

1 ORIGINAL

2 PUBLIC UTILITY COMMISSION

3 ----- XDocket No.
 4 Pennsylvania Public Utility Commission :R-00038102
 5 v. PECO Energy Company. Electric Division has :
 6 filed Supplement No. 44 Electric PA PUC NO. 3:
 7 to become effective January 1, 2004, which :
 8 proposes to recover \$19.8 million in revenue :
 annually, resulting in an increase to the :
 Nuclear Decommissioning cost adjustment from :
 \$0.0000 per KWH to \$0.0006 per KWH. :
 Initial telephonic prehearing conference. :
 -----:

9 Pages 1 through 39

Library Conference Room
State Office Building
Philadelphia, Pennsylvania

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Tuesday, April 29, 2003

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

DOCKETED

MAY 06 2003

14 BEFORE:

17 Marlane R. Chestnut, Administrative Law Judge

19 APPEARANCES:

20 KENT D. MURPHY, ESQUIRE
 21 WARD SMITH, ESQUIRE
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 (For PECO Energy)

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7 (For PAIEUG)

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9 P.O. Box 3265
10 Harrisburg, Pennsylvania 17108
11 (For PUC Office of Trial Staff)

12 JAMES MULLINS, ESQUIRE
13 555 Walnut Street, 5th Floor
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20 (Pro se)

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WITNESSES WITNESS INDEX
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EXHIBIT INDEX

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
(None)		

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE MARLANE R. CHESTNUT: Let's
3 go on the record. This is the prehearing conference scheduled
4 at Docket R-00038102. For the record let me state that I am
5 Administrative Law Judge Marlane R. Chestnut. Now as I'm sure
6 you're all aware the court reporter is here, and I do have the
7 ALJ Hearing Report that I will fill out for you with your names,
8 addresses, et cetera.

9 In fact, what I will do, to make life easier, I
10 will go through what I have here. If it's not correct, please
11 tell me. Is everybody able to hear me? The other thing I want
12 to mention, please identify yourself before you speak, so that
13 the court reporter will know who is talking. Also, try to keep
14 your voice up.

15 These are the appearances that I will have
16 noted for the record. Kent Murphy and Ward Smith, both
17 representing PECO Energy Company, at 2301 Market Street, P.O.
18 Box 8699, Philadelphia, PA 19101-8699. Mr. Murphy, I put your
19 E-mail address as kentmurphy@exeloncorp.com, and your Fax number
20 as (215) 568-3389.

21 MR. MURPHY: That's correct.

22 JUDGE CHESTNUT: The next person that I have
23 listed is Charis Burak, at McNees, Wallace, Nurick, LLC,
24 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108-1166.
25 E-mail address, cburak@mwn.com. Fax number (717) 237-5300,

1 representing PAIEUG.

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

3 JUDGE CHESTNUT: Mr. Mickens, I have you on behalf
4 of PUC Office of Trial Staff at P.O. Box 3265, Harrisburg, PA
5 17105-3265, telephone (717) 787-1976, E-mail address,
6 kmickens@state.pa.us. Fax number (717) 772-2677. Is that all
7 correct?

8 MR. MICKENS: That's correct.

9 JUDGE CHESTNUT: That takes us to Mr. Mullins, on
10 behalf of the Office of Consumer Advocate. I have your address
11 listed as Forum Place, 555 Walnut Street, 5th Floor,
12 Harrisburg, PA 17101-1923. Telephone (717) 783-5049.
13 E-mail jmullins@paoca.org. Fax is (717) 783-7152. Does that
14 sound right?

15 MR. MULLINS: That's all correct.

16 JUDGE CHESTNUT: Mr. Epstein, that takes us to
17 you, Eric J. Epstein, 4100 Hillsdale Road, Harrisburg, PA
18 17112. Telephone (717) 541-1101. E-mail eepstein@igc.apc.org.
19 Fax number (717) 541-5487. You're representing yourself; is
20 that correct?

21 MR. EPSTEIN: Yes.

22 JUDGE CHESTNUT: From a procedural note, let
23 me remind you that I will be issuing a written order that
24 incorporates the results of today's prehearing conference. I do
25 have an agenda that I go through. So if there are any other

1 issues you can raise them when I'm finished. Let me note for
2 the record that I received Prehearing Memoranda from everybody,
3 which is PECO, PAIEUG, OCA, OTS and Mr. Epstein.

4 The Petition to Intervene filed by PAIEUG on March
5 fifth, 2003 will be granted. Let me state that Petitions to
6 Intervene and Motions for Admission Pro Hac Vice, if any are
7 filed, if not defective on their face, will be deemed granted
8 if not objected to within three business days after filing.

9 If objected to such pleadings will be addressed
10 by order. Does everybody understand that? I'm going through
11 my checklist of issues. Not all of them may apply at this point
12 in the proceeding, but they may. That's why I'm mentioning
13 them.

14 Pursuant to 52 PA Code Section 5.61, Subsection D,
15 no answer is required for complaints that may be docketed with
16 this proceeding. Pursuant to 52 PA Code Section 1.55, each
17 party shall be limited to one entry on the service list,
18 although there can be more than one name listed. I think that's
19 okay with everybody.

20 Pursuant to 52 PA Code Section 1.54, Subsection D,
21 participants can be considered to be active or inactive. Given
22 the small number of parties to this proceeding, I don't think
23 it's necessary to develop an inactive party service list. If
24 there are more parties, then I think we can address it at that
25 point. At this point the active parties are all of the parties,

1 PECO, OCA, OTS, PAIEUG and Mr. Epstein.

2 Any party that files a Petition to Intervene and
3 wasn't at this prehearing conference will be granted active
4 party status only upon written request to the Presiding
5 Officer. Does everybody understand that?

6 MR. EPSTEIN: Yes.

7 MR. MURPHY: Yes.

8 JUDGE CHESTNUT: Could you identify yourselves?

9 MR. EPSTEIN: This is Mr. Epstein. I answered
10 affirmatively.

11 JUDGE CHESTNUT: Mr. Murphy, I think you did, too.

12 MR. MURPHY: Yes, Your Honor, it was me.

13 JUDGE CHESTNUT: Anybody else?

14 MR. MICKENS: This is Mr. Mickens. I understand.

15 JUDGE CHESTNUT: Thank you, Mr. Mickens.

16 MR. EPSTEIN: This is Mr. Epstein. I did have a
17 question.

18 JUDGE CHESTNUT: Certainly.

19 MR. EPSTEIN: When you issue the order from this
20 teleconference, is that the official service list we should all
21 utilize?

22 JUDGE CHESTNUT: Yes. I see that you have
23 additional entries on yours that really are not necessary.

24 MR. EPSTEIN: I was concerned because I noted
25 some of the filings were expert witnesses. I didn't know if

1 they should be included in that service list.

2 JUDGE CHESTNUT: No, that's a courtesy. But
3 that's not the official service list.

4 MR. MURPHY: This is Mr. Murphy. I've noticed on
5 some of the pleadings and notices, I think from your office,
6 that include Carol Pennington.

7 JUDGE CHESTNUT: That's from Harrisburg. But she
8 shouldn't be included. The OSBA has indicated it's not going to
9 be a part of this case. Just to make it clear, you have to
10 serve the entities on my list. You can serve anyone else that
11 you want.

12 That takes me to communication. I would prefer it
13 if you communicate with me via E-mail as opposed to phone
14 calls, unless it's just a really simple procedural matter.
15 First, I'm concerned about Ex Parte. I'm sure everybody is
16 aware, and would not knowingly violate that, but I would just
17 like to be very careful about that. I'll be honest with you
18 also, I'm not a quick thinker. So if you have something you
19 want me to address, that needs an answer, I really don't
20 appreciate being put on the spot on a telephone call.

21 Does everybody understand? If I don't hear
22 anything, I will move on. But please feel free to speak up.
23 I know I'm kind of fast. I think you can all keep up.

24 Now that takes me to my E-mail distribution list.
25 It's basically you folks at the E-mail addresses I indicated

1 when I noted your appearance. But on your E-mail list I want
2 you to include me, of course. My E-mail address is MACHESTNUT,
3 one word, @STATE.PA.US. Now I think you have all noticed I've
4 included my secretary, Kathy Niesborella. I would like you to
5 include her as well.

6 MR. EPSTEIN: This is Mr. Epstein. What is her
7 E-mail address?

8 JUDGE CHESTNUT: You have to listen because it
9 doesn't make a lot of sense. It will be on my prehearing order.
10 I think you've seen it, but just to be sure, it's
11 K-N-I-E-S-B-O-R-E-L, that's her alias, @state.pa.us. Everybody
12 get that?

13 MR. EPSTEIN: This is Mr. Epstein. I have
14 K-N-I-E-S-E-R-O-L.

15 JUDGE CHESTNUT: B-O-R-E-L.

16 MR. EPSTEIN: Thank you.

17 JUDGE CHESTNUT: That takes us to the next issue
18 which I have listed, which is discovery. I'm sure you're all
19 aware that it's very common to modify the Commission's discovery
20 regulations, the response periods. Now PECO requested a response
21 period of ten business days. I assume that's to answer, to
22 object, Mr. Murphy?

23 MR. MURPHY: That's the response time to answer
24 a question. I didn't offer an alternative on the objections
25 period.

1 JUDGE CHESTNUT: That's a longer period than we
2 normally do. We either do five business day or ten calendar
3 days. But given the extensive period we have for litigation
4 here, I don't have a problem with that. Does anybody have a
5 problem with the response period of ten days to answer?

6 MR. EPSTEIN: This is Mr. Epstein. Some of
7 the things I have answered have been complicated, so I would
8 appreciate that it would take longer than normal.

9 JUDGE CHESTNUT: Generally I do expect all of you
10 to exercise good faith in conducting discovery. I really hate
11 having to address Motions to Compel. I hate it a lot because
12 the propounder should know what permissible discovery is, and
13 the responder should exercise good faith in responding to it.
14 If there is a problem, I expect you to work it out.

15 MR. EPSTEIN: This is Mr. Epstein. I can say,
16 that in terms of filing, I guess numerous, perhaps onerous
17 interrogatories, the company has been very responsive. In fact,
18 we worked out everything. From my point of view, I don't have a
19 problem.

20 JUDGE CHESTNUT: I like to hear that. I would
21 hope everybody exercises professionalism and reasonableness.
22 I'm going to go through the standard changes, and you tell me if
23 you want to do this or not. I have included ten business days,
24 because there are a few other changes here. Okay. An active
25 participant's answers to written interrogatories shall be served

1 within ten business days of receipt, unless receipt occurs on a
2 Friday, Saturday, Sunday or holiday, in which case the answers
3 shall be served within ten business days of the first day after
4 receipt that is not a Friday, Saturday, Sunday or holiday.

5 Does everybody understand? That's to avoid the Friday evening
6 dump.

7 Second, now, this is the standard change. Let me
8 know if you want to extend this. Objections to interrogatories
9 are to be communicated orally to the propounder of the
10 interrogatory within two business days of receipt and in writing
11 within four business days of receipt.

12 Do you want to stick with that or change it?

13 MR. MURPHY: Your Honor, this is Kent Murphy. We
14 have no problem with that.

15 JUDGE CHESTNUT: Because they are business days,
16 not calender days. I want to remain consistent with your
17 request for business days.

18 That takes us to Motions to Compel. Answers to
19 Interrogatories that have been objected to and answers to Motion
20 to Compel shall be filed with the Commission and served on me
21 within three business days of receipt of the objections or
22 Motion to Compel, again, unless it occurs on a Friday, Saturday,
23 Sunday or a holiday, in which case they shall be filed
24 and served within three business days of the first business day
25 after receipt that's not a Friday, Saturday, Sunday or holiday.

1 Like I said, I don't want to see any of those.
2 Let me clarify here for I guess Mr. Epstein, because everybody
3 should really know this. Pursuant to 52 PA Section 5.341 (b),
4 neither interrogatories nor responses are to be filed with the
5 Commission or served on me, although you may file a Certificate
6 of Service with the Commission's Secretary.

7 Does everybody understand that?

8 MR. EPSTEIN: This is Mr. Epstein. I'm not sure
9 what I should do retroactively.

10 JUDGE CHESTNUT: Don't do anything retroactively.

11 MR. EPSTEIN: I have filed informal interrogatories.
12 Do they need to be filed with the Commission?

13 JUDGE CHESTNUT: No, you don't file it with the
14 Commission. That's what I just said.

15 MR. EPSTEIN: Okay.

16 JUDGE CHESTNUT: You do not file interrogatories
17 with the Commission. Don't file answers with the Commission and
18 don't send them to me, because they're not part of the record
19 yet.

20 MR. EPSTEIN: Okay.

21 JUDGE CHESTNUT: This is just another general
22 comment, just to make you aware of that, interrogatories which
23 are objected to, which are not made the subject of Motion to
24 Compel will be deemed withdrawn.

25 That takes us to request for admissions, shall be

1 deemed admitted unless answered or objected to within five
2 business days of receipt. Again, unless receipt occurs on a
3 Friday, Saturday, Sunday or holiday.

4 Responses to requests for document production,
5 entry for inspection or other purposes must be served in-hand
6 within seven calendar days. Everybody understand these things?

7 MR. MURPHY: This is Mr. Murphy, we understand,
8 Your Honor.

9 JUDGE CHESTNUT: I don't think it's going to be
10 necessary because it sounds like everybody is cooperating at
11 this point. I was a little concerned about a statement in
12 PECO's Prehearing Memorandum that they're going to stop replying
13 to, I guess engaging in informal discovery, and want it on a
14 formal basis.

15 MR. MURPHY: No, Your Honor, what was meant --
16 this is Kent Murphy. What was meant by the comment in our
17 prehearing was that the requests that we receive from the
18 parties will be treated formally now. That doesn't curtail the
19 desire to have informal discussions if that's what the parties
20 want to have.

21 JUDGE CHESTNUT: Because I really would urge all
22 of you to work amongst yourselves to engage in full discovery.
23 I think this is the kind of case that benefits from it. If I
24 would have to deal with a Motion to Compel, I tell you now that
25 my interpretation of proper discovery would be pretty broad.

1 I think that takes care of discovery. Also,
2 here is one more thing. When possible interrogatories should be
3 provided electronically as well as in paper. Actually I think
4 at this point people pretty much do it electronically. But,
5 again, that's something for you folks to work out. Whatever you
6 can agree to. Does anybody have any comments or questions about
7 discovery?

8 Okay. The next issue that is on my list then is
9 settlement. I routinely put in my prehearing order that parties
10 are to confer among themselves in an attempt to resolve some or
11 all of the issues. Obviously you're doing it here. I would
12 encourage you to continue doing that. I see your proposed
13 schedule does include provisions for additional settlement
14 conferences. Is that still on track, Mr. Murphy?

15 MR. MURPHY: Yes, it is, Your Honor.

16 JUDGE CHESTNUT: Obviously, I know substantively
17 less about this area than most of you. But it seems like this
18 case should be settled. If there is anything that I can do to
19 assist you in this, please let me know. But otherwise I will
20 let you folks go ahead and work among yourselves.

21 That brings us to the proposed schedule. PECO and
22 OCA both have schedules attached to their prehearing memoranda,
23 which were pretty similar except for hearing dates. Let's talk
24 about the schedule.

25 MR. MURPHY: This is Kent Murphy, Your Honor.

1 I think this is the part of the prehearing where people might
2 get mad at the company. I submitted a proposed schedule that
3 had a hearing date of November 13th through 14th, that was based
4 on some indications from my witnesses as to availability.
5 Unfortunately, what one of the witnesses later informed me was
6 that a vacation that had been pre-planned by his wife, but not
7 informed to him, had been planned which would render him
8 unavailable for the November 13th through 14th dates.

9 I have attempted to put some dates, alternative
10 dates, together but have not been able to discuss those with the
11 parties.

12 JUDGE CHESTNUT: Well I think you're jumping a
13 little ahead here. Let me say this: I calculated the back of
14 the schedule, based on the suspensions date of June 30th, 2004
15 when my decision would be due, when the briefs would be due,
16 when the record would need to be closed. Now obviously we have
17 a lot of flexibility here in terms of time, which is good.

18 Let's just go through this item by item. Is there
19 any problem with having, let me back up. I understand that the
20 schedule -- is this a consensual schedule for OTS and PAIEUG?
21 Have you seen the schedule? Do you agree with it, except for
22 the hearing date issue? Mr. Mickens?

23 MR. MICKENS: The hearing date issue that just
24 came up, we have no problem with the proposed scheduled.

25 JUDGE CHESTNUT: Ms. Burak?

1 MS. BURAK: We saw the schedule as well,
2 Your Honor, we did not have a problem with it.

3 JUDGE CHESTNUT: Mr. Epstein?

4 MR. EPSTEIN: I am in full agreement with the
5 schedule. The only caveat I have, if it's adjusted, not to
6 fall on a Jewish holiday, frankly.

7 JUDGE CHESTNUT: Certainly.

8 MR. MULLINS: Your Honor, Mr. Mullins for the OCA.

9 JUDGE CHESTNUT: I was just about to get to you.

10 MR. MULLINS: The OCA does agree with PECO's
11 proposed schedule despite our differences for the third
12 settlement conference and then also for hearings.

13 JUDGE CHESTNUT: It's up to you in terms of when
14 you think your settlement conferences should be scheduled.

15 MR. MURPHY: Your Honor, I basically put this
16 schedule together with the desire I suppose to satisfy your
17 interests that you had expressed that we not have hearings in
18 the middle of wintertime. And I'm very flexible if the other
19 parties are also flexible, about moving all of these dates
20 forward in time, if that comports with the schedule that you had
21 worked out by backing up from the suspension period.

22 JUDGE CHESTNUT: Well I was concerned about bad
23 weather, because we just had a bad winter where a number of days
24 of hearings were problems. It doesn't mean we can't schedule
25 things. But I really would prefer not to go past mid-November,

1 if we can in hearings. My preference here is to allow you the
2 maximum opportunity to settle it. I guess at this point you
3 have had one settlement conference?

4 MR. EPSTEIN: This is Mr. Epstein. The only
5 additional comment I would make, I can't speak for the other
6 participants, very constructive initial settlement conference.
7 One of the issues that I think we're all waiting on, I can't
8 speak for the company but the completion of the decommissioning
9 studies. I think that may be critical to the pace and content
10 of the proceeding.

11 JUDGE CHESTNUT: What is the time frame?

12 MR. MURPHY: Your Honor, there are actually two
13 time frames. But the end of the time period that we're talking
14 about is early July, that's why we were going to, that's why
15 the July 14th week update is on the attachment or memorandum.
16 Ideally we would probably prefer to have a couple additional
17 weeks so that the parties could take an informed look at those
18 studies to see if they comport with or how they line up with our
19 claim in this case, Your Honor.

20 JUDGE CHESTNUT: Well, from my perspective, I
21 don't really care about your settlement conference scheduling
22 or your testimony filing dates. That's something I really do
23 believe is, you're best addressed to handle. I would like to
24 stick with the November 13th, 14th hearings dates, and if you
25 want to jiggle around your testimony dates, that's okay.

1 Because you left yourself plenty of time there.
2 If you want to move it back a little so you have more time to
3 review the studies, that's fine. If you want to keep it the way
4 it is, that's fine with me, too.

5 MR. EPSTEIN: This is Mr. Epstein. The only other
6 issue, again, I can't speak for the other parties, that would
7 have an impact on this proceeding, is re-licensing at Peach
8 Bottom. I think at that point time, by early July we should
9 have the studies and a good idea of whether re-licensing has
10 been approved at Peach Bottom.

11 MR. MURPHY: This is Kent Murphy, Your Honor.
12 Mr. Epstein has represented what we believe to be the case.
13 Of course that is all dependent on what the United States
14 Nuclear Regulatory Commission ultimately decides.

15 JUDGE CHESTNUT: So does the schedule accommodate
16 that? It seems to me that it would?

17 MR. MURPHY: Yes, it does.

18 JUDGE CHESTNUT: So is everybody okay with the
19 schedule up to the hearings?

20 MR. MULLINS: Mr. Mullins, for the OCA. Just one
21 minor point. On September 26th the company has designated that
22 date as PECO rebuttals, the service of PECO's rebuttal. I would
23 like to include the possibility that the other intervenors may
24 wish to file rebuttal on that date as well. Not likely, but--

25 JUDGE CHESTNUT: I'm sorry, what date was that?

1 MR. MULLINS: That's September 26th.

2 JUDGE CHESTNUT: Well I frankly didn't understand
3 your schedule to some point, Mr. Murphy, because it seems like
4 we have gone away from that. Instead of having company,
5 intervener, company, intervenor, ending up with the company, it
6 seems like the company files, everybody files and then there is
7 rebuttal by everybody to everybody, and then surrebuttal where
8 everybody just does their own. Is that what you're talking
9 about, Mr. Mullins?

10 MR. MULLINS: Yes, it is, Your Honor.

11 JUDGE CHESTNUT: PECO's schedule, you have PECO,
12 Intervenor direct, PECO rebuttal, I don't know why that wouldn't
13 be everybody rebuttal on September 26.

14 MR. MURPHY: It was an oversight, Your Honor.

15 JUDGE CHESTNUT: Okay.

16 MR. MURPHY: Kent Murphy.

17 JUDGE CHESTNUT: I didn't know if you were trying
18 to be slick here.

19 MR. MURPHY: I wasn't trying to pull a fast one.
20 I have been doing it for 15 years, and I still can't get past
21 those old tricks of the trade.

22 JUDGE CHESTNUT: Okay. So that means that
23 July 30th would be PECO direct. August 29th would be --
24 you have complainant OTS, intervenor. I just say non-company
25 direct. And then September 26th is all parties rebuttal.

1 Then October 22nd would be all parties surrebuttal.

2 Wait, I'm getting confused here.

3 MR. MURPHY: All parties surrebuttal would be fine.
4 As the proponent of the rate, we would hope to close with our
5 rejoinder.

6 JUDGE CHESTNUT: Well of course you have that
7 right. You open and close. So if you want to do very, very
8 brief oral rejoinder because at that point everyone would have
9 three rounds of testimony.

10 MR. MURPHY: That's understood, Your Honor.

11 JUDGE CHESTNUT: That would be October 29th.
12 Hearings 13th, 14th. Now, they would be in Harrisburg.

13 MR. EPSTEIN: Mr. Murphy, are the hearings still
14 the 13th and 14th?

15 MR. MURPHY: Well the concern that I expressed
16 earlier with regard to my witness, who is really the main NRC
17 expert, Mr. Levin. The dates that he would be able to appear
18 unfortunately would be a week later, November 20 through 21.

19 JUDGE CHESTNUT: How about a week earlier?

20 MR. MURPHY: The vacation unfortunately is a
21 multi-week vacation.

22 JUDGE CHESTNUT: I'm just concerned about pushing
23 it back because that's getting into Thanksgiving.

24 MR. MURPHY: Could we have the hearings in
25 Philadelphia?

1 JUDGE CHESTNUT: It's okay with me.

2 MR. MICKENS: Ken Mickens from OCA. Your Honor,
3 I would like to indicate that there would be a budgetary concern
4 for OCS having the hearings in Philadelphia, but we would prefer
5 Harrisburg.

6 MR. EPSTEIN: This is Mr. Epstein. I'm wondering
7 if we could move it up earlier the same week. The 13th and the
8 14th I believe is a Thursday and a Friday. Would he be available
9 earlier the same week?

10 JUDGE CHESTNUT: I thought you said it was a
11 multi-week -- when is he available earlier?

12 MR. MURPHY: He will not be able to make the 13th
13 and 14th.

14 MR. EPSTEIN: I'm sorry, Your Honor. You're
15 right. He would be absent the whole week.

16 MR. MURPHY: The whole week, the week before and
17 the week before that even.

18 MR. EPSTEIN: Really. I have to start working for
19 your company.

20 JUDGE CHESTNUT: Well you know, I'm going to have
21 to say that maybe someone else should be made available. That's
22 a very big chunk of time.

23 MR. MURPHY: We will have to work with that, Your
24 Honor. We are asking for a one-week indulgence at this point.
25 And I recognize the concerns about the weather.

1 JUDGE CHESTNUT: There are not a lot of parties
2 here so if the weather is bad I will just do it telephonically.

3 MR. MURPHY: Your Honor, that would be okay with
4 us. We could have our witness in your chambers.

5 JUDGE CHESTNUT: How about my house?

6 MR. EPSTEIN: Yes.

7 MR. MURPHY: There you go. We would do that.

8 MR. EPSTEIN: Your Honor, I think if we're talking
9 about the witness that we're thinking of, I'm not in the habit
10 of siding with PECO, but I think it would probably hurt their
11 case if this person wasn't present.

12 MR. MURPHY: Your Honor, we could even go up to
13 Harrisburg. You could be in Philadelphia or your house and have
14 a court reporter in Harrisburg.

15 JUDGE CHESTNUT: Well, let's not anticipate too
16 much here. I was just trying to be prudent. I don't know if
17 there is going to be a blizzard in November.

18 MR. EPSTEIN: I hope not.

19 JUDGE CHESTNUT: I hope not, too. But this was a
20 very traumatic winter in terms of hearings. Well, how about the
21 18th and 19th of November?

22 MR. EPSTEIN: This is Mr. Epstein again, the 18th
23 and 19th in Harrisburg?

24 JUDGE CHESTNUT: Yes. I don't want to do it on a
25 Monday if I can get away from that.

1 MR. EPSTEIN: I don't have any objection. I don't
2 know about the other parties.

3 JUDGE CHESTNUT: Well Kent, what about the
4 witness? Is he available the 18th and 19th?

5 MR. MURPHY: Yes, Your Honor.

6 JUDGE CHESTNUT: Does anyone have a problem if we
7 schedule the hearings at this point for November 18th and 19th?

8 Mr. Mullins?

9 MR. MULLINS: Not a problem at this point, Your
10 Honor. But I would have to clear the date with our witness,
11 Mr. Katlin. But he hasn't mentioned any other conflicts to me.
12 But I would have to verify that to be sure.

13 JUDGE CHESTNUT: Well why don't you have someone
14 check now. I would like to get it resolved before we adjourn.

15 MR. MULLINS: Your Honor, Mr. Mullins again.
16 I can run down the hall for a minute and have someone call
17 Mr. Katlin while we're still on the line.

18 JUDGE CHESTNUT: Could you do that please?

19 MR. MULLINS Sure.

20 JUDGE CHESTNUT: Ms. Burak?

21 MS. BURAK: Yes, Your Honor.

22 JUDGE CHESTNUT: How about you, the 18th and
23 19th?

24 MS. BURAK: That's fine, Your Honor.

25 JUDGE CHESTNUT: Mr. Epstein?

1 MR. EPSTEIN: Yes.

2 JUDGE CHESTNUT: Mr. Mickens, I don't remember if
3 I asked you or not. I'm sorry.

4 MR. MICKENS: Yes, Your Honor.

5 JUDGE CHESTNUT: Yes, it's okay?

6 MR. MICKENS: Right.

7 JUDGE CHESTNUT: Assuming that this is okay with
8 Mr. Mullins, then let's talk about a briefing schedule. When I
9 did my rate case calculations using the rate case calculator my
10 decision would be due May 11th, which means that in terms of the
11 time between events, your reply briefs would be due April sixth,
12 your main briefs due March 27th, with the record closing in
13 March.

14 Now I understand that you have moved things up
15 because of the time here. But I prefer you to move the briefs
16 back. And the reason for that is, if you have not settled
17 everything by then I think it would give you more time to do
18 so. You can still settle after you file your testimony and
19 have the hearings. In fact sometimes that's a good basis for
20 arriving at a settlement.

21 But I have found that once parties file briefs
22 they are really locked in, and there never is any kind of
23 movement after that. So that's why I proposed that we backend
24 the briefs on the schedule. As well as the fact, I will be
25 honest with you, that I do take most of December off.

1 So you can file, but I wouldn't even be looking at
2 it. So in that case I would rather that you just, instead of
3 spending time on the briefs, that you spend time talking to each
4 other. How do you folks feel about that? Mr. Murphy?

5 MR. MURPHY: Your Honor, I believe that's a very
6 good idea.

7 JUDGE CHESTNUT: Mr. Epstein?

8 MR. EPSTEIN: I have no problems.

9 JUDGE CHESTNUT: Mr. Mickens, how do you feel
10 about moving the briefing schedule back?

11 MR. MICKENS: I would have no objection to that.

12 JUDGE CHESTNUT: Ms. Burak?

13 MS. BURAK: That's fine, Your Honor.

14 JUDGE CHESTNUT: Mr. Mullins, are you back yet?

15 MR. MULLINS: I have returned, Your Honor. I do
16 not have an issue with moving the briefing dates back. I did
17 try to reach Mr. Katlin. He's out of the office today, but as I
18 said before I don't think the 18th or 19th would be problematic.

19 JUDGE CHESTNUT: We will go ahead and tentatively
20 do that. I will hold off on letting the schedulers know. If
21 you could get back to me by the end of today maybe.

22 MR. MULLINS: I believe Mr. Katlin is out until
23 tomorrow. I will give him a call first thing in the morning.

24 JUDGE CHESTNUT: Because scheduling, they do it
25 months and months ahead. It's really important that I let them

1 know what the days are.

2 MR. MULLINS: I will call them first thing. Like
3 I said, I don't think those dates are problematic.

4 JUDGE CHESTNUT: If they are a problem check also
5 maybe into the 20th, 21st, or other days in that week.

6 MR. MULLINS: Okay.

7 JUDGE CHESTNUT: Because that seems to be the
8 week. Now I guess nobody said they had a problem with my
9 suggestion to move the briefing schedule back. Like I said,
10 when I ran this through the spread sheet I came up with March
11 7th, I'm sorry, March 27th, for the main brief, April sixth for
12 the reply brief, and then my decision. You know what, why don't
13 I move that back and give myself some extra time because I have
14 to put in a week for the decision to be processed in Harrisburg.
15 And from April 6th to May 11th is really not a lot of time.
16 So if we could move this up a bit, that might be easier.

17 I tell you the truth, I forgot to print out a 2004
18 schedule, yearly schedule. So does someone have a 2004 schedule
19 there?

20 MR. MURPHY: Yes, I do, Your Honor.

21 JUDGE CHESTNUT: Could you tell me what date March
22 7th would be?

23 MR. MURPHY: March 7th, it's a Sunday.

24 JUDGE CHESTNUT: Let me look at this. If we say
25 that your main briefs would then be due March eight, you don't

1 want it on a Monday, so we'll say the ninth for a Tuesday, to
2 make it easier for you to deliver it. What day of the week is
3 the 28th?

4 MR. MURPHY: The 28th again is a Sunday.

5 JUDGE CHESTNUT: So we will make it 30th for the
6 reply briefs.

7 MR. MURPHY: That would be good for PECO.

8 JUDGE CHESTNUT: Does anybody have a problem with
9 those two days as the briefing days?

10 MS. BURAK: Could you just repeat those again,
11 Your Honor? I apologize.

12 JUDGE CHESTNUT: Sure. March ninth, 2004, which is
13 a Tuesday, for the main brief, March 30th, which is of course
14 giving you lots of extra time for your reply brief. That would
15 be March 30th for your reply brief.

16 MS. BURAK: That's fine with PAIEUG, Your Honor.

17 JUDGE CHESTNUT: Mr. Epstein?

18 MR. EPSTEIN: That's not a problem.

19 JUDGE CHESTNUT: Mr. Mullins?

20 MR. MULLINS: That's fine, Your Honor.

21 JUDGE CHESTNUT: Mr. Mickens?

22 MR. MICKENS: That's fine with OTS.

23 JUDGE CHESTNUT: Then we will say that. Now
24 pending then Mr. Mullins getting back to me with respect to the
25 hearing dates let's go through the schedule we have so far then

1 to make sure that it's consistent. I will mention your days
2 that you have for conferences and testimony just to be sure that
3 everybody is aware of them.

4 The week of May fifth is the second settlement
5 conference. The week of July 14th is the third settlement
6 conference. But again, you can change those dates amongst
7 yourselves. You don't have to ask me for permission to change
8 the schedule, unless there is some dispute of course. July 30th
9 is PECO direct testimony. August 29 is non-company direct
10 testimony. September 26th, 2003 is all parties rebuttal.
11 October 22nd is all parties surrebuttal. October 29th is the
12 written outline of brief PECO oral rejoinder. November 18th
13 and 19th, subject to the OCA witness's availability will be the
14 hearings held in Harrisburg.

15 Main briefs would be March ninth. Reply briefs
16 would be March 30th, and my decision would probably be out May
17 fifth, I'm sorry May 11th, with the end of the suspension is
18 June 30th. Is everyone clear on the schedule or does anyone
19 have any questions about the schedule?

20 Okay. Let's talk about specifics relating to the
21 schedule then. First is the witnesses. Ms. Burak, you did not
22 list any witnesses in your prehearing memorandum. How come?

23 MS. BURAK: Your Honor, at this point we're
24 not positive that we're going to be putting in testimony.
25 Sometimes what occurs in these proceedings is that, for example,

1 PECO in their direct testimony or another party in its direct
2 testimony might put in something we need to respond to. So
3 we're not always sure until we have seen the testimony.

4 JUDGE CHESTNUT: Well that's not really good
5 enough. Because I assume you have someone retained to review
6 this. You should have listed somebody.

7 MS. BURAK: Your Honor, at this point we have
8 not retained anyone. We're still reviewing the filing and
9 determining whether or not we will. Because there are so many
10 settlement dates in there and so much time in between we felt
11 that that would give us a little bit of leeway for the members
12 to determine what they would like to do.

13 JUDGE CHESTNUT: Well, you're not going to be
14 permitted to present a witness unless you get my permission.
15 Okay?

16 MS. BURAK: That's fine, Your Honor. I would
17 indicate that I don't believe any of the other parties would
18 have problems --

19 JUDGE CHESTNUT: I don't care about other parties,
20 Ms. Burak. You did not comply with my prehearing order.

21 MS. BURAK: I apologize, Your Honor. Again, as I
22 mentioned, at this point the membership is still deciding what
23 they would like to do. Because it's often timed with respect to
24 direct testimony it's difficult for us to decide at this point
25 in time where we will be with respect to needing a witness.

1 JUDGE CHESTNUT: Let me refer to my prehearing
2 order. "Further, witnesses not listed on your prehearing
3 memorandum will not be permitted to participate in the hearing
4 without good cause shown." And I'm going to tell you now that
5 unless you have a good reason, you're not going to be permitted
6 to present any direct testimony. If you have a good reason that
7 you haven't said, that's fine, and I will be glad to consider
8 that. But keep this in mind. Okay?

9 Now of course, this does not preclude, as everyone
10 has recognized in the prehearing memorandum, that there may be
11 changes. That's certainly fine. But I will tell you right now
12 that that kind of generalized vague statement in your prehearing
13 memorandum is just not acceptable anymore.

14 MS. BURAK: I do apologize, Your Honor. I wasn't
15 trying to run afoul of your prehearing order. It was just that
16 as I noted, because direct testimony is not due until August,
17 it's very difficult for our membership to determine who they
18 would like to retain or how they would like to move forward,
19 especially with the various economics involved.

20 JUDGE CHESTNUT: Well try to put some pressure on
21 them. I'm happy for you to cast me as the bad person here. But
22 maybe this can help them come to a decision sooner.

23 MS. BURAK: I will do my best, Your Honor.

24 JUDGE CHESTNUT: Now in accordance with the
25 schedule we just talked about, testimony, the dates that we

1 talked about testimony, that's dates of receipt, not dates of
2 mailing. Testimony is to be served and received in-hand by the
3 parties no later than 4:30 p.m. on the dates listed.

4 Parties are also directed to serve their
5 testimony electronically on the other parties. I don't need
6 it electronically. I'm sure you all know, do not file your
7 testimony with the Commission. Although you may file a
8 Certificate of Service.

9 Does everybody understand that and why that is?

10 MR. MURPHY: Yes. Your Honor, this is Kent
11 Murphy. I'm not clear as to whether electronic versions of the
12 testimony are considered service.

13 JUDGE CHESTNUT: Technically it's not. Service is
14 different from filing.

15 MR. MURPHY: I have in other proceedings received
16 agreement from the parties that they would accept electronic
17 mail versions of the testimony.

18 JUDGE CHESTNUT: That's fine. You can work that
19 out. I don't want it electronically. I want it hard copy. But
20 if it's a problem for you to hard copy it to me on the day you
21 send it electronically to the other parties, let me know, and
22 I don't mind getting it the next day. I don't want it faxed
23 either, because frankly our fax machine is not that great. And
24 I just don't want documents faxed. Okay? If you can help it.
25 Sometimes it's unavoidable if your E-mail system goes down.

1 But it's important to me that the parties receive
2 the testimony on dates that it's due, because they're the ones
3 who have to respond. I just have to read it. So it's really
4 not a problem if I get it the next day. But you have to let me
5 know. Okay. Does everybody understand the timing of serving
6 testimony?

7 MR. EPSTEIN: This is Mr. Epstein. I did
8 understand. I want to clarify to make sure I understand how you
9 feel about electronic mailing. That's something that's in
10 addition to other mandates worked out between the parties?

11 JUDGE CHESTNUT: Yes. The rule it has to be hard
12 copied. But frankly, parties find it easier to receive it
13 electronically. I don't care. I just don't want it E-mailed or
14 faxed. Let me point out something else to you all concerning
15 testimony. You're directed to comply with provision 52 PA Code
16 Section 5.243 Subsection E, which prohibits introduction of
17 evidence during rebuttal or surrebuttal, which have been
18 included in the active party's case-in-chief or which
19 substantially varies from the case unless the evidence is
20 introduced in support of a proposed settlement.

21 In other words, no sandbagging. Is everybody
22 aware of that?

23 MR. MURPHY: Yes. One question.

24 JUDGE CHESTNUT: Sure.

25 MR. MURPHY: If underlying facts develops between

1 direct testimony and rebuttal testimony, in other words there is
2 a change --

3 JUDGE CHESTNUT: Of course. Let's be reasonable
4 here. I don't want you to sandbag. But on the other hand, if
5 it's something that would reflect changes, reasonable changes
6 that occur, I would expect you to do that. I would expect
7 everyone to understand and deal with that. I don't think it
8 should be a problem here because I'm sure you all are not
9 problem practitioners. I'm sure you will all exercise
10 reasonableness and good faith.

11 You have so far, and I have no reason to believe
12 you will not in the future. This is just a standard warning
13 that I started to include because of problems in other cases.

14 Let's go on. This is simple. Testimony should be
15 premarked with numerical, sequential statement numbers. All
16 statements must list on the cover sheet the issues addressed
17 in that statement. Speaking of issues, maybe as part of the
18 settlement discussion, I want you to agree on a start list of
19 issues and sub-issues. So that everybody is addressing the same
20 issues and in the same order. I want you to provide me with an
21 issue list as soon as you develop it. Mr. Murphy?

22 MR. MURPHY: Yes.

23 JUDGE CHESTNUT: I assume no one has a problem,
24 right?

25 MR. EPSTEIN: I do not.

1 JUDGE CHESTNUT: Mr. Mullins, Mr. Mickens,
2 Ms. Burak, I assume it's okay with you unless you speak up.
3 The hearings like we said, actually my Bureau has more travel
4 budget constraints than yours. Mr. Mickens, I will agree to
5 have it in Harrisburg. We will start the first day at 10:00.
6 Let's say 10:00 each day unless we change it.

7 I will tell you that it's my practice to travel up
8 and back from my residence. I don't stay over. So I don't like
9 to go late on a hearing, because I'm bound because I take the
10 train. Does anyone have questions so far concerning hearings or
11 testimony filing?

12 All right. Let's move on. Let's talk about
13 briefs. Unlike your testimony, briefs are filed with the
14 Commission as well as served on the parties. In fact, the
15 regulation that controls that is 52 PA Code Section 5.502,
16 Subsection A. The briefs are to be received -- let's back up.
17 Main briefs are to be received in-hand -- why don't we make both
18 briefs, sometimes people let the reply brief date be the date of
19 mailing, but I want to say that both brief dates are the date of
20 receipt because you have a lot of time in there. It should not
21 be a problem.

22 So that the briefs must be filed with the
23 Commission and received by me and the parties no later than
24 4:30 on the dates that we have listed. You can arrange it
25 among yourselves how to do this. But I do want the parties to

1 E-mail briefs to me. If you can't E-mail, please send a disk.
2 Also include a disk in the copy you file with the Secretary. It
3 should be in Word 2000 or another compatible format. If that's
4 a problem call me and we can work it out. But I do want it
5 electronically.

6 Each brief, regardless of length must contain a
7 table of contents. I can't tell you how important that is.
8 It's also good for you folks in terms of helping you organize.
9 So it must include a table of contents, a history of the
10 proceeding, discussion, proposed findings of facts, proposed
11 conclusions of law with appropriate citations and proposed
12 ordering paragraphs.

13 In addition there must be a one sentence summary
14 at the end of each issue. Don't make it broad, OTS's position
15 should be adopted. Just try to summarize. It's not for me,
16 it's for other parties at the Commission. I think you all
17 understand what I'm talking about.

18 In terms of that, let me give you a piece of
19 advice. You cannot summarize enough. Summarizé, summarize,
20 summarize. When I write my decision I like to put in what each
21 party's position is. If I can cut and paste one or two sentence
22 piece out of your brief instead of me trying to recast it, it's
23 certainly a lot better for everybody.

24 Does anyone have questions about briefs? Again,
25 this will be included in a prehearing order. If you have any

1 questions please bring them up. I guess you all understand.
2 You have all been doing it quite a while, so I'm sure you know
3 when you write your brief you really should do it in terms of
4 what is helpful to me and to the Commission in terms of
5 incorporating in our respective decisions and orders.

6 That's just a tip. Certainly not a directive.
7 That's the end of my issues. Does anyone else have anything
8 they want to raise? Mr. Murphy?

9 MR. MURPHY: We have nothing else.

10 JUDGE CHESTNUT: Ms. Burak?

11 MS. BURAK: I have nothing further, Your Honor.

12 Thank you.

13 JUDGE CHESTNUT: Mr. Mickens?

14 MR. MICKENS: Nothing further.

15 JUDGE CHESTNUT: Mr. Mullins.

16 MR. MULLINS: Nothing further.

17 JUDGE CHESTNUT: Mr. Epstein?

18 MR. EPSTEIN: Thank you. Nothing further.

19 JUDGE CHESTNUT: Thank you very much. As soon as
20 I hear from Mr. Mullins, I will issue a prehearing order that
21 incorporates the items that we have addressed. If anything
22 comes up let me know. I want to encourage you to see if you
23 can resolve this, so that we don't need to have the hearing in
24 November. That would be great. But I expect you will do what
25 you can.

1 Thank you very much. This prehearing conference
2 is adjourned.

3 MS. BURAK: Thank you.

4 MR. MURPHY: Thank you.

5 MR. EPSTEIN: Thank you.

6 (Whereupon, at 11:00 a.m. the prehearing
7 conference was adjourned.)

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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
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