

1 APPEARANCES (Continued):

2 REGINA M. SESTAK, Esquire
3 Duquesne Light Company
4 411 Seventh Avenue
5 Mail Drop 8-2
6 Pittsburgh, Pennsylvania 15219
7 (For the Respondent)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS INDEX

WITNESSES

DIRECT CROSS REDIRECT RECROSS

(None.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>FOR EVIDENCE</u>
(None.)		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Any reproduction of this transcript
is prohibited without authorization
by the certifying reporter.

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE MICHAEL A. NEMEC: Let's go
3 on the record right off the start here. This morning we
4 have a prehearing conference in a case, two cases actually.
5 One is captioned Ohioview Infrastructure versus Duquesne
6 Light Company. The other one is captioned Groveton Housing
7 versus Duquesne Light Company. The first one is docketed at
8 C-20066233. The second one is docketed at C-20066236.

9 Present by way of telephone are Attorneys Clifford
10 Levine and David Montgomery representing the complainants.
11 Also present by way of telephone is Attorney Regina Sestak
12 representing Duquesne Light Company.

13 My name is Michael Nemec. I'm an administrative law
14 judge with the Pennsylvania Public Utility Commission. I've
15 been assigned to conduct the prehearing conference and any
16 subsequent hearings that are required in these two complaint
17 proceedings.

18 Of course, I note from the pleadings that I've
19 reviewed already that all parties are in agreement that both
20 of these complaints be heard and litigated at the same time.
21 I certainly have no problem with that.

22 I also want to note on the record that I received
23 prehearing memoranda from both, in essence, from all three
24 parties. As I understand it, the parties are Ohioview
25 Infrastructure, Groveton Housing Partnership L.P., and

1 Duquesne Light Company.

2 Mr. Levine and Mr. Montgomery, do you each represent
3 both complainants?

4 MR. LEVINE: Thorp Reed & Armstrong is representing
5 each of those partnerships, yes.

6 JUDGE NEMEC: Now, I've reviewed all three parties'
7 memoranda and the first question I have for you is what do
8 you see as being the-- I can see the legal issues that
9 you're presenting. Are there, in fact, factual issues that
10 we need to consider here?

11 MR. LEVINE: This is Cliff Levine, Your Honor.

12 JUDGE NEMEC: Go ahead.

13 MR. LEVINE: Obviously there's the legal question and
14 then you have a question about what is new development.
15 These projects arise in the context of the Hope VI. I don't
16 know if you're familiar with the Hope VI projects.

17 JUDGE NEMEC: You can assume that I'm not familiar
18 with anything.

19 MR. LEVINE: Okay. In the 1990s there was a decision
20 made at HUD, Washington decision, in terms of how affordable
21 housing should be made available to people, and a lot of the
22 old barrack style, you know, 20-story buildings that were
23 really hot beds of crime and people were removed from their
24 kids, et cetera, there was a philosophy in Washington that
25 there should be basically a new way of housing people in

1 affordable housing.

2 The idea was, one, not to completely segregate all
3 people that were low income but actually to create mixed
4 income environments where a significant percentage, like 30
5 to 50 percent, of the homes would be market rate and then
6 the other homes would be subsidized, if you will, by
7 government payments. So the idea was to mix those
8 developments.

9 The second point was to not put people in barracks so
10 much as to recreate urban environments, many of which some
11 of these, you know, housing projects were just stuck on a
12 hill or removed from society. So the idea was to create
13 grid streets or to create what would be literally a new
14 residential environment for these people to live.

15 So the essence of the Hope VI projects, Hope VI being
16 the characteristic and then regulations promulgated, the
17 essence of these were to knock down, reconfigure the roads,
18 rebuild the housing, alter the mix of tenants, not have the
19 sort of dense overcrowding that urban planners considered to
20 be failures in terms of the manifestation of crime, et
21 cetera.

22 So these two projects represent local Western
23 Pennsylvania projects that were these types of projects.

24 MR. MONTGOMERY: Your Honor, let me interject here for
25 a second. This is David Montgomery. As we pointed out in

1 our prehearing memorandum, Groveton was not Hope VI, per se.
2 But it was inspired by these same concepts of new urbanism
3 and mixed income development that are fostered by the Hope
4 VI program.

5 MR. LEVINE: So there are a number of these projects.
6 So the essence of the project really is to create this new
7 environment for affordable housing. So that's what
8 happened.

9 As part of the project then there are developers of
10 the project, and the way their financing works is these
11 developers will finance it, they'll hire a contractor to
12 build the project, and then they get reimbursed certain
13 monies in terms of maintaining the partnership and will
14 continue to maintain the affording level of the housing for
15 a period of time. So this is a federal project.

16 MR. MONTGOMERY: I think in that regard, Your Honor,
17 it's important to note here that there is new ownership for
18 these sites. These sites have been owned by the Allegheny
19 County Housing Authority, and now it's this mixed finance
20 public-private ownership that owns the ground and manages
21 the properties. I think that becomes important as we
22 consider whether there's been a new residential development
23 installed at these developments.

24 MR. LEVINE: So that's the kind of-- So what happens
25 is when these projects are being built you have to deal, the

1 developer has to deal with the utilities and there's
2 questions then when the utility comes in whether the utility
3 would treat this as, quote, new residence development or
4 nct, whether this is almost like a, you know, we're asking
5 for an existing building. We're asking you to relocate a
6 line for our tenant or whatever.

7 So that's the context. I think there's a factual
8 component here in terms of understanding Hope VI, seeing how
9 that applies, understanding how these new affordable housing
10 concepts apply, how the new ownership structure works.

11 So our position really is -- and I think there's a
12 factual component here just in terms of urban design -- our
13 position is it's too simplistic to say that the world exists
14 of built up building areas in greenfield sites and that it's
15 only urban sprawl greenfield sites to which the utilities
16 have to extend, to which Duquesne Light would have to
17 extend, and that when there is an urban project that is
18 completely restructuring the infrastructure and it's
19 associated, you know, with a large scale project that that,
20 too, could qualify as new residential development.

21 So I do think that there's some factual components.
22 Well, that's our position essentially. So linking that,
23 showing perhaps internally how Duquesne Light might view
24 different projects, where do you draw that line, is it just
25 a greenfield, is it only a new greenfield site that would

1 qualify in their view, or are there other urban type of
2 redevelopment projects that have qualified.

3 Seeing that history, I think it becomes factually
4 relevant and then being how from affordable housing factual
5 witness offering you that type of testimony that I was just
6 summarizing.

7 JUDGE NEMEC: All right. Ms. Sestak, any response?

8 MS. SESTAK: Yes, Your Honor. I think it's been
9 mischaracterized to say that this is a question of whether
10 or not Duquesne Light has to extend facilities to urban
11 sites as opposed to greenfield sites. The question here is
12 who should pay for it if Duquesne Light Company installs
13 facilities for the benefit of a developer.

14 The tariff ruling question is clear. This is Duquesne
15 Light Company's Tariff Rule 13.2. We're not quibbling so
16 much over the word new as we're quibbling over the word
17 development. The definition of development in 13.2a(3) ends
18 with this phrase: "If providing electric service to such
19 project necessitates extending the company's existing
20 distribution lines."

21 In both of these projects, Ohioview and Groveton,
22 Duquesne Light Company had existing distribution
23 infrastructure. Because of the projects, it was necessary
24 to remove that infrastructure and reinstall it for the
25 developer.

1 The fact that it was removed at the developer's
2 request does not convert this to a new development that
3 distribution facilities are being extended to that were
4 perfectly good distribution facilities already in place.

5 It's not fair to require Duquesne Light Company's
6 other ratepayers to subsidize private developers in the
7 rehabilitation of an existing location even if that
8 rehabilitation necessitates the removal and reconstruction
9 of the housing. Duquesne Light Company's position,
10 therefore, is that it's reasonable for the developer to bear
11 the cost of reinstalling Duquesne Light Company's
12 infrastructure.

13 MR. LEVINE: Your Honor, just as a follow-up point, I
14 agree that this is starting to show the factual issues. The
15 streets actually were vacated. Part of this project the
16 streets were vacated. So, given the design that was
17 intended for this, we believe that it was necessary to
18 realign the infrastructure.

19 JUDGE NEMEC: Is this Mr. Levine?

20 MR. LEVINE: Yes. I mean, to me it's an instant
21 question just, you know, kind of societal issues as well
22 here because that's where you get into this concept of
23 affordable housing, that it wasn't a matter of putting in
24 new carpeting in the barracks and keeping the streets and
25 keeping everything intact.

1 It was the fundamental philosophy here that you needed
2 to create new streets and new patterns in a fundamental
3 level. That was the philosophy. Then to achieve that it
4 was necessary then to reconfigure the infrastructure. I
5 mean, that's just going to be a factual question I assume.

6 JUDGE NEMEC: I'm sorry, Mr. Levine. What is the
7 factual question you believe is presented?

8 MR. LEVINE: Well, as I understood Ms. Sestak, there
9 was no issue that this is new construction since buildings
10 were knocked down. The question that she was offering is
11 whether the project necessitated extending these lines. Her
12 assumption is that because there were existing lines there
13 that basically any new type of project would not necessitate
14 extending the lines or altering the lines.

15 My point was that it's inherent certainly in a Hope VI
16 project, but really in the general philosophy of affordable
17 housing now, it's inherent that you can't just keep the
18 existing infrastructure in place and the roads and whatnot.
19 They actually in this case vacated roads, reconfigured
20 streets, lowered density in many occasions. So that's the
21 philosophy.

22 So the project that is either mandated or desired in
23 the Hope VI context, the project that's mandated or desired
24 here, necessitates that change in the distribution lines.

25 MR. MONTGOMERY: This is Mr. Montgomery. Also, the

1 easements for the old infrastructure were abandoned. I
2 mean, you have new easements for the utilities, you have new
3 streets. So in every respect the groundwork, the
4 infrastructure, is new here. So there's a factual question
5 about whether the distribution lines were extended.

6 MS. SESTAK: Your Honor, if I may, I believe that Mr.
7 Levine and Mr. Montgomery are miscomprehending the purpose
8 of the tariff rule. The tariff rule is not meant to perform
9 the public service of encouraging new development.

10 The tariff rule is based upon an assumption that if
11 Duquesne Light Company extends its distribution system into
12 an area that it has not previously served that the company
13 will realize an increase in income and, as a result, it's
14 reasonable to subsidize the cost of it.

15 In fact, that's not what's happening here. There were
16 perfectly good facilities in place prior to these
17 development projects. Duquesne Light Company is not
18 realizing any gain in income because of changing the old
19 customers to new customers or changing the old buildings
20 that our service went into to new buildings that the service
21 goes into. It's because the distribution itself was not
22 extended beyond the point where the distribution system
23 existed before that the developer must pay the cost here.

24 JUDGE NEMEC: Okay. The reason I asked the question
25 in terms of factual issues, I don't hear or read in your

1 memoranda that you parties are necessarily in any factual
2 disagreement as to what's happened. It's how do these facts
3 apply to whatever the law happens to be.

4 MS. SESTAK: We do have one factual dispute. It's my
5 understanding that Groveton's main street remained in place
6 and was not vacated. But that's a very minor issue.

7 JUDGE NEMEC: Well, I mean, that's the kind of thing
8 that we hold hearings to determine. That's why I asked
9 whether there are, in fact, factual issues. It seems to me
10 that you might be able to stipulate to a lot of the facts.

11 I mean, whatever happened happened. I don't know that
12 the parties disagree on that. It's the effect of what
13 happened and how that's interpreted both by Duquesne and by
14 the complainants and then ultimately how the Commission
15 interprets those facts with regard to the existing law and
16 Duquesne's tariff.

17 Well, I think this discussion has been helpful to me
18 to understand your respective positions. I want to note
19 that both sides have listed quite a number of witnesses and
20 if you can pare that down and perhaps stipulate to the bulk
21 of the facts that might save everybody some time.

22 In any event, do we want to get to scheduling a
23 hearing or hearings on this?

24 MR. LEVINE: Yes. I had a question in the form of
25 very informal discovery question here--

1 JUDGE NEMEC: Go ahead.

2 MR. LEVINE: --for Ms. Sestak.

3 JUDGE NEMEC: Who is this?

4 MR. LEVINE: Cliff Levine. I'm sorry. My question
5 was in terms of this tariff. Does Duquesne Light keep
6 records, interpretations, memorandums, issues that might
7 come up on certain sections of a tariff? Do you have that
8 information available?

9 Then the second question was, in cases where there is
10 new development and you have to make a determination as to
11 whether or not you believe that this is appropriate for the
12 reimbursement or not, you know, if we were to take projects,
13 say, looking over the last five years at, say, at a minimum,
14 say, 25 or 30 homes or town houses -- I don't want to have
15 too much of the small projects -- but do you have those
16 sorts of records available that we can look at how you treat
17 these, quote, large scale developments and whether it was
18 reimbursed and how the costs were assessed? Is that
19 information--

20 MS. SESTAK: Let me ask the gentleman who is here with
21 me, John Coyle. Do you know if there is a general place
22 where records of that type would be maintained?

23 MR. COYLE: Not specific records. However, we do
24 follow the tariff rule that states five or more units it
25 cannot be fed from existing facilities. Then it would

1 qualify as an underground residential development.

2 If there are existing facilities there, then those
3 facilities would feed those new units and in some cases in
4 some plans you could have a combination where if you had
5 existing facilities on the main road and then a new
6 development that is a perpendicular and it feeds 20 or 30
7 units, any more than five units, that portion goes
8 underground.

9 However, Duquesne Light generally feeds the units that
10 border on the street with overhead service drops unless the
11 developer requests otherwise. But we probably do somewhere
12 in the vicinity of 40 to 60 new residential developments
13 every year and then follow that ruling of Rule 13.2.

14 MR. LEVINE: Is that over, when you say, is that
15 category five or more units?

16 MR. COYLE: Yes, it's five or more units or it could
17 be a five-unit townhome. They can't be fed from existing
18 facilities.

19 MR. LEVINE: If we had a request just to be able to
20 review how these were handled and let's say we drew a line
21 at, say, 20 units or 25 -- I'm being somewhat arbitrary, but
22 I'm looking for just the larger scale projects; I'm trying
23 to do it with a number that is not overwhelming to you --
24 how many, if you had over 20 or 25 units per new
25 development, say, in the last four or five years, how many

1 have you done per year where you make that decision about
2 whether or not this would be new development in terms of
3 reimbursement or not?

4 MR. COYLE: Probably in the range of about 60
5 developments a year generally 20 are in the vicinity of, 20
6 or more lots or units.

7 MR. LEVINE: Sixty developments a year?

8 MR. COYLE: Approximately. The last five years has
9 been a little bit more vigorous. Prior to that maybe it was
10 a lesser number.

11 MR. LEVINE: But if we upped it to, say, 50 or more
12 units, that would reduce that I guess?

13 MR. COYLE: That would reduce that, yes.

14 MR. LEVINE: Do you have any just a ballpark range? I
15 know you're just guessing here.

16 MR. COYLE: I think in general probably on average of
17 all of the developments that we do about half-- Well, I
18 guess on average, if we took the lower numbers and the
19 higher numbers, we probably come somewhere in the range of
20 40 units per development. So that means, you know, some of
21 them are at 20 range, some of them are at 80. The exact
22 numbers I am not certain.

23 MR. LEVINE: Okay. But then if we took like a 50
24 number, then that would be less than half of that and then
25 you're in about a 20/25 range per year?

1 MR. COYLE: I think that's a reasonable assumption,
2 yes.

3 MR. LEVINE: Your Honor, see, we think that would be
4 relevant just to see how, to be able to see how the projects
5 compare, differ, and where the lines are drawn, if you will.

6 JUDGE NEMEC: Well, if you want to conduct discovery
7 that's fine, and I would urge the parties to conduct it in
8 an informal fashion. But if that doesn't work the
9 Commission does have formal discovery rules available.

10 MR. LEVINE: We can just send a letter to Ms. Sestak.
11 If there's any disagreement, obviously we can work it out.
12 If we have an issue we'll try to accommodate that in an
13 informal way first, and then if there's some issue that we
14 can't resolve we would go to you, Your Honor.

15 JUDGE NEMEC: That's fine. Now, it occurs to me, is
16 the cost of the work done by Duquesne Light, is that a
17 factual issue in this case?

18 MR. LEVINE: Well, on these two projects-- Well, I
19 certainly know on Ohioview -- I think at Groveton, too; I
20 have to verify that -- there was a question because even
21 within what costs were aligned it wasn't clear, there was no
22 breakdown of costs that the developer ever was able to
23 receive in Ohioview. So for those projects there just might
24 be a breakdown of where the costs were allocated. But that
25 should be fairly simple to produce.

1 JUDGE NEMEC: Okay.

2 MR. LEVINE: There were a couple-- This is what,
3 frankly, precipitated some of these issues, when the new
4 project was being built and the whole area is leveled and
5 the developer would go to Duquesne Light and say, well, what
6 would be the cost here.

7 And there was a number I think in excess of a million
8 dollars or something very high and then there was some
9 balking and then the number was adjusted and then there was
10 a request for some itemization and then there was another
11 sort of kind of gross number given but not breakdowns.

12 That may have some relevance in terms of even as a
13 backup if you're not doing what's new and what's not. Maybe
14 there's some -- this is what we heard the discussion about
15 -- you may extend certain lines, what would that cost me.

16 JUDGE NEMEC: All right. I'll go back to the question
17 I asked earlier. Do we want to try and set up a schedule at
18 this point? Any proposals with regard to a schedule and how
19 to proceed?

20 MR. LEVINE: Well, I mean, are we looking at a 90-day
21 window just to--

22 MR. MONTGOMERY: To conduct the discovery that would
23 be sufficient.

24 MR. LEVINE: I would think 90 days just considering
25 that August might be difficult with vacation schedules. So

1 90 days seems reasonable and then schedule the hearings at
2 that point.

3 I agree with you, Your Honor. I think a great deal of
4 this eventually is stipulated. I mean, we know how many
5 units were built, we know what it looks like, we know what
6 it looked like previously, what it looks like now. I would
7 try to get some cost numbers that would be stipulated.

8 So much of it then becomes this interpretation of the
9 tariff and any factual aspect, of course, as to just why
10 this project might be unique than just a typical urban
11 remodeling, if you will.

12 JUDGE NEMEC: Ms. Sestak, any comments?

13 MS. SESTAK: No, Your Honor.

14 JUDGE NEMEC: I'll ask all of you this. Do you think
15 two days would be sufficient?

16 MR. LEVINE: Oh, absolutely I do.

17 JUDGE NEMEC: We could schedule these either in
18 November or December.

19 MR. LEVINE: I think November is fine if we run
20 August, September, October.

21 JUDGE NEMEC: November, we get into the first or
22 second week of November, that should give you your 90 days
23 to conduct discovery in preparation and maybe do some
24 stipulating in terms of facts.

25 MS. SESTAK: Okay.

1 MR. LEVINE: I have my calendar, Your Honor. I hate
2 to confess, I have to see when election day is.

3 JUDGE NEMEC: It's November 7th.

4 MS. SESTAK: If we avoid Tuesdays that should cover a
5 lot.

6 MR. LEVINE: Elections and leading up to it are kind
7 of craziness.

8 JUDGE NEMEC: Election day is November 7th.

9 MR. LEVINE: Right. So if we did maybe the week after
10 that, assuming the case is not a virtual tie. I'll just
11 pull out my calendar.

12 JUDGE NEMEC: That would be the week of the 13th.

13 MS. SESTAK: I actually have nothing scheduled in all
14 of November. So I'm open to any date.

15 MR. LEVINE: Actually that would be, that's very good,
16 Your Honor. Like the 14th and 15th?

17 JUDGE NEMEC: Yeah, or the 15th and 16th.

18 MR. LEVINE: That's fine. That's a good time.

19 JUDGE NEMEC: We'll try for the 15th and 16th. I
20 don't control my schedule. It's done out of Harrisburg.
21 But I'll ask for those two days and then I'll confirm it
22 with a very brief further prehearing order.

23 MR. LEVINE: We have the hearing in Pittsburgh; right?

24 JUDGE NEMEC: Yes, it will be right here. We're not
25 going to go to Harrisburg on this one, nope.

1 MR. LEVINE: Okay.

2 JUDGE NEMEC: Anything further, folks? I want to say
3 that I'm available during normal work hours. You can call
4 me. You can e-mail me. I do respond. If anything comes up
5 you have questions about, we can do informal conference
6 calls, whatever.

7 MR. LEVINE: What is your e-mail, Your Honor?

8 JUDGE NEMEC: mnemec@state.pa.us. My direct dial
9 number is (412) 880-0437.

10 MR. LEVINE: Very good. Thank you.

11 JUDGE NEMEC: All right. Thank you all for your
12 participation. We're going to adjourn at this time.

13 MR. LEVINE: Thank you, Your Honor.

14 (Whereupon, at 10:27 a.m., the hearing adjourned.)
15
16
17
18
19
20
21
22
23
24
25

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

NOTARIAL SEAL
KAREN L. CROSS, NOTARY PUBLIC
McCANDLESS TWP. COUNTY OF ALLEGHENY
MY COMMISSION EXPIRES FEBRUARY 4, 2008

COMMONWEALTH REPORTING CO., INC.

BY: Karen L. Cross
Karen L. Cross

RECEIVED
2005 AUG -3 AM 9:53
SECRETARY'S BUREAU