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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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Petition of PPL Electric Utilities Corp. : Docket No.
For Approval of a Competitive Bridge Plan :
: P-00062227
Telephonic prehearing conference :
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Friday, September 22, 2006

Met, pursuant to notice, at 10:04 a.m.

BEFORE:

MARLANE R. CHESTNUT, Administrative Law Judge

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WITNESSES

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE

MARLANE R. CHESTNUT: This is the prehearing conference scheduled at Docket P-00062227, petition of PPL Electric Utilities Corporation for approval of a competitive bridge plan.

For the record let me state that I am Administrative Law Judge Marlane R. Chestnut.

Now, with respect to the parties present, I would like to state on the record that I did have prepared the OALJ hearing report both here and in Harrisburg. Instead of everybody going through and stating your name, your address, et cetera, for the record, I would just like you to take a minute to look that over and see if there are any changes that need to be made, let me know if there are, and then just state your name and on whose behalf you are appearing.

Is there going to be somebody in Harrisburg who is like a main speaker? Let me go through and see who is there.

Here in Philadelphia are Mr. MacGregor and Mr. Russell for PPL, Mr. Murphy and Mr. Gay for Exelon, Mr. Stewart for Dominion, Mr. Thomas and Ms. Corson for Constellation, and Mr. Knipe for Reliant.

Now, in Harrisburg, if you could identify

1 yourself for me. Is Mr. Mullins there?

2 MR. MULLINS: Yes. Good morning, Your
3 Honor.

4 JUDGE CHESTNUT: Good morning.

5 Mr. Mickens, are you there?

6 MR. MICKENS: Good morning, Your Honor.

7 JUDGE CHESTNUT: Who is there from OSBA?

8 MR. GRAY: Good morning, Your Honor.

9 Steve Gray for OSBA.

10 JUDGE CHESTNUT: Good morning, Mr. Gray.

11 Mr. Rubin?

12 MR. RUBIN: Yes. Good morning, Your
13 Honor.

14 JUDGE CHESTNUT: Ms. Evers for Met
15 Ed/Pennelec?

16 MS. EVERS: Yes. Good morning, Your
17 Honor.

18 JUDGE CHESTNUT: Ms. Polacek and Mr.
19 Benschhoff for PPLICA?

20 MS. POLACEK: Good morning, Your Honor.
21 This is Ms. Polacek. Mr. Benschhoff is not with me today.

22 JUDGE CHESTNUT: Mr. Moody for RESA
23 Strategic and Direct Energy?

24 MR. MOODY: Good morning, Your Honor.

25 JUDGE CHESTNUT: Mr. Epstein for yourself.

1 MR. EPSTEIN: Good morning, Your Honor.

2 JUDGE CHESTNUT: Ms. Armstrong for SEF.

3 MS. ARMSTRONG: Good morning, Your Honor.

4 JUDGE CHESTNUT: And Mr. Hanger for

5 PennFuture.

6 MR. HANGER: Yes.

7 JUDGE CHESTNUT: Good morning.

8 MR. HANGER: Good morning.

9 JUDGE CHESTNUT: Is there anybody else
10 there whose name I didn't say?

11 MR. HASSELL: Good morning, Your Honor.
12 This is Mike Hassell also for PPL Electric.

13 JUDGE CHESTNUT: Have you had a chance to
14 look at the OALJ hearing report for your particular
15 information? Let me know of any changes that I need to
16 make to it.

17 MR. GRAY: We are taking a look at it now,
18 Your Honor. This is Steve Gray for the OSBA.

19 JUDGE CHESTNUT: Thank you.

20 MR. GRAY: Your Honor, can you hear us
21 okay?

22 JUDGE CHESTNUT: I can hear you fine. Can
23 everybody else?

24 MR. MacGREGOR: Yes.

25 JUDGE CHESTNUT: Okay.

1 I assume you have had a chance to review
2 that.

3 MR. HASSELL: Your Honor, this is Mike
4 Hassell.

5 It appears that everyone is on the report.

6 JUDGE CHESTNUT: Thank you. I will make
7 sure to add you and Ms. Corson and Mr. Gay.

8 Now, as you all know, what I plan to do is
9 go through the issues that I list in my normal prehearing
10 order. If you have other issues you wish to raise wait
11 until I am finished and hopefully we will get through this
12 relatively quickly.

13 I received prehearing memoranda from
14 basically everybody, which includes Local 1600, Strategic,
15 OTS, the Exelon Companies, RESA, SEF, Epstein -- I'm
16 sorry, Mr. Epstein, I should have said Mr. Epstein --
17 OCA, Dominion, PennFuture, OSBA, Constellation, MetEd and
18 Pennelec, Direct Energy, PPL Electric, PPLICA, Reliant and
19 FES.

20 Now, we are going to go through first and
21 address the petitions to intervene. The first one is the
22 petition to intervene filed by PennFuture on August 25,
23 2006. Does anybody have an objection?

24 (No audible response.)

25 JUDGE CHESTNUT: That petition is granted.

1 Next is the petition to intervene filed by
2 Strategic on August 25, 2006. Does anyone have an
3 objection?

4 MR. MacGREGOR: Your Honor, this is David
5 MacGregor. Could I just make a brief statement about the
6 petitions to intervene?

7 JUDGE CHESTNUT: Sure.

8 MR. MacGREGOR: We have no opposition to
9 any of the petitions to intervene, both the ones filed
10 before and after August 28. We obviously don't
11 necessarily agree with the merits of some of the arguments
12 made and we reserve the right to argue that some of the
13 issues may or may not be relevant to the proceeding, but
14 we have no opposition to anyone intervening in the
15 proceeding.

16 JUDGE CHESTNUT: Okay. Great.

17 Then let me just them. That is the
18 petition to intervene filed by Local 1600, the petition to
19 intervene filed by PPLICA, the petition to intervene filed
20 by RESA, the petition to intervene filed by Constellation,
21 the petition to intervene filed by Reliant, the petition
22 to intervene filed by MetEd/Pennelec, the petition to
23 intervene filed by Dominion, the petition to intervene
24 filed by FES, the petition to intervene out of time filed
25 by the Exelon Companies, the out of time petition to

1 intervene of Eric Joseph Epstein, the late-filed petition
2 to intervene filed by SEF, and the petition to
3 intervene/protest out of time filed by Direct Energy.

4 Then that takes us to Reliant's motion to
5 dismiss. I am going to deny that motion. I think it is
6 premature and not justified.

7 MR. KNIPE: Your Honor, shall I wait until
8 you are finished to --

9 JUDGE CHESTNUT: Do you want to say
10 something about that? I don't mean to foreclose you from
11 addressing something I'm talking about. If you have
12 something relating to this issue, yes, please bring it up.

13 MR. KNIPE: Your Honor, I would
14 respectfully request that you please certify this question
15 for consideration by the Commission.

16 JUDGE CHESTNUT: Well, that request is
17 denied. Anything else?

18 MR. HASSELL: Your Honor, we couldn't hear
19 that. I'm sorry.

20 JUDGE CHESTNUT: I'm sorry. I denied not
21 just the motion to dismiss but Mr. Knipe's request to
22 certify the question to the Commission.

23 I'm sorry. Did you want to address that,
24 Mr. MacGregor?

25 MR. MacGREGOR: No. I think your ruling

1 is fine with me, Your Honor.

2 JUDGE CHESTNUT: Let me state generally
3 that petitions to intervene and motions for admission pro
4 hac vice if not defective on their face shall be deemed
5 granted if not objected to within three business days
6 after filing. If objected to such pleadings will be
7 addressed by order.

8 Let me state generally for those not
9 familiar, these are standard prehearing instructions that
10 I am going to be going through at this point.

11 Pursuant to 52 Pennsylvania Code Section
12 1.55 each party is limited to one entry on the service
13 list. I think you have all indicated who your entry is.
14 I do allow you to have extra entries on my e-mail
15 distribution list, though, which we will go over.

16 Parties are limited to those persons or
17 entities who attended this prehearing conference and any
18 persons or entities granted intervention in accordance
19 with the provisions of 52 Pennsylvania Code Sections 5.73
20 to 5.75.

21 Parties will receive all documents and
22 must serve all other parties with all documents filed in
23 the case.

24 Parties will participate in conducting
25 discovery, attend hearing sessions, sponsor and present

1 witnesses, be allowed to examine other parties' witnesses
2 and be permitted to file and serve main and reply briefs.

3 Let me state also make sure you send me
4 directly a copy of every document you file because service
5 to me from the file room is erratic.

6 MR. MacGREGOR: That is hard copy, Your
7 Honor?

8 JUDGE CHESTNUT: Yes.

9 MR. MacGREGOR: In addition to e-mail?

10 JUDGE CHESTNUT: If it is just an -- yes.
11 Yes, actually. If you are talking about a document I
12 would prefer to have it e-mail and hard copy.

13 Anybody have any questions of anything I
14 have gone through at this point?

15 (No audible response.)

16 JUDGE CHESTNUT: Anybody in Harrisburg?

17 (No audible response.)

18 JUDGE CHESTNUT: Anybody here?

19 (No audible response.)

20 JUDGE CHESTNUT: Let's talk about, then,
21 my informal e-mail distribution list. Make sure you
22 understand that it is an informal means of communication
23 and it is really just a courtesy to you that I do that.

24 I sent my list to you and you should have
25 had a chance to review it. Does anybody have any changes

1 to make to it?

2 (No audible response.)

3 MR. MURPHY: Your Honor, we will have a
4 change with Mr. Gay being added to the case.

5 JUDGE CHESTNUT: Yes. Thank you for
6 reminding me.

7 Let's talk about discovery. As you all
8 know, these regulations are usually modified. I see in
9 the company's prehearing memorandum that they propose some
10 suggested changes which I have to say are not the same as
11 the ones I usually do. But we can talk about that.

12 The first change that I would like to
13 propose, which is standard, is that when an interrogatory
14 or motion is served on a Friday or the day before a
15 holiday the appropriate period is deemed to start -- I
16 should say the appropriate response period is deemed to
17 start on the next business day. Does anybody object to
18 that?

19 MR. MULLINS: Your Honor, Mr. Mullins from
20 the OCA.

21 Just one small request. If 12 noon on a
22 Friday could be the cutoff date we would actually prefer
23 that so we don't lose an entire day.

24 MR. MacGREGOR: Before noon it counts and
25 after noon it doesn't.

1 JUDGE CHESTNUT: Okay. Is that okay with
2 everyone?

3 MR. MacGREGOR: Yes.

4 JUDGE CHESTNUT: If served before noon on
5 a Friday or the day before a holiday. How's that?

6 MR. MULLINS: Thank you, Your Honor.

7 JUDGE CHESTNUT: Wait. Afternoon. Excuse
8 me. See, I hate making changes to my standard order.

9 The next one is the response period for
10 replying to written interrogatories. The company has
11 proposed that be ten days, which I think is standard.

12 Does anybody object to that?

13 (No audible response.)

14 JUDGE CHESTNUT: Okay.

15 Objections to interrogatories communicated
16 orally within three calendar days and in writing within
17 five.

18 Does anybody that have a problem with
19 that?

20 (No audible response.)

21 JUDGE CHESTNUT: That takes us to motions
22 to dismiss objections to compel response. They would be
23 filed within three calendar days. That seems reasonable
24 to me.

25 Anybody have a problem with that?

1 MR. GRAY: Your Honor, pardon the
2 interruption. This is Steve Gray from the OSBA.

3 Three calendars days within what for the
4 motion to compel?

5 JUDGE CHESTNUT: Three calendar days of
6 receipt of the objections.

7 MR. GRAY: Okay. Thank you.

8 JUDGE CHESTNUT: Sure.

9 And answers to the motions would be filed
10 and served within three calendar days.

11 MR. MacGREGOR: Right.

12 JUDGE CHESTNUT: Now, the next item that
13 is on the prehearing memorandum about rulings on motions,
14 I am not going to put that in. Instead I have an
15 alternative way of dealings with these, which is if
16 objections are not reserved Counsel will alert the
17 presiding officer by e-mail or telephone of the need for a
18 ruling and a conference call will be scheduled. I will
19 make a ruling over the phone and not reduce it to writing
20 unless requested to do so.

21 MR. MacGREGOR: But there will be written
22 motions and answers?

23 JUDGE CHESTNUT: Yes. The motion to
24 compel is what triggers this.

25 MR. MacGREGOR: Okay.

1 JUDGE CHESTNUT: And let me state that I
2 don't want to see any kind of discovery disputes. You all
3 know what the appropriate limits of discovery are and I
4 don't want to have to deal with it. Frankly, if it gets
5 to me somebody is not doing their job and I am going to be
6 not backward in expressing my opinion about that.

7 I don't want any game playing. There is
8 not a lot of time in the schedule. There are too many
9 parties. So I expect everybody to act in good faith. And
10 I take that very seriously.

11 Let me just state, although we all know
12 this, that interrogatories which are objected to but which
13 are not made the subject of a motion to compel will be
14 deemed withdrawn.

15 And also you should all know this: Do not
16 file interrogatories or responses with the Secretary or
17 me. Just serve them on the other parties. You may file a
18 certificate of service with the Secretary. But as you all
19 know, they are not part of the record until they are made
20 part of the record.

21 And also just generally, interrogatories
22 and responses are to be served electronically as well as
23 on paper.

24 Now, the other two items -- they are my
25 items. Now, looking at PPL's prehearing memorandum, the

1 other two are responses for request of document
2 production, et cetera, and requests for admission.

3 Does anybody have a problem with the
4 proposed dates in there, which are ten calendar days and
5 then requests for admission should be deemed admitted
6 unless answered within ten calendar days or objected to
7 within five?

8 (No audible response.)

9 JUDGE CHESTNUT: Okay. They are
10 reasonable and they are also adopted.

11 In addition to working out discovery
12 disputes among yourselves I would also like you to
13 remember that there are alternative means of
14 discovery, such as discovery conferences or depositions.

15 MR. MacGREGOR: Your Honor, we do plan to
16 have those. I don't know if that needs to be part of the
17 prehearing order or not, but we do plan to try to schedule
18 informal discovery sessions.

19 JUDGE CHESTNUT: Super. I urge you all to
20 take advantage of that.

21 Also if you have some proprietary or
22 confidential information work out a confidentiality
23 agreement among yourselves. If you can't do it then I
24 do a protective order but I prefer not to have to do
25 that.

1 That takes us to the schedule. Let's talk
2 about the schedule that has been proposed here. I don't
3 know if the parties have had a chance to review that or
4 not.

5 I guess I should ask first if anybody here
6 Philadelphia has a problem with this proposed schedule
7 or any issues they want to raise about it.

8 (No audible response.)

9 JUDGE CHESTNUT: Anybody in Harrisburg
10 have something to say about the schedule?

11 MR. GRAY: Yes, Your Honor. This is Steve
12 Gray from the OSBA.

13 I expect you will hear from a number of
14 parties. Just for example, I communicated to Mr. Russell
15 the OSBA has some concerns with the schedule as proposed.
16 And I think Mr. Mullins and Mr. Mickens at least have some
17 comments. So I will defer to them.

18 JUDGE CHESTNUT: Okay.

19 MR. MULLINS: Mr. Mullins for the OCA.

20 I did look over the schedule and touched
21 base briefly with Mr. MacGregor yesterday voicing our
22 concerns that although we don't want to stand in the way
23 of expediting the proceeding and making it as efficient as
24 possible, we do have various witness conflicts throughout
25 October and pretty much the first half of November.

1 Mr. MacGregor, I believe -- and he can
2 speak to this -- was prepared to revise his schedule but I
3 have not had a chance to speak with him as to whether or
4 not he has done that.

5 I am some dates here if you would like me
6 to go over those, or we can proceed in another fashion.

7 JUDGE CHESTNUT: Okay. Sure.

8 Let me state also, I have reviewed a
9 number of Commission decisions about these types of cases
10 and it seems to me they anticipate a six month process for
11 this. I'm not sure if that is cut and -- you know, how
12 definite that is, but I saw some language -- I don't
13 remember what I saw it in -- but they expect this to be
14 wrapped up in six months, which is really a bit of a
15 problem or could be a bit of a problem.

16 Mr. MacGregor, do you want to address
17 these concerns?

18 MR. MacGREGOR: Yes.

19 Mr. Mullins is correct. We did talk
20 yesterday afternoon and he had mentioned a possible date
21 for filing of the opposing party testimony, moving that
22 from October 27th that we had proposed to November 15th.
23 And while we are anxious to get this case moving along as
24 quickly as we can for the reasons we have stated in our
25 petition, the prehearing, that date would be okay with us.

1 And then I just jotted down some follow-on
2 days that could be discussed as well. If the opposing
3 party testimony were filed on November 15 then we would
4 propose to serve our rebuttal testimony on December 1st.

5 JUDGE CHESTNUT: That would be all
6 parties' rebuttal, right?

7 MR. MacGREGOR: I'm sorry. All parties'
8 rebuttal on September 1st --

9 JUDGE CHESTNUT: Wait. I'm sorry.

10 MR. MacGREGOR: December 1st.

11 JUDGE CHESTNUT: December 1st, yes. Okay.
12 So other parties' direct is November 15.

13 MR. MacGREGOR: Right.

14 JUDGE CHESTNUT: All parties' rebuttal
15 would be December 1st.

16 MR. MacGREGOR: Right. And then all
17 parties' surrebuttal December 8th.

18 JUDGE CHESTNUT: Okay.

19 MR. MacGREGOR: Hearings 13th, 14th or
20 14th, 15th, whatever, in the middle of that next week.

21 JUDGE CHESTNUT: Wait. That is December?

22 MR. MacGREGOR: Yes.

23 JUDGE CHESTNUT: So that is the week of
24 December 11.

25 MR. MacGREGOR: Right.

1 MR. GRAY: Yes.

2 JUDGE CHESTNUT: Okay. With respect to
3 the hearings, do you think two days is enough?

4 MR. MacGREGOR: My thought was to schedule
5 three days but my anticipation is probably that two would
6 be enough, mainly because I think a lot of these issues
7 are policy issues and a lot of them the parties have been
8 over in other POLR proceedings for other companies and I
9 think the drill may be pretty well established here in
10 terms of --

11 JUDGE CHESTNUT: I was going to address
12 that later but my preference is really to schedule three
13 and then cancel the third if we don't need it. It's just
14 a lot easier to deal with that way.

15 MR. MacGREGOR: That's fine.

16 JUDGE CHESTNUT: Is three days okay with
17 everybody then?

18 (No audible response.)

19 JUDGE CHESTNUT: So that would be --

20 MR. MacGREGOR: The 13th, 14th and 15th.

21 MR. MULLINS: Your Honor, Mr. Mullins
22 again.

23 JUDGE CHESTNUT: Yes, Mr. Mullins.

24 MR. MULLINS: Mr. MacGregor's proposal,
25 although a step in the right direction, if we could have

1 just a week added to both of those testimony dates, 12/6
2 for rebuttal and then 12/16 for surrebuttal, I think that
3 would enable us to proceed in a more efficient fashion.

4 MR. MacGREGOR: We have the hearings the
5 next week. It's all right with me, but --

6 JUDGE CHESTNUT: It's not okay with me.

7 MR. MULLINS: We were looking at December
8 19 and 20 for hearings.

9 MR. MacGREGOR: That's all right with us.

10 JUDGE CHESTNUT: All right.

11 You know, my feeling is I really don't
12 care about the testimony filing dates. It is what you
13 people can live with.

14 MR. MacGREGOR: Could you state those
15 dates again, James?

16 MR. MULLINS: Sure. We start with 11/15
17 opposing testimony, December 6 for rebuttal --

18 JUDGE CHESTNUT: I'm sorry. Wait, wait,
19 wait. You are still on November 15 for other parties'
20 direct?

21 MR. MULLINS: Yes. Yes.

22 JUDGE CHESTNUT: Okay.

23 MR. MULLINS: That date is fine.

24 JUDGE CHESTNUT: Okay. And then rebuttal
25 for everybody is December --

1 MR. MULLINS: December 6.

2 JUDGE CHESTNUT: Okay.

3 MR. MULLINS: And then surrebuttal due on
4 December 15.

5 JUDGE CHESTNUT: Okay.

6 MR. MULLINS: And hearings on December
7 19th through the 21st if Your Honor prefers three days.

8 JUDGE CHESTNUT: Yes. I prefer, like I
9 said, three days and hopefully it won't take more than
10 one -- or none.

11 So then what do you do in terms of the
12 briefs? That takes the main brief to --

13 MR. MacGREGOR: We had proposed, I guess,
14 maybe January 5 and January 12.

15 JUDGE CHESTNUT: I don't care. It's up to
16 you. When do you feel you can have a decent quality brief
17 to me? I would rather you take a little time and do a
18 good job, frankly. But I don't want to delay it here.

19 MR. EPSTEIN: Judge, this is Eric Epstein.

20 I just have a comment.

21 JUDGE CHESTNUT: Yes? Mr. Epstein, you're
22 going to have to speak up. It's hard for the court
23 reporter to hear you.

24 MR. EPSTEIN: I presume there is going to
25 be public input hearings and I'm not sure how the timing

1 of the public input hearings would impact the schedule
2 that we are constructing right now.

3 JUDGE CHESTNUT: No. I have no request
4 for a public input hearing. We will address that issue if
5 and when it comes up, but at this point there has been no
6 request.

7 So where are we in terms of the brief?

8 MR. MacGREGOR: I had proposed January 5
9 and January 12.

10 MR. MULLINS: Your Honor, Mr. Mullins
11 again.

12 Perhaps the 12th and the 19th, assuming
13 the 19th is not a state holiday.

14 MR. GRAY: It is not.

15 MR. MULLINS: Okay. That is just a week
16 added to Mr. MacGregor's schedule for briefing.

17 JUDGE CHESTNUT: I'm sorry. January what?

18 MR. MULLINS: January 12th for the main
19 brief.

20 JUDGE CHESTNUT: Okay.

21 MR. MULLINS: And then the 19th for the
22 reply brief.

23 MR. MacGREGOR: That is okay with us, Your
24 Honor.

25 JUDGE CHESTNUT: Okay.

1 MR. GRAY: This is Steve Gray for the
2 OSBA.

3 Keep in mind the 15th -- Monday, January
4 15th -- is a state holiday.

5 JUDGE CHESTNUT: All right. I think you
6 can deal with that.

7 MS. POLACEK: Your Honor, this is
8 Ms. Polacek.

9 JUDGE CHESTNUT: Yes?

10 MS. POLACEK: I can agree with this
11 schedule. At this point I have not contacted our likely
12 witness about any December availability. I did have his
13 availability for November hearings as originally proposed
14 by the company. But I know the parties have been very
15 cooperative in the past if I have some scheduling
16 constraints with the witness. He may be available on only
17 one of the hearings days.

18 JUDGE CHESTNUT: Okay. We will work that
19 out. I expect everybody will be reasonable and
20 cooperative.

21 Let me go over the schedule, then, to make
22 sure that it is clear.

23 The direct testimony has already been
24 filed on September 15.

25 We have had the prehearing conference.

1 Now, other parties' direct testimony will
2 be November 15.

3 All party rebuttal is December 6.

4 All party surrebuttal is December 15.

5 Hearings December 19 through the 21st.

6 Main briefs, January 12.

7 Reply briefs January 19.

8 And I assure you I will try to get the
9 decision out quickly. I am not going to limit myself to a
10 particular date, though. But you do understand that it is
11 not just me writing it but it has to be processed through
12 Harrisburg, so that is a couple days right there. But
13 obviously I will do my best to get it out in a timely
14 fashion.

15 Let's talk generally about testimony and
16 briefs.

17 Service, usually it is done electronically
18 and by hard copy. Testimony is to be served and received
19 in-hand by the parties no later than than 4:30 p.m. on the
20 dates listed. Parties can indicate if they will accept it
21 electronically by that time and get a hard copy the next
22 day.

23 If you have a problem getting it to me on
24 the date that it is due just let me know because I don't
25 really care if it is a day late or not. But it is a

1 courtesy to me to let me know and don't arbitrarily just
2 change the date. But these are due dates. Whether they
3 are satisfied electronically or by mail is up to you.

4 Do not serve it with the Commission.
5 Don't file your testimony with the Secretary. File a
6 certificate of service.

7 I don't want you to e-mail your testimony
8 to me either. I prefer to even get it the next day just
9 so I don't have to deal with that.

10 Testimony should be pre-marked with
11 numerical sequential statement numbers. All statements
12 must list on the cover sheet the issues addressed in that
13 statement.

14 Now, if you have not identified your
15 witnesses in your prehearing memoranda make sure you
16 provide notice about who the witness is going to be as
17 soon as possible. And I think perhaps there should be a
18 cutoff for that.

19 Do you have a date?

20 MR. MacGREGOR: November 1st?

21 JUDGE CHESTNUT: Well, obviously --

22 MR. MacGREGOR: It is due November 15.

23 MS. POLACEK: Your Honor, this is

24 Ms. Polacek.

25 Haven't we generally used, like, a week or

1 so before?

2 JUDGE CHESTNUT: Yes.

3 MS. POLACEK: In the rate case I think it
4 was approximately maybe a week to ten days before the
5 testimony was due.

6 MR. MacGREGOR: How about November 1st
7 just so if we have any kind of voir dire discovery to do
8 on the witness we can get that out in advance.

9 JUDGE CHESTNUT: Okay. I think November
10 1st works for me, and I assume it will work for all of
11 you.

12 All parties are directed to comply with
13 the provisions of 52 Pennsylvania Code, section 5.243,
14 subsection (e), which prohibits the introduction of
15 evidence during rebuttal or surrebuttal which should have
16 been included in the party's case in chief or which
17 substantially varies from the active participant's case in
18 chief unless the evidence is introduced in support of a
19 proposed settlement. You all understand that. No
20 sandbagging.

21 The hearings will be held in Harrisburg
22 unless there is a groundswell of support for holding them
23 here in Philadelphia. And I don't hear that. Or Exton or
24 Downingtown. But Harrisburg works for me. And we will
25 start at 10 o'clock and then we can talk about perhaps

1 starting the second day at nine. We will see how it goes.

2 You will be providing to me a listing of
3 the daily witness lineup and I will be sending you a
4 cross-examination grid to indicate how much
5 cross-examination you expect to have for those witnesses.
6 And let me tell you right now that if you don't fill out
7 that grid you will not be doing cross-examination. I
8 recognize that is your best effort estimate which may
9 change depending on answers, et cetera, but I do want to
10 have some idea about how we are going to conduct the
11 hearing.

12 Does anybody have any questions about the
13 hearing or the testimony? Anybody here?

14 (No audible response.)

15 JUDGE CHESTNUT: Anybody in Harrisburg?

16 MS. EVERS: Your Honor, this is Linda
17 Evers.

18 I just wanted to confirm, did you say you
19 did not want electronic copies of the testimony, that you
20 prefer hard copies?

21 JUDGE CHESTNUT: Did you ask me if I did
22 not want electronic copies of the testimony?

23 MS. EVERS: Yes.

24 JUDGE CHESTNUT: Yes. The answer is yes
25 to your question.

1 Let's talk about briefs, then. An
2 original and nine copies of all briefs must be filed with
3 the Secretary and one copy received in-hand by me and all
4 parties no later than 4:30 on the dates listed. Again, if
5 a party wants to receive it electronically as a
6 satisfactory service, that's fine.

7 In addition, each party is expected to
8 e-mail its brief to me and to the parties and to include a
9 copy on disk with the briefs that you file with the
10 Secretary. If you do not e-mail your brief to me make
11 sure you give me a copy on a disk.

12 MR. MacGREGOR: Format?

13 JUDGE CHESTNUT: Word 2003. Something
14 compatible with that. Make sure it is Word and not Adobe.
15 Because if you want me to cut and paste and use your
16 language it's a lot easier.

17 And let me say generally about briefs, you
18 cannot summarize enough. Keep it simple. The hardest
19 thing for me sometimes is to summarize a party's position.
20 So if I can just lift it from your own words obviously
21 that is a lot better.

22 Also, remember who you are writing this
23 for. You are writing it for me and for people at the
24 Commission who are not going to be spending the amount of
25 time that you do on this. They may be familiar with

1 generally how these cases are handled and the issues
2 involved but they are not going to know the specifics
3 about your particular case the way that you do.

4 Let's talk about the contents of briefs,
5 then. Here are the things that have to be included, and
6 this is regardless of how long your brief is: You must
7 have a table of contents. And in fact you are crazy if
8 you don't. It is another way of educating the reader to
9 your point of view. It is an outline so that you can put
10 things in. So even if your brief is two pages long have a
11 table of contents.

12 Have a history of the proceedings. That
13 should be straightforward.

14 Make sure you have a table of citations,
15 of course -- which I should have said first.

16 In your discussion it should -- I think as
17 we go through this it will be very clear what the issues
18 are. I want to make sure that everybody addresses the
19 issues in a consistent fashion. So we can talk about a
20 common issue listing.

21 The next thing is proposed findings of
22 fact with record citations to transcript pages or
23 exhibits.

24 Proposed conclusions of law with citations
25 to supporting statutes, regulations or relevant case law.

1 And this is really important and people
2 don't do this a lot, which is proposed ordering paragraphs
3 specifically identifying what you want the Commission to
4 do. You would be surprised how often the Commission is
5 actually trying to adopt your client's position and just
6 doesn't get it right.

7 Any questions about the contents of
8 briefs?

9 (No audible response.)

10 JUDGE CHESTNUT: Let me talk about reply
11 briefs, then.

12 If a reply brief is not filed I will
13 assume that you do not dispute the assertions,
14 contentions, arguments, et cetera, made by the other
15 parties. Don't send me a letter.

16 Generally let me just tell you that this
17 is one of my particular things, which is parties should
18 understand letters are correspondence, they are not
19 pleadings. Don't file a letter in lieu of a reply brief
20 or in lieu of something else. It just gets tossed in the
21 correspondence folder. Just take the same information you
22 are going to put in your letter and put a heading on it.
23 Seriously. I have no idea why people do that but it just
24 drives me nuts.

25 To get back to reply briefs, if you don't

1 file it you are taking a risk. You don't have to repeat
2 everything you had in your main brief. You can just refer
3 to a particular argument. But if you don't address it
4 then you've lost it.

5 Any brief not filed and served on or
6 before the date fixed for that will not be accepted for
7 filing except for good cause. And my definition of good
8 cause in that situation is reasonable but narrow. Major
9 illness, yes. That kind of thing. But otherwise, I do
10 expect them on a timely base. If not, you have to let me
11 know.

12 Now, let's talk about settlement. I
13 understand that you have started the settlement process.
14 I really want to encourage you to do that. There is no
15 reason in the world why this case should not be settled.
16 As Mr. MacGregor pointed out I think in the company's
17 prehearing memorandum, these really are a lot of policy
18 issues. Of course, there are a lot of details that have
19 to be looked at with respect to the particular proposals
20 but this is not the kind case where there is an allegation
21 that there has been a violation of the Public Utility Code
22 or something like that. This is policy. So there is a
23 lot of room for a reasonable decision.

24 And frankly you are better off doing this
25 yourself. You all know what the Commission has done in

1 prior cases. You know how it has addressed particular
2 issues. So you you should be able to come up with
3 something within those parameters. And I'll be honest
4 here, you don't want me making any recommendations because
5 I don't know this as well as you do and I don't care about
6 it the way you do. Once my decision is done I have
7 nothing more to do with this. So in terms of motivation
8 you really are better off trying to work it out yourself.

9 Now, like I said, I assume everybody acts
10 in good faith. I really do. And I believe that you are
11 all very reasonable. So I expect that if you take that
12 approach you can come up with a win-win-win-win-win
13 result. Because there shouldn't be any winners and losers
14 here. I think there is enough to help everybody.

15 Does anybody have anything to say about
16 that? Because I'm sure you are all very willing to try to
17 settle this.

18 Mr. MacGregor, did you want to say
19 something?

20 MR. MacGREGOR: I just would say we have
21 had an initial settlement conference where we were able to
22 at least identify some of the major issues the parties
23 have and we plan to schedule another session within the
24 next ten days or so and hopefully we will have a proposal
25 to put forth then for the other parties to react to. We

1 will see what we can do.

2 JUDGE CHESTNUT: Good. I mean, this is a
3 tight litigation schedule so obviously you need to focus
4 on that. But you really can't divert your attention from
5 settling it. I know that is a two track kind of thing and
6 almost they are antithetical but focus on settling as well
7 as complying with your responsibilities with the schedule.

8 If I can do anything to assist you let me
9 know. If you want a mediator, if you want a place, if you
10 want some technical help, anything I can do to help you
11 get a good result I will be glad to do.

12 Does anybody have any other issues they
13 want to raise?

14 Mr. MacGregor? Mr. Russell? Mr. Knipe?

15 MR. KNIPE: Just because it was over so
16 quickly earlier, the motion to dismiss.

17 JUDGE CHESTNUT: I can't believe you are
18 still bringing that up.

19 MR. KNIPE: Indulge me for one second
20 because I will need to go back and explain it, just as
21 every lawyer does. Did you say it was premature?

22 JUDGE CHESTNUT: Premature in that, I
23 mean, frankly, I don't think -- you have not established
24 meeting any kind of standard for throwing a petition out
25 at a preliminary stage in the proceeding. You have to

1 understand what the standards are, and they are not
2 addressed at all in your motion.

3 Now, obviously we all know that the
4 Commission has pending, I guess, regulations to address
5 the POLR situation but there is no guarantee that those
6 regulations are going to be in place at any time.

7 If you want to know my reasoning on this I
8 think you need to read the company's answer to the motion,
9 which I thought did a good job of explaining why the
10 motion should be denied.

11 MR. KNIPE: Thank you, Your Honor.

12 JUDGE CHESTNUT: And I don't mean it
13 personally.

14 MR. KNIPE: Certainly not.

15 JUDGE CHESTNUT: I just feel that that
16 motion should be denied and I certainly don't see any
17 reason for certifying it to the Commission.

18 MR. KNIPE: Thank you.

19 JUDGE CHESTNUT: Is there anything you
20 want to say about it?

21 MR. KNIPE: Not at this time.

22 JUDGE CHESTNUT: I don't want to put you
23 on the spot. Obviously you need to do what you feel is in
24 your client's best interests. And you know what legally
25 is appropriate and not appropriate.

1 MR. KNIPE: Thank you, Your Honor.
2 JUDGE CHESTNUT: Anybody else? Mr. Gay?
3 Mr. Murphy?
4 MR. MURPHY: No, Your Honor.
5 JUDGE CHESTNUT: Mr. Stewart? Mr. Thomas?
6 (No audible response.)
7 JUDGE CHESTNUT: Mr. Mullins, anything
8 from you?
9 MR. MULLINS: No, thank you, Your Honor.
10 JUDGE CHESTNUT: Mr. Mickens?
11 MR. MICKENS: Nothing.
12 JUDGE CHESTNUT: Mr. Gray?
13 MR. GRAY: Nothing, Your Honor. Thank
14 you.
15 JUDGE CHESTNUT: Mr. Rubin?
16 MR. RUBIN: Nothing, Your Honor.
17 JUDGE CHESTNUT: Ms. Evers?
18 MS. EVERS: Nothing, Your Honor.
19 JUDGE CHESTNUT: Ms. Polacek?
20 MS. POLACEK: Nothing, Your Honor.
21 JUDGE CHESTNUT: Mr. Moody?
22 MR. MOODY: Nothing, Your Honor.
23 JUDGE CHESTNUT: Mr. Epstein?
24 MR. EPSTEIN: Yes, Your Honor. I would
25 just like to encourage us to keep the door open for public.

1 input. I'm not sure if people are aware of the case.

2 JUDGE CHESTNUT: Ms. Armstrong?

3 MS. ARMSTRONG: Nothing, Your Honor.

4 JUDGE CHESTNUT: Mr. Hanger?

5 MR. HANGER: Nothing, Your Honor.

6 JUDGE CHESTNUT: Mr. Hassell?

7 MR. HASSELL: Your Honor, just an
8 opportunity, perhaps, if I may with everyone on the phone
9 to see if we can all agree that service will be accepted
10 electronically to meet the in-hand requirement. Is that
11 acceptable with everyone?

12 JUDGE CHESTNUT: Does anybody have an
13 objection to that?

14 MR. HASSELL: Everyone here says yes, Your
15 Honor.

16 JUDGE CHESTNUT: Except me.

17 MR. HASSELL: Well, we understand what
18 Your Honor has laid out.

19 JUDGE CHESTNUT: Okay. Then thank you
20 very much, then. Hearing nothing further, this prehearing
21 conference adjourned.

22 MR. MacGREGOR: Thank you, Your Honor.

23 JUDGE CHESTNUT: Thank you all.

24 (Whereupon, at 10:20 a.m., the prehearing
25 conference was 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 were 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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