

**CONFIDENTIAL**

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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: Pennsylvania Public Utility Commission : Docket No.  
: v. PPL Electric Utilities Corporation. : R-00049255  
: Rate filing. :  
: Initial Prehearing Conference :  
: ----- x

Pages 1 through 46

Hearing Room No. 3  
Commonwealth Keystone Building  
Harrisburg, Pennsylvania

**DOCUMENT**

Wednesday, May 19, 2004

Met, pursuant to notice, at 2:00 p.m.

BEFORE:

ALLISON K. TURNER, Administrative Law Judge  
SUSAN D. COLWELL, Administrative Law Judge

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**DOCKETED**

JUN 08 2004

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WITNESS INDEX

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FORM 2

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FORM 2

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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE ALLISON K. TURNER: Now is  
3 the time and place for the initial prehearing conference in  
4 the matter of Pennsylvania Public Utility Commission,  
5 et al., versus PPL Electric Utilities Corporation docketed  
6 at R-00049255. My name is Allison Turner, and I am the  
7 Administrative Law Judge assigned to hear this case and make  
8 preliminary rulings and submit a recommended decision.  
9 Sitting with me will be my colleague, Susan Colwell. She  
10 has gone to get a second page for the appearance sheet, and  
11 she will return shortly. Also with us we have Chief Judge  
12 Christianson at the back of the room.

13 Do you want to join us up here, Judge, or are you  
14 going to stay in the back?

15 CHIEF JUDGE CHRISTIANSON: My ears are straining.  
16 Maybe I'll come up.

17 JUDGE TURNER: Okay. If I have to talk louder, I  
18 will. Can you all hear me in the back?

19 CHIEF JUDGE CHRISTIANSON: They can hear you, but the  
20 echoes don't help. I'll come up front.

21 JUDGE TURNER: When I do get the appearance sheet, I  
22 will note the appearances on the record, but for the time  
23 being, since it isn't completed and we do need an additional  
24 copy, I will begin without that.

25 First of all, to those of you who were not on my

1 service list but who had filed Petitions to Intervene early,  
2 I must apologize. Not all of the Petitions to Intervene  
3 were sent to me and they weren't all entered on our  
4 docketing system. I think I've caught up with almost  
5 everyone. That would be SEC and MAPSA and perhaps one other  
6 party who filed Petitions to Intervene in April. I  
7 apologize to those of you, and you will be added to the  
8 service list.

9 We do have a couple of last minute Intervenors. In  
10 fact, I was just handed a Petition to Intervene before we  
11 started, and perhaps I could call on those two attorneys to  
12 identify themselves and their clients.

13 Ms. Knight.

14 MS. KNIGHT: Yes, Your Honor. Good afternoon. I  
15 filed a Petition to Intervene, and hopefully we'll be  
16 representing a Public Lighting Users Group which has street  
17 light and traffic light customers.

18 JUDGE TURNER: And did you give a copy of that to  
19 counsel for PPL?

20 MS. KNIGHT: Yes, I did. I dispensed it to everyone  
21 who was in the room before you started, and I will make sure  
22 everyone gets a copy.

23 JUDGE TURNER: Okay. I just wanted to be sure,  
24 because so far PPL has answered all Petitions to Intervene  
25 and all complaints.

1 Mr. Adels.

2 MR. ADELS: Peter Adels representing Citizens for  
3 Pennsylvania's Future, Edward McGovern and Char Magaro. I  
4 filed a Petition to Intervene yesterday. I served it to the  
5 list that I got from the Secretary's office a couple days  
6 ago, and I'll follow up to serve everyone else.

7 JUDGE TURNER: Let me say right now -- you can be  
8 seated -- people who speak from the audience are going to  
9 have to shout. It's very hard to hear you up here. I  
10 understand that the acoustics in these hearing rooms are not  
11 the best. So, please remember to speak up; and, of course,  
12 if you can't hear me, please let me know.

13 Now, Mr. Adels, you also gave a copy of your petition  
14 to PPL?

15 MR. ADELS: I have a copy I can give to them today.  
16 They received one by mail yesterday.

17 JUDGE TURNER: Okay. Are there any other late  
18 intervenors at this point?

19 MR. NIESEN: If Your Honor pleases, my name is Thomas  
20 Niesen. I'm representing the Sustainable Energy Fund of  
21 Central Eastern Pennsylvania. I think when you mentioned  
22 SEC earlier, your intent was to refer to that organization.

23 JUDGE TURNER: That's correct.

24 MR. NIESEN: Thank you.

25 JUDGE TURNER: So how should I refer to it?

1 MR. NIESEN: SEF would probably be better than SEC.  
2 Thank you.

3 JUDGE TURNER: Okay. Excuse my error. Please  
4 correct the transcript, and I'll try to do that right from  
5 now on.

6 All right.

7 MR. HERSKOVITZ: Your Honor?

8 JUDGE TURNER: Yes, sir.

9 MR. HERSKOVITZ: Rick Herskovitz from Duquesne Light.  
10 We did file a Petition to Intervene back in April, and I was  
11 in the Secretary's office. They did find it today. It just  
12 wasn't docketed. A copy was served on Mr. Russell back in  
13 April.

14 JUDGE TURNER: Okay. You're saying they did find it?

15 MR. HERSKOVITZ: Yes.

16 JUDGE TURNER: So it will then be entered?

17 MR. HERSKOVITZ: They were entering it when I left.

18 JUDGE TURNER: Okay. Is there anyone else at this  
19 point?

20 MR. MORROW: Your Honor, is UGI Utilities on your  
21 list?

22 JUDGE TURNER: No, it isn't.

23 MR. MORROW: We filed a Petition to Intervene on May  
24 11th.

25 JUDGE TURNER: I hope you have an extra copy today.

1 MR. MORROW: I will provide you one after the  
2 hearing.

3 JUDGE TURNER: Okay. In fact, in some cases the  
4 reason that I know a petition was filed is because PPL has  
5 filed a response. So I know in some cases they have gotten  
6 petitions that I haven't, but I didn't have a response to  
7 UGI.

8 Excuse me. Sir?

9 MR. FIORENTINO: Your Honor, Michael Fiorentino  
10 representing the Clean Air Council. We filed last Thursday.  
11 I would just like to confirm whether that's on your service  
12 list at this point.

13 JUDGE TURNER: If it's not, it will be, because I  
14 know we got a copy of it and I know we got a copy of your  
15 prehearing memo, and Judge Colwell has just indicated to me  
16 that you are on the parties' list that I received today  
17 when I came. They give the document folders to the Judges  
18 with a list, and you are on it.

19 MR. FIORENTINO: Thank you.

20 JUDGE TURNER: Anyone else?

21 (No response.)

22 JUDGE TURNER: All right. Is the appearance sheet  
23 completed yet?

24 MR. McCORMICK: The first page of it is, Your Honor.  
25 The other page I think is still being signed by people.

1 JUDGE TURNER: Thank you.

2 (Appearance sheet handed to Judge Turner.)

3 JUDGE TURNER: Thank you, Mr. McCormick.

4 Let me just for the record note the parties that have  
5 appeared. Steven C. Gray for the Office of Small Business  
6 Advocate. Can you indicate where you are for the court  
7 reporter's convenience?

8 MR. GRAY: Here.

9 JUDGE TURNER: Johnnie E. Simms and Richard A.  
10 Kanaskie for the Office of Trial Staff.

11 Mr. Kanaskie, you'll be taking the lead today; is  
12 that correct?

13 MR. KANASKIE: Yes, Your Honor.

14 JUDGE TURNER: Tanya McCloskey and James Mullins for  
15 OCA.

16 MS. McCLOSKEY: Here, Your Honor.

17 JUDGE TURNER: And you'll be taking the lead today,  
18 Ms. McCloskey?

19 MS. McCLOSKEY: Yes, I will, Your Honor.

20 JUDGE TURNER: David B. MacGregor for PPL.

21 MR. MacGREGOR: Yes, Your Honor.

22 JUDGE TURNER: You'll be taking the lead today?

23 MR. MacGREGOR: Yes, I will.

24 JUDGE TURNER: And PPL, also Paul E. Russell. And  
25 you'll be in control today; right?

1 (Laughter)

2 MR. MacGREGOR: As always, Your Honor.

3 JUDGE TURNER: Joseph L. Vullo for Commission on  
4 Economic Opportunity.

5 Hi, Mr. Vullo. How are you?

6 MR. VULLO: Fine. How are you?

7 JUDGE TURNER: Can I call your organization CEO?

8 MR. VULLO: Yes, you can.

9 JUDGE TURNER: Mark C. Morrow for UGI Utilities, who  
10 spoke before. John Isom of MLB for PPL, also. Thomas  
11 Niesen and Patricia Armstrong for Sustainable Energy Fund.

12 You'll be taking lead today, Mr. Niesen?

13 MR. NIESEN: I will.

14 JUDGE TURNER: Okay. Pamela Polacek for PPLICA.

15 MS. POLACEK: Good afternoon, Your Honor.

16 JUDGE TURNER: Good afternoon.

17 David A. McCormick for the Department of Defense.

18 MR. McCORMICK: Yes, Your Honor.

19 JUDGE TURNER: Okay. That is the end of this list.  
20 I know there are others, but at least to that point, I think  
21 the court reporter has you identified.

22 I can see Mr. Scott Rubin for IBEW, Local 1600.

23 MR. RUBIN: Yes. Good afternoon, Your Honor.

24 JUDGE TURNER: And Ms. Knight, who formerly spoke.

25 Mr. Murphy is here for PECO, Kent Murphy.

1 MR. MURPHY: That's right.

2 JUDGE TURNER: Mr. John Munsch is here for West Penn  
3 Power, trading and doing business as Allegheny Power. Mr.  
4 Fiorentino identified himself. Mr. Adels has identified  
5 himself.

6 Am I missing anyone? Mr. Epstein, how could I forget  
7 you?

8 MR. EPSTEIN: Hard to miss me, isn't it, Judge?

9 JUDGE TURNER: Mr. Epstein is a Complainant in his  
10 own name and will be representing himself, of course.

11 I would like to note the staff people who are going  
12 to work with me on this case. Mr. Deichmiller and Ms. --  
13 help me with your pronunciation.

14 MS. MURICEAK: Muriceak.

15 JUDGE TURNER: Muriceak; thank you. And, of course,  
16 Mr. Simms is here, chief prosecutor.

17 Yes, sir?

18 MR. MOODY: Your Honor, Kevin Moody for MAPSA.

19 JUDGE TURNER: Thank you.

20 Is there anyone else?

21 (No response.)

22 JUDGE TURNER: Now let's turn to business. I have  
23 two primary concerns, and I'm certainly willing to hear  
24 other issues. My primary concern is the hearing schedule,  
25 and included in that are the public input hearings. We have

1 received requests from the Northeast Delegation of the House  
2 of Representatives for a hearing in a central location in  
3 northeast Pennsylvania. I don't remember any specific  
4 requests for public input hearings in the prehearing  
5 memoranda. However, I made it a point to get the public  
6 comment file, and here it is (indicating). You can see  
7 there are quite a few letters of comment from various parts  
8 of Pennsylvania where PPL serves.

9 I also sent out with my Prehearing Order, which I  
10 realize not everyone got, a list of the locations of the  
11 public input hearings for the restructuring case. I have  
12 not seen any individual complaints other than Mr. Epstein's.  
13 That doesn't mean they're not here, because our Secretary's  
14 Bureau sometimes gets behind; and as I discussed with Mr.  
15 Russell, since they sent out their notices with their  
16 billing cycle, they didn't have one big public notice. So  
17 it's at least possible that customer complaints will come  
18 trickling in, but, as I say, I have not seen one, and I try  
19 to keep up with our record.

20 However, I do think that there is probably an  
21 obligation to have certainly a representative number of  
22 public input hearings in this case, and I would hope that  
23 OCA will have some suggestions in that regard.

24 Then there are some procedural matters that we might  
25 want to go over. For instance, so far, PPL has answered all

1 complaints and Petitions to Intervene. In some cases of a  
2 big dimension like this, we relax that rule and the company  
3 does not have to answer every complaint and I can impose a  
4 procedural rule that unless a Petition to Intervene is  
5 objected to, it will be granted within five days of service.  
6 However, I'll let PPL speak to that.

7 We have a difference of opinion about modifying the  
8 discovery rules. OCA has proposed modifying them and OTS  
9 says they're not in favor of it for this case. We need to  
10 discuss that.

11 But before we go on, let me read the other names that  
12 I have here. They have all spoken and identified  
13 themselves. Peter Adels, Michael Fiorentino, Richard  
14 Herskovitz, Kevin J. Moody, Eric J. Epstein, Scott J. Rubin,  
15 Louise A. Knight, Kent D. Murphy, and John L. Munsch.

16 Now, just before I move on, Mr. Herskovitz sent me a  
17 letter saying that he was going to attend, but he was not  
18 going to file a prehearing memorandum because he didn't  
19 intend to raise any issues.

20 MR. HERSKOVITZ: That's correct, Your Honor.

21 JUDGE TURNER: Okay. He just wants to be on the  
22 service list, which gets to another issue.

23 But, first of all, let me turn to PPL and see what  
24 your plans are about future Petitions to Intervene and  
25 complaints. Do you want to continue answering them?

1 MR. MacGREGOR: Yes, Your Honor. I think if we had  
2 received a massive number of customer complaints, we would  
3 perhaps look to seek some relief from the rule, but at this  
4 point, we have received none or virtually none of the sort  
5 of classic consumer complaints, and we've had no trouble  
6 answering the petitions and the complaints that have come in  
7 so far. So I think we'll just continue to answer in the  
8 near term, and if we need relief, we'll ask.

9 JUDGE TURNER: Fine. I would ask you to take the  
10 time today to go through the public comment file.

11 MR. MacGREGOR: Yes.

12 JUDGE TURNER: Because some of these letters even ask  
13 for formal complaint forms, and I'm not sure that they were  
14 sent out, but some of them it seems to me are the equivalent  
15 of formal complaints.

16 MR. MacGREGOR: We have not seen them.

17 JUDGE TURNER: I know. So I'd like you to see these.

18 MR. MacGREGOR: We will.

19 JUDGE TURNER: That answers that question.

20 MR. EPSTEIN: Judge Turner, can I --

21 JUDGE TURNER: Yes, sir.

22 MR. EPSTEIN: I think there's a reason why there  
23 aren't more complaints, and I think that's because a lot of  
24 people are unaware that there is a potential rate increase  
25 at stake for them. I think if you look back to our last

1 proceeding ten years ago, I think the company did a better  
2 job of letting people know that there was a rate increase.  
3 So my concern is that we'll still have complaints. If the  
4 company is willing to address them, that's good, but I'm not  
5 so sure that the general public is aware of the consequences  
6 of this proposal, frankly.

7 JUDGE TURNER: Okay. So you're saying there hasn't  
8 been sufficient public notice?

9 MR. EPSTEIN: That's exactly what I'm saying.

10 JUDGE TURNER: Okay.

11 MR. EPSTEIN: If I could just follow up, based on the  
12 attendance at the reliability hearings for Met-Ed, every one  
13 I went to has been overfilled. There are people that are  
14 very interested in this issue. I know reliability is a  
15 different issue, but I think people would like to have an  
16 opportunity to speak.

17 JUDGE TURNER: I understand your point. Please be  
18 seated. I actually had one of those public input hearings,  
19 and, of course, it's not only a different issue, but it's a  
20 different company with different performance records.

21 Nonetheless, PPL, do you have any response to that at  
22 this point?

23 MR. MacGREGOR: Just briefly, Your Honor. We sent  
24 every customer a notice, separate notice of the rate  
25 increase as part of the billing cycle. We have advertised

1 about it. We've press-released. I think the notice is  
2 certainly out there, and if there's a lack of interest,  
3 there's a lack of interest. It's not from any lack of  
4 publicity on our part.

5 JUDGE TURNER: Okay. I would say that the letters in  
6 this folder show an interest. They just have not been filed  
7 as formal complaints.

8 All right. Are there other issues before we turn  
9 first to discovery and then to the schedule?

10 MS. McCLOSKEY: Your Honor?

11 JUDGE TURNER: Yes.

12 MS. McCLOSKEY: I don't know if were moving off  
13 public inputs or not, but in our prehearing memorandum, we  
14 did identify requests that had come directly to our office  
15 for public input hearings in response to the mailing that  
16 our office does to the customers, and we did try to identify  
17 the principal areas that have been coming into our office.

18 JUDGE TURNER: I apologize.

19 MS. McCLOSKEY: We did not have an opportunity to  
20 review the comment file.

21 JUDGE TURNER: I apologize for having missed that.  
22 Can you point me to the page?

23 MS. McCLOSKEY: It's on page 9, Section 6. We have  
24 not put forward a specific schedule or specific locations,  
25 but we've tried to identify the principal areas. Again, you

1 had identified where the public inputs were held in the  
2 restructuring case, and it happens we went back to the last  
3 base rate case, and they happen to be the same places. So  
4 those two went together as well. They seem to be  
5 congealing.

6 JUDGE TURNER: That's probably our office just  
7 repeating history, but we don't need to do that if we have  
8 fresh requests.

9 MS. McCLOSKEY: Correct.

10 JUDGE TURNER: Here you have requests from  
11 Harrisburg, Wilkes-Barre, Scranton, Allentown, Williamsport  
12 and Bethlehem.

13 MS. McCLOSKEY: And I realize Mr. Gray communicated a  
14 request from the Northeast Delegation. I'm not quite sure  
15 how that would fit into these areas specifically. Wilkes-  
16 Barre and Scranton I think fall within them.

17 JUDGE TURNER: Yes. The Northeast Delegation has  
18 communicated directly with the Chief Judge and I have copies  
19 of that request. They seem to be interested in Scranton,  
20 but I'm sure they wouldn't object to other locations as  
21 well.

22 I have one question. Is Williamsport in PPL's  
23 service territory?

24 MR. MacGREGOR: Yes.

25 JUDGE TURNER: It must be just right on the border

1 then, because I looked pretty hard at your service map.

2 All right.

3 MR. GRAY: Your Honor?

4 JUDGE TURNER: Yes.

5 MR. GRAY: In the OSBA prehearing memo, we also  
6 mentioned that we've been contacted by a series of  
7 businesses from Lancaster, and Lancaster County, apparently,  
8 business down there would like to have public inputs as  
9 well. That's on page 4 of the OSBA prehearing memo.

10 JUDGE TURNER: Okay. I'm sorry if I overlooked that.  
11 Certainly, I remember in a PPL case presiding over a public  
12 input hearing in Lancaster, and it was really a very good  
13 public input hearing, very lively, attended by business  
14 people as well as citizens, and it's already on the list.

15 My concern about scheduling public inputs is that we  
16 do not get ourselves into a situation where we hold a public  
17 input and nobody comes. This has happened. It's expensive.  
18 Everybody I think feels compelled to attend. The ALJ sends  
19 somebody. All of the costs go into the assessments and  
20 eventually go out to customers. So I am willing to have  
21 public inputs. I'm in favor of public inputs if they are  
22 actually going to produce a response. So keep that in mind  
23 as we're discussing it.

24 You said you'd like to take a look at this file?

25 MS. McCLOSKEY: Yes, Your Honor. I think that might

1 help us to narrow in on the areas where the most interest  
2 is.

3 JUDGE TURNER: For the record, when I said "this  
4 file," I meant the public comment file.

5 All right. Now, when we go onto the schedule, we'll  
6 include public inputs presumably in the proposed schedule.  
7 In fact, I believe OTS proposed a time period for them. I'm  
8 not sure that anyone else did, but then I did not get PPL's  
9 prehearing memo until today. So far as I remember, OTS is  
10 the only group that proposed a time period for them.

11 Before we go off the record to discuss scheduling, I  
12 do want to discuss discovery rules. OCA has proposed  
13 modification to the rules that has come to be fairly  
14 standard in major cases, and OTS is not in favor of this.

15 Mr. Kanaskie, can you speak to that?

16 MR. KANASKIE: Yes, Your Honor. My recommendation is  
17 based on the large number of parties and the potential  
18 volume of interrogatories that could come from different  
19 directions, different parties, different Intervenors, I felt  
20 that shortening the time frame might be unduly burdensome to  
21 the parties. We would obviously support a best efforts  
22 approach, but I don't feel the need for shortening the  
23 requirement of the 15 days that are on the regs now.

24 JUDGE TURNER: Are you saying that you don't think  
25 OTS can meet a shorter schedule?

1 MR. KANASKIE: I'm looking at all the parties  
2 involved and speaking not on behalf of anyone else.

3 JUDGE TURNER: But you're confident that your office  
4 couldn't?

5 MR. KANASKIE: If need be, we could, Your Honor, but  
6 we would prefer to have the same length of time that the  
7 company has had.

8 JUDGE TURNER: Well, I'm considering setting a  
9 shorter period of time for the company.

10 MR. KANASKIE: Conversely, we've served our series of  
11 interrogatories at this point. Now we're waiting for  
12 interrogatories coming back in, which would shorten it to  
13 the Intervenors. Our response time is what I mean by  
14 shorten it.

15 JUDGE TURNER: Ms. McCloskey, would you like to speak  
16 to this?

17 MS. McCLOSKEY: Yes, Your Honor. I think the company  
18 in their prehearing memo also opposed a shorter discovery  
19 schedule. So I don't know if you wanted to hear from them  
20 first or not.

21 JUDGE TURNER: Mr. MacGregor?

22 MR. MacGREGOR: Yes. Your Honor, our primary basis  
23 for doing that, we're certainly willing to use our very best  
24 efforts to meet the shortened schedule that the OCA has  
25 proposed. It's just we received almost 600 interrogatories

1 and more seem to come in the door every day, and the company  
2 personnel have been working very hard to produce the  
3 answers, and I believe we're on track and on schedule so far  
4 in producing those answers. There are only so many we can  
5 answer and only so many we can answer on a shortened  
6 schedule.

7 I understand the parties need the information to  
8 prepare their testimony and get that in on time and have  
9 this case proceed on schedule. So we would prefer to stay  
10 with the schedule in the regulations, but would not oppose a  
11 shortened schedule as long as it's understood that it's best  
12 efforts and we may need some help or relief if we get  
13 inundated by any more interrogatories than we've already  
14 received.

15 JUDGE TURNER: Okay. Before I turn to you, Ms.  
16 McCloskey, let me ask you this. Are these duplicative, the  
17 interrogatories?

18 MR. MacGREGOR: Some are, but not many. There are  
19 some cross-references, but not a large number.

20 JUDGE TURNER: And do you serve the answers only on  
21 the party asking the interrogatory or do you serve them on  
22 everybody?

23 MR. MacGREGOR: We serve everyone, Your Honor, with  
24 all the answers.

25 JUDGE TURNER: Okay. Has there been any discussion

1 of a discovery session, an informal discovery session at PPL  
2 with all parties in attendance?

3 MR. MacGREGOR: There has not been any such  
4 discussion, Your Honor. We would be more than happy to  
5 entertain that, however.

6 JUDGE TURNER: I know that has been done in some  
7 other large cases and I believe it has been done  
8 successfully. However, I think the participants would have  
9 to speak to that. I would certainly suggest that that would  
10 be one way to proceed that would save perhaps work and time  
11 for everybody; not only PPL, but for the parties who could  
12 attend and present their questions and even get answers  
13 there or arrange to have answers sent to them.

14 Now, Ms. McCloskey, would you like to speak to your  
15 proposal?

16 MS. McCLOSKEY: Yes, Your Honor. We made our  
17 proposal to reflect the fact that by any account, if you  
18 look at any of the proposed schedules, this is a fairly  
19 aggressive schedule to accomplish. We have been diligent in  
20 sending our interrogatories. I believe we have nine sets  
21 out now, and at this time we do have some overdue sets,  
22 which we are working with the company to try and get caught  
23 up on.

24 As the time moves quickly by and the schedule is very  
25 short and the time frame between -- no matter how you plan

1 this case, the time frame between the testimony between our  
2 direct, the company's rebuttal and even our rebuttal and  
3 surrebuttal is very short, and 15 days to us seemed to be --  
4 if, in fact, answers were coming out on the 15th day would  
5 put all of the witnesses in a very difficult position in  
6 terms of preparing adequately their testimony. So we were  
7 proposing a shorter schedule for those reasons.

8 I think both Mr. Kanaskie and Mr. MacGregor have  
9 proposed a best efforts type of approach, and I think it  
10 might be possible for us to try and work with a best efforts  
11 for a shorter response time type of approach and at least  
12 proceed that way and see if that is successful along with  
13 informal discovery.

14 JUDGE TURNER: All right. I do note that at least  
15 one party -- I believe that's Mr. Fiorentino's party --  
16 suggested a discovery cutoff at July 2nd. I can remember  
17 trying to impose discovery cutoffs in the past with a  
18 notable lack of success, the problem usually being follow-up  
19 of previously answered discovery.

20 Is anyone other than Clean Air Council in favor of a  
21 cutoff of discovery at a certain date? I'll get to you, Mr.  
22 Fiorentino.

23 (No response.)

24 JUDGE TURNER: Okay. Mr. Fiorentino, do you want to  
25 speak to that?

1 MR. FIORENTINO: Certainly, Your Honor. We're  
2 certainly by no means wedded to having a deadline in place.  
3 We had placed that in there as a way to provide a minimum  
4 amount of time between when we might receive responses to  
5 our discovery and when we would have to file testimony, but  
6 if the preference of the court and the parties is to  
7 continue to allow discovery to proceed throughout the back  
8 and forth of testimony, that would be fine.

9 JUDGE TURNER: Okay. My interest as an ALJ is not in  
10 imposing deadlines and carving them in stone, et cetera.  
11 What I want to do is set up a schedule that is going to  
12 produce the most information for the parties so that the  
13 testimony can be as meaningful as possible and we have the  
14 best record for the Commission. That's my desire.

15 I generally think that if we establish a modified  
16 shorter schedule and combine it with a best efforts  
17 approach, that is PPL can notify the party we're going to  
18 have to take more than ten days on this, I would prefer to  
19 go in that direction if the parties can live with that.

20 Mr. Kanaskie?

21 MR. KANASKIE: If I might add, Your Honor, can we  
22 modify that to the extent that on interrogatories served on  
23 a Friday afternoon, that we don't start -- that we consider  
24 them having been received on a Monday?

25 JUDGE TURNER: I often put in my Orders and I will

1 put in this one that anything that is filed on a Friday  
2 afternoon shall be considered served on a Monday. It's just  
3 that simple.

4 MR. MacGREGOR: That's helpful for objections, in  
5 particular, Your Honor, if we're under a three-day rule.

6 JUDGE TURNER: Yes. I realize that some people can't  
7 help filing things on Friday, but it's not a good day to  
8 file things.

9 Now, Mr. Epstein.

10 MR. EPSTEIN: I don't know if this is the appropriate  
11 time, but I just wanted to remind some of the principals  
12 that were involved in this case before that there a number  
13 of issues that surfaced ten years ago. It's been a while.  
14 One of them, when it came to expert witnesses, was the  
15 difficulty of scheduling expert witness testimony to  
16 coincide with vacation times.

17 JUDGE TURNER: I think you're a little early on that,  
18 Mr. Epstein.

19 MR. EPSTEIN: I'm a little early on that, but I just  
20 want to sensitize at least --

21 JUDGE TURNER: Okay. You're a little early on it.  
22 Will you be seated?

23 MR. EPSTEIN: Yes.

24 JUDGE TURNER: Thank you. Now, we haven't approached  
25 issues at all and we haven't approached the identification

1 of witnesses at all. Are there any particular technical or  
2 evidentiary issues that parties wish to raise and discuss?

3 Give someone else a turn, Mr. Epstein.

4 (Pause.)

5 JUDGE TURNER: Are you looking at me expectedly, Mr.  
6 MacGregor?

7 MR. MacGREGOR: Yes, Your Honor. On the discovery  
8 timing, I think it's standard to say that the shortened  
9 rules that we're making the best efforts to comply with  
10 apply prospectively from the prehearing and it doesn't  
11 shorten the deadline for interrogatories that are already in  
12 the mill. I don't know if that's acceptable to the other  
13 parties or not.

14 JUDGE TURNER: I believe that was something that Mr.  
15 Kanaskie had said before.

16 MR. KANASKIE: I'm not certain I have, Your Honor,  
17 but I agree.

18 JUDGE TURNER: It sounded like it. Never mind. I  
19 agree with that, and I will put that in the Order.

20 Okay, Mr. Epstein.

21 MR. EPSTEIN: I don't want to go 0 for 3 this early,  
22 and I don't know if this is an appropriate --

23 JUDGE TURNER: Take a chance.

24 MR. EPSTEIN: I just want to raise an issue -- at  
25 least tell me when I should raise it if it's not appropriate

1 now -- of same-day transcription of expert testimony. That  
2 was an issue in the last case. I'll sit down promptly, but  
3 --

4 JUDGE TURNER: Okay. I was really trying to turn to  
5 issues like the DSIC and various other rate structure  
6 issues. Are there any issues of that nature that the  
7 parties want to discuss?

8 (No response.)

9 JUDGE TURNER: Not ready; okay. How about scheduling  
10 a settlement conference?

11 (No response.)

12 JUDGE TURNER: A number of the parties said that they  
13 were not ready to identify issues that could be settled;  
14 that they hadn't had a chance to talk to PPL; and as Ms.  
15 McCloskey has said, we are setting a somewhat aggressive  
16 schedule, and one of the reasons we're setting an aggressive  
17 schedule is that we're not counting back from the effective  
18 date of the rates, but from the last public meeting of the  
19 Commission in December, and I decided to do that because I  
20 think that that's a practical approach since we work for the  
21 Commission. I don't see that anyone has really objected to  
22 that, but it does cut two weeks off a traditional schedule,  
23 and I do not want settlement to get lost in the shuffle of  
24 everybody struggling to file their interrogatories, answer  
25 interrogatories, file their testimony.

1           So I certainly do want to put into the schedule,  
2 first of all, an informal discovery session and a settlement  
3 conference, and I will probably schedule a further  
4 prehearing at least to get reports on those two events.

5           Now, if there is nothing else at this point, I'd like  
6 to go off the record and discuss the dates in the schedule.

7           Nothing else?

8           (No response.)

9           JUDGE TURNER: Okay. Off the record.

10          (Discussion off the record.)

11          JUDGE TURNER: We have a schedule, and it is as  
12 follows. Once I have it on the record, if you have  
13 corrections, let me know.

14          The public input hearings will be scheduled between  
15 June 21st and June 30th. OCA will coordinate the scheduling  
16 of public inputs, including the location and the timing,  
17 evening and afternoon. They will work with the company,  
18 OTS, OSBA, and any other party who is interested.

19          The direct testimony of all opposing parties will be  
20 filed with the company in-hand on June 29th with a copy to  
21 all other parties also in-hand on June 29th and the Judges'  
22 in-hand. Rebuttal testimony will be filed July 27th in-  
23 hand, likewise. Surrebuttal testimony will be filed August  
24 5th in-hand, likewise.

25          Technical evidentiary hearings will be held between

1 August 9th and August 13th in Harrisburg. Main briefs will  
2 be filed September 2nd. Reply briefs will be filed  
3 September 13th in-hand to the Judges.

4 Are there any amendments to that schedule?

5 (No response.)

6 JUDGE TURNER: Any misstatements?

7 (No response.)

8 JUDGE TURNER: So that's okay. Now, as far as I'm  
9 concerned, the case will be on three-day delivery. If it's  
10 possible, I'll see if I can get the court reporters to send  
11 me a copy directly in Harrisburg. I should also say to all  
12 parties from now on, whenever you file anything, send me a  
13 copy directly. I cannot count on getting copies from  
14 Harrisburg, and they're not always entered timely in the CMS  
15 system, which I can check from Philadelphia. So please send  
16 me a copy.

17 Just checking with you again, Mr. Epstein, does this  
18 take care of your expert scheduling?

19 MR. EPSTEIN: I was more concerned for other folks,  
20 yes, but I'll be there.

21 JUDGE TURNER: Okay. And you'll notify me and the  
22 parties in writing if and when you have an expert that  
23 you're going to put on?

24 MR. EPSTEIN: Yes.

25 JUDGE TURNER: Okay. I think that I would like to

1 have some kind of a date for notification by the parties if  
2 they're going to change their witness submission. Some  
3 parties have reserved the right to add witnesses and they'll  
4 let us know later. I think we really need to know by June  
5 25th who's going to put on witnesses and who they're going  
6 to be.

7 MS. McCLOSKEY: Your Honor, can we have a second date  
8 for the rebuttal, in that we might receive direct testimony  
9 that would require us to add another witness, but it would  
10 be a second date for the rebuttal?

11 MR. MacGREGOR: The same with the company.

12 JUDGE TURNER: Yes. Do you have a date to propose?

13 MS. McCLOSKEY: I think maybe a week before the  
14 rebuttal.

15 JUDGE TURNER: All right. June 25th for direct  
16 witnesses. June 20th for rebuttal?

17 MS. McCLOSKEY: That would be fine.

18 MR. MacGREGOR: July.

19 MS. McCLOSKEY: I'm sorry; July.

20 JUDGE TURNER: Excuse me. I misspoke. Thank you for  
21 the correction. All right. Now, OTS has raised in its  
22 prehearing memorandum the fact that there may be issues  
23 which do not require the support of a witness or direct  
24 testimony. I agree. However, I think that all parties  
25 have to be on notice if you're going to do that. So I think

1 probably by the beginning of hearings, any party that is  
2 going to raise an issue in brief that it's not going to  
3 support with testimony should notify the Judge and all other  
4 parties that this is an issue they're going to raise in  
5 brief and you're not going to see any witnesses on it.

6 Mr. MacGregor, you're frowning.

7 MR. MacGREGOR: Well, it's a little late for us to  
8 respond if people identify a number of issues at the  
9 beginning of the hearings or right before the hearings. How  
10 are we supposed to respond to that?

11 JUDGE TURNER: They're saying that they're going to  
12 argue them in brief, that they're not going to use evidence,  
13 put in evidence on it.

14 MR. MacGREGOR: So these are legal issues?

15 JUDGE TURNER: I assume.

16 MR. MacGREGOR: Oh, okay.

17 JUDGE TURNER: Do you want to talk with Mr. Kanaskie  
18 about it?

19 MR. MacGREGOR: Is that what you have in mind, legal  
20 issues?

21 MR. KANASKIE: Yes. I mean, I can't predict ahead,  
22 but generally, that's what's involved.

23 JUDGE TURNER: Say that again.

24 MR. KANASKIE: I can't predict what's going to  
25 develop in terms of issues, but generally, our thought

1 process is legal issues we would present in brief and we  
2 would make you aware of that so that there's no surprise.

3 MR. MacGREGOR: I have no problem with that, Your  
4 Honor, but if there are factual issues they're going to  
5 raise, we need a chance to present rebuttal. Those should  
6 be presented on June 29th when they file their direct  
7 testimony.

8 JUDGE TURNER: Believe me, if they notify us just  
9 before the hearing that they intend to raise factual in  
10 brief that they're not going to put in evidence on, they  
11 will be in trouble.

12 MR. KANASKIE: Duly noted.

13 JUDGE TURNER: That will not be allowed.

14 MR. MacGREGOR: Your Honor?

15 JUDGE TURNER: Yes.

16 MR. MacGREGOR: I'm not sure when we went on or off  
17 the record, but did you want to note or did you note for the  
18 record the informal discovery times and the settlement  
19 times?

20 JUDGE TURNER: I did not. Thank you. That was an  
21 omission. That was done off the record. All right. For  
22 the record, there will be an informal discovery session at  
23 PPL in Allentown, a two-day session, June 7th and 8th, and I  
24 gather that PPL will issue invitations with directions.

25 MR. MacGREGOR: Yes.

1 JUDGE TURNER: There will be a follow-up informal  
2 discovery session June 14th in Harrisburg either in a  
3 Commission hearing room or in Mr. MacGregor's office. We do  
4 have hearing rooms open and will reserve one.

5 MR. MacGREGOR: I thought that was for settlement  
6 discussions, Your Honor, not for the informal.

7 JUDGE TURNER: Well, I thought it was for both.

8 MR. MacGREGOR: It can be for both.

9 JUDGE TURNER: And then an initial discovery session.  
10 If it's not needed for any follow-up, use it all for  
11 settlement discussion. Then I did put on the public input  
12 hearings and the cooperative approach we're using.

13 Is there anything else that needs to be added to the  
14 schedule?

15 (No response.)

16 JUDGE TURNER: All right. I would also appreciate  
17 having a copy of the schedule as it develops, Ms. McCloskey,  
18 for the public input hearings.

19 MS. McCLOSKEY: Certainly, Your Honor.

20 JUDGE TURNER: Because I sometimes find where Judges  
21 say, "I don't know how it got that way. I didn't have  
22 anything to do with it." So I'd like to have some say.

23 All right. Is there anything else about scheduling  
24 that needs to be done here?

25 (No response.)

1 JUDGE TURNER: All right. Are there any other issues  
2 that are raising their ugly heads now that need to be  
3 discussed and dealt with by the ALJs?

4 (No response.)

5 JUDGE TURNER: Everyone's happy.

6 MR. EPSTEIN: Yes.

7 JUDGE TURNER: Mr. Epstein, why did I know that?

8 (Laughter)

9 MR. EPSTEIN: I just wanted to concur that I was  
10 joyous.

11 JUDGE TURNER: I think we'll save this page of the  
12 record. Everybody else, Mr. Fiorentino and the other small  
13 parties, feel that their needs are being met here?

14 Mr. Niesen?

15 MR. NIESEN: Yes, Your Honor. Will you be issuing  
16 Orders dealing with the Petitions to Intervene or do you  
17 intend to grant them formally on the record today? My  
18 client, Sustainable Energy Fund, filed its petition about  
19 April the 28th. It's not opposed by PPL, and if it's  
20 appropriate, I'd like that it be noted on the record that  
21 the petition is granted.

22 JUDGE TURNER: It was my intent to grant the  
23 Petitions to Intervene that had been answered in this  
24 Prehearing Order, and I had initially proposed, but the  
25 company is not interested, in a system whereby Petitions to

1 Intervene that were not answered would be granted  
2 automatically. So I will grant those subsequently by Order  
3 also.

4 MR. NIESEN: Thank you.

5 JUDGE TURNER: That does raise an issue for me, Mr.  
6 Niesen, and I thank you for this, and that is I had asked  
7 the utility intervenors to be willing to discuss the extent  
8 of their intended intervention on the record. Now, Duquesne  
9 has made clear that they do not really intend to participate  
10 actively. I don't know about PECO and UGI.

11 I am concerned that the other utilities do not  
12 needlessly complicate this case, and I think I'm not  
13 interested in having them be in a position to appeal. I  
14 don't see why another utility should be an interested party  
15 through intervention in PPL's rate case and be in a position  
16 to appeal the Commission decision, if you follow me.

17 You're frowning, Mr. Murphy.

18 MR. MURPHY: Your Honor, we believe that we have a  
19 separate standing as a customer, but, frankly, our intent in  
20 this proceeding is mostly to monitor. If legal issues do  
21 arise which are pertinent to the electric distribution  
22 company industry generally, we may desire to brief that  
23 later on, but as I said in the prehearing memoranda, we  
24 don't necessarily intend at this point to submit testimony  
25 or become involved in the discovery process.

1 JUDGE TURNER: I agree that you have separate  
2 standing as a customer, and, in fact, all of the utilities,  
3 I believe, do have that standing and have so stated, but are  
4 you saying you might want to file a brief without having  
5 submitted any testimony or evidence?

6 MR. MURPHY: I'm having difficulty hearing you.

7 JUDGE TURNER: I'm sorry. Are you saying that you  
8 might want to file a brief without having submitted any  
9 testimony or evidence?

10 MR. MURPHY: We would want to reserve our right to do  
11 so in the event that a legal issue of particular importance  
12 arises.

13 CHIEF JUDGE CHRISTIANSON: A generic sort of an  
14 issue?

15 MR. MURPHY: Almost in the form of an amicus type  
16 brief.

17 JUDGE TURNER: But this isn't a generic proceeding.  
18 This is a particular company's rate case proceeding.

19 MR. MURPHY: Your Honor, it is the first major  
20 electric distribution case since the advent of electric  
21 restructuring.

22 JUDGE TURNER: I'm well aware of that.

23 MR. MURPHY: And there may be certain issues which  
24 are taken up by the various parties that may set precedent  
25 for these types of proceedings into the future, and,

1 therefore, we may want to provide our view of how those  
2 issues would be handled.

3 JUDGE TURNER: And if your view does not prevail?

4 MR. MURPHY: Excuse me?

5 JUDGE TURNER: And if your view does not prevail?

6 MR. MURPHY: If our view does not prevail, if it's a  
7 legal issue and we have standing, we may desire to pursue  
8 the issue on appeal. I'm not saying that there are any  
9 issues that have been identified to date, but we can't  
10 predict what might happen in the next few months.

11 JUDGE TURNER: Okay; and I'm saying at this point  
12 that I think you have standing as a customer, but I do not  
13 agree that you have standing in a generic sense.

14 MR. MURPHY: I can understand your view on that, Your  
15 Honor.

16 JUDGE TURNER: If you want to file a brief, that may  
17 be all well and good, but it may not really be included, and  
18 I really do not think that you should be able to use this  
19 proceeding as a generic proceeding to appeal to Commonwealth  
20 Court a generic issue. It's not a generic case. I'm not  
21 interested in having it turned into a generic case.

22 MR. MURPHY: Again, Your Honor, we don't intend to  
23 raise generic issues, but if they are raised, we would  
24 reserve our right to provide our view on those issues.

25 JUDGE TURNER: Well, I guess I would have to reserve

1 my right to make a ruling on that at the time.

2 MR. MURPHY: Yes.

3 JUDGE TURNER: As long as you're clear on it. I  
4 mean, I'm aware that it is a precedent setting case, and I  
5 intend along with my colleagues to do the best job I can to  
6 make it a good case on those issues, but I don't think that,  
7 even from the Commission's point of view, that it should be  
8 turned into a generic case, but enough of that.

9 Mr. Fiorentino?

10 MR. FIORENTINO: Yes, Your Honor. Thank you. Just  
11 to clarify your position on the arguing in brief of issues  
12 without having specific testimony, having introduced  
13 specific testimony on your own, I just wanted to point out  
14 that in previous cases, Clean Air Council has participated  
15 in Public Utility Commission proceedings, restructuring  
16 cases, merger cases, and so forth where we have argued based  
17 on testimony of other parties, and I'm just trying to get  
18 clarification. Certainly, we may desire to do that again in  
19 this case.

20 Is your position that that would not be appropriate  
21 or permissible?

22 JUDGE TURNER: No. Actually, I'm aware of Clean Air  
23 Council's historic participation and its techniques, so to  
24 speak. No; you can argue a brief based on evidence in the  
25 record.

1 MR. FIORENTINO: Okay.

2 JUDGE TURNER: But I think you need to give parties  
3 notice of what positions you're going to take.

4 MR. FIORENTINO: Absolutely.

5 JUDGE TURNER: Prior to filing a brief. I mean, you  
6 can't be silent throughout the proceeding and then come up  
7 and say, "Oh, I like that." I think you should provide a  
8 letter to the other parties that you intend to take a  
9 position in your brief.

10 MR. FIORENTINO: That would be fine.

11 JUDGE TURNER: Mr. Kanaskie, do you have something to  
12 say?

13 MR. KANASKIE: Just before we go off the record, Your  
14 Honor, I notice there are a lot of parties, because of the  
15 limited serviced list that I have, that I did not serve  
16 prehearing memos on, and I have them available for anybody  
17 who is interested.

18 JUDGE TURNER: Okay. Mr. Morrow?

19 MR. MORROW: You mentioned earlier, Your Honor, you  
20 wanted each of the EDCs, I believe, to state what their  
21 plans were for the case.

22 JUDGE TURNER: Yes.

23 MR. MORROW: I think UGI's position would be very  
24 similar to Mr. Murphy's. We don't anticipate at this time  
25 presenting any evidence or participating in discovery.

1 JUDGE TURNER: Thank you. I'd really like a copy of  
2 your Petition to Intervene, because I haven't seen it yet.

3 MR. MORROW: Okay. I used the service list provided  
4 by the Secretary's Bureau at the time.

5 JUDGE TURNER: Okay.

6 MS. KNIGHT: May I make a request? That is I still  
7 have to serve my Petition to Intervene. I've served some  
8 today, but would you make a photocopy of the sign-in sheet  
9 available after the hearing?

10 JUDGE TURNER: Sure.

11 CHIEF JUDGE CHRISTIANSON: We can make a copy of the  
12 service sheet, too.

13 JUDGE TURNER: Right. There's a service sheet that  
14 comes out with the folders when we get them, and I can make  
15 copies of that. When my Prehearing Order comes out, it will  
16 also have a service list attached to it. We do not include  
17 witnesses on that list. We do include attorneys.

18 Ms. Knight, since you just submitted your petition  
19 today, I'll certainly wait until PPL has a chance to  
20 respond.

21 Judge Christianson?

22 CHIEF JUDGE CHRISTIANSON: That's it, I think. Do  
23 you intend to have a second prehearing conference at this  
24 point?

25 JUDGE TURNER: I do. I said I would like to have one

1 to check on the progress of settlement and informal  
2 discovery, but I did not put a date in this schedule. It  
3 was getting kind of packed. I will think about that. You  
4 can expect to find out about that.

5 JUDGE CHIEF CHRISTIANSON: We probably have our main  
6 cast of characters, but I think there might be other people  
7 coming in. I think we're not nearly to the 60-day time, the  
8 notice time. I think that comes near the end of the month.  
9 So we may be getting other significant people into the case.  
10 I don't think we'll get any big entrants, but look for  
11 developments, I guess.

12 JUDGE TURNER: Okay. I guess there becomes an issue  
13 of how you count the 60-day notice period of utilities who  
14 give notice in their billing cycle. When will your last  
15 notice go out, or has it gone out?

16 MR. MacGREGOR: It has certainly gone out. I don't  
17 know the exact date it went out. We started on the day we  
18 filed, which was the 29th of March. So 30 days after that  
19 would be April 28th. So 60 days after that would be June  
20 27th.

21 JUDGE TURNER: June 27th?

22 MR. MacGREGOR: I've not calculated that out, but  
23 that's roughly.

24 JUDGE TURNER: Okay. Mr. Russell is nodding. I  
25 guess that's right. Okay.

1 CHIEF JUDGE CHRISTIANSON: That's sort of when the  
2 burden of proof shifts.

3 JUDGE TURNER: So that would be June 27th or June  
4 28th would be the end of that notice cycle. You can let us  
5 know if that's wrong, but that's about it.

6 Okay. Do you have anything?

7 JUDGE COLWELL: Nothing.

8 JUDGE TURNER: Does any other party have anything  
9 else at this point?

10 (No response.)

11 JUDGE TURNER: Hearing nothing, thank you all very  
12 much. Those who want a copy of Mr. Kanaskie's prehearing  
13 memo can stop to see him. Those who want to work on the  
14 public input schedule can see Ms. McCloskey, and I will give  
15 the information to Ms. Knight that she requested.

16 We are adjourned, and thank you all very much.

17 (Whereupon, at 3:56 p.m., the prehearing conference  
18 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 record to the best of my ability.

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