

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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 :
Petition of Duquesne Light Company. :
 Petition for approval of Default : Docket No.
 Services Plan for the period January 1, : P-00072247
 2008 through December 31, 2010. :
 :
 Initial Hearing. :
 :
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Pages 23 through 47

Hearing Room 4
Commonwealth Keystone Building
Harrisburg, Pennsylvania

**DOCUMENT
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Thursday, April 26, 2007

Met, pursuant to notice, at 1:00 p.m.

BEFORE:

LARRY GESOFF, Administrative Law Judge

APPEARANCES:

MICHAEL W. GANG, Esquire
ANTHONY KANAGY, Esquire
Post & Schell, P.C.
17 North Second Street
Harrisburg, Pennsylvania 17101
(For Duquesne Light Company)

DAVID MacGREGOR, Esquire
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103
(For Duquesne Light Company)



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APPEARANCES (Continued):

GARY A. JACK, Esquire
411 Seventh Avenue, Eighth Floor
Pittsburgh, Pennsylvania 15219
(For Duquesne Light Company)

CHARLES DANIEL SHIELDS, Esquire
P.O. Box 3265
Harrisburg, Pennsylvania 17101
(For Office of Trial Staff)

TANYA J. McCLOSKEY, Esquire
DAVID T. EVRARD, Esquire
555 Walnut Street
Forum Place, Fifth Floor
Harrisburg, Pennsylvania 17101-1923
(For Office of Consumer Advocate)

SHARON WEBB, Esquire
300 North Second Street, Suite 1102
Harrisburg, Pennsylvania 17101
(For Office of Small Business Advocate)

DAVID P. ZAMBITO, Esquire
Reger, Rizzo, Kavulich & Darnall, LLP
20 North Market Square, Suite 300
Harrisburg, Pennsylvania 17101
(For Constellation NewEnergy, Inc. and
Constellation NewEnergy Commodities Group, Inc.)

ADAM BENSHOFF, Esquire
McNees, Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, Pennsylvania 17108-1166
(For Duquesne Industrial Intervenors)

CRAIG R. BURGRAFF, Esquire
Hawke, McKeon, Sniscak & Kennard, LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, Pennsylvania 17105
(For Dominion Retail, Inc.)

Commonwealth Reporting Company, Inc.

700 Lisburn Road
Camp Hill, Pennsylvania 17011

APPEARANCES (Continued):

KEVIN J. MOODY, Esquire
Wolf, Block, Schorr & Solis-Cohen
213 Market Street, Ninth Floor
P.O. Box 865
Harrisburg, Pennsylvania 17108-0865
(For Retail Energy Supply Association)

BRIAN J. KNIPE, Esquire
Buchanan Ingersoll & Rooney
One South Market Square
213 Market Street, Third Floor
Harrisburg, Pennsylvania 17101
(For Reliant Energy, Inc.)

Commonwealth Reporting Company, Inc.

700 Lisburn Road
Camp Hill, Pennsylvania 17011

WITNESS INDEX

WITNESS

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(None.)

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE LARRY GESOFF: This is the
3 time and the place for, I guess it's an initial hearing -- a
4 settlement has been reached -- in the petition of Duquesne
5 Light Company, Docket No. P-00072247.

6 I am Larry Gesoff, the Administrative Law Judge
7 assigned to this proceeding. There are several names on the
8 appearance sheet that I have filled out in advance, and I
9 just want to see if there's anyone who's not here, so I
10 thought I'd just go down the names.

11 David B. MacGregor is here on behalf of Duquesne
12 Light; Anthony Kanagy is here on behalf of Duquesne Light,
13 and Gary Jack I saw on behalf of Duquesne Light. Charles
14 Daniel Shields on behalf of OTS is here. Tanya McCloskey on
15 behalf of the OCA; is Mr. Evrard here -- oh, hi. I should
16 have recognized you. I'm sorry. And Sharon Webb on behalf
17 of the OSBA.

18 Is John McCaffrey here?

19 (No response.)

20 JUDGE GESOFF: No? Okay. Kent Murphy or Adrian
21 Newall?

22 (No response.)

23 JUDGE GESOFF: Okay. They are representing Exelon
24 Corporation and Exelon Generation Company, LLC. Mr.
25 McCaffrey was Citizens Power.

1 Mr. Zambito, David Zambito?

2 MR. ZAMBITO: Yes, Your Honor.

3 JUDGE GESOFF: Constellation New Energy, Inc.,
4 Constellation Energy Commodities Group, Inc.

5 And Mr. Burgraff, Craig R. Burgraff is here for
6 Dominion Retail, Inc.

7 MR. BURGRAFF: That's right.

8 JUDGE GESOFF: Is Mr. Jugovic, George Jugovic here?

9 (No response.)

10 JUDGE GESOFF: Okay. He represents Citizens for
11 Pennsylvania's Future.

12 Brian Knipe is here on behalf of Reliant Energy, Inc.
13 Daniel Clearfield?

14 MR. MOODY: Your Honor, Kevin Moody here. Mr.
15 Clearfield is not here today.

16 JUDGE GESOFF: Okay. And Pamela Polacek?

17 MR. BENSHOFF: Your Honor, Adam Benschoff here,
18 representing DII.

19 JUDGE GESOFF: Okay, Duquesne Industrial Intervenors.

20 Steven S. Goldenberg, for Pennsylvania Large Energy
21 Users Coalition?

22 (No response.)

23 JUDGE GESOFF: Not here. Paul Forshay on behalf of
24 the same entity?

25 (No response.)

1 JUDGE GESOFF: Not here. Kathy Kolich, FirstEnergy
2 Solutions Corp.?

3 (No response.)

4 JUDGE GESOFF: Not here. Nicholas Pasciullo,
5 Conservation Consultants?

6 (No response.)

7 JUDGE GESOFF: Not here. And I mentioned Michael
8 Gang on behalf of Duquesne Light Company. Okay. Mr.
9 MacGregor?

10 MR. MacGREGOR: Thank you, Your Honor. A couple of
11 preliminary matters. First of all, I did want to apologize
12 for the record for dragging you down here from Pittsburgh.
13 We didn't achieve the settlement that we anticipated until
14 very late yesterday, but there are a couple of procedural
15 things to take care of here, and so I appreciate the
16 opportunity to have the hearing in person.

17 And secondly I wanted, on behalf of the company, to
18 thank all the parties who worked very, very hard here to get
19 a settlement together here in this case, which we certainly
20 think is in the interest of all parties and presents a
21 reasonable resolution of this proceeding.

22 Procedurally, the settlement will take the form of
23 three stipulations. The first, which I will call a general
24 stipulation, contains the bulk of the settlement among most
25 of the parties. There are a couple of parties who weren't

1 included in that stipulation and we have negotiated two
2 separate stipulations that bring the remaining parties on
3 board.

4 The second stipulation is between the company, Direct
5 Energy and the Office of Small Business Advocate, and deals
6 with establishing a collaborative going forward to consider
7 the development and proposal of a market share threshold
8 proposal for certain small commercial and industrial
9 customers. That stipulation is signed and available as is
10 the general stipulation.

11 The third stipulation that we're still working on
12 finalizing is with DII, the Duquesne Industrial Intervenors,
13 and several of the marketers, and deals with a proposal to
14 offer day-ahead hourly pricing as opposed to real-time
15 hourly pricing for large C&I customers.

16 We're still working on some of the language of that
17 stipulation and it has not been circulated among the larger
18 party group, but we hope to do that later today.

19 So that's where we stand. I do believe we have an
20 agreement among all parties to resolve all issues and I
21 think we are confident we can proceed with the settlement
22 process and not with evidentiary hearings.

23 We did, since we're having a hearing, bring along two
24 copies for the court reporter of our testimony and exhibits,
25 and the plan is to stipulate into the record I believe all

1 of the parties' testimony which will constitute the record
2 in this proceeding and provide a basis for evaluating the
3 settlement by Your Honor and by the Commission.

4 So I guess what we would like to do is introduce our
5 evidence by stipulation and let any of the other parties who
6 are able to do so and willing to do so do so today and those
7 who are not here and have testimony or didn't bring their
8 testimony along can do that by submittal to Your Honor
9 separately.

10 JUDGE GESOFF: Well, if we stipulate it all in today,
11 physically I suppose it should maybe be sent to the court
12 reporter. Is that right, John, two copies to the court
13 reporter?

14 THE REPORTER: Yes, Your Honor.

15 JUDGE GESOFF: Okay. All right.

16 MR. MacGREGOR: I will proceed then with identifying
17 for the record -- and I do have a list of our exhibits for
18 the court reporter. And I can read through all of these or
19 I can ask the court reporter just to reproduce this in the
20 record.

21 JUDGE GESOFF: That would be fine. Can you do that,
22 John, reproduce it into the record?

23 THE REPORTER: Yes, Your Honor.

24 JUDGE GESOFF: Okay.

25 MR. MacGREGOR: Then I would ask, Your Honor, that

1 the documents identified on this list of exhibits for
2 Duquesne Light Company, Volumes I, II and III, be marked for
3 identification as they are so marked on this listing.

4 JUDGE GESOFF: They will be so marked.

5 (Whereupon, the documents were
6 marked as Duquesne Exhibit No. 1
7 and Duquesne Statements Nos. 1, 2,
8 3, 4, 5, 6, 2-R, 3-R, 4-R, 6-R and
9 4-S for identification.)

10 MR. MacGREGOR: And then I would ask that they be
11 admitted into evidence by stipulation with copies to be
12 provided to the court reporter.

13 JUDGE GESOFF: All right. They are admitted.

14 (Whereupon, the documents marked as
15 Duquesne Exhibit No. 1 and Duquesne
16 Statements Nos. 1, 2, 3, 4, 5, 6,
17 2-R, 3-R, 4-R, 6-R and 4-S were
18 received in evidence.)

19 MR. MacGREGOR: I guess the other parties can go
20 through that and we can come back to the stipulations.

21 JUDGE GESOFF: Okay. Ms. McCloskey?

22 MS. McCLOSKEY: Thank you, Your Honor. I'd like to
23 have marked for identification OCA Statement No. 1, which is
24 the direct testimony of Matthew I. Kahal; OCA Statement No.
25 1-R, the rebuttal testimony of Matthew I. Kahal; OCA

1 Statement No. 1-SR, the surrebuttal testimony of Matthew I.
2 Kahal.

3 JUDGE GESOFF: They may be so marked.

4 (Whereupon, the documents were
5 marked as OCA Statements Nos. 1,
6 1-R and 1-SR for identification.)

7 MS. McCLOSKEY: And Your Honor, I'd also like to have
8 marked OCA Statement No. 2-R, the rebuttal testimony of
9 Barbara R. Alexander and OCA Statement No. 2-SR, the
10 surrebuttal testimony of Barbara R. Alexander.

11 JUDGE GESOFF: They may be so marked.

12 (Whereupon, the documents were
13 marked as OCA Statements Nos. 2-R
14 and 2-SR for identification.)

15 MS. McCLOSKEY: Your Honor, pursuant to the agreement
16 and stipulation, I'd like to have the testimonies that have
17 been marked for identification for the OCA admitted into the
18 record.

19 JUDGE GESOFF: They are admitted.

20 (Whereupon, the documents marked as
21 OCA Statements Nos. 1, 1-R, 1-SR,
22 2-R and 2-SR were received in
23 evidence.)

24 MS. McCLOSKEY: Thank you, Your Honor.

25 JUDGE GESOFF: You're welcome.

1 Ms. Webb?

2 MR. WEBB: Thank you, Your Honor. I would like the
3 testimony of Brian Kalcic, the OSBA's witness, marked for
4 the record. I have with me two copies of OSBA Statement 1,
5 the direct testimony of Mr. Kalcic; OSBA Statement 2, which
6 is the rebuttal testimony of Mr. Kalcic; and two copies as
7 well of OSBA Statement No. 3. May they be so marked?

8 JUDGE GESOFF: Yes.

9 (Whereupon, the documents were
10 marked as OSBA Statements Nos. 1,
11 2 and 3 for identification.)

12 MR. WEBB: Pursuant to the agreement of the parties,
13 I would request that they be admitted into the record.

14 JUDGE GESOFF: Admitted.

15 (Whereupon, the documents marked as
16 OSBA Statements Nos. 1, 2 and 3
17 were received in evidence.)

18 MR. WEBB: Thank you.

19 JUDGE GESOFF: Anybody else ready to do this, any
20 other parties?

21 MR. KNIPE: Good afternoon, Your Honor. Dave Zambito
22 on behalf of Constellation NewEnergy. I'd like to have
23 marked for the record Constellation/NewEnergy Statement No.
24 1 and Statement No. 1-R, which are the direct testimony of
25 Steven Ruback and the rebuttal testimony of Steven Ruback.

1 JUDGE GESOFF: They may be so marked.

2 (Whereupon, the documents were
3 marked as Constellation/NewEnergy
4 Statements Nos. 1 and 1-R for
5 identification.)

6 MR. ZAMBITO: And pursuant to the stipulation, I'd
7 like to move them into evidence.

8 JUDGE GESOFF: Admitted.

9 (Whereupon, the documents marked as
10 Constellation/NewEnergy Statements
11 Nos. 1 and 1-R were received in
12 evidence.)

13 MR. BURGRAFF: Yes, Your Honor, Craig Burgraff on
14 behalf of Dominion Retail. I would ask that the prepared
15 direct testimony of Thomas J. Butler on behalf of Dominion
16 Retail, Incorporated be identified as Dominion Retail
17 Statement No. 1.

18 JUDGE GESOFF: So identified.

19 (Whereupon, the document was marked
20 as Dominion Retail Statement No. 1
21 for identification.)

22 MR. BURGRAFF: We have two copies which I will give
23 to the court reporter and pursuant to the stipulation of the
24 parties, I ask they moved into the record.

25 JUDGE GESOFF: Admitted.

1 (Whereupon, the document marked as
2 Dominion Retail Statement No. 1 was
3 received in evidence.)

4 MR. KNIPE: Your Honor, if I may?

5 JUDGE GESOFF: Yes.

6 MR. KNIPE: Brian Knipe for Reliant Energy, Inc. We
7 have marked for the record Reliant Statement No. 1, the
8 direct testimony of James A. Ajello. It has an associate
9 Exhibit JAA-1, and two copies which I'll provide to the
10 court reporter. I'd also like to mark for identification
11 Reliant Statement No. 1-R, the rebuttal testimony of James
12 A. Ajello and provide two copies to the court reporter.

13 And finally, I'd like to mark for identification
14 Reliant Statement No. 1-S, the surrebuttal testimony of
15 James A. Ajello. And by stipulation of the parties, I move
16 these be entered into evidence.

17 JUDGE GESOFF: They may be so marked and they are
18 admitted.

19 (Whereupon, the documents were
20 marked as Reliant Statements Nos.
21 1, 1-R and 1-S for identification
22 and received in evidence.)

23 MR. KNIPE: Thank you, Your Honor.

24 JUDGE GESOFF: Anyone else?

25 MR. SHIELDS: Judge, OTS had not previously

1 distributed any testimony, so therefore I have nothing to
2 offer today.

3 JUDGE GESOFF: Thank you, Mr. Shields.

4 MR. ZAMBITO: Your Honor, I'd like to just note for
5 the record that we're handing the court reporter two copies
6 of Constellation's testimony.

7 JUDGE GESOFF: Okay. As far as I can tell from my
8 list of statements, the only ones that are not being
9 identified and admitted are those of Strategic Energy, RESA
10 and Direct Energy and RESA.

11 MR. MOODY: Your Honor, I'm here. I'm prepared to --

12 JUDGE GESOFF: Oh, go ahead. Sorry.

13 MR. MOODY: I'd like to have marked as SE/RESA
14 Statement No. 1, which is the direct testimony of Richard
15 Hudson on behalf of Strategic Energy and the Retail Energy
16 Supply Association; then SE/RESA Statement No. 1-SR, which
17 is the surrebuttal testimony of Richard Hudson on behalf of
18 Strategic Energy and the Retail Energy Supply Association;
19 then Direct/RESA Statement No. 1, which is the direct
20 testimony of Frank Lacey on behalf of Direct Energy Services
21 and the Retail Energy Supply Association; then Direct/RESA
22 Statement No. 1-R, which is the rebuttal testimony of Frank
23 Lacey on behalf of Direct Energy Services and the Retail
24 Energy Supply Association; and then Direct/RESA Statement
25 No. 1-SR, which is the surrebuttal testimony of Frank Lacey

1 on behalf of Direct Energy Services and the Retail Energy
2 Supply Association; and then Direct/RESA Statement No. 2-SR,
3 which is the surrebuttal testimony of Guy Sharfman on behalf
4 of Direct Energy Services and the Retail Energy Supply
5 Association.

6 I will hand two copies of each of these testimonies
7 to the court reporter and I have one copy for Your Honor,
8 and pursuant to the stipulation, I ask that these be
9 admitted.

10 JUDGE GESOFF: They may be so identified and they are
11 admitted.

12 (Whereupon, the documents were
13 marked as SE/RESA Statements Nos.
14 1 and 1-SR and Direct/RESA
15 Statements Nos. 1, 1-R, 1-SR
16 and 2-SR for identification and
17 received in evidence.)

18 JUDGE GESOFF: I think that takes care of all the
19 testimony and statements.

20 MR. MacGREGOR: Your Honor, with respect to the
21 stipulations, I would I guess propose the following. I have
22 three signed copies by everyone of the general stipulation.
23 I just obtained the final signatures from Direct/RESA here
24 in the room.

25 And what I would ask is that that stipulation be

1 marked for identification as Duquesne Exhibit 2, Exhibit 1
2 being the petition in the proceeding.

3 And I will provide those copies to the court reporter
4 and Your Honor, and then I will serve final-final copies
5 with all the signature pages on all the parties separately
6 later today.

7 I will note, there are two changes to the general
8 stipulation from what the parties signed. The first is,
9 Direct and RESA have been added as parties supporting in
10 part and not opposing in part the stipulation.

11 And the second is a typographical error. There were
12 several occasions where we referenced Exhibit NJDK-2. That
13 should be NJDK-3, which is the retail distribution tariff.
14 NJDK-2 was the supply tariff, so it was simply
15 misidentification, and that has been changed in this copy
16 and will be changed in the copies you receive.

17 JUDGE GESOFF: Thank you.

18 (Whereupon, the document was marked
19 as Duquesne Exhibit No. 2 for
20 identification, to be admitted
21 upon receipt.)

22 MR. MacGREGOR: And then if I can -- I can either do
23 this in a letter when I send it in or if I can ask it be
24 pre-marked as Duquesne Exhibit 3, the stipulation between
25 Duquesne Light Company, Direct Energy Services and the

1 Office of Small Business Advocate, I have that signed here
2 but I don't have copies sufficient for the court reporter
3 and Your Honor, so I will distribute those to the court
4 reporter. And Your Honor, I ask that that be marked for
5 identification and admitted as Exhibit 3.

6 And then finally, if I can just in advance pre-mark
7 Exhibit 4, the stipulation with DII, Duquesne Light and
8 certain marketers that will be supplied as soon as it's
9 signed and available.

10 JUDGE GESOFF: Okay. Exhibit 3 may be so marked, or
11 pre-marked, and Exhibit 4 pre-marked.

12 (Whereupon, the documents were
13 marked as Duquesne Exhibits Nos.
14 3 and 4 for identification, to be
15 admitted upon receipt.)

16 MR. MacGREGOR: I would note, Your Honor, that these
17 stipulations reflect the agreements of the party. We do not
18 have statements in support at this time, and I guess, at
19 Your Honor's preference, I would propose that those parties
20 who wish to do so file statements in support as an aid to
21 Your Honor in preparing a recommended decision, but it's up
22 to you as to whether you want that.

23 JUDGE GESOFF: Okay. When you submit the other two
24 stipulations, I would like three copies, unbound.

25 MR. MacGREGOR: Unbound?

1 JUDGE GESOFF: Right, because I attach them to my
2 decision, and then when they go to Harrisburg they can
3 photocopy them as needed.

4 And when would you expect to get the stipulations in
5 my hands?

6 MR. MacGREGOR: I will certainly have the first two
7 in your hands tomorrow in Pittsburgh. I can Fed-Ex them out
8 tonight, so you'll have them tomorrow. I will send the
9 other one along as soon as we finish it, and we may finish
10 it today, we may not finish it until tomorrow, but I can
11 certainly supply it to you by e-mail if we finish it
12 tomorrow, or if not, the latest will be Monday.

13 JUDGE GESOFF: If you can do e-mail and hard copy,
14 that would be fine. Now, as far as statements in support, I
15 just want to set a deadline, is what I'm after. Is a week
16 sufficient?

17 MR. SHIELDS: How about Friday next week, Judge?

18 JUDGE GESOFF: Friday next week, okay.

19 MR. MacGREGOR: That's fine with us, Judge.

20 JUDGE GESOFF: May 4th, okay. I think I'll issue an
21 order then closing the record effective May 4th. Anything
22 else?

23 MR. MacGREGOR: That's all I have, Your Honor.

24 JUDGE GESOFF: Okay. Did you want to say something?

25 MR. KNIPE: Just briefly, Your Honor.

1 JUDGE GESOFF: Okay.

2 MR. KNIPE: Brian Knipe for Reliant Energy. Mr.
3 MacGregor has described the process of the stipulations
4 perfectly. I would just add as a minor point of emphasis,
5 with respect to the concept of the global settlement, we are
6 still one stipulation short and we are hopeful at this point
7 that this will be finalized very shortly, perhaps today. I
8 just want to make sure that minor qualification to the
9 global settlement isn't lost.

10 JUDGE GESOFF: Your caveat is noted.

11 MR. KNIPE: Thank you, Your Honor.

12 MR. WEBB: Your Honor?

13 JUDGE GESOFF: Yes?

14 MR. WEBB: Just a logistical issue. For the
15 statements of support to Your Honor on Friday, electronic
16 service to you with hard copy first class mail and file it
17 with the Secretary, or --

18 JUDGE GESOFF: I think that's good. Thank you. Yes.
19 I won't be in the office on Friday, but yes, that's good.
20 In Word, please, in case I cut-and-paste any of it, which
21 I'm known to do.

22 Well, it's been my experience that the utility Bar
23 has evolved over the years, and this settlement and the
24 other Duquesne Light settlement in the rate case I think are
25 reflective of the fact that the Bar has sort of grown up

1 together, and know each other and trust each other. So from
2 my perspective, it's a nice thing to see.

3 This will probably be my last hearing. As you all
4 know, I'm retiring on the 22nd of June after I think 24
5 years as an ALJ and over 30 years' service with the
6 Commission, and it's been a delight. It's a good job.

7 And so I thank you, and in thanking you I'm thanking
8 the rest of the utility Bar for making my professional life
9 very enjoyable. I appreciate it, and I appreciate all your
10 good wishes for me, and I wish you the best, too.

11 Okay. Then the hearing is concluded. Thank you all
12 very much.

13 (Whereupon, at 1:23 p.m., 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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