

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

-----X
)
 Pennsylvania Public Utility)
 Commission, et al.) Docket No. R-00050662
)
 vs.) Docket Nos.
) R-00050662C0001-C0010
 Duquesne Light Company)
 Initial Pre-Hearing Conference.)
 -----X

ORIGINAL

Pages 1 through 16 Hearing Room 5
 Keystone Building
 Harrisburg, Pennsylvania

Tuesday, April 24, 2007

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

BEFORE:

FRED R. NENE, Administrative Law Judge
 (Via Telephone)

APPEARANCES:

CHARLES DANIEL SHIELDS, Esquire
 P.O. Box 3265
 Harrisburg, Pennsylvania 17105
 (For Office of Trial Staff)

GARY A. JACK, Esquire (Via Telephone)
 411 Seventh Avenue #8-2
 Pittsburgh, Pennsylvania 15219
 (For Duquesne Light Company)

JOHN H. ISOM, Esquire
 17 North 2nd Street
 Harrisburg, Pennsylvania 17101
 (For Duquesne Light Company)

DOCUMENT FOLDER

DOCKETED
APR 26 2007

S.M.
 2007 APR 25 PM 12:49
 RECEIVED
 SECRETARY'S BUREAU

Commonwealth Reporting Company, Inc.
 700 Lisburn Road
 Camp Hill, Pennsylvania 17011

1 APPEARANCES: (Continued)

2 STEVEN C. GRAY, Esquire
3 Commerce Building, Suite 1102
4 300 North Second Street
5 Harrisburg, Pennsylvania 17101
6 (For Office of Small Business Advocate)

7 DAVID EVRARD, Esquire
8 555 Walnut Street, 5th Floor
9 Harrisburg, Pennsylvania 17101
10 (For Office of Consumer Advocate)

11 ADAM BENSHOFF, Esquire
12 100 Pine Street
13 P.O. Box 1166
14 Harrisburg, Pennsylvania 17108
15 (For Duquesne Industrial Intervenors)

16 KEVIN J. MOODY, Esquire
17 213 Market Street, 9th Floor
18 P.O. Box 865
19 Harrisburg, Pennsylvania 17108
20 (For Strategic Energy, LLC)

21

22

23

24

25

26

27

28

29

30

31

32

33

WITNESS INDEX

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

(None.)

EXHIBIT INDEX

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

NUMBER
(None.)

FOR IDENTIFICATION IN EVIDENCE

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE FRED R. NENE: This
3 is the time scheduled for a pre-hearing conference on an
4 application for a rate tariff change filed by Duquesne Light
5 Company. That's docket R-00050662.

6 My name is Fred Nene, and I'm the
7 administrative law judge assigned by the commission to
8 investigate and to issue a recommendation on this
9 application.

10 I am heard, and the other parties are in
11 Harrisburg, telephonically depicted. Also, here in
12 Pittsburgh is Attorney Gary Jack. He is general counsel for
13 Duquesne Lighting.

14 So let me -- who is in Harrisburg? If we
15 could start with you, Mr. Shields, and go around the table,
16 identify yourself and who you're representing.

17 MR. SHIELDS: Certainly, your Honor. My name
18 is Charles Daniel Shields. My title is senior prosecutor
19 with the Commissions Office of Trial Staff.

20 MR. MOODY: Kevin Moody, Wolf Block, on behalf
21 of Strategic Energy.

22 JUDGE NENE: Kevin Moody, just a second.
23 Okay.

24 MR. BENSHOFF: Adam Benshoff, your Honor, from
25 McNees, Wallace and Nurick on behalf of the Duquesne

1 Industrial Intervenors.

2 JUDGE NENE: The last name again, please.

3 MR. BENSHOFF: It's Benshoff, your Honor.

4 JUDGE NENE: Does the court reporter have the
5 spelling?

6 MR. BENSHOFF: Yes, she does, your Honor.

7 JUDGE NENE: Okay. And next?

8 MR. EVRARD: Yes. This is David Evrard from
9 the Office of Consumer Advocate. And I'll spell that last
10 name. It's E-v, like Victor, r-a-r-d, like David.

11 MR. ISOM: Good morning, this is John Isom
12 with the law firm Post and Schell here on behalf of Duquesne
13 Light Company.

14 JUDGE NENE: Thank you.

15 MR. GRAY: And good morning, your Honor.
16 Steve Gray for the Office of Small Business Advocate.

17 JUDGE NENE: Good morning, Mr. Gray. Next?

18 MR. GRAY: That's it, your Honor.

19 JUDGE NENE: Very good. For the court
20 reporter's sake, I want to say that we're going to use some
21 expressions or initials here. One is PJM. That's
22 Pennsylvania, Jersey, Maryland. FERC, F-E-R-C, that's the
23 Federal Energy Regulatory Commission.

24 SECA, S-E-C-A. That means Seams, s-e-a-m-s,
25 Elimination Cost Adjustment. We might do P-O-L-R. Fuller is

1 the provider of last resort. Something else may come up but
2 we'll identify it at that time.

3 Mr. Isom, I received a letter from you last
4 March indicating -- requesting that this pre-hearing
5 conference be continued until at least today. And you
6 indicated at that time that you were in a settlement phase
7 and that you were -- it's nearly two years old. And do you
8 have anything you want to say at this time regarding your
9 question?

10 MR. ISOM: Well, let me explain where we were
11 and where we are. At the last time we thought we had all
12 parties but one onboard. The party who is not yet onboard
13 had a -- I'll paraphrase it as kind of a procedural issue.
14 And that they also had a compliant pending the FERC, which
15 had been -- in which they had entered into a settlement
16 proceeding -- excuse me -- settlement agreement that FERC
17 then and now has not yet acted on.

18 I think the general consensus is that if FERC
19 were to approve that, they would be content because they
20 signed the settlement. But that has not happened yet. And a
21 lot of the discussions of the last month revolved around how
22 they can fairly preserve their rights in the state if the
23 FERC does something other than approve the settlement that
24 they entered into it.

25 Duquesne and that party have now resolved

1 their differences, although that was fairly recent and we
2 just kind of recirculated the changes among the other parties
3 to see if there is any further objection. I received one
4 this morning, which I don't think will be a serious problem,
5 but I have to check with the company.

6 And I have received no other comments,
7 suggestions, on the kind of settlement bullet points that we
8 circulated I believe last Thursday. So, no, we're not quite
9 there, but we're very close.

10 JUDGE NENE: Has the FERC proceedings -- are
11 they completed?

12 MR. ISOM: Some are. Some aren't. As to the
13 SECA charges and the allocations among the load serving
14 entities in the PJM, a series of complaints were filed
15 involving the Duquesne region. Some of them have been
16 settled. I believe, and I can -- correct me if I'm wrong --
17 I believe settlement agreements have been entered into as to
18 all but one. And that one is not a party to this proceeding.

19 And most but not all of the settlement
20 agreements have been approved by FERC but several or at least
21 one is still pending. That's the one that -- for which there
22 is a party both there at FERC and here.

23 JUDGE NENE: So further FERC action is
24 necessary for resolution of this matter?

25 MR. ISOM: Well, no, we have worked out an

1 arrangement, assuming the other parties agree, whereby a
2 party would withdraw his complaint with the right to
3 reactivate it or reinstate it if the FERC does not approve
4 the settlement, although I'm trying real hard to determine
5 what the terms of the settlement are.

6 JUDGE NENE: Okay. One of the purposes of the
7 pre-hearing conference is to see if we're ready to have an
8 evidentiary hearing and if such hearing is necessary.

9 MR. ISOM: Well, can I take this opportunity
10 to kind of, since all parties are present, poll them and see
11 if they have any problem with the latest settlement as
12 circulated?

13 JUDGE NENE: Do you want to do that on the
14 record?

15 MR. ISOM: We can do it on or off. I just
16 want the information. I don't really care if it's on the
17 record.

18 MR. SHIELDS: Judge, this is Mr. Shields.
19 Might I suggest we go off the record and then perhaps Mr.
20 Isom can make a representation as to what occurred off the
21 record when we go back on the record.

22 JUDGE NENE: I think that's appropriate, so
23 we'll go off the record until you make your poll.

24 (Off the record discussion from 10:14 a.m. to
25 10:16 a.m.)

1 JUDGE NENE: Let's go back on the record.

2 MR. ISOM: We completed our poll of the
3 parties, your Honor. And there are, oh, I guess one
4 outstanding set of suggestions from one party, and we think
5 we can get this done within ten days.

6 JUDGE NENE: In principle or final?

7 MR. ISOM: Realistically in principle. What
8 we've -- I don't know if you've seen what we typically
9 circulate, but that common practice was followed here too.

10 We circulate what we call bullet points or
11 settlement, the real nut of it. And we go back. And once
12 people agree to that, write a complete agreement around it.

13 I question whether we'd get everything done,
14 but we ought to be able to hash out this one last provision
15 relatively quickly.

16 JUDGE NENE: Okay. Well, you know what the --
17 I don't know whether it concerns everybody, but we've had
18 this docket open for two years now. And I just wonder if
19 setting a hearing schedule would help or not in moving this
20 along.

21 MR. ISOM: I --

22 JUDGE NENE: Yes, Mr. Isom.

23 MR. ISOM: I think it would not, and I fear it
24 would cause a significant waste of resources when we're this
25 close to settlement. I apologize. I know you've heard that

1 phrase before --

2 JUDGE NENE: Yes.

3 MR. ISOM: -- in this proceeding.

4 JUDGE NENE: Yes.

5 MR. ISOM: But we're really down to
6 essentially one provision.

7 JUDGE NENE: Well, it's in the best interest
8 and the public interest, I think, to proceed in the way
9 you're doing. And I respect your need for time, to avoid
10 other distractions that scheduling the matter would have.
11 Would you -- how about if I schedule this for a further
12 hearing conference, if necessary?

13 MR. ISOM: That's fine. Of course, we'll keep
14 you advised as to our progress. If we reach a settlement in
15 principle, we'll tell you that very promptly and then start
16 preparing a full document immediately thereafter.

17 JUDGE NENE: All right. Would anybody --
18 would it be -- in the interest of moving this along, have a
19 30 day further pre-hearing conference?

20 MR. SHIELDS: Judge, this is Mr. Shields.

21 JUDGE NENE: Yes.

22 MR. SHIELDS: I prefer to cut to the quick
23 here and suggest that the parties represent to you that we'll
24 have the settlement petition to you within 20 days and with
25 no need for further action on your part. We're down to one

1 provision. The indication is that it's not going to be a
2 complete stumbling block.

3 As your Honor has noticed, this case has been
4 going on for two years. I think it's time to move forward
5 definitively. And I would ask the parties to comment upon my
6 suggestion that we represent that we have a settlement
7 petition to you within 20 days.

8 JUDGE NENE: And I guess if we don't have one
9 in 20 days, under this suggestion, then I would just set it
10 for a hearing.

11 MR. SHIELDS: Oh, yes. I think that's a good
12 idea, Judge. Why don't we put it to them that way.

13 JUDGE NENE: Why don't we -- all right. Let's
14 talk about that. Mr. Isom, do you think you can deal with
15 that?

16 MR. ISOM: Well --

17 JUDGE NENE: You don't know?

18 MR. ISOM: If that is your judgment, we will
19 deal with it, but my preference is the original plan we
20 talked about with a further pre-hearing conference in roughly
21 30 days. We certainly will hold to Mr. Shield's deadline as
22 a goal, but I am not terribly comfortable we can get
23 everything done in that time.

24 MR. SHIELDS: Mr. Shields, again, Judge. That
25 was just a suggestion.

1 JUDGE NENE: Yes.

2 MR. SHIELDS: If counsel prefers that and we
3 need to schedule -- I don't know -- the 5th or 6th for the
4 pre-hearing conference then so be it.

5 JUDGE NENE: Anybody else have a comment on
6 how we should proceed procedurally from here?

7 MR. MOODY: Yes, your Honor, Kevin Moody. I
8 think that maybe, subject to what the company says, maybe 30
9 days we could have a, you know, a full petition, but I think
10 20 days is a little aggressive. But I think 30 might be more
11 realistic, because there are a lot of things going on I
12 certainly know that the company is involved in as well.

13 MR. ISOM: Yes, we are.

14 JUDGE NENE: All right. Anybody else? All
15 right. How about this as sort of a compromise? I will
16 expect a status report in 30 days. Then I will either
17 schedule an immediate pre-hearing conference as soon as we
18 can or take other action at that time.

19 MR. ISOM: That's fine.

20 JUDGE NENE: Okay.

21 MR. ISOM: So that's May 24th, if that's not a
22 weekend?

23 JUDGE NENE: Well, I don't have a calendar.
24 Sorry.

25 MR. GRAY: It's a Thursday.

1 MR. EVRARD: I was going to say it's the end
2 of the week.

3 JUDGE NENE: May 24 is a Thursday?

4 MR. GRAY: Yes, your Honor.

5 JUDGE NENE: Let's go with that. Let's have a
6 joint status report or --

7 MR. ISOM: May I request, your Honor, that
8 we'll be glad to submit a status report, but the joint report
9 suggests we circulate drafts and get signatures.

10 JUDGE NENE: Yes. You can tell me at what
11 point your proceedings are --

12 MR. ISOM: That's fine.

13 JUDGE NENE: -- on May 24th. That would be up
14 to you then, Mr. Isom.

15 MR. ISOM: That's fine.

16 JUDGE NENE: I have another concern about the
17 ten or so individual complainants that have filed a complaint
18 in this matter. Those people have not contacted me at all
19 and they probably -- they found like -- but they --- we're
20 going to have to involve them at least to give them an
21 opportunity to make comments on any of the post-settlement
22 that is submitted. Can we have somebody, Mr. Isom -- the
23 company sends a copy of any proposal that might resolve it to
24 those complainants.

25 MR. ISOM: Certainly, your Honor. I just

1 procedurally haven't thought that through yet. But I know we
2 had a similar procedure, for example, in a recent rate case,
3 National Fuel, and I'm sure others.

4 JUDGE NENE: Maybe the Consumer Advocate would
5 prefer to do that.

6 MR. EVRARD: Certainly, your Honor, we would
7 be glad to do that. Perhaps Mr. Isom and I can discuss that
8 and come up with an approach that would be suitable.

9 JUDGE NENE: All right. That's just something
10 that might come up later, if this is able to reach
11 settlement.

12 MR. EVRARD: Very good.

13 MR. ISOM: And that's fine. We'll probably
14 address it in the settlement agreement and specify whatever
15 it is we're going to do.

16 JUDGE NENE: Yes. Is there anything else we
17 should discuss now? Anybody? Well, we've waited two years
18 to have a hearing. We've waited too long, but at least we're
19 going to have something in 30 days. If there is nothing else
20 that anybody wants to say at this time, we will close this
21 matter. Very well. We'll close this particular pre-hearing
22 conference now.

23 (Whereupon, at 10:24 a.m., the prehearing
24 conference was adjourned.)

25 ***

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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: Linda C. Larson

Linda C. Larson

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Linda C. Larson, Notary Public
Carlisle Boro, Cumberland County
My Commission Expires Mar. 4, 2010

Member, Pennsylvania Association of Notaries

RECEIVED
2007 APR 25 PM 12:49
SECRETARY'S BUREAU