

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission : Docket No.
v. PPL Electric Utilities Corporation : R-00049255
Rate increase. :

Telephonic Prehearing Conference :
on Remand :

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Pages 1168 through 1190

Hearing Room No. 2
Commonwealth Keystone Building
Harrisburg, Pennsylvania

**DOCUMENT
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Wednesday, March 7, 2007

Met, pursuant to adjournment, at 10:05 a.m.

BEFORE:

SUSAN D. COLWELL, Administrative Law Judge

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FORM 1

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL: All right.
3 Let's go on the record.

4 This is the time and the place set for a prehearing
5 conference in the remand of the case entitled, "Pennsylvania
6 Public Utility Commission versus PPL Electric Utilities
7 Corporation," at PUC Docket No. R-00049255 and the
8 accompanying individual Complaints captioned at the same
9 docket with "C" numbers 1 through 20.

10 I am Susan Colwell, the Administrative Law Judge
11 appointed to preside in the remand portion of this
12 proceeding.

13 I note for the record the appearance of the following
14 counsel: Richard A. Kanaskie on behalf of the Office of
15 Trial Staff; David A. McCormick on behalf of the consumer
16 interest of the U.S. Department of Defense and other
17 affected Federal executive agencies; David B. MacGregor on
18 behalf of PPL Electric Utilities Corp; Michael Hassell on
19 behalf of PPL Electric Utilities Corp; and Paul Russell on
20 behalf of PPL Electric Utilities Corp; Aron J. Beatty on
21 behalf of the Office of Consumer Advocate; Steven C. Gray on
22 behalf of the Office of Small Business Advocate; Pamela
23 Polacek and Vicki Karandrikas on behalf of PPL Industrial
24 Customer Alliance; and Mr. Epstein, Eric Epstein, on behalf
25 of himself.

1 Is that everybody?

2 (No response.)

3 JUDGE COLWELL: Okay.

4 Okay. I have received numerous requests to remove
5 names and parties from the service list. Most of you got
6 those as well, as there were e-mails flying yesterday.

7 After this proceeding, I will issue a Scheduling Order
8 which will have the new list attached. I do want you to use
9 the new list, since there were quite a lot of people and
10 entities who don't want a mailbox full of your submittals.

11 So far I have requests for removal from Duquesne
12 Light, the Sustainable Energy Fund; Penn Future; Mark Morrow
13 on behalf of UGI; Jim Melia -- I don't know who he
14 represents -- the Commission on Economic Opportunity; Louise
15 Knight for PLUG; the Retail Energy Supply Association; the
16 organization formerly known as the Mid Atlantic Power Supply
17 Association; Strategic Energy, LLC; FirstEnergy; and
18 Mr. Curvin Snyder.

19 I have received no requests to remain on the list even
20 if the entity does not show up. So, the other people who
21 are going to be removed are people I did not state.

22 Now, one thing about that. There were some entities
23 on there -- it was right here -- who were Representatives.
24 They will stay on. I have Representative Phyllis Mundy.
25 And there was somebody else in here who had a House of

1 Representatives address. Nikki Lopez.

2 Does anybody know is there anybody else on that list
3 who would fall into that category? Because, otherwise, they
4 are going to be removed.

5 MR. EPSTEIN: Phyllis represents the Northeast
6 Delegation. So, she might want to choose to make the
7 decision.

8 MR. MacGREGOR: Can I have just a minute, Your Honor?

9 JUDGE COLWELL: Sure.

10 (Pause.)

11 MR. MacGREGOR: I don't know of anybody else.

12 JUDGE COLWELL: Thank you.

13 Okay. Well, I am sure if we leave them off and they
14 notice, we will hear about it. It certainly wouldn't be
15 cutting them off on purpose. I just want to try to whittle
16 this down to a manageable size.

17 Okay. We are here because the Commonwealth Court in
18 an Order dated August 4, 2006, reversed, in part, and
19 vacated, in part, the Commission's Order of December 22,
20 2004, which, in turn, adopted as modified the Recommended
21 Decision of Administrative Law Judge Allison K. Turner
22 regarding PPL's proposal for an increase in rates.

23 Petitions for Allowance of Appeal to the Pennsylvania
24 Supreme Court filed by the Commission and PPL were denied.

25 The case was returned to the Commission for

1 disposition. By Order entered February 8, 2007, the
2 Commission remanded the case to the Office of Administrative
3 Law Judge for necessary proceedings, and the case was
4 assigned to me due to the retirement of ALJ Turner.

5 The scope of this remand is limited to the issue of
6 distribution and transmission rates.

7 I have received Prehearing Memos from the following
8 entities: PPL, OSBA, OCA, OTS, PPLICA, the Department of
9 the Army, Exelon, and Mr. Epstein. That appears to be
10 everybody who is here or on the phone.

11 Okay. I received an e-mail from Mr. MacGregor which
12 indicated that this group has agreed upon a tentative
13 schedule. As I didn't get anybody screaming in response, I
14 assume that that was accurate. How do we feel about the
15 June 11 and 12 evidentiary hearing dates? Does anyone have
16 a problem with it?

17 (No response.)

18 JUDGE COLWELL: Silence is deafening. No one has a
19 problem with it.

20 Okay. So, that will give us the schedule of:
21 April 13, PPL will submit a direct case; May 11, other
22 parties will submit direct testimony; June 1, all party
23 rebuttal; June 11 and 12, the evidentiary hearings; June 29,
24 initial briefs; and July 13, reply briefs.

25 Anything else about the schedule? Does anybody have

1 anything regarding the schedule?

2 MR. GRAY: Your Honor, just my suggestion about the
3 surrebuttal testimony. It was not my intention to not make
4 the witnesses available to you for the hearings. I know you
5 like to have the witnesses there for a lot of reasons.

6 It was simply a way of handling, frankly, the
7 paperwork involved. If we have a lot of live testimony on
8 the 11th and 12th, people are going to have to construct
9 their cross on the fly. There could be a lot of exhibits,
10 because cost of service and allocation issues can get kind
11 of complex.

12 So, it was simply a way of simplifying the hearings
13 and then, frankly, helping us in the back end, post the
14 hearings, having 17 days, two and a half weeks, to write the
15 main brief, less to deal with in that time period.

16 So, I saw it as a way of helping everyone out, since
17 we have a little extra time.

18 JUDGE COLWELL: So, you want to cut down on paperwork
19 by creating more. Is that what you said?

20 MR. GRAY: I think, in this case, for a base rate
21 case, yes. I think organizing the testimony and serving all
22 of the testimony in written form would make the hearings run
23 significantly smoother.

24 JUDGE COLWELL: Does anybody else have any input on
25 this issue?

1 MR. MacGREGOR: I am not opposed if that is what the
2 parties prefer. My own feeling was that since we already
3 have an extensive record here that was created in the 2004
4 case, that three rounds of additional testimony would be
5 enough.

6 It would not primarily be our witnesses who would be
7 doing the surrebuttal. So, I don't feel strongly one way or
8 the other.

9 But I just don't know if there is going to be a need
10 for surrebuttal after -- I mean, the parties have already
11 submitted direct, rebuttal, and surrebuttal testimony on
12 this issue in the rate case in 2004, and now we are
13 responding to, you know, a proposal on remand on limited
14 issues.

15 So, I guess my own feeling is that three rounds are
16 enough, but I don't object if that is the parties'
17 preference to have surrebuttal.

18 JUDGE COLWELL: Anybody else?

19 Mr. Kanaskie?

20 MR. KANASKIE: Your Honor, if I understand correctly,
21 though, you are permitting surrebuttal. Right now the issue
22 is whether it is going to be oral or written. Is that
23 correct?

24 JUDGE COLWELL: That is correct.

25 MR. KANASKIE: Okay. So, to Mr. MacGregor's comments,

1 either way there is the possibility of surrebuttal. So
2 then, I would echo Mr. Gray's position. And, quite
3 frequently, prepared surrebuttal can make a proceeding go
4 smoother.

5 If we are going to the option of it anyway, I believe
6 having it prepared ahead of time would be beneficial, I
7 believe even for Mr. MacGregor's part.

8 JUDGE COLWELL: No one else feels strongly about it?

9 MS. POLACEK: We have no preference, Your Honor.

10 JUDGE COLWELL: From my point of view, it isn't going
11 to be helpful to have something else in writing before the
12 hearing. I really do prefer to hear that kind of testimony
13 in person. Just my preference.

14 It makes more of an impact on me. So, this is your
15 chance to have your witnesses make an impact on me.

16 MR. GRAY: I don't have a problem with that, Your
17 Honor. There might be a number of exhibits that are
18 distributed. So, if it is going to be live testimony, it
19 very well could literally be that. But, if that is your
20 preference, that is your preference.

21 JUDGE COLWELL: It is a risk I am willing to take.

22 MR. GRAY: Understood.

23 JUDGE COLWELL: Okay. All right. So, we have a
24 schedule.

25 I believe that PPL's Prehearing Memo has some

1 suggestions about in-hand service on page 5 of the PPL
2 Prehearing Memo. This is something that I would normally
3 include in a Scheduling Order anyway, as long as nobody has
4 any legitimate problems with this.

5 Due dates are in hand. Electronic service on the due
6 date is considered timely. Documents being served on
7 parties who don't have e-mail or decline are due in hand on
8 the next business day. If they are served electronically,
9 hard copies must be sent to the parties on the same day.
10 Hard copies may be sent by first class mail.

11 Is everybody in with that?

12 (No response.)

13 JUDGE COLWELL: Okay. How about discovery? I believe
14 you also had some discovery recommendations.

15 MR. MacGREGOR: Yes, Your Honor. I just had noted
16 that because the record had already been created, we weren't
17 expecting a tremendous amount of discovery, but we did want
18 to say in advance that when we file our proposal on April 13
19 we do plan to convene either by telephone or in person an
20 informal technical conference to give the parties a chance,
21 after they have had a chance to review the filing, to ask
22 questions to try to streamline the discovery process and the
23 responsive process. But we weren't otherwise proposing to
24 amend the discovery schedule.

25 JUDGE COLWELL: Okay.

1 MR. MacGREGOR: It is in the regulations.

2 JUDGE COLWELL: All right. I don't remember if that
3 was done originally or not, if there were separate discovery
4 rules for this proceeding that are already in place.

5 MR. MacGREGOR: There are, I believe.

6 JUDGE COLWELL: There are?

7 MS. POLACEK: I believe we had expedited discovery for
8 interrogatories, and there were deadlines --

9 MR. MacGREGOR: That is correct.

10 MS. POLACEK: -- for oral objections, and then tried
11 to work it out, and Motions to Compel. I can't recall,
12 sitting here, what they were.

13 JUDGE COLWELL: Okay. I don't have a copy of it in
14 front of me.

15 MR. MacGREGOR: We can send to you a copy of the
16 Prehearing Order from the 2004 rate case.

17 JUDGE COLWELL: So, you are recommending keeping
18 those?

19 MR. MacGREGOR: We are willing to live with those.
20 They were somewhat shortened. I assume they were probably
21 10-day answers to interrogatories rather than 20 days and a
22 shortening of the objection time, et cetera.

23 We are willing to do that as long as it doesn't apply
24 until we file our rate case at the end of March.

25 I don't know if the parties plan any discovery in

1 advance of our filing on April 13. If they don't, then that
2 is fine; we can go with the expedited rules that were in the
3 prior Order.

4 JUDGE COLWELL: Anybody?

5 MS. POLACEK: I mean, Your Honor, I think we should
6 keep -- I don't have an objection to that, but I think we
7 should keep the accelerated discovery time lines in there,
8 especially given the small period between where the other
9 parties' direct would come in and the rebuttal phase, with
10 the idea that we may be asking each other some questions to
11 explain how the increase would be allocated in other
12 proposals.

13 JUDGE COLWELL: Anybody else?

14 (No response.)

15 JUDGE COLWELL: Okay. So, we have existing
16 accelerated discovery rules. Nobody knows what they are.
17 But, when they figure it out, we are keeping them.

18 MR. MacGREGOR: Yes.

19 JUDGE COLWELL: Okay.

20 All right. When you send e-mails, while I got to that
21 point on my page, I ask you, if it is the next one on a
22 whole big list of e-mails, could you delete the ones that
23 were there already so that I don't have -- you know, when
24 you press the print button and six pages come out? You
25 know, just get rid of the stuff you don't need when you are

1 sending an e-mail, even if you are using the same service
2 list that you have.

3 And also, if you send me something from your
4 secretary, support staff, junior attorney, or anybody else
5 whose name I will not recognize, will you please make sure
6 that the name of this case appears in the subject line?
7 That way I can find it; I can figure out which case it goes
8 to relatively quickly.

9 All right. Do we need to identify the pertinent parts
10 of the existing record? Or are you going to do that in
11 briefs? Or how are we going to do that to make it easy on
12 me?

13 MR. MacGREGOR: I think it would be easiest -- I mean,
14 we have the same docket number that we had from the rate
15 case, and we just assumed that all of that record is
16 available to the parties to cite. I don't know if we are
17 going to need to designate particular parts of it to produce
18 again. I mean, do you have access to that record?

19 JUDGE COLWELL: Well, let me put it this way. The
20 Scheduler's record is non-existent. Judge Turner's office
21 has been cleaned out. The Secretary's Bureau should have
22 everything.

23 I would prefer to have fresh copies of whatever you
24 are relying on so that I know I have them.

25 MR. MacGREGOR: All right. Well, why don't I try to

1 develop with the parties a list of everything that possibly
2 deals with revenue allocation, cost allocation, rate design?
3 I will try to develop a comprehensive list of the exhibits
4 and testimony and transcript.

5 And then, once that is agreed to by the parties, I
6 will provide a copy to you of all of those documents.

7 JUDGE COLWELL: Kind of a reproduced record?

8 MR. MacGREGOR: Right.

9 JUDGE COLWELL: That would be very helpful for me.

10 MR. EPSTEIN: Dave, would that include the material
11 from parties that are not actively a part of this
12 proceeding?

13 MR. MacGREGOR: Yes, it could.

14 MR. EPSTEIN: Okay. Which I presume would be the
15 public input.

16 MR. MacGREGOR: It could be. Yes, I suppose that is
17 right. I haven't really thought about what would go in
18 that; but when we do the list, we will make sure everybody
19 has a chance to comment on it.

20 MR. EPSTEIN: That was the main thing, because I know
21 we are not going to have public input this time.

22 MR. MacGREGOR: That is a fair point, that maybe the
23 public input transcript should be part of that.

24 MS. POLACEK: I know that the parties have discussed
25 this, but I don't know if we have talked with the Judge

1 about the fact that with the witnesses that we are going to
2 be getting the testimony from, because that has been already
3 crossed and everything, they are not going to be required to
4 reappear.

5 MR. MacGREGOR: If they are not presenting additional
6 new testimony.

7 MS. POLACEK: If they are not presenting additional
8 testimony.

9 JUDGE COLWELL: Sure. Sure. That is absolutely fair,
10 as long as it is in the record. It is just a matter of me
11 being able to find it, quite honestly.

12 MR. MacGREGOR: The one thing we will be adding -- and
13 I believe I mentioned this to the parties earlier in a phone
14 call -- unless there is an objection, is, you know,
15 obviously, we filed for a certain rate increase in that
16 case, and we showed the results of the cost of service study
17 at present and proposed rates.

18 The Commission in its final Order, then, allowed a
19 different increase, lesser increase, than what was filed
20 for.

21 We did run a compliance filing cost of service study
22 at that time when we submitted our compliance filing, but we
23 did not submit the revised cost of service study, but we
24 have that, and it will probably provide a useful starting
25 point for the parties here to see where the revenue

1 allocations came out on a compliance filing basis.

2 So, we do plan to circulate a compliance filing cost
3 of service study and then use that adjusted for the storm
4 damage expense disallowance as sort of a starting cost of
5 service for consideration in the remand.

6 JUDGE COLWELL: That will be in your April 13 filing?

7 MR. MacGREGOR: Correct. Actually, we could probably
8 distribute that to the parties in advance, if it would be
9 useful.

10 It was completed at the end of '04. We revised it for
11 the storm damage. So, we will send that out in advance so
12 the parties have that as kind of a starting guide.

13 JUDGE COLWELL: That would be useful.

14 MR. GRAY: Yes. We requested that in our Prehearing
15 Memo. So, that would be a good starting point.

16 JUDGE COLWELL: Okay. Is there anything else in your
17 Prehearing Memo that you requested that I missed or haven't
18 discussed yet?

19 MR. GRAY: I don't think so.

20 JUDGE COLWELL: Anybody?

21 MR. MacGREGOR: I have one item, Your Honor, that is
22 not in our Prehearing Memo, if everybody else is finished.

23 JUDGE COLWELL: I think the floor is yours.

24 MR. MacGREGOR: Just to give Your Honor and the
25 parties a heads up, the way the Commission's Order on Remand

1 is written, they divided it, really, into two parts. One is
2 storm damage and the other is the revenue allocation.

3 We were directed to file within 30 days a refund plan,
4 a remand plan, on the storm damage expense, and we will be
5 filing that on Friday.

6 What we are going to request -- and, obviously, we
7 don't know if the Commission is going to grant it or not --
8 is that the storm damage refund be rolled into this case for
9 consideration for the following reason.

10 We believe that what we will propose on April 13, to
11 partially address the Commonwealth Court decision, is to
12 refund the storm damage expense on a non-proportional basis.

13 Rather than decrease everybody's rates by a little bit
14 to refund the storm damage, we are going to propose that it
15 be non-proportionally refunded such that parties who are
16 paying above the system average cost of service receive
17 either all or a large portion of the refund and parties who
18 are paying below cost of service would not, to partially
19 adjust the rates more toward cost of service. It would be
20 consistent with what we would call a non-proportional scale
21 back of a rate increase in a normal rate case.

22 The first hour of disallowance would go to parties who
23 are paying above cost of service rather than below cost of
24 service. That is going to be our proposal.

25 The parties are going to file on the 9th. The parties

1 have 20 days, I think, under the Commission's Remand Order
2 to respond. Then the Commission will either tell us that is
3 right or not, and we will proceed accordingly.

4 But I just wanted to give the parties a heads up that
5 that is what we are going to be proposing.

6 JUDGE COLWELL: Okay. So, you are warning me that the
7 scope of this may increase?

8 MR. MacGREGOR: Slightly.

9 JUDGE COLWELL: Okay. Thank you for the warning.

10 (Laughter.)

11 JUDGE COLWELL: All right.

12 MR. HASSELL: Your Honor, just one other thing just as
13 a matter of procedure. I did not appear as counsel in the
14 original proceeding. We will be filing today an additional
15 Notice of Appearance to add my name to this proceeding.

16 JUDGE COLWELL: Okay.

17 MS. POLACEK: Your Honor, Ms. Karandrikas was not
18 counsel in the original proceeding. We actually had an
19 attorney who was listed who has left the firm. Would you
20 like Ms. Karandrikas to just file an appearance and note
21 that the other name should be removed?

22 JUDGE COLWELL: Yes. That would keep it nice and
23 clean. That is what we are going for, a nice, clean record
24 for your next appeal.

25 (Laughter.)

1 JUDGE COLWELL: All right. Is there anything else
2 that we need to discuss today?

3 Mr. Kanaskie?

4 MR. KANASKIE: Your Honor, just to clarify. To the
5 extent it is necessary, there will be oral surrebuttal
6 permitted and oral rejoinder?

7 JUDGE COLWELL: Right there at the hearing. Whatever
8 you need.

9 MR. KANASKIE: Okay.

10 JUDGE COLWELL: It is nice he is looking out for your
11 interests.

12 (Laughter.)

13 JUDGE COLWELL: Okay. Well, if we have got everything
14 covered, then as soon as we figure out what the discovery
15 rules in existence are, I will issue a Scheduling Order and
16 we will get moving on this.

17 If there is nothing else, then I thank you all for
18 braving the elements in coming in here today, and we are off
19 the record.

20 (Whereupon, at 10:25 a.m., the prehearing conference
21 was adjourned.)

22

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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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FORM 1