

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission, :
Office of Consumer Advocate, Henry J. : Docket No.
Tkacik, Michael Tarr, Office of Small : R-00061295
Business Advocate v. Equitable Gas : R-00061295
Company. 1307(f). : C0001-C0004

Evidentiary Hearing.

DOCUMENT FOLDER

Pages 16 through 36

Hearing Room 2
Commonwealth Keystone Building
Harrisburg, Pennsylvania

DOCKETED
SEP 22 2006

Friday, June 16, 2006

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

BEFORE:

MICHAEL A. NEMEC, Administrative Law Judge

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WITNESS

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE MICHAEL E. NEMEC: This
3 morning we have a case that's captioned Pennsylvania Public
4 Utility Commission versus Equitable Gas Company. The matter
5 is docketed at R-0006129 -- (inaudible) --

6 MS. WEBB: Judge, you're cutting out.

7 JUDGE NEMEC: Okay. I'm not sure what I can do about
8 that. I'm speaking right into the phone. Is that any
9 better?

10 MS. WEBB: Yes, sir.

11 JUDGE NEMEC: Okey-doke. I will try and keep up the
12 volume. The pre-hearing in this case was held on April 19th
13 by ALJ Fred Nene who issued a pre-hearing order on April
14 20th. The matter was reassigned to me by notice dated --
15 (inaudible) -- 21, 2006.

16 What I'd like to do at this point is have counsel
17 identify themselves on the record and state -- (inaudible)
18 -- we'll start with Equitable.

19 MR. THOMAS: May it please Your Honor, this is
20 Charles Thomas, Jr. I'm in the hearing room on behalf of
21 Equitable Gas Company. With me is Thomas T. Niesen from our
22 law firm, and also Dan Frutchey from the company.

23 JUDGE NEMEC: Okay, sir. Office of Trial Staff?

24 MR. SIMMS: Good morning, Your Honor. This is
25 Johnnie Simms, appearing on behalf of the Office of Trial

1 Staff.

2 JUDGE NEMEC: Thank you, Mr. Simms. Consumer
3 Advocate?

4 MS. WONG: Your Honor, this is Darlene Wong for the
5 OCA.

6 JUDGE NEMEC: Thank you, Ms. Wong. OSBA?

7 MS. WEBB: Good morning, Your Honor. Sharon Webb for
8 the OSBA.

9 JUDGE NEMEC: Thank you, Ms. Webb.

10 MS. KNIGHT: And last but not least, Louise Knight
11 for NRG Energy Center Pittsburgh, LLC.

12 JUDGE NEMEC: And NRG Energy Center, LLC is an
13 intervenor in this matter.

14 MS. KNIGHT: Energy Center Pittsburgh, LLC, yes.

15 JUDGE NEMEC: NRG Energy Center Pittsburgh, LLC.

16 MS. KNIGHT: You got it.

17 JUDGE NEMEC: I'm trying to catch up here.

18 Now, I have two individual complainants --
19 (inaudible) -- of those present?

20 MS. WEBB: Your Honor, you cut out again. I'm sorry.
21 The court reporter couldn't hear you.

22 JUDGE NEMEC: Okay.

23 MR. THOMAS: May it please Your Honor, this is
24 Charles Thomas again. Per Your Honor's instructions, I
25 attempted to call both Mr. Tkacik and Mr. Tarr, the two

1 complainants, and was unable to speak with them directly,
2 but I left voice mail messages on their home phone
3 recorders, and I think I even left two with respect to Mr.
4 Tkacik, who had attended the pre-hearing conference, but I
5 was unable to speak with them directly.

6 JUDGE NEMEC: Thank you, Mr. Thomas, and I would
7 assume that neither one of them are present this morning.

8 (No response.)

9 JUDGE NEMEC: Did anybody hear that?

10 MS. WEBB: Not in Harrisburg, Your Honor.

11 JUDGE NEMEC: I assume that neither one of the
12 individual complainants is present in the hearing room in
13 Harrisburg.

14 MR. SIMMS: That's correct, Your Honor.

15 JUDGE NEMEC: Thank you. Now, I issued an interim
16 order back on May 23rd, granting a motion in limine filed by
17 -- (inaudible) -- Staff, outstanding motion to strike a
18 portion of testimony of OCA Witness Mierzwa. I assume that
19 that's been resolved.

20 MR. THOMAS: It has, Your Honor.

21 JUDGE NEMEC: Okay. And I know that there's been a
22 settlement entered into, but apparently there's still one
23 outstanding issue, and which do you want to address the
24 first, the settlement or the outstanding issue?

25 MR. THOMAS: May it please Your Honor, this is

1 Charles Thomas again. As I advised Your Honor, we had
2 reached a comprehensive settlement of all of the issues in
3 the proceeding and we had a settlement term sheet. However,
4 the term sheet was not yet completed as of last evening, and
5 it still isn't completed this morning because we were
6 awaiting language that is presently being prepared
7 concerning an issue as between the Trial Staff and the
8 Office of Small Business Advocate.

9 And when we have that, we should be in a position to
10 forward first a term sheet to Your Honor, to be followed by
11 an actual settlement agreement executed by all of the
12 parties. We reached an oral resolution with, I'm just going
13 to say the NRG Energy Center Pittsburgh, last evening.

14 That also has not been reduced to writing, but we
15 were in oral agreement on the principles of that settlement.
16 We did receive an e-mail last evening. However, at the time
17 the e-mail was received by the machines, we were in meetings
18 and first saw it this morning and had only a preliminary
19 review of it, and I need to speak with Ms. Knight about it.

20 MS. KNIGHT: I just wanted to indicate that we had
21 gone further than just an oral agreement. I realize it got
22 over to Mr. Thomas relatively late in the evening, and we're
23 certainly prepared to have further discussions today, but I
24 think we're of a like mind that we'll be able to resolve our
25 issue.

1 JUDGE NEMEC: All right. Now, this is Michael Nemeč
2 again in Pittsburgh. Are the parties comfortable with
3 undertaking to provide me with a copy of the completed --
4 (inaudible) -- by the second week of July?

5 MR. THOMAS: The actual settlement agreement, Your
6 Honor, or -- I would hope to have that within two weeks at
7 the most, so I think we can have a signed document to Your
8 Honor certainly by the second week of July.

9 JUDGE NEMEC: My normal policy is to request that I
10 have the final document on or before the due date for reply
11 briefs, which is July 17th. Assuming I get it by then,
12 that's fine. But if I can get it sooner than that, that
13 would be very good with regard to my schedule.

14 MR. THOMAS: Your Honor, everybody seems to be so
15 busy and there are so many proceedings that I would like to
16 capture their attention as quickly as possible so that we
17 can resolve this, and we will do our best to have it
18 submitted to Your Honor prior to the 17th.

19 JUDGE NEMEC: Okay. Now, one further thing, and this
20 would be very helpful to me, if the final settlement
21 document can be in Word, Microsoft Word, and both a hard
22 copy and a copy attached to e-mail be provided to me.

23 The problem that arises apparently is that there's a
24 need to provide copies to the staffs of each Commissioner,
25 and if you can see to it that the final settlement document

1 is in Word and can readily be copied, that would be helpful.

2 Any questions about that?

3 MR. THOMAS: That's certainly doable, Your Honor.

4 JUDGE NEMEC: Okay. Am I correct we have nothing
5 further to consider here?

6 MR. THOMAS: May it please Your Honor, we thought
7 that it would be appropriate this morning to submit our
8 statements of testimony and exhibits. That would be for all
9 parties by stipulation.

10 And when we submit the settlement agreement, there
11 will be a provision that with respect to the testimony
12 that's been submitted by stipulation, that should any
13 portion of the settlement be rejected, any testimony that
14 has been submitted that's inconsistent with the Commission's
15 approval of the settlement will be considered withdrawn.

16 And that is to avoid the problem that we had last
17 year when the Commission pointed to testimony and used it as
18 a basis for rejecting a term of the settlement that had been
19 agreed to by every party to the proceeding and recommended
20 by Your Honor, and we suddenly have testimony being used to
21 support a position contrary to all of the settling parties.

22 So what we are going to propose now, to the extent
23 any testimony in the company's exhibits are inconsistent
24 with the settlement, those portions shall be considered
25 withdrawn.

1 It's the very same language the Commission uses when
2 it is disposing of complaints in a proceeding, and we think
3 that is a far easier and better approach than having the
4 parties go through and submit redacted testimony, which is a
5 lot of work, to redact any testimony that may be
6 inconsistent with the settlement.

7 So anyway, we propose, to summarize once again, we
8 would propose to submit the testimony of the parties by
9 stipulation, identify it and stipulate to its authenticity
10 and to admit it into the record.

11 And again, any testimony submitted, to the extent
12 that testimony is inconsistent with the terms of the
13 settlement, that testimony is deemed withdrawn.

14 JUDGE NEMEC: That's fine with me. Do you wish to do
15 that on the record now?

16 MR. THOMAS: Well, Your Honor, very quickly, I think
17 Equitable probably has the greatest burden with respect to
18 the number of statements of testimony, but yes, we are
19 prepared to do that right now. I don't think it would take
20 very long.

21 JUDGE NEMEC: Go ahead.

22 MS. WEBB: Your Honor, this is Sharon Webb from the
23 OSBA. I just wanted to clarify, I think that we are on the
24 same page but Mr. Thomas said two different things, and I
25 just want to be clear that the testimony going in that is in

1 support of the settlement, anything that's inconsistent
2 would be withdrawn.

3 But in his first statement, he said anything that's
4 rejected by the Commission, the testimony would be
5 withdrawn. And it was my understanding that if something
6 was rejected, that the testimony would all go in.

7 MR. THOMAS: May it please Your Honor, I know I
8 wasn't clear, and I apologize. It's due to lack of sleep.
9 But basically, what I was saying, should any portion of the
10 settlement be rejected, that the testimony that had been
11 submitted that may relate to that issue, to the extent it's
12 inconsistent with what the Commission is doing and to the
13 extent that testimony is inconsistent with the settlement,
14 that testimony will have been deemed withdrawn and therefore
15 not be available for the Commission to cite in support of
16 whatever action it may take.

17 We think that due process would require, if there
18 were to be any rejection of any term of the settlement, that
19 due process would mean that we then reconvene and have an
20 expedited hearing on that particular issue, because the
21 testimony that we have was prepared ahead of the parties
22 reaching a settlement, so the testimony itself does not
23 directly address the settlement. It's basically addressing
24 the positions of the parties and rebutting the positions of
25 other parties.

1 It's a little awkward, and I realized into my
2 dialogue there that I hadn't been clear the first time, but
3 that was what I was trying to address, that we don't want
4 any testimony cited to support something that's inconsistent
5 with the testimony. If the Commission's going to reject the
6 settlement, we think we should be back in the hearing room
7 on that issue.

8 JUDGE NEMEC: Ms. Webb, does that satisfy you?

9 MS. WEBB: If by "coming back into the hearing room,"
10 Mr. Thomas means that we'll have an opportunity to submit
11 our original testimony and argue those points that were
12 rejected by the Commission, yes, that's fine.

13 MR. THOMAS: That's absolutely what I mean.

14 JUDGE NEMEC: Okay. Go ahead, Mr. Thomas.

15 MR. THOMAS: May it please Your Honor, Equitable
16 requests that there be marked for identification and
17 admitted into the record by stipulation its definitive 2006
18 1307(f) filing, that it be identified as Equitable Exhibit I
19 and admitted into the record by stipulation.

20 We also would request that there be identified as
21 Equitable Statement 1 and Equitable Statement 1-R the
22 prepared direct and rebuttal testimony of its witness,
23 Robert M. Narkevic, and that that testimony be admitted into
24 the record by stipulation.

25 We would request that there be marked for

1 identification as Equitable Statement 2 and Equitable
2 Statement 2-R the prepared direct and rebuttal testimony of
3 Jeffrey S. Nehr and again, that that be admitted into the
4 record by stipulation.

5 We would request that there be identified as
6 Equitable Statement No. 3 and Equitable Statement No. 3-R
7 the prepared direct and rebuttal testimony of Equitable
8 Witness John A. Quinn and that that testimony be admitted
9 into the record by stipulation.

10 And lastly, Your Honor, we would request that there
11 be marked for identification as Equitable Statement No. 4
12 and Equitable Statement No. 4-R the prepared direct and
13 rebuttal testimony of Equitable Witness Steven C. Rafferty,
14 and the accompanying exhibits appended to Mr. Rafferty's
15 direct testimony, that would be Equitable Statement No. 4,
16 and his Exhibits SCR-1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, that
17 Mr. Rafferty's testimony and exhibits be admitted by
18 stipulation.

19 I think that covers all of our statements of
20 testimony and exhibits, Your Honor.

21 JUDGE NEMEC: The exhibits and statements may be so
22 identified, and Equitable Exhibit I along with Statements 1,
23 1-R, 2, 2-R, 3, 3-R, 4 and 4-R with attached exhibits are
24 admitted pursuant to the proposed stipulation.

25 (Whereupon, the documents were

1 marked as Equitable Exhibit I
2 and Equitable Statements 1, 1-R, 2,
3 2-R, 3, 3-R, 4 and 4-R for
4 identification and received in
5 evidence.)

6 JUDGE NEMEC: Trial Staff?

7 MR. SIMMS: Thank you, Your Honor. The Office of
8 Trial Staff respectfully requests that the direct testimony
9 of Michael J. Gruber be identified as OTS Statement No. 1
10 and be admitted into the record by stipulation. We request
11 that the rebuttal testimony of Janet Markovich be marked for
12 identification as OTS Statement No. 1-R and be admitted into
13 the record by stipulation. And we request that the
14 surrebuttal testimony of Michael J. Gruber be marked for
15 identification as OTS Statement No. 1-SR and be admitted
16 into the record by stipulation.

17 JUDGE NEMEC: They may be so identified, and OTS
18 Statements Nos. 1, 1-R and 1-SR are admitted by stipulation
19 into the record.

20 (Whereupon, the documents were
21 marked as OTS Statements Nos. 1,
22 1-R and 1-SR for identification
23 and received in evidence.)

24 JUDGE NEMEC: Consumer Advocate?

25 MS. WONG: Thank you, Your Honor. The OCA requests

1 that the direct testimony of Jerome Mierzwa be identified as
2 OCA Statement 1 with testimony and accompanying schedules
3 and entered into the record by stipulation, and the OCA also
4 requests that the surrebuttal testimony of Jerome Mierzwa be
5 identified as OCA Statement 1-S with testimony and
6 accompanying schedules, and that that be entered into the
7 record by stipulation as well.

8 JUDGE NEMEC: The two statements may be so
9 identified, and OCA Statement 1 and OCA Statement 1-S with
10 attached schedules are admitted into the record by
11 stipulation.

12 (Whereupon, the documents were
13 marked as OCA Statements Nos. 1
14 and 1-S for identification
15 and received in evidence.)

16 JUDGE NEMEC: OSBA?

17 MS. WEBB: Good morning, Your Honor. The OSBA would
18 like to have marked for identification OSBA Statement 1
19 which is the direct testimony of its witness, Brian Kalcic,
20 and accompanying, I believe they were exhibits, and also
21 OSBA Statement 1-S which is the surrebuttal testimony of its
22 witness, Brian Kalcic, marked for identification and moved
23 into the record by stipulation.

24 JUDGE NEMEC: Okay. OSBA Statements 1 and 1-S may be
25 so identified, and OSBA Statement 1 and Statement 1-S with

1 attached exhibits and/or schedules are admitted by
2 stipulation into the record of this proceeding.

3 (Whereupon, the documents were
4 marked as OSBA Statements Nos. 1
5 and 1-S for identification
6 and received in evidence.)

7 MS. WEBB: Thank you, Your Honor. I will make sure
8 today that the court reporter gets the two copies of the
9 statements. As I had indicated earlier, I thought that the
10 court reporter was going to be in Pittsburgh so I did not
11 bring them with me.

12 JUDGE NEMEC: Okay. I have a question for you all.
13 My records indicate that there were no additional complaints
14 or interventions subsequent to the pre-hearing conference.
15 Is anyone aware of any additional complaints or
16 interventions?

17 MS. KNIGHT: No, Your Honor, but this is Ms. Knight.
18 I believe I have some testimony sitting here that should be
19 admitted into the record as well.

20 JUDGE NEMEC: I am very sorry, Ms. Knight. I
21 continually -- (inaudible) -- your role in all of this. I
22 apologize profusely. Go ahead.

23 MS. KNIGHT: Apology accepted. Your Honor, I have
24 with me a document marked as NRG Pittsburgh Statement No.
25 1A. As you'll recall, we actually submitted two statements,

1 1 and 1A, during the pendency of the Office of Trial Staff's
2 motion in limine, so in view of your subsequent ruling on
3 that matter, we are submitting Statement No. 1A as well as
4 four exhibits marked NRG Exhibits 1 through 4. At this
5 time, I'd like to have them admitted by stipulation.

6 JUDGE NEMEC: NRG Statement 1 and 1A and Exhibits --

7 MS. KNIGHT: Your Honor, just 1A. I was explaining
8 why there were two in the record, but we're only filing 1A.

9 JUDGE NEMEC: Thank you. NRG Statement 1A and NRG
10 Exhibits 1 through 4 are identified and they are admitted
11 into the record in this proceeding.

12 (Whereupon, the documents were
13 marked as NRG Statement No. 1
14 and NRG Exhibits Nos. 1 through
15 4 for identification and
16 received in evidence.)

17 JUDGE NEMEC: Have I forgotten anybody else? I hope
18 not.

19 (No response.)

20 JUDGE NEMEC: All right. I assume we have no other
21 complainants or intervenors. What else do we need to do
22 today, folks?

23 MR. THOMAS: May it please Your Honor, I'm not
24 certain that there is anything else that we need to do. We
25 would be prepared, if Your Honor would like us to do so, to

1 indicate the subjects or the matters that are the subject of
2 the settlement, but you will be receiving the settlement
3 agreement which will go into much greater detail.

4 JUDGE NEMEC: Are you prepared to do that in outline
5 form?

6 MR. THOMAS: Yes, Your Honor. Just perhaps for the
7 record, the issues that are being settled, and these were
8 the contested issues in the proceeding, would be design,
9 peak day and capacity entitlements, the first one;

10 The second one, standby charges and balancing
11 charges;

12 Third would be exchange transactions;

13 Fourth, performance based rate design No. 1;

14 Five, VPEM storage management arrangement;

15 Six, the discounting of fuel retention charges;

16 Seven, Btu content;

17 Eight, hedging;

18 Nine, the Equitrans refund;

19 And we have the matter of the 2004 price spike, an
20 OSBA issue that we will address in the settlement agreement
21 as well.

22 And we will also address for Your Honor more clearly
23 than I said earlier the treatment to be accorded to
24 testimony and exhibits.

25 JUDGE NEMEC: Okay. Thank you for that. Anything

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further?

(No response.)

JUDGE NEMEC: There being no response to that, I want to thank you all for your hard work and continue to work hard to get me a complete settlement agreement and -- (inaudible) -- in advance for that, and we -- (inaudible) -- adjourned at this time. Thank you all again.

(Whereupon, at 10:24 a.m., the proceedings were concluded.)

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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John A. Kelly,
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FORM 1