

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

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 :
Pennsylvania Public Utility Commission v. :
Duquesne Light Company. : Docket No.
 Requested general rate increase of : R-00061346
 \$162,700,000. :
 :
 Initial Pre-Hearing Conference. :
 :
 ----- X

DOCUMENT
FOLDER

Pages 1 through 22 Hearing Room 2
 Commonwealth Keystone Building
 Harrisburg, Pennsylvania

Friday, May 12, 2006

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

BEFORE:

LARRY GESOFF, Administrative Law Judge

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(None.)

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FORM 1

1 Duquesne Light; and John Howells in the rate department of
2 Duquesne Light.

3 Mr. Gang, you're there, I take it?

4 MR. GANG: I am. Good morning, Your Honor, and David
5 MacGregor from Post and Schell is also here with me.

6 JUDGE GESOFF: Okay. And I also have Mr. Kanagy and
7 Mr. Jack on my distribution list, correct?

8 MR. GANG: That is correct.

9 JUDGE GESOFF: Okay. For OTS?

10 MR. SHIELDS: Judge, good morning. Charles Daniel
11 Shields and Robert V. Eckenrod for the Office of Trial
12 Staff.

13 JUDGE GESOFF: Okay. Thank you. And for the OCA?

14 MS. McCLOSKEY: Good morning, Your Honor. This is
15 Tanya McCloskey for the OCA and with me is David Evrard and
16 Darryl Lawrence.

17 JUDGE GESOFF: Good morning. I understand, Ms.
18 McCloskey, the first rate case you had was the Duquesne
19 Light base rate case.

20 MS. McCLOSKEY: Yes, it was, Your Honor.

21 JUDGE GESOFF: Well, here we are again.

22 (Laughter.)

23 JUDGE GESOFF: Okay. And for the OSBA?

24 MR. GRAY: Good morning, Your Honor. Steve Gray for
25 the OSBA.

1 JUDGE GESOFF: Good morning. And for DII and IECPA?

2 MS. POLACEK: Good morning, Your Honor. This is
3 Pamela Polacek, and I have Adam Benshoff with me this
4 morning.

5 JUDGE GESOFF: Okay. And should I have Mr.
6 Kleppinger on my e-mail distribution list?

7 MS. POLACEK: That's not necessary. Mr. Benshoff and
8 I will be sufficient.

9 JUDGE GESOFF: Okay. Thank you. And for IBEW Local
10 29?

11 MR. RUBIN: Good morning, Your Honor. This is Scott
12 Rubin.

13 JUDGE GESOFF: Good morning. And for CNE and NRG
14 ECP?

15 MR. BROGAN: Good morning, Your Honor. This is Tom
16 Brogan, and I have with me Brian Knipe and Greg Rhodes.

17 JUDGE GESOFF: Very good. I have come across the
18 name of John E. McCaffrey and added him to my distribution
19 list but I'm not sure how I got him. Is he in the case?

20 (No response.)

21 JUDGE GESOFF: I hear no response, so I will delete
22 him. I don't know how that happened.

23 Are there any other counsel who wish to be
24 recognized?

25 MR. MOODY: Yes, Your Honor. Kevin Moody. I'm here

1 on behalf of Strategic Energy LLC and RESA, Retail Energy
2 Supply Association. Neither of these entities have filed
3 petitions to intervene, but intend to do so.

4 JUDGE GESOFF: Okay. Did you mention another
5 counsel's name?

6 MR. MOODY: Daniel Clearfield will be -- he's not
7 here, but he will also be --

8 JUDGE GESOFF: Okay. Should I put him on the
9 distribution list?

10 MR. MOODY: Yes, please. Thank you.

11 JUDGE GESOFF: Is that a yes?

12 MR. MOODY: Yes.

13 JUDGE GESOFF: Okay.

14 MR. MOODY: Thank you.

15 JUDGE GESOFF: Any other counsel?

16 (No response.)

17 JUDGE GESOFF: Okay. I have received petitions to
18 intervene from the IBEW Local 29 and a joint petition for
19 Constellation NewEnergy, Inc. and NRG Energy Center
20 Pittsburgh. Are there any objections to that petition, Mr.
21 Gang, or am I premature?

22 MR. GANG: No, there's no objection to that petition,
23 Your Honor. You're not premature.

24 JUDGE GESOFF: Okay. They are granted then and I
25 will indicate that in one of the ordering paragraphs of my

1 pre-hearing order.

2 I have the following complaints that have been filed
3 so far: Duquesne Industrial Intervenors and Industrial
4 Energy Consumers of Pennsylvania; the Office of Consumer
5 Advocate; Bernadine Creighton; David J. McAdams. And I
6 assume, although I haven't seen it yet, the Office of Small
7 Business Advocate has filed a complaint?

8 MR. GRAY: Yes, we have, Your Honor, and we should
9 have served that on you yesterday.

10 JUDGE GESOFF: Okay. There's also someone on the
11 service list named Chris Moser, who apparently requested
12 information about testifying against the complaint, but I
13 haven't seen any complaint from that person. As I mentioned
14 earlier, the Office of Trial Staff has filed a notice of
15 intervention.

16 If a proprietary order is required, I assume the
17 parties will be able to agree on one and submit it to me.

18 MR. GANG: That is correct, Your Honor. I assume we
19 will be able to agree. This is Mr. Gang speaking. We are
20 preparing a proprietary agreement and will circulate it to
21 the parties and follow up with a proprietary order to
22 support that.

23 JUDGE GESOFF: Okay. Thank you.

24 Now, as far as electronic service of documents is
25 concerned, as far as I'm concerned, electronic service of

1 documents will meet the service requirements under the
2 Commission's regulations as long as a hard copy of the
3 document is sent by first class mail.

4 And we can discuss this further, but I would propose
5 that electronic service must be perfected by five p.m. on
6 the due date. Is there anything we need to talk more about?

7 MR. GANG: This is Mr. Gang, Your Honor. That is
8 fine with the company, Duquesne. I would like the parties
9 to inform me off the record whether they want hard copies or
10 not. I know that the Trial Staff has indicated that in
11 their pre-hearing memorandum, so I would just ask that the
12 parties -- we will file where possible, particularly
13 discovery, electronically. And I would ask the parties to
14 notify me if they also want paper copies.

15 JUDGE GESOFF: Okay. I'll put down what I indicated
16 earlier, and of course if a party has already said that they
17 don't need a hard copy, then they don't need to get one even
18 though the order says so.

19 Now, with respect to discovery, I have found it very
20 effective to have the parties, if there's an objection to an
21 interrogatory, to call each other up on the phone and try to
22 resolve the matter. And if they can't, they call me up.

23 First of all, they would send me the interrogatory in
24 question and the objections in writing, electronically if
25 possible, and then call me up. I discuss it over the phone

1 and I make a ruling over the phone, and I don't reduce it to
2 writing unless necessary.

3 I have found that I have been called once or twice
4 about this, and half the time the counsel resolve it while
5 they're talking to me, and the other times I make a ruling
6 and that's that. It saves a lot of time, and we don't have
7 that much in this case.

8 So I want to adopt that, and I want to also then
9 discuss the OCA's proposal, because I believe they're the
10 only party in the pre-hearing memorandum that had specific
11 desires about the discovery schedule.

12 So first of all, I guess I'd say, does anyone have a
13 problem with the procedure I outlined?

14 (No response.)

15 JUDGE GESOFF: I didn't think so. Okay.

16 How about the rest of what the OCA has put forth?
17 That would basically be in Sections, A, B, F, G and H of
18 their pre-hearing memorandum. I think paragraphs B, C, D
19 and E are taken up by the procedure I indicated.

20 MS. McCLOSKEY: Yes, Your Honor. I see we have two
21 paragraph B's, but A and B were specifically agreed to by
22 the parties. What we tried to do is then put down some time
23 frames that typically follow or fall out when you shorten
24 the response time.

25 JUDGE GESOFF: Okay. So A and the first paragraph B

1 are okay with everyone?

2 MR. GANG: This is Mr. Gang, Your Honor. They are
3 acceptable, A and the first paragraph B. Our understanding
4 is the company will make its absolute best efforts to comply
5 with these shortened deadlines, and I think that's Ms.
6 McCloskey's --

7 MS. McCLOSKEY: Yes, that's our understanding.

8 JUDGE GESOFF: Okay. And then I can put that in my
9 pre-hearing order. And how about paragraphs F, G and H?
10 Any problems with that?

11 MR. GANG: We have no objection, Your Honor, on
12 behalf of Duquesne.

13 JUDGE GESOFF: All right. So I'll put those in my
14 pre-hearing order also. Okay. Scheduling of witnesses, I
15 don't know if this is necessary. I know the company has
16 about 15 witnesses and there will be several others.

17 Do we need to have someone prepare a grid containing
18 the order in which witnesses will appear for cross-
19 examination during the hearings?

20 MR. GANG: Certainly, Your Honor. This is Mr. Gang
21 again. The company will take that on as we get closer to
22 the hearings and we see the testimony and responsive
23 testimony. We typically would do that approximately a week
24 or two before the hearings, if that's sufficient for your
25 purposes.

1 JUDGE GESOFF: Okay. That's fine. And of course, my
2 desire is that there be no holes in the schedule. If for
3 some reason we don't need the last day, we won't use it, but
4 I don't foresee that.

5 Also, I would like -- a general format for briefs in
6 general base rate increases will be submitted to the parties
7 by me. Actually, I'll attach it to the pre-hearing order.
8 That also contains tables that the parties have to file,
9 include along with their briefs, tables that trace the
10 adjustments. But I would like there to be a common brief
11 outline developed by the parties, and that can be done
12 obviously after the hearings are over.

13 The instructions for the briefs, including the
14 required tables, stem from when we did base rate cases
15 umpteen years ago. I think that for the most part, they
16 still apply today.

17 I just mention that if the parties advocate for an
18 adjustment and it's not reflected in the tables, it won't be
19 considered. I think this will be self-explanatory, and some
20 of you have had experience with this in the past. Are there
21 any problems with any of that?

22 (No response.)

23 JUDGE GESOFF: Okay. Next would be the transcript
24 turnaround time. I think there's a standard five days --
25 well, right now it's on a five-day turnaround time. Do any

1 of the parties want it faster than that? Is five days fast
2 enough?

3 (Pause.)

4 JUDGE GESOFF: Okay.

5 MR. GANG: One moment, Your Honor.

6 JUDGE GESOFF: Okay, sorry. I'm going too fast.

7 (Pause.)

8 MR. GANG: The question was, how long do we have
9 between the close of the record on August 25th and September
10 19th is main briefs, so we'd have -- the last transcript
11 would be available approximately August 30th, about 19 days.

12 MR. ECKENROD: Actually, the standard turnaround time
13 is three days.

14 MR. GANG: That's the confusion, Your Honor. Mr.
15 Eckenrod was just pointing out that typically, we're used to
16 three day turnaround, and I think John is indicating that's
17 the case. He's nodding.

18 JUDGE GESOFF: Okay. It will be three days. John,
19 do I have to do anything about that? Or is it just going to
20 happen?

21 THE REPORTER: Not to my knowledge, Your Honor.

22 JUDGE GESOFF: "Not to my knowledge" meaning I don't
23 have to do anything?

24 THE REPORTER: Right.

25 JUDGE GESOFF: Okay. Now, the litigation schedule is

1 what I'd like to turn to next, and the parties have done I
2 think a lot of work judging from what was submitted in the
3 Duquesne Light pre-hearing memorandum, so you're to be
4 congratulated for that.

5 And I suppose we need to discuss whether discovery
6 fits in there okay based upon the schedule that we've agreed
7 to, and also when would the public input hearings be, where
8 would they be, how many, etcetera.

9 So, can we talk about public input hearings? I'm
10 going to ask the OCA.

11 MS. McCLOSKEY: Sure. Your Honor, the OCA is
12 requesting public input hearings. At this time, I think
13 we're still fairly early in the notification process, so
14 it's a little bit difficult to gauge the level of interest.

15 But we would suggest that there be at least two
16 public input hearings in different portions of Duquesne's
17 service territory. I think they can be held on the same day
18 or fairly close together, but we think there should be at
19 least two locations where public input hearings are held.

20 JUDGE GESOFF: Okay. And are we talking about
21 daytime and evening?

22 MS. McCLOSKEY: I would recommend at least one
23 daytime and one evening.

24 JUDGE GESOFF: At each location?

25 MS. McCLOSKEY: Your Honor, at this point, I was

1 hoping we could perhaps wait a week or so to gauge as we
2 watch for the interest and complaints to go in. I think the
3 company is still in the process of the notification going
4 out to customers. We're still a little bit ahead of that
5 process being complete and customers having the time to
6 provide their notice.

7 JUDGE GESOFF: Okay, so we haven't gone through a
8 billing cycle yet.

9 MS. McCLOSKEY: They have probably just completed it.

10 JUDGE GESOFF: Okay. Well, then, I'll wait until you
11 get back to me on that.

12 MS. McCLOSKEY: I think we can work with the company
13 on coming up with some locations and appropriate times.

14 JUDGE GESOFF: Okay.

15 MR. GANG: This is Mike Gang, Your Honor. While I'm
16 not objecting to Ms. McCloskey's proposal, I do note that
17 Duquesne is a little unusual in the sense that it has a
18 relatively compact service area. It's only about 800 square
19 miles, and it's really pretty compact.

20 I would just like to reserve the question of whether
21 we really need two different locations or whether we could
22 do this with a day and evening session. Let's just leave
23 that open and see what kind of response parties get for
24 requesting public input hearings. Otherwise, we might find
25 ourselves in a situation where there just aren't very many

1 people, with two different locations.

2 JUDGE GESOFF: Okay. We'll keep that open, then.

3 Is there anything we need to do to change any aspect
4 of the litigation schedule that the company submitted with
5 its pre-hearing memorandum?

6 MR. GANG: This is Mr. Gang again, Your Honor. You
7 questioned discovery. I just note that we have shortened
8 discovery periods and we've also scheduled in the hearing
9 schedule at least two days of informal discovery during the
10 week of June 5th or 12th.

11 The company will work hard to try to answer questions
12 informally. We will invite parties and their consultants to
13 come to Pittsburgh and see the company's books and records
14 in Pittsburgh, and if that is not convenient, we will do it
15 by telephone. We will do everything we can to move the
16 discovery process along efficiently.

17 JUDGE GESOFF: Okay. Is there anything else we need
18 to discuss?

19 MR. GRAY: Your Honor, this is Steve Gray from the
20 OSBA. Following up on something I put in my pre-hearing
21 memo, we all note there's quite a few parties involved in
22 this proceeding, and the hearings of course are scheduled
23 for late August.

24 I would just suggest that it might be a smoother,
25 more comfortable process to hold the hearings in the larger

1 hearing rooms in Harrisburg rather than the frankly smaller
2 hearing rooms in Pittsburgh.

3 JUDGE GESOFF: I'm glad you brought that up. There
4 was never any question in my mind where the hearings would
5 be. They're going to be in Harrisburg. The main reason for
6 that is that as far as the Commission is concerned, it costs
7 more money for everyone from Harrisburg to come here than
8 for just myself and Judge Nemeč to come to Harrisburg, so
9 it's always been that way. We just love coming there.

10 (Laughter.)

11 MR. GRAY: That's great, Your Honor. Thank you.

12 MR. GANG: It's getting to be a nicer place than it
13 used to be.

14 JUDGE GESOFF: It is a much nicer place, number one,
15 and number two, we're coming in August, which is a lot
16 different than coming in January or February.

17 MR. GANG: Your Honor, again, this is Mike Gang. If
18 you might, could you comment on, I understand you are the
19 lead Judge in this case, and what you might perceive as your
20 role and Judge Nemeč's role?

21 JUDGE GESOFF: Thank you. I thought of doing that
22 and I forgot to mark it down in some of the things I wanted
23 to cover.

24 We both should be on your e-mail distribution lists
25 and we should each receive whatever is being submitted. I

1 didn't mention that I don't want to see any interrogatories,
2 not even cover letters. The only thing I want to know about
3 an interrogatory is a phone call saying there's an
4 objection, and if you can't iron it out, then I'll see the
5 interrogatory and the objections.

6 I will be the lead Judge, so if there's a problem
7 with -- for instance, if you need a ruling from me, then you
8 would contact me. If I'm not available, then you would
9 contact Judge Nemec.

10 I'm pretty sure we're both going to be coming to the
11 hearing and we'll divide up portions of the decision to
12 write. I don't know if I've answered all of your question.

13 MR. GANG: I just wanted to get a sense of it, Your
14 Honor, and on behalf of the parties, that's satisfactory.
15 In fact, I suspect what we'll happen, it will become fairly
16 clear at the hearings which Judge will be handling which
17 issues, and I expected that's where we were heading, and I
18 just wanted to see if that was the case.

19 JUDGE GESOFF: Yeah. And he and I have not discussed
20 what issues we're going to take.

21 MR. GANG: Just tell him to give me a call. I'll let
22 him know what the easy ones will be.

23 (Laughter.)

24 JUDGE GESOFF: Well, you know, he has an economics
25 background. I have a liberal arts background, so I'm going

1 to try to get him to do the things that he knows best.
2 We'll see.

3 MR. GANG: All right. Well, then, you give me a
4 call.

5 (Laughter.)

6 JUDGE GESOFF: All right. Is there anything else?

7 (No response.)

8 JUDGE GESOFF: Okay. This is going to be fun. It's
9 been a lot of years since I've had one of these, and for
10 some of you it's the very first time, so we'll have fun.

11 MR. GANG: We look forward to it. Thank you, Your
12 Honor.

13 JUDGE GESOFF: All right. Thank you.

14 (Whereupon, at 10:27 a.m., the proceedings were
15 concluded.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me or under my direction, and that this transcript is a true and accurate record to the best of my ability.

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By: John A. Kelly

John A. Kelly,
Certified Verbatim Reporter

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