

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

David Nippes,
v.
PECO Energy Company
Telephonic Hearing

Docket No.: C-20077811

Pages 1 - 13

1400 Broad &
Spring Garden Streets
State Office Building
Philadelphia, PA

September 10, 2007
Commencing at 10:00 a.m.

BEFORE:

ANGELA T. JONES, Administrative Law Judge

APPEARANCES:

David Nippes
Pro se

MICHAEL SWERLING, Esquire
Exelon Business Services Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
For the Respondent

DOCUMENT
FOLDER

REPORTER: JOSHUA HESS

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WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

None

P R O C E E D I N G S

JUDGE ANGELA T. JONES:

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4 This is the time and place for the matter
5 of Mr. Nippes versus PECO Energy Company at Docket
6 Number C-20077811. I am Administrative Law Judge
7 Angela T. Jones appointed by the Commission to preside
8 over this matter. I note that this is a telephonic
9 hearing. Mr. Nippes is before me at the following
10 number 610-873-9629. Mr. Swerling is representing
11 PECO Energy Company, and he is before me at the
12 following number 215-841-6841. I do have a court
13 reporter physically with me that is recording this for
14 the record. I believe, Mr. Nippes, you have some
15 preliminary matters that you wish to have brought on
16 the record before me. Now, Mr. Nippes.

17 MR. NIPPES:

18 I object to the other side grandstanding
19 by not presenting their witnesses in effect prior to
20 have proper notification, also about the paperwork
21 that was sent which still did not represent the people
22 going to be presenting witnesses. There was no
23 witnesses. So I'm asking that the Court bar the
24 witnesses from any hearing and also that any matter
25 that PECO Energy sent me on Saturday not to be able to

1 be used due to the fact it was not sent in a timely
2 fashion as an attorney should know.

3 JUDGE JONES:

4 Okay. Mr. Nippes, let's start with your
5 first objection in reference to the witnesses. On
6 what basis or authority are you making that objection,
7 sir?

8 MR. NIPPES:

9 I'm making that objection because we were
10 not given information on these people. Be it
11 personally of what they're going to talk about and who
12 they represent which is, of course PECO Energy, who
13 else, in this matter. And I believe the law is very
14 specific. It says they must give us that information
15 prior to the hearing and also in a timely fashion,
16 which is ten days. They've done none of that.

17 JUDGE JONES:

18 Okay. Are you referring to my pre-
19 hearing order, paragraph eight?

20 MR. NIPPES:

21 I'm referring to the --- whatever, if
22 that is the paragraph, I don't ---.

23 JUDGE JONES:

24 Are you referring to my pre-hearing order
25 dated August 6?

1 MR. NIPPES:

2 Yes, your --- well, mine doesn't have a
3 date on it but, yes.

4 JUDGE JONES:

5 Okay. Paragraph eight talks about
6 witnesses that are subpoenaed. The company is
7 bringing their own witnesses so they do not have to
8 subpoena them, sir. So they're ---.

9 MR. NIPPES:

10 I'm not going to continue then.

11 JUDGE JONES:

12 Excuse me.

13 MR. NIPPES:

14 I'm going to take this matter --- if
15 these people are going to be able to grandstand this.
16 I'm not going to have PECO Energy basically playing a
17 game with me when the law states that they're supposed
18 to --- any witnesses are to be given prior to --- so
19 that I have a chance to talk to them and find out what
20 they're asking for if they're going to present
21 witnesses. And by the way, what are the names of the
22 witnesses so I can have a copy of them, their names
23 and associations with PECO Energy for the record?

24 JUDGE JONES:

25 Mr. Swerling?

1 ATTORNEY SWERLING:

2 Yes, Your Honor.

3 JUDGE JONES:

4 Do you wish to respond to Mr. Nippes?

5 MR. NIPPES:

6 They re going to do this bullshit here.

7 Listen to this.

8 ATTORNEY SWERLING:

9 To his objection or to his last question?

10 JUDGE JONES:

11 To his objection.

12 ATTORNEY SWERLING:

13 I would respectfully request that his
14 objection be denied. I believe that he's making
15 reference to discovery. And he made no proper
16 discovery request about what witnesses would be
17 presented or what they're going to talk about. That's
18 all in the discovery stage. I would argue it's a
19 little too late at this point to do discovery. And he
20 has made no questions before about the witnesses. So
21 the witnesses should be able to testify. So PECO can
22 put its case on. Let's see. In reference to the
23 exhibits being late, I apologize for that.

24 MR. NIPPES:

25 Bull.

1 ATTORNEY SWERLING:

2 But you know, I just respectfully request
3 to be allowed to proceed with the exhibits. And I
4 would argue that Mr. Nippes is not prejudiced by that.
5 He had time to review them.

6 MR. NIPPES:

7 I didn't have ---.

8 JUDGE JONES:

9 Wait just a minute, Mr. Nippes. I am in
10 control of who speaks and when, sir. Let me make a
11 ruling first before you respond or do you want to
12 respond?

13 MR. NIPPES:

14 Go ahead make your ruling then I'll
15 respond.

16 JUDGE JONES:

17 Mr. Swerling is correct that ---

18 MR. NIPPES:

19 Fine.

20 JUDGE JONES:

21 --- discovery is procedural, asking each
22 party of how they're presenting their cases and the
23 details of the cases. Requesting material about
24 witnesses and what they're going to say is proper
25 discovery. However, Mr. Swerling, I do have a problem

1 with you asking the Court's indulgence for delivering
2 exhibits in a timely fashion. I do note I believe it
3 is in my pre-hearing order. Just a moment.

4 Pre-hearing order paragraph one, if you
5 intend to present any proposed exhibits for my
6 consideration, you must send one copy to the other
7 party and three copies to me one week before the
8 hearing. I did not receive my copies one week before
9 the hearing. And Mr. Nippes is stating that he
10 received his copies as late as Saturday for a hearing
11 that is proposed to proceed on Monday. That is
12 unacceptable, Mr. Swerling. I agree with Mr. Nippes
13 that an attorney should know better.

14 ATTORNEY SWERLING:

15 I understand, Your Honor. And like I
16 said I freely admitted that. It was my mistake. The
17 only thing --- I understand you're saying it's
18 unacceptable. The only thing I would just like to say
19 is that the exhibits sent, one is just a simple
20 account statement, one is a copy of Mr. Nippes' bill,
21 which he has and the other is just a notice that was
22 sent to Mr. Nippes to receive in the mail. They're
23 not very complicated exhibits. And I would argue that
24 if Mr. Nippes has any questions about them, I would
25 feel free to indulge him in those questions. But I

1 think they're important for everyone to understand
2 what's going in the case. So if you're going to rule
3 that you will not admit them as evidence, I just wish
4 or request that they will be taken some kind of
5 judicial notice so that we can proceed with this
6 hearing in the most efficient and effective matter.

7 JUDGE JONES:

8 Mr. Nippes. Mr. Nippes? Hello?

9 ATTORNEY SWERLING:

10 I'm not sure if he's still on the line,
11 Your Honor.

12 JUDGE JONES:

13 That's very interesting. I was unaware
14 that Mr. Nippes was disconnected. What we're going to
15 do is we're going to go off the record and try to
16 reconnect Mr. Nippes and see if we can resolve these
17 matters. Mr. Swerling, I may have to disconnect you
18 in order to reconnect Mr. Nippes. So please be aware
19 and accept my indulgence, sir.

20 ATTORNEY SWERLING:

21 No problem.

22 JUDGE JONES:

23 We are off the record.

24 OFF RECORD DISCUSSION

25 JUDGE JONES:

1 We had off the record. Mr. Nippes
2 disconnected, which we were unaware of. We tried to
3 get him back on the record. Upon dialing the number
4 that was stated on the record, Mr. Nippes did answer
5 the phone personally and stated some derogatory
6 remarks. Also stated that he would be filing a
7 complaint against myself, Administrative Law Judge
8 Angela T. Jones, and the way I conducted this
9 proceeding. I believe that is a correct summary of
10 what occurred off the record. Mr. Swerling happened
11 to still be on the line when that occurred.

12 Mr. Swerling, how do you wish to proceed
13 with this proceeding, sir?

14 ATTORNEY SWERLING:

15 I guess at this point, actually I would
16 request that the Commission dismiss the case with
17 prejudice for obvious failure to prosecute.

18 JUDGE JONES:

19 Very well, sir. I will take that under
20 advisement. I will note that Mr. Nippes also after
21 making the derogatory remarks to me, stated to me not
22 to call that number ever again. So I cannot proceed
23 with this proceeding because it's telephonic and
24 that's the only number I have to reach Mr. Nippes. I
25 believe that is a fair rendition of what occurred off

1 the record. Is there anything further?

2 ATTORNEY SWERLING:

3 No, Your Honor

4 JUDGE JONES:

5 Thank you, Mr. Swerling. We are done.

6 ATTORNEY SWERLING:

7 Thank you, Judge.

8 JUDGE JONES:

9 Just a moment. The court reporter wants
10 to know if you want a copy of this transcript?

11 ATTORNEY SWERLING:

12 Not at this point in time.

13 JUDGE JONES:

14 Okay. Thank you.

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16 * * * * *

17 HEARING CONCLUDED AT 10:10 A.M.

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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
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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.



Court Reporter