDGE CORBETT: Okay.

10 MS. GANNON: Your Honor, this is Ms. Gannon from the
11 OCA.

12 JUDGE CORBETT: Yes.

13 MS. GANNON: Certainly we understand the difficulty of a
14 weekend hearing, but perhaps we can set the evening hearing as
15 late as possible to allow the most people travel time.

16 JUDGE CORBETT: Okay. Well...

17 MS. GANNON: 7:30 perhaps?

18 JUDGE CORBETT: I'm sorry?

19 MS. GANNON: 7:30 perhaps?

20 JUDGE CORBETT: Oh, that's starting very late. That is--
21 ---

22 MR. ENGLEMAN: I wouldn't have----

23 JUDGE CORBETT: I think----

24 MR. ENGLEMAN: any objection to that, Ms. Gannon. This
25 is Carl Engleman. I mean, we're willing to be reasonable here.

1 JUDGE CORBETT: Okay.

2 The point is that we have people that are going to be
3 traveling. By the time the hearing is over, it's going to be
4 very late, if we have any kind of attendance; people are going
5 to be traveling mountain roads at night; and I -- you know,
6 that's not always a good thing. People can show up for the
7 public input hearing and they can participate -- you know, they
8 can come in, in the middle of the hearing, if they want, and
9 have their say so or whatever. I'm not all enthused about
10 started a hearing at 7:30. 7:00 is the very latest, I would
11 think; if not earlier than that.

12 MS. GANNON: Okay, Your Honor. Whenever -- I understand
13 your concern about the late night. As long as people can come
14 in, in the middle and sign up, that should be fine.

15 JUDGE CORBETT: Yeah, I have no problem with that.

16 MR. BEENER: Your Honor?

17 JUDGE CORBETT: Yes.

18 MR. BEENER: Jim Beener. I can advise you that you can,
19 in fact, dial back in.

20 JUDGE CORBETT: Well, I'm very glad to hear that. I
21 thought I hear the tone there before, Mr. Beener. Very good.

22 MR. BEENER: Yeah. I just wanted to wait 'til an
23 appropriate time.

24 JUDGE CORBETT: Well, that's fine. All right. Well,
25 one moment. We'll be back to you in just a minute, Mr. Beener.

1 MR. BEENER: Okay.

2 JUDGE CORBETT: Do we have any other comments on the
3 public input hearing?

4 MR. SHIELDS: Yes. Charlie Shields for OTS, Judge, if I
5 may speak?

6 JUDGE CORBETT: [No response.]

7 MR. SHIELDS: I just wanted to put Mr. Engleman's
8 concerns -- assuage some of his concerns about the timing of a
9 public input session *vis-a-vis* mediation sessions. It's often
10 the case in highly litigated, major base-rate proceedings that
11 we conduct settlement discussions and preliminarily narrow a
12 number of issues and simply say that there's no agreement per
13 se, but that, um -- the qualifier is, if there's any particular
14 issues that come up at the public input session, that we can
15 incorporate them into further settlement discussions. To my
16 knowledge, having a public input session after a mediation or a
17 settlement conference has not compromised the settlement or
18 mediation process to the extent that it undermines or
19 eliminates a settlement that otherwise would have gone forward.
20 We simply incorporate additional issues as necessary, but they
21 don't -- to my knowledge, they don't become deal breakers.

22 So, Your Honor, is correct that in our experience, it
23 takes the scheduling office at least 6 weeks to put something
24 together. And that's often the case for the parties who don't
25 know, the Office of Administrative Law Judge always wants to

1 give our commissioners or the commissioners staff an
2 opportunity to attend the public input session. And, of
3 course, working that kind of information and notice through the
4 commission and allowing for an appropriate response time
5 contributes to that 6-week period. And, as Your Honor has also
6 correctly noted, we have a spanking brand new scheduling staff
7 for the most part here in Harrisburg, they are getting their
8 sea legs now, and that may add some particular time.

9 So, what I'd suggest is: If Mr. Beener's report back is
10 that the clients are amenable to a mediation schedule, that we
11 target that in about 30 days and let the ALOJ work out the
12 details for the public input session.

13 JUDGE CORBETT: Okay.

14 Any one else on the public input hearing?

15 COURT REPORTER'S NOTE: [No response.]

16 JUDGE CORBETT: Okay.

17 Mr. Beener, can you share with us what your clients have
18 indicated, if anything, concerning mediation?

19 MR. BEENER: The short version is that: Not being
20 totally acquainted with the details of the mediation process --
21 and with that caveat, uh -- and I just heard Mr. Shields say,
22 "Have a mediation session in about 30 days." The answer is
23 mediation is -- I mean, they would go ahead and agree to that,
24 but they would like it soon.

25 JUDGE CORBETT: Okay.

1 MR. BEENER: And 30 days sounds to me like an awful long
2 time to schedule something where the parties can sit down and
3 work through this process.

4 JUDGE CORBETT: Okay, we -- see, the other thing is,
5 too, I can't box in the mediators because they have their own
6 schedule too.

7 MR. BEENER: Uh-huh.

8 JUDGE CORBETT: We have two mediators that work on these
9 matters, Herb Neric [phonetic] and Bruce Bigelow [phonetic],
10 and they have their own schedule that they have to follow.

11 So, what I would -- here's what I would suggest -- we're
12 going around and around on this. I'd like to bring this to
13 some type of conclusion. What I would suggest is this: I will
14 talk to the people in Harrisburg about the wishes of the
15 parties to perhaps set up a mediation session.

16 Going into the mediation session, there's no commitment
17 one way or the other that the parties are going settle or
18 they're not going to settle or whatever; they just come with
19 the idea that they have the authority to settle, if the
20 conditions are met and if their -- if the conditions are there
21 for them to do so. Otherwise, the -- the session is there for
22 the parties to use, and they're to be used without wasting
23 anybody's time and so forth.

24 My idea is to set up a parallel course here of mediation
25 and also a litigation schedule; and, this way, we're not going

1 to waste anybody's time. The time we spent on the phone this
2 morning will not be -- also will not be also wasted. I'd like
3 to set up a litigation schedule. We can set this up so that
4 the times are far enough in advance without being too far out
5 of sight, so that the mediation proceeding can go forward and
6 perhaps successfully reach some kind of a settlement in this
7 matter. We can have our public input hearing. The parties can
8 see what the concerns of the customers are, what additional
9 issues might be involved in this case, and resolve them if they
10 can. If they can't, then we'll litigate those.

11 At this point I'd like to set the parameters for a
12 litigation schedule. I'd like to see when the parties are
13 contemplating filing testimony and possibly getting an idea as
14 to when they'd like to have hearings in this case. In that
15 way, we know what we're looking at. And it, also, I think,
16 would help the mediator to bring the parties together so that
17 there's some conclusion to both mediation process and the
18 litigation process. So, those are my thoughts. I'd like to
19 have the parties, at this point, think about a litigation
20 schedule, and -- and we'll see what we can do with setting it
21 up at this point.

22 MS. GANNON: Your Honor, this is Ms. Gannon. I would
23 suggest that probably the place to start is to ask the company
24 when they think they can pull together their direct testimony
25 and start from there.

1 JUDGE CORBETT: Right, I -- right. That was my next
2 point.

3 Mr. Engleman, do you have some thoughts on when you'd
4 like to do that?

5 MR. ENGLEMAN: Mr. Beener, what do you think?

6 MR. BEENER: I'm at your discretion, Carl.

7 MR. ENGLEMAN: Okay.

8 As we're sitting here at August the 5th...

9 JUDGE CORBETT: Right.

10 MR. ENGLEMAN: Um...

11 JUDGE CORBETT: Do you think you can have testimony in
12 30 days? 6 weeks? or 2 months? Whatever.

13 MR. ENGLEMAN: I think -- I think 6 weeks we could do
14 it.

15 JUDGE CORBETT: Okay, one moment. 6 weeks -- let's see.

16 MR. ENGLEMAN: Your Honor, this may be a good time to
17 address some -- address discovery as well.

18 The parties have been exchanging documentary discovery.
19 Office of Consumer Advocate has been more than gracious in
20 granting an extension to Hidden Valley Utility Services
21 regarding round two of their documentary discovery. That is in
22 process. And I am just reviewing the, uh -- I'm reviewing
23 those answers that have been provided by the company now, prior
24 to sending them to the Office of Consumer Advocate, along with
25 a voluminous set of attachments.

1 One thing that has been agreed between the Office of
2 Consumer Advocate and Hidden Valley Utility Services -- and,
3 Ms. Gannon, please correct me if I'm wrong. Office of Consumer
4 Advocate has stated that they will address issues that have
5 been inquired into by interrogatories and requests for
6 production of documents, by Hidden Valley Utility Services to
7 the Office of Consumer Advocate, if they are direct filed
8 testimony. So, at some point after the submission of pre-filed
9 direct from the Office of Consumer Advocate, and possibly from
10 the Office of Trial Staff, Hidden Valley Utility Services is
11 going to need a second round of discovery, documentary
12 discovery, and perhaps depositions, but I doubt that we're
13 going to need to go there, um -- with Office of Consumer
14 Advocate's witnesses.

15 MS. GANNON: Yes, Your Honor, speaking for the OCA,
16 that's traditionally how we do things. We can certainly set up
17 the schedule not only to afford the company time for discovery
18 after the filing of the OCA's and the other parties direct
19 testimonies, but also time for the OCA to then do another round
20 of discovery following the company's rebuttal testimony.

21 JUDGE CORBETT: Okay.

22 MS. GANNON: And also, I just want to add: In this
23 case, because it's an application proceeding, we have the 20-
24 day time frame for discovery; so, we should just bear those in
25 mind when we're setting the scheduling date.

1 JUDGE CORBETT: Right.

2 Well, if I'm calculating this correctly, 6 weeks for
3 filing of the company testimony would be sometime during the
4 week of September 13.

5 Is that your thought, Mr. Engleman?

6 MR. ENGLEMAN: Yes, Your Honor.

7 JUDGE CORBETT: Okay, pick a date.

8 MR. ENGLEMAN: How about direct testimony due in-hand,
9 Wednesday, September 15, before the close of business?

10 JUDGE CORBETT: Okay.

11 Would anybody have any objection to that?

12 MS. BOYTER: No, Your Honor. This is Angie Boyter.

13 MS. GANNON: No, Your Honor, for the OCA.

14 I'd also suggest that we -- if the parties are amenable,
15 that we have electronic service count as in-hand followed by a
16 hard copy.

17 JUDGE CORBETT: Right. I was going to cover that point.

18 Does everybody agree that since everybody seems to be
19 pretty fluent in using email communication in this case? Does
20 everyone agree that communications will be via email followed
21 by a hard copy the next business day?

22 MR. ENGLEMAN: No objection from Hidden Valley Utility
23 Services, Your Honor.

24 JUDGE CORBETT: Okay.

25 MR. SHIELDS: Judge, Charlie Shields for OTS. The, um -

1. - rather than the next business day -- I mean, you have --
2 first of all, we wholeheartedly concur. Myself personally and
3 our office encourages electronic filing submissions as meeting
4 all in-hand dates. But, it will save our office tens of
5 thousands of dollars over the course of the year if we could
6 simply have regular first-class mail rather than overnight
7 delivery. I mean, the person has the docu--the parties have
8 the document; one day more to get a hard copy, to save the
9 Commonwealth countless amounts of money, we think is
10 appropriate. We would ask if anybody opposes that.

11 JUDGE CORBETT: Well, my thought -- I'm just thinking
12 off the top of my head on that point, Mr. Shields. That is,
13 if we're dealing -- if the testimony is to have accompanying it
14 the exhibits and so forth -- and sometimes the exhibits might
15 involve tables, schedules, and so forth that aren't very easily
16 emailed or might not be picked up by the party that is
17 receiving the email very well, a hard copy usually takes care
18 of that problem. Those are my thoughts on the matter at this
19 point.

20 MR. SHIELDS: Well, how about this caveat, Judge: To
21 the extent that -- we're at the point now we've just received a
22 scanner, so we can virtually send any attachment
23 electronically. How about if -- how about we have a proviso
24 that -- to the extent that any exhibits are not electronically
25 transmitted, that they be overnight mailed, but that anything

1 else can be regular first-class mail?

2 I don't feel -- I'm not paying the Commission's budget;
3 so, I mean, you know, if it's Your Honor's pleasure to have
4 everything automatically overnight mailed, we will certainly
5 adhere to that.

6 JUDGE CORBETT: I think it -- I don't mean to be hard-
7 nosed about it, but I think that would certainly alleviate some
8 questions and some possible problems down the line by parties
9 who may not -- who may question whether their exhibit is
10 properly emailed or not.

11 MR. SHIELDS: Understood, Judge.

12 JUDGE CORBETT: So, I think we'll go with overnight
13 delivery, next business day received -- email with overnight
14 delivery.

15 MR. SHIELDS: Judge, if I -- Charlie Shields again for
16 OTS. Before we move off the subject of the company's direct
17 testimony, I'd like to express our office's concerns as to
18 exactly what will be the content of that direct testimony.
19 Unlike a base-rate proceeding where the burden of proof is on
20 the company who is filing -- who made their filing and who have
21 a vested interest, financial and otherwise, and having the
22 Commission, you know, accept the contents of the filing, in
23 this case we have a company who agreed, in a settlement
24 petition from an OTS complaint, to file these applications.
25 And if one were to go back and read through the OTS complaint

1 and the documents in that case, one of our concerns -- the
2 Office of Trial Staff's concerns was that, you know, the
3 company has ensured that the applications are approved by the
4 commission. And they're certainly entitled to a presumption
5 that they're acting in good faith. But, quite frankly, the
6 Office of Trial Staff wants to see these applications approved.
7 To the extent that the company files direct testimony that
8 wouldn't, quote/unquote, fully support the application, I don't
9 know how we would proceed from there. I mean, if -- if, um --
10 for sake of argument, hypothetically, the company's direct
11 testimony was -- failed to support the applications, I mean,
12 where do we go from there? Does the Office of Trial Staff and
13 the Office of Consumer Advocate so savage that testimony that
14 it diminishes the possibility that the applications are going
15 to be approved? I mean, I think at some point we have to
16 distinguish two issues at least. One is whether the -- three
17 issues. One is whether the application should be approved; the
18 second is what's an appropriate level of rates; and the third
19 is whether refunds are appropriate. On the issue of refunds,
20 if I may, the Office of Trial Staff takes no position on
21 whether or not refunds would be appropriate in this case. In
22 fact, it would encourage and perhaps suggest that's an issue
23 that could be briefed right now.

24 In a number of proceedings I've been in, where there's
25 clearly a legal issue that is going to have an outcome on a

1 major component of Your Honor's decision and the Commission's
2 ultimate order in the case, if we know the issue is going to
3 arise, and if we know what the issue is, the legal issue, I see
4 no reason why the company and the OCA can't brief that issue
5 now and put it before Your Honor. It might actually facilitate
6 during the course of the proceeding what issues need be -- what
7 factual issues need be or not be added to whatever record is
8 established -- that we fully litigate the case. So that's my
9 thoughts on a number of matters, Your Honor. Thanks very much.

10 JUDGE CORBETT: All right.

11 MR. ENGLEMAN: Your Honor, this is Carl Engleman.

12 JUDGE CORBETT: Yes.

13 MR. ENGLEMAN: If I may. As far as the refund issue
14 goes, I think that consideration of the refund issue is really
15 premature because we are talking about the -- we're talking
16 about what rates are reasonable for Hidden Valley. And to
17 allay some of Mr. Shields' concerns, Hidden Valley Utility
18 Services wants to see this application approved. That's the
19 reason that they filed it. Secondly, in order to get the
20 application approved, the company has to demonstrate technical,
21 operational, and financial fitness before the Commission can
22 state that this is in the public interest, to have Hidden
23 Valley Utility Services offer this service. So that's the
24 first part of this. The second part of this does come down to
25 the rates and whether the rates are reasonable, which that

1 bears on the refund issue. Prior to judging whether there's
2 going to be a refund that is -- that may or may not be required
3 in this case, the issue must be resolved as to whether the
4 rates that were being charged for water service were
5 unreasonable. So, therefore, the rate that gets set in this
6 case is going to go a long way towards stating whether any
7 rates that were charged by the Hidden Valley Foundation to the
8 end-user customer were, in fact, reasonable or not.

9 JUDGE CORBETT: Okay.

10 MS. GANNON: Your Honor, this is Ms. Gannon. Just real
11 quickly, I'd just like to correct one thing that was just said
12 by Mr. Engleman. The issue of refund is not tied to whether
13 the rates previously charge illegally were reasonable or not.
14 Any rates charged without a certificate of service are per se
15 illegal and reasonableness does not come into play.

16 Reasonableness of the proposed rates certainly is an issue in
17 this case; but, in terms of the refund, you can't separate the
18 refund obligation from the financial fitness prong of the
19 Section 1102 requirements.

20 JUDGE CORBETT: The parties can make those arguments to
21 me; you know, they can raise them in their testimony and they
22 can make the arguments to me later.

23 So far as whether or not the concern of the OTS is to
24 whether -- you know, the company's testimony will support a
25 *prima facie* case of whether the application should be granted

1 or not, I think we run into that question whenever we have any
2 type of written testimony being filed in any kind of a case.
3 And, you know, it may or may not be a concern. If it a
4 concern, then the parties can raise that, some type of a
5 motion, and we'll deal with it at that point. But, to consider
6 it at this point, I think is premature. We're going to assume
7 at this point that the company can go forward, can put together
8 written testimony that will show a *prima facie* case of granting
9 the application, and then we'll go from there. And I'm not
10 pre-judging the facts. I'm just saying that at this point
11 we're going to assume that, certain things, so that we can set
12 up the litigation schedule.

13 All right, let's----

14 MS. BOYTER: Your Honor...

15 JUDGE CORBETT: Yes?

16 MS. BOYTER: Excuse me. This is Angie Boyter. And, as
17 these discussions go on, I become more and more convinced then
18 -- and if it's appropriate to bring this up now, I really would
19 like to see Hidden Valley Resort made an indispensable party to
20 this. As you're talking about the kind of testimony that's
21 going to be needed in order to determine whether Hidden Valley
22 Utility Services has the competence and also, an appropriate
23 rate structure, the logical thing you're going to have to look
24 at is the historical operation and the historical expenses and
25 rates of the previous company.

1 JUDGE CORBETT: Okay. Well, I think this is -- I don't
2 want to go too far down this line because I think we're
3 beginning to spin off into other issues.

4 MS. BOYTER: Sure.

5 JUDGE CORBETT: And I'd like to get back on to what we
6 have to take care of this morning and then conclude this
7 conference if I can.

8 MS. BOYTER: Okay.

9 JUDGE CORBETT: You can perhaps discuss your concerns,
10 Ms. Boyter, with Ms. Gannon from OCA. OCA has already
11 indicated, I believe, that they are either contemplating or
12 going to file a motion to join Hidden Valley Resort. So, you
13 can take that up with her, and perhaps that will take care of
14 your concerns.

15 MS. BOYTER: That's great. Thank you.

16 JUDGE CORBETT: All right. Let's move on then.

17 We have the company filing its direct testimony on
18 September 15; assuming that there will be discovery on that
19 testimony and the need for interrogatories and so forth.

20 What are we looking at for the other parties to file
21 their testimony; when would they like to do that?

22 MS. GANNON: Your Honor, from the OCA, I would suggest
23 sometime maybe around October 27th?

24 JUDGE CORBETT: Okay.

25 MS. GANNON: Or about?

1 JUDGE CORBETT: That would be about 6 weeks later,
2 approximately. Okay.

3 Any thoughts on October 27th?

4 MS. BOYTER: No objection from the Boyters.

5 MR. ENGLEMAN: No objection from Hidden Valley Utility
6 Services, Your Honor.

7 JUDGE CORBETT: All right.

8 MR. SHIELDS: Yeah. And Charlie Shields for OTS. That
9 seems appropriate, Your Honor.

10 JUDGE CORBETT: All right.

11 October 27th, other parties' direct testimony. One
12 second. [Appears to make notes.]

13 And what would the company need?

14 MR. ENGLEMAN: Well, Your Honor, seeing as the company
15 has no idea exactly what OCA is planning on presenting in
16 direct testimony at this time, we're going to need at least,
17 I'd say, a couple of weeks to go through that and then propound
18 interrogatories and request for production of documents on the
19 Office of Consumer Advocates; so, looking at -- ahead at
20 October 27th----

21 JUDGE CORBETT: You're now into -- you're talking
22 probably into the Thanksgiving holidays, the beginning of
23 December?

24 MR. ENGLEMAN: Yes, Your Honor. I believe we can have
25 interrogatories and requests for production of documents

1 propounded by November 10. That would be 2 weeks. And then
2 we're looking at a 20-day-response time; that would be Tuesday,
3 November 30, that they would be due.

4 JUDGE CORBETT: And when would your testimony be ready?

5 MR. ENGLEMAN: Our rebuttal testimony would be ready
6 December 17.

7 JUDGE CORBETT: Any objections from the other parties?

8 COURT REPORTER'S NOTE: [No response.]

9 JUDGE CORBETT: Okay, hearing none, I'll assume it's
10 appropriate.

11 The parties were contemplating filing reply testimony to
12 that. Was there an indication that they were going to file
13 some type of rebuttal to that; surrebuttal?

14 MR. SHIELDS: Judge, I would like to suggest that the
15 hearings be scheduled after that. To the extent that there is
16 any surrebuttal, that we be -- normally it's not extensive,
17 normally it's -- surrebuttal is often just to correct a number
18 of minor matters. I would like to suggest that maybe several
19 days before the hearings, um -- OTS, OCA, and any complainants
20 are there at that point could submit an outline of oral
21 surrebuttal. That way we just take care of it at the hearings
22 with oral surrebuttal rather than extending the hearings even
23 further for written surrebuttal and some sort of review time
24 after that.

25 JUDGE CORBETT: Okay.

1 Any thoughts on that subject?

2 MS. GANNON: Your Honor, speaking for the OCA, we have
3 no objection to doing oral surrebuttal and providing an outline
4 in advance.

5 JUDGE CORBETT: All right.

6 MR. ENGLEMAN: And no objection from Hidden Valley
7 Utility Services, Your Honor.

8 JUDGE CORBETT: Okay.

9 MS. BOYTER: None from the Boyters, Your Honor.

10 JUDGE CORBETT: Okay.

11 Then let's set a hearing date and then we'll back that
12 back from there; we'll set up when we're going to do the
13 statement or the outline. When would the parties want to have
14 hearings? We're talking probably sometime in January now.

15 MR. SHIELDS: Yeah, how about January 12th, Judge?
16 That's a Wednesday?

17 JUDGE CORBETT: Okay, one second.

18 MR. SHIELDS: 2005.

19 JUDGE CORBETT: I'm trying to flip my calendar to 2005.

20 [Brief pause/recess.]

21 JUDGE CORBETT: Okay.

22 What did you----

23 MR. SHIELDS: In Harrisburg.

24 JUDGE CORBETT: Oh, no. I don't think so, no.

25 MS. GANNON: Your Honor, this is the OCA. January 12th

1 is fine. We might suggest -- we may want to leave the 13th
2 open just in case.

3 JUDGE CORBETT: Okay. I was going to suggest probably 2
4 days for the hearings. Would 2 days be -- 2 or 3 days?

5 MR. ENGLEMAN: I think we can do it in 2, Your Honor.
6 This is Carl Engleman for Hidden Valley Utility Services.

7 JUDGE CORBETT: Okay. It's not a question of whether we
8 can do it in 2; it's whether a question of: Do we need more
9 than 2?

10 MR. ENGLEMAN: I don't believe so, Your Honor.

11 JUDGE CORBETT: Okay. 2 days sufficient then.

12 Does everyone agree?

13 MS. GANNON: Yes, Your Honor.

14 MR. SHIELDS: Yes, Your Honor.

15 JUDGE CORBETT: Okay. 12 and 13 is good?

16 MS. BOYTER: Yes, Your Honor.

17 JUDGE CORBETT: Okay. Then that's what we'll do. And
18 the hearings will be in Pittsburgh.

19 MR. ENGLEMAN: Your Honor, as long as we're on the
20 subject, I'm assuming these are going to be in-person hearings?

21 JUDGE CORBETT: Yes.

22 MR. ENGLEMAN: And if we're going back eventually to the
23 discussion of mediation sessions, Hidden Valley Utility
24 Services would like to request that they be in-person as well.

25 JUDGE CORBETT: Yes.

1 MR. SHIELDS: And that would definitely be in
2 Harrisburg, Judge.

3 JUDGE CORBETT: Yes, okay.

4 So, backtracking from the 12th and 13th hearings, you
5 would want your outlines when? About a week before that?

6 MR. SHIELDS: That's fine, Judge. We're prepared to
7 that. This is Charlie Shields for OTS.

8 JUDGE CORBETT: That would be January 5?

9 MR. SHIELDS: That's correct.

10 JUDGE CORBETT: Outline of surrebuttal.

11 MR. SHIELDS: Yes, Your Honor.

12 JUDGE CORBETT: Okay.

13 MR. ENGLEMAN: No objection from Hidden Valley Utility
14 Services, Your Honor.

15 JUDGE CORBETT: Okay.

16 We have direct testimony due, of the company, on
17 September 15th; other parties direct testimony due October 27;
18 company's rebuttal December 17; and the outline of parties
19 surrebuttal due January 5; the hearings on the 12th and 13th of
20 January.

21 Okay, any other comments with regard to the hearing
22 schedule itself?

23 MR. SHIELDS: Judge, Charlie Shields again for OTS. I
24 don't have a comment on the schedule, but I do have some
25 concluding remarks.

1 JUDGE CORBETT: Okay, we'll get to those in just a few
2 minutes.

3 MS. BOYTER: Your Honor, with respect to the litigation
4 schedule -- this is Angie Boyter again.

5 JUDGE CORBETT: Yes.

6 MS. BOYTER: Actually, with regard to preparation of
7 testimony, I would like to request, if it's appropriate, that
8 the record and the exhibits from the previous dockets number --
9 our complaint and the OTS complaint that kicked off this whole
10 application be incorporated by reference into these cases so
11 that we can refer to those documents more easily.

12 MR. ENGLEMAN: Your Honor, this is Carl Engleman for
13 Hidden Valley Utility Services. The company does object to
14 including the record of a previous proceeding that does not
15 involve Hidden Valley Utility Services into this proceeding.
16 It is totally separate and distinct.

17 JUDGE CORBETT: All right. If there's a question that
18 the parties want to incorporate the previous proceeding --
19 anything from the prior proceeding into this case, put it in
20 the motion, put it in a written motion so that the parties can
21 respond, and I'll make a ruling on it. We'll handle it in that
22 fashion. Also, if there's going to be any joinder of other
23 parties, I would appreciate those motions ASAP, within the next
24 week or two at the very latest, if you can, so that we get
25 those issues out of the way as early in the process as we can.

1 MR. ENGLEMAN: Your Honor, this is Carl Engleman again.
2 I'm saying this strictly for Ms. Boyter's benefit because she's
3 not been involved in a proceeding like this before. I'm
4 assuming that all witnesses that are going to be submitting
5 direct testimony will be available for cross in person at the
6 hearing on January 12th and 13th.

7 JUDGE CORBETT: Right.

8 Yes, Ms. Boyter, if you or your husband are going to
9 testify in the case, we're going to ask that you also abide by
10 the schedule for filing written testimony. If there is a
11 question or if there is some difficulty in preparing that
12 written testimony, perhaps you can discuss the matter with Mr.
13 Shields or with Ms. Gannon. Perhaps they can give you written
14 samples of prior -- from testimony from prior cases or
15 something that will show you approximately how the format is
16 set up, the line numbers, and the question and answer format,
17 and the page numbers, and so forth so that you have some idea
18 as to what you're dealing with here.

19 MS. BOYTER: And I thank you, Your Honor.

20 JUDGE CORBETT: All right.

21 MR. ENGLEMAN: And, Your Honor, this is Carl Engleman
22 again. This would also apply to any other witness that they
23 were to call that would submit any testimony in this case.

24 JUDGE CORBETT: Yeah.

25 MS. BOYTER: Your Honor, I can't imagine we would be

1 having any witnesses. That certainly could change, but----

2 JUDGE CORBETT: Okay, that's Ms. Boyter.

3 MS. BOYTER: Yes.

4 JUDGE CORBETT: Okay.

5 MS. BOYTER: And, yeah, this is Ms. Boyter. And any
6 testimony will be done by one of us.

7 JUDGE CORBETT: Okay, that's fine.

8 Okay, anything else with regard to the hearings
9 themselves?

10 COURT REPORTER'S NOTE: [No response.]

11 JUDGE CORBETT: One other thing I would like to ask is -
12 - since the parties are traveling to Pittsburgh, is 9:30 start
13 time too early; or, do they want to stick with the 10 o'clock
14 start time?

15 MR. ENGLEMAN: 9:30 is fine with Hidden Valley Utility
16 Services, Your Honor.

17 JUDGE CORBETT: Okay.

18 Mr. Shields?

19 MR. SHIELDS: I have no position on that, Judge.

20 JUDGE CORBETT: Okay.

21 Ms. Gannon?

22 MS. GANNON: Your Honor, that's fine.

23 JUDGE CORBETT: And Ms. Boyter?

24 MS. BOYTER: I don't have any position on it either,
25 Your Honor.

1 JUDGE CORBETT: Okay. We'll set it then for 9:30.
2 That's a start time. That's what time I will come into the
3 hearing room and we'll begin the hearings.

4 I would also ask that the parties to schedule their
5 witnesses so that there's no dead time; there's no time where
6 there's any gaps between calling witnesses or we're waiting for
7 witnesses; that, one party is ready to go after the cross-
8 examination; that, when the examination of one witness is
9 through, then the next witness is called. The parties can
10 discuss that among themselves off the record to arrange the
11 scheduling of witnesses.

12 Let's talk a little bit about email communications. The
13 parties have indicated that they want to engage in email
14 communication. I think everyone here in this case seems to be
15 familiar with that process. We'll discuss the attachments and
16 so forth. I'd like the attachments overnighted to emails. The
17 parties can work out any attachments to discovery or anything
18 like that, that may involve something that can't be handled by
19 email. I suggest the parties work those matters out among
20 themselves.

21 Talking about discovery. Everyone who has litigated a
22 case in front of me in the past knows that I am a great
23 advocate for informal discovery. By that, I mean, simply
24 picking up the phone and calling the opposing party and asking
25 them to give you whatever information it is that you believe

1 you need for your particular case. I think that the parties
2 can work out their discovery problems among themselves, and
3 they seem to be doing that up to this point; so, I won't
4 belabor the point that I wish to make: That is, that the
5 parties engage in informal discovery whenever and wherever they
6 possibly can in order to meet their discovery needs. If, on
7 the other hand, you don't obtain the information you need
8 through informal discovery, then there are discovery procedures
9 available under the rules and regulations of the Commission
10 under its *Rules of Administrative Practice and Procedure* for
11 obtaining discovery. I always ask the parties if there is a
12 motion to compel a party to respond to a discovery matter that
13 is objected to, that the parties indicate or certify on the
14 motion to compel that they have engaged in informal discovery
15 and that those informal discovery procedures have proved
16 unavailing. If I don't see that certification, then I will
17 call the parties and ask them to engage in the informal
18 discovery before ruling upon any motion to compel.

19 Besides the discovery matters that the parties have
20 raised up to this point, are there any particular discovery
21 issues or any needs that the parties have with regard to
22 discovery that they'd like to discuss at this point?

23 Anything from the company, Mr. Engleman?

24 MR. ENGLEMAN: No, Your Honor. The company envisions no
25 discovery issues at this point.

1 JUDGE CORBETT: Mr. Shields?

2 MR. SHIELDS: Yes, Your Honor. Not to make too big an
3 issue of it at this point, but we are awaiting company
4 responses to rate structures OTSRS 1 through 16 and OTSRB 1
5 through 2. It's the same interrogatories for both the water
6 and the wastewater proceedings. They were due on July 31st. I
7 don't intend to do anything other than mention that and
8 encourage the company to provide those responses as soon as
9 possible.

10 MR. ENGLEMAN: Mr. Shields, I'm sorry, I thought that I
11 had discussed the possibility of an informal discovery
12 conference with OTS regarding those?

13 MR. SHIELDS: Actually, we would like to see the written
14 responses.

15 MR. ENGLEMAN: Very well. We can do that.

16 MR. SHIELDS: Thank you, counsel.

17 JUDGE CORBETT: Okay.

18 Any discovery issues, Ms. Gannon?

19 MS. GANNON: Your Honor, if I may, I just wanted to ask
20 the company when they expect to provide the response to OCA's
21 second set.

22 MR. ENGLEMAN: Ms. Gannon, I believe we can probably get
23 those out at some point next week. It's been -- it's a decent
24 amount of information that we're trying to compile here to make
25 sure that we get it to you in the most succinct form as

1 possible. So, we do appreciate you bearing with us on that.

2 MS. GANNON: That's fine. Next week is fine.

3 MR. ENGLEMAN: Thank you.

4 JUDGE CORBETT: Okay.

5 Any discovery issues or needs, Ms. Boyter?

6 MS. BOYTER: No, Your Honor. I'm very interested in
7 seeing the responses to the OCS's interrogatories though.

8 JUDGE CORBETT: Okay. All right.

9 Then let's move on then to settlement. The parties have
10 talked about settlement a great deal this morning. I encourage
11 the parties to settle, if at all possible. If they can't reach
12 a global settlement of the entire case, then I suggest the
13 parties settle whatever issues they possibly can and stipulate
14 to those issues in written form so that we can move on to
15 litigate the issues that are really being contested. So, with
16 that in mind, if you can't settle the whole case -- and I would
17 encourage you to try to settle the whole case, but, if you
18 can't do that, then please stipulate to as many issues as you
19 possibly can so that the parties do not waste their time and
20 resources on litigating issues that don't need to be litigated.

21 MR. SHIELDS: Judge, Charlie Shields on that point. Is
22 it your preference that you contact the Office of
23 Administrative Law Judge's mediation section and inform them
24 that we're interested in mediation or would you prefer that the
25 parties do that directly?

1 JUDGE CORBETT: No, I'll take care of that after the
2 hearing this morning.

3 MR. SHIELDS: Very good, Judge. Thanks.

4 JUDGE CORBETT: Sure. That'll be fine.

5 We'll talk about briefs, if necessary, on the last day
6 of hearings. Let me just say at this point that the briefs
7 should be submitted to me in Word -- in the format of -- on IBM
8 machine capable, compatible format in -- with the Word
9 application -- word processing application. I believe that's
10 Word 2002. If you have a more recent version, then there's a
11 way of saving the material so that it's saved in Word 2002.
12 I'll have more to say about briefs later on, if necessary.

13 At this point I would ask the parties -- go around the
14 table once and see if they have any other matters or any other
15 concerns that they'd like to bring to our attention before we
16 adjourn.

17 I should also note that I will issue a pre-hearing order
18 immediately -- well, sometime today, to the parties, that will
19 outline the matters that we've discussed this morning, together
20 with the litigation schedule, so that if there's any question,
21 please follow the pre-hearing order.

22 With that, we'll turn to you, Mr. Engleman. Do you have
23 any thoughts or any questions or any matters that you'd like to
24 bring to this conference?

25 MR. ENGLEMAN: Only, Your Honor, that it's my

1 understanding that I will provide you with a contact person for
2 the scheduling of a public input session at the Hidden Valley
3 Resort Facility.

4 JUDGE CORBETT: Yes. If you can get me the name of the
5 contact person ASAP, then I will either -- you can email me
6 that information. I believe you have my email address?

7 MR. ENGLEMAN: Yes, Your Honor, I do. We hopefully will
8 be able to do that today; and we will carbon copy all of the
9 other parties on the email, sir.

10 JUDGE CORBETT: That'll be fine.

11 I will also include my email address in my pre-hearing
12 order, but I think all you folks have it anyway.

13 Anything else then, Mr. Engleman?

14 MR. ENGLEMAN: No, Your Honor.

15 JUDGE CORBETT: Anything, Mr. Beener?

16 MR. BEENER: No, sir.

17 JUDGE CORBETT: Anything, Mr. Shields?

18 MR. SHIELDS: Yes, I do, Your Honor. At the risk of
19 belaboring a point, Ms. Gannon made a comment that I'd like to
20 follow up on. As I indicated on a number of occasions already
21 through this telephonic pre-hearing conference, it's the Office
22 of Trial Staff's interest in having this application proceeding
23 resolved as quickly as possible with an eye to ensuring that
24 the filing is in the public interest. And when I discussed the
25 issue of briefing the legal question of refunds, Ms. Gannon

1 commented on Mr. Engleman's comment, and I concur with her
2 sentiments. And what Mr. Engleman suggested was that the issue
3 of refunds -- to the extent that it's appropriate, or there
4 should be some calculation down the line, assuming refunds are
5 even allowable, that, somehow there would be a comparison of
6 the previously existing non-tariff rates to whatever rates are
7 deemed just and reasonable as a result of this proceeding. And
8 I heard Ms. Gannon say that, "Well, no, that's not the case"
9 from their perspective. She can correct me if I'm wrong. From
10 their perspective, any rates regardless of how they relate to
11 or compare to rates that come out of this proceeding is not the
12 issue. It's the issue of having charged any rates without a
13 tariff. Which I happen to concur with that analysis. The
14 question, of course, whether or not -- based upon the fact that
15 we have a separate entity, would even allow for the refunds we
16 can put aside. But, my point being, Your Honor: That, as far
17 as we're concerned, that legal issue is ripe for some sort of
18 determination right now. To the extent that we need to wait
19 and that issue needs to be further addressed and considered by
20 Your Honor at the conclusion of the proceeding, it's going to
21 serve only to extend the ultimate date of resolution of this
22 proceeding. We're not under the statutory 9-month provision.
23 So, again, to the extent that that needs to be sorted out up
24 front, I would encourage the parties to try and do that, put
25 the legal issues before Your Honor, and perhaps get a

1 resolution that in our perspective would serve only to help to
2 narrow the issues and move the proceeding forward.

3 Thank you, Your Honor.

4 JUDGE CORBETT: All right.

5 Ms. Gannon, any final comments that you'd like to make?

6 MS. GANNON: Yes, I -- really trying not to get into
7 merits here. So, without doing so, at this point, as you
8 correctly said, it's the OCA's intent to file a motion to join.
9 I think that that's probably the first step; that, once we have
10 addressed that issue, we can address the issue of Ms. Boyter's
11 question about the record from the previous cases, the legal
12 issue of refunds, and to which party that would apply. I think
13 it would be premature to address the legal issue of refunds
14 before we've addressed which parties will be in the case.

15 JUDGE CORBETT: Right, I agree with that.

16 Ms. Boyter, do you have any comments that you'd like to
17 make at this point?

18 MS. BOYTER: I only have one final comment; it really
19 goes to the issue everybody is talking about of, you know, who
20 the entities are; who has provided water service when. And, I
21 believe, unless I understood her -- misunderstood her, Ms.
22 Gannon said that, as of February, Hidden Valley Utility
23 Services was providing service to the community; is that
24 correct, Ms. Gannon? I believe you said that earlier.

25 MS. GANNON: Yes, Ms. Boyter, that's my understanding;

1 that, the utility service company was formed in February of
2 2004.

3 MS. BOYTER: It was formed; but, is it providing the
4 service now or is it not? Maybe Mr. Engleman can tell me.

5 MR. ENGLEMAN: Yes. Yes, Your Honor, I can. Hidden
6 Valley Utility Services, because it has filed this application,
7 is not providing service to anyone at this point. The party
8 that is providing service to end-use customers is the Hidden
9 Valley Foundation. Hidden Valley Resort is merely providing
10 water to the Hidden Valley Foundation. The foundation
11 purchases the water from the resort. is the Hidden Valley
12 Foundation who then resells the water through the system to the
13 end-use customer. So, Hidden Valley Utility Services is doing
14 absolutely nothing right now with respect to providing water to
15 the public.

16 MS. BOYTER: Thank you, Mr. Engleman. Without agreeing
17 to your statement about whether the foundation is providing the
18 services or not, I do appreciate your clarifying that Hidden
19 Valley Utility Services is certainly not providing them.

20 MR. ENGLEMAN: That is correct, Ms. Boyter.

21 MS. BOYTER: Okay.

22 JUDGE CORBETT: Okay. All right.

23 I thank the parties for their participation and
24 cooperation.

25 As I indicated, I will memorialize the matters that

1 we've discussed and decided in a pre-hearing order that I will
2 email to the parties and hard mail to the parties after --
3 sometime today.

4 With that, I thank you all for your patience and
5 cooperation and look forward to seeing and talking to you all
6 later on.

7 MS. GANNON: Your Honor, this is Erin Gannon, if I could
8 add one more thing?

9 JUDGE CORBETT: Yes.

10 MS. GANNON: I just wanted confirm that I have the
11 Boyter's email address.

12 JUDGE CORBETT: Sure.

13 MS. BOYTER: Sure. We are Boyter, B-O-Y-T-E-R at
14 Sprynet, S-P-R-Y-N-E-T, dot com.

15 MS. GANNON: I'm sorry. Could you spell that one more
16 time for me?

17 MS. BOYTER: Spry, S-P-R-Y-N-E-T, dot com.

18 MS. GANNON: S-P-R-Y-E-T dot com?

19 MS. BOYTER: S-P-R-Y-N-E-T.

20 MS. GANNON: N-E-T.

21 MS. BOYTER: Sprynet, yes. And while we are on that
22 subject, I wanted to make sure that I had your phone number,
23 Ms. Gannon. I think I have everyone else's.

24 MS. GANNON: Certainly. I can give you our toll free
25 number which is 1-800----

1 MS. BOYTER: Uh-huh.

2 MS. GANNON: 684----

3 MS. BOYTER: 684.

4 MS. GANNON: 6560.

5 MS. BOYTER: 6560. It may not work because when I'm not
6 in Pennsylvania -- what's your direct number?

7 MS. GANNON: The direct number is 717----

8 MS. BOYTER: Uh-huh.

9 MS. GANNON: 783----

10 MS. BOYTER: 783.

11 MS. GANNON: 5048.

12 MS. BOYTER: 5048.

13 MS. GANNON: And if you call in, you can -- if I'm not
14 here you can ask for Chris Hoover or for Marilyn Kraus.

15 MS. BOYTER: Sure. Thank you very much.

16 JUDGE CORBETT: Does everyone have everyone else's email
17 and telephone numbers or is there any need to exchange that
18 information at this point before we adjourn?

19 MR. ENGLEMAN: Your Honor, this is Carl Engleman
20 speaking. I have everyone's contact information and we've been
21 using electronic communication regularly.

22 JUDGE CORBETT: Right. That's what I understood.
23 That's why I didn't want to bring it up before now.

24 Anyone else that needs to be heard on that subject?

25 COURT REPORTER'S NOTE: [No response.]

1 JUDGE CORBETT: Okay.

2 One final matter: The court reporter would like to know
3 if anyone wishes a copy of the transcript from this morning's
4 hearing -- this morning's conference.

5 MR. ENGLEMAN: Yes, Your Honor, this is Carl Engleman, I
6 would.

7 JUDGE CORBETT: Okay.

8 MS. GANNON: Your Honor, the OCA will obtain our copy
9 from the Commission.

10 JUDGE CORBETT: Okay.

11 As will Mr. Shields?

12 MR. SHIELDS: Yes, Your Honor. I made the mistake one
13 time of saying I wanted a copy and we received a bill for
14 thirty-two-hundred dollars; so, my standard response now is
15 that the Office of Trial Staff will receive a transcript
16 pursuant to our contracts with the various court reporting
17 firms.

18 JUDGE CORBETT: Right. Okay.

19 MS. GANNON: I will jump in on that for the OCA as well.

20 JUDGE CORBETT: Sure. Okay.

21 And Ms. Boyter?

22 MS. BOYTER: After what Mr. Shields said, there's no way
23 I'm going to request a copy at this point.

24 JUDGE CORBETT: Okay, very good.

25 MR. ENGLEMAN: Your Honor, this is Carl Engleman again.

1 Can I please get back to the court reporter on that?

2 JUDGE CORBETT: Sure.

3 MR. ENGLEMAN: Who would the court reporter be, if I may
4 ask?

5 JUDGE CORBETT: Okay. One moment, please. She's
6 frantically writing here.

7 COURT REPORTER: [Shows note to Judge Corbett.]

8 JUDGE CORBETT: The court reporting firm is Commonwealth
9 Reporting. The court reporter this morning is Linda Derry, D-
10 E-R-R-Y. Her phone number is 330-227-3252.

11 MR. ENGLEMAN: 330-227-3252? Linda Derry?

12 JUDGE CORBETT: Correct.

13 MR. ENGLEMAN: Thank you so much, Your Honor. I
14 appreciate that.

15 JUDGE CORBETT: That's all right.

16 Any other matters that we need to take care of?

17 COURT REPORTER'S NOTE: [No response.]

18 JUDGE CORBETT: Thank you all and we'll look forward to
19 hearing and talking to you in the future. Bye now.

20 MR. ENGLEMAN: Thank you, Judge.

21 MS. GANNON: Bye.

22 JUDGE CORBETT: Bye now.

23 MR. SHIELDS: Bye-bye.

24 [Whereupon, at 11:32 a.m., on August 5, 2004, the
25 hearing adjourned.]

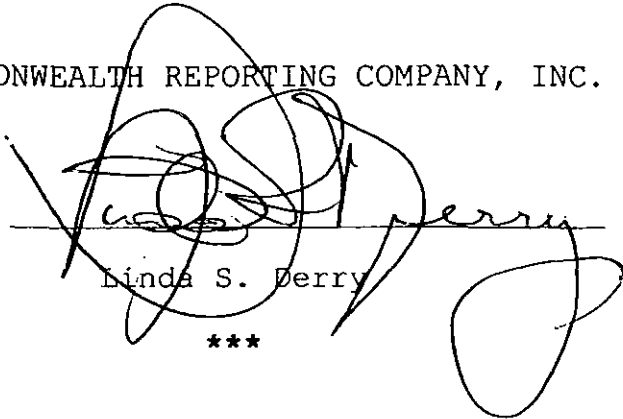
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I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically by
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