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COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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Equitable Gas Company, a Division of Equitable : Docket No.  
Resources Inc. v. The Peoples Natural Gas : C-20031128  
Company d/b/a Dominion Peoples. Disputing :  
duplication of facilities, predatory pricing, :  
unfair competition and rate discrimination and :  
prohibit Dominion from participating in :  
construction of pipeline. :  
: :  
Initial prehearing conference. :  
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Pages 1 through 32

State Office Building  
Hearing Room 1  
300 Liberty Avenue  
Pittsburgh, Pennsylvania

**DOCKETED**

DEC 10 2003

Thursday, November 20, 2003

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

BEFORE:

MICHAEL A. NEMEC, Administrative Law Judge

APPEARANCES:

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*g.m.*

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WITNESS INDEX

WITNESS

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P R O C E E D I N G S

1  
2 ADMINISTRATIVE LAW JUDGE MICHAEL A NEMEC: This  
3 morning we have a case that is captioned Equitable Natural  
4 Gas Company versus The Peoples Natural Gas Company. The  
5 matter is docketed at C-20031128.

6 My name is Michael Nemec and I am an Administrative  
7 Law Judge with the Pennsylvania Public Utility Commission.  
8 I have been assigned to conduct the prehearing conference  
9 and any subsequent hearings that may be required in this  
10 complain proceeding.

11 We have a prehearing conference this morning and  
12 what we are going to do is start off by asking counsel to  
13 identify themselves and state on the record the parties  
14 that they represent.

15 We will start with Mr. Thomas.

16 MR. THOMAS: Good morning, Your Honor. My name is  
17 Charles E. Thomas, Jr., with the law firm of Thomas,  
18 Thomas, Armstrong & Niesen. I am one of the attorneys  
19 representing Equitable Gas Company.

20 JUDGE NEMEC: Mr. Niesen.

21 MR. NIESEN: Good morning, Your Honor. I am Thomas  
22 Niesen, also with the firm Thomas, Thomas, Armstrong &  
23 Niesen, representing Equitable Gas Company.

24 JUDGE NEMEC: Mr. Frutchey.

25 MR. FRUTCHEY: Daniel L. Frutchey, Senior Vice

1 President and general counsel for Equitable Gas Company.

2 JUDGE NEMEC: Thank you, sir. Mr. Kennard.

3 MR. KENNARD: Yes, Your Honor, Norman Kennard with  
4 the law firm of Hawke, McKeon, Sniscak and Kennard,  
5 representing The Peoples Natural Gas Company, doing  
6 business as Dominion Peoples.

7 JUDGE NEMEC: Ms. George.

8 MS. GEORGE: Susan George in-house counsel for The  
9 Peoples Natural Gas Company.

10 JUDGE NEMEC: Mr. Picadio.

11 MR. PICADIO: Anthony Picadio representing  
12 Pittsburgh Allegheny County Thermal, known as PACT.

13 JUDGE NEMEC: And, Mr. Shilobod.

14 MR. SHILOBOD: Dennis Shilobod, general counsel for  
15 PACT.

16 JUDGE NEMEC: And, Mr. Simms.

17 MR. SIMMS: Yes, Your Honor, Johnnie Simms with the  
18 Commission's Office of Trial Staff.

19 JUDGE NEMEC: Can you hear everybody?

20 MR. SIMMS: Barely, Your Honor. If they could  
21 speak up, it would be appreciated.

22 JUDGE NEMEC: Yes, I can understand that. The  
23 complaint was filed August 29th of 2003. I checked the  
24 Commission's mainframe to see what other matters have been  
25 filed, and I have the complaint, an answer, motion to

1 dismiss for failure to join an indispensable party.

2 I have the complaint, I have the answer, but I do  
3 not have the motion to dismiss. PACT filed a petition to  
4 intervene; I do not have that. There was an answer to the  
5 motion to dismiss filed by Equitable; I do not have that.  
6 There was a petition for leave to withdraw a motion to  
7 dismiss; I do not have that. I have Equitable's answer to  
8 the petition to intervene.

9 Are there any other pleadings that have been filed  
10 in this matter.

11 MR. KENNARD: We filed a motion for protective  
12 order, Peoples did, Your Honor, on November 12th, 2003.

13 JUDGE NEMEC: I do not have that.

14 MR. SHILOBOD: If Your Honor please, I have a copy  
15 here of PACT's petition to intervene.

16 JUDGE NEMEC: I can get it eventually. I don't  
17 know how bid a rush there is to deal with that. Let's just  
18 hold that for a minute. I want to tell you what I know and  
19 what I don't know.

20 I also have a prehearing memorandum from Equitable  
21 and from Peoples. That's where I am at this point in terms  
22 of what I know about this case. I'm aware that there has  
23 been an action filed in the Court of Common Pleas also. At  
24 this point, it appears to me that Equitable, Peoples, PACT  
25 and OTS are the parties. Are there any other parties?

1 (No response.)

2 Equitable talks about discovery in their prehearing  
3 memo. We need to establish a discovery schedule. I will  
4 hear from Equitable first.

5 MR. THOMAS: If it please Your Honor, we believe  
6 that a significant amount of time is necessary for  
7 discovery. Discovery has commenced insofar as the Office  
8 of Trial Staff having served discovery upon Equitable,  
9 Peoples and PACT.

10 To the best of our knowledge, PACT has responded,  
11 Equitable has responded we believe very recently. Peoples  
12 responded, however the Peoples' responses were not served  
13 on -- at least not served on Equitable. I can't speak for  
14 service upon the other parties.

15 Equitable is prepared to initiate its discovery, but  
16 just from the answers that we have from PACT in response to  
17 the Office of Trial Staff, we are becoming aware of things  
18 that we were not aware of at the time we filed our  
19 complaint, and I think that what we are seeing in response  
20 to the discovery served upon PACT and in the responses  
21 served pursuant thereto by PACT, that a lengthy period is  
22 needed for discovery.

23 We would be agreeable to establishing a period for  
24 discovery, however we cannot agree to the time period set  
25 forth the Peoples' prehearing memo which are different than

1 those Peoples' counsel and myself discussed in Harrisburg  
2 earlier in the week.

3 JUDGE NEMEC: I think perhaps I should back up.  
4 Does Equitable object to PACT being a party to the  
5 proceedings?

6 MR. THOMAS: No, Your Honor. If you look at  
7 paragraph 9 on page 6 of our prehearing memo, we indicate  
8 that we did file an answer to PACT's petition. We do not  
9 oppose PACT's intervention provided it is not used to  
10 expand the scope of this proceeding.

11 The complaint is against Peoples. There are at the  
12 present time, four counts in the complaint. Those counts  
13 are summarized on page 5 of Equitable's prehearing memo.

14 There is, in the civil proceeding, contractual  
15 issues involving PACT and Equitable, a subject for the  
16 Allegheny County Court of Common Pleas. We think as far as  
17 contractual matter and the laws of contract, that is the  
18 appropriate place for that proceeding.

19 PACT is, I think, participating in the proceeding,  
20 but they can't expand the scope of the proceeding beyond  
21 the complaint that was filed by Equitable. All of that was  
22 set forth in our answer to the PACT petition.

23 JUDGE NEMEC: And, with regard to discovery, you  
24 feel you need an expanded period of discovery, but you  
25 don't know how much?

1 MR. THOMAS: We would anticipate a matter of  
2 several months, and the discovery itself will help  
3 Equitable determine the number of witnesses that will be  
4 called in the case, but we do anticipate the calling of  
5 several outside, non-affiliated independent consultant  
6 witnesses as well as the company witnesses, and we need to  
7 see the discovery.

8 Of course, there is an issue before Your Honor with  
9 respect to Peoples' contentions that its answers should be  
10 subject to a protective order. I think as we look at the  
11 request, the protective order really related to just  
12 certain of Trial Staff's interrogatories, yet we haven't  
13 received the responses that were not covered by the  
14 request, and that's not in accordance with the Commission's  
15 rules and regulations for practice in this type of  
16 proceeding.

17 We will be filing an answer to that petition either  
18 tomorrow or Monday in accordance with the time period set  
19 by the Commission's regulations.

20 This will be a case, Your Honor, that requires a lot  
21 of discovery. We are in a situation now where, to the best  
22 of knowledge, Peoples is serving PACT, and I am not sure  
23 delaying the case to really have all the information that  
24 we need is necessarily detrimental to PACT or to Peoples.  
25 It may well in the end be, but it is Equitable that has had

1 its service displaced.

2 JUDGE NEMEC: Have you received the motion for  
3 protective order?

4 MR. THOMAS: We have received it. I'm not sure  
5 what day we received. We received it by mail, and I  
6 believe Monday would be the technical due date for our  
7 answer to the petition.

8 MR. KENNARD: Your Honor.

9 JUDGE NEMEC: Yes, you may respond.

10 MR. KENNARD: On that note, the protective order we  
11 have put out there is the standard one used to the  
12 Commission, and I would invite Equitable to give us a call  
13 if you have a problem with the protective order. We  
14 obviously need one in this case. We took the standard one  
15 off the shelf and put it out there.

16 We could be formalistic about this or not. If you  
17 want to call and make suggestions for the document, we  
18 would modify it with reasonable suggestions and put in a  
19 stipulated document to the Judge, but obviously we need  
20 one.

21 It's intended to be available to all parties for all  
22 discovery in the case. It was not limited to the Trial  
23 Staff materials. You can proceed how you want to, but I  
24 would make the invitation that we are available by phone to  
25 discuss this if you would like.

1 MR. THOMAS: We would be happy to speak to Peoples,  
2 but, at least in our practice, it was not an off-the-  
3 shelf -- necessarily an off-the-shelf request.

4 MR. KENNARD: It was...

5 JUDGE NEMEC: Excuse me, Mr. Kennard, the  
6 protective order deals with responses to interrogatory  
7 requests?

8 MR. KENNARD: Yes, Your Honor.

9 JUDGE NEMEC: Okay, that's fine.

10 MR. KENNARD: As well as the treatment of any  
11 documents, so this would include testimony. What we did  
12 was, the Commission just came out with one with in the  
13 Review Order that they sponsored, and we just recently  
14 entered into it in another case with Trial Staff and the  
15 Consumer Advocate, and we just simply changed the names and  
16 the caption and put it out in this case and don't  
17 anticipate major issues. Again, you are welcome to call.

18 MR. THOMAS: There may not be major issues, Your  
19 Honor, but we will speak to it with Mr. Kennard if he is  
20 back in his office tomorrow afternoon. I will place the  
21 call and maybe we can discuss it then.

22 Based upon that, we will hold off filing our  
23 answer until Monday and maybe the answer will involve a  
24 stipulation.

25 JUDGE NEMEC: Okay. Mr. Simms, do you want to

1 weigh in on this at all, on discovery?

2 MR. SIMMS: No, I don't, Your Honor.

3 JUDGE NEMEC: Okay, thank you.

4 MR. KENNARD: Your Honor, in terms of the  
5 significant time needed for discovery, as you noted in your  
6 recitation, this case was filed August 29th. Certainly  
7 Peoples set out a substantial complaint. They had to have  
8 a prima facia case before filing. It's done nothing since  
9 then.

10 Our concern is that there have been -- there has  
11 become a cloud put over this transaction with PACT. There  
12 have been allegations made about Peoples' conduct and  
13 frankly, we don't want this hanging around.

14 Equitable brought the complaint and they should have  
15 been prepared to proceed with it. They have done nothing  
16 on it for two and a half months, and now to show up in the  
17 middle of November and say, well, we need extensive time  
18 for discovery, we are becoming aware of things we didn't  
19 know about -- I mean, all they had to do was do discovery.  
20 That's now it was discovered, because Trial Staff undertook  
21 discovery.

22 Clearly Equitable should have proceeded to do its  
23 own discovery, and we resist the notion that this case  
24 can't be tried in a more compressed time frame. At this  
25 point in time, as I understand Equitable's proposal, it's

1 that we set aside three months for discovery or so, have  
2 another prehearing conference and then establish witnesses  
3 and so forth.

4 We have come here today prepared to set out a  
5 schedule that we can proceed to clear the names of the two  
6 parties that are in this transaction that Equitable objects  
7 to and get a clear line of sight on the future of their  
8 relationship.

9 MR. THOMAS: May it please Your Honor, I think if  
10 you review the time frame for the various pleadings that  
11 have been filed to date in the proceeding, you are going to  
12 discover that Equitable's answer to the intervention  
13 petition filed by PACT was submitted on the 27th of  
14 October, there have a number of pleadings filed, initially  
15 Peoples' move to dismiss the complaint.

16 It would have premature to begin anything until we  
17 have the players set for the proceeding. The Trial Staff  
18 started its interrogatories. I commend them for it, but we  
19 believe that it would have been inappropriate for us to  
20 begin prior to holding a prehearing conference.

21 It is a complicated matter and it will take time.  
22 And, as far as any cloud on Peoples, there is a proceeding  
23 going on over in the Court of Common Pleas, and if there's  
24 any kind of cloud, there is a lot of cloud coming from that  
25 proceeding. I have not seen anything in the rules,

1 regulations or cases that one rushes to judgement because  
2 of an alleged cloud, and it's a very clear day as I look  
3 out that window, Your Honor.

4 JUDGE NEMEC: Okay. Mr. Simms, where is OTS in its  
5 discovery?

6 MR. SIMMS: Your Honor, we have, as the parties  
7 have indicated, submitted at least one round of discovery.  
8 We anticipate some follow-up interrogatories based on the  
9 answers that we have received. We are hoping that will be  
10 done within the next three weeks or so.

11 JUDGE NEMEC: All right. Mr. Simms, are you  
12 participating in the Common Pleas Court proceedings?

13 MR. SIMMS: No, Your Honor, I am not.

14 JUDGE NEMEC: All right.

15 MR. PICADIO: May we be heard on this?

16 JUDGE NEMEC: You certainly may.

17 MR. PICADIO: Do I take it that the petition to  
18 intervene has been granted based on the lack of opposition?

19 JUDGE NEMEC: Yes, it will be.

20 MR. PICADIO: We would like to have leave to file  
21 an answer to the complaint. We would attach a proposed  
22 answer to the petition. The answer alleges facts that  
23 relate to PACT's agreement with Equitable, PACT's agreement  
24 with Peoples, the ownership and construction of the line  
25 that PACT built, and we think we should be entitled to

1 respond to those allegations in a formal way.

2 JUDGE NEMEC: That's fine.

3 MR. PICADIO: So, we may file an answer?

4 JUDGE NEMEC: You may file an answer. Twenty days  
5 would be fine.

6 MR. PICADIO: On the issue of discovery and the  
7 nature of this case, this is not a complicated case. This  
8 is a very simple case.

9 You have a customer that is in the overlapping  
10 service areas of two utilities that was unable to negotiate  
11 an acceptable agreement with one and exercised its right to  
12 do business with the other one.

13 The customer built the line, owns the line, borrowed  
14 money to finance the line, gave security interest in the  
15 bank to do it. There's no dispute about that fact.

16 The claim -- one of the four claims set forth in the  
17 complaint is that this constitutes a duplication of  
18 facilities not in the public interests. This is the  
19 customer's facilities, not Peoples' facilities, and we  
20 think we can demonstrate that in the form of a motion  
21 without the need of any discovery.

22 I just don't think there is any -- this fact is  
23 incontrovertible. We know we paid a million and a half  
24 dollars for construction. It's constructed, it's being  
25 used. We have an interest in accelerating these

1 proceedings and getting a prompt adjudication of some of  
2 these issues which are very simple.

3 We have a customer who can do business with either  
4 one. There's no dispute about the overlapping territory.  
5 There's no dispute - there shouldn't be a dispute about  
6 who owns the line at this point. I'm not sure what is left  
7 in this case.

8 MR. THOMAS: May it please Your Honor, some of the  
9 responses from PACT to the Trial Staff interrogatories and  
10 with some of the statements made here in the hearing room,  
11 we think it is controvertible, if that's the appropriate  
12 adjective. We totally disagree with that statement.

13 As we get further into it and as we learn more,  
14 ownership of the line was being financed in part by  
15 Peoples, perhaps a substantial part. We were totally  
16 unaware of that until Mr. Simms propounded his  
17 interrogatories and the answers were provided.

18 We are learning more every day and we think those  
19 facts that we are learning are supporting our case and we  
20 want to pursue them. We think a number of weeks of  
21 discovery is required.

22 As Mr. Simms said, you send the first round out, you  
23 review the responses -- again, we haven't seen Peoples'  
24 responses to Trial Staff's interrogatories. As you review  
25 the responses, that provides a basis for further

1 interrogatories. I think that we are going to have a  
2 number of rounds of interrogatories propounded.

3 As I said, we anticipate bringing in some economic  
4 witnesses who are not Equitable employees, and they have to  
5 have these interrogatory responses before them before their  
6 testimony is prepared.

7 I don't think Peoples is necessarily disadvantaged  
8 by giving a full factual record before the parties -- prior  
9 to the submission of prepared testimony.

10 MR. KENNARD: Your Honor, the question isn't  
11 factual development. The question is when is Equitable  
12 going to step up to the plate and prosecute its complaint?

13 Trial Staff has already sent out three sets of  
14 interrogatories and they have all been answered. They can  
15 speculate because they found out something apparently they  
16 didn't know, one fact, that they may find others.

17 They may be arguing that they are going to put on  
18 economic testimony to argue that the Commission's policy  
19 regarding customer choice in overlapping service  
20 territories is incorrect, but that's more of an economic  
21 matter and that's more trying to change the state of the  
22 law in Pennsylvania as it has stood for a long time.  
23 That's a policy issue and not necessarily a factual issue.

24 Equitable can say, well, we didn't know about this.  
25 The reason they didn't know about it is because they

1 haven't prosecuted their complaint yet. They need to step  
2 up to the plate and do this.

3 The risk to PACT and Dominion Peoples is that their  
4 business relationship remains under a cloud so long as  
5 Equitable is legally challenging it, and until Equitable  
6 does prosecute its complaint and we get the issues out  
7 there, that cloud continues despite the day being bright.

8 JUDGE NEMEC: Have you provided the answers that  
9 you provided to OTS to Equitable?

10 MR. KENNARD: No, Your Honor. We serve those  
11 timely on Monday. We previously sent out the motion for  
12 protective order. As soon as that is...

13 JUDGE NEMEC: Providing responses to Equitable, is  
14 that dependent on the protective order?

15 MR. KENNARD: Yes there's highly confidential --  
16 there's documents in there that we deem highly  
17 confidential.

18 JUDGE NEMEC: The first thing you want to do is get  
19 the protective order straightened out.

20 MR. KENNARD: Yes, and as soon as that happens, the  
21 discovery goes to all the parties.

22 JUDGE NEMEC: My problem is that I won't be around  
23 next week until the following Tuesday, so I won't be  
24 available to sign any protective order. I hope you can  
25 work that out. Obviously, that's step one. Okay?

1 MR. KENNARD: And we are available today to hammer  
2 out the protective order.

3 JUDGE NEMEC: I'm here tomorrow. If you can get me  
4 something that you can agree to and I can sign tomorrow,  
5 fine. Obviously, the protective order is step one. You  
6 have to resolve that.

7 MR. KENNARD: Right.

8 JUDGE NEMEC: Just in terms of holidays and  
9 everything that is going on, I am going to suggest that  
10 discovery be completed by the end of January. I'm just  
11 throwing this out, and you can respond.

12 If you finish discovery by the end of January,  
13 Equitable's direct testimony would be due mid-February.  
14 That will push the proposed schedule from Peoples back  
15 about 45 days, and I am ball parking everything.

16 MR. THOMAS: Your Honor, just looking at our  
17 counts, beyond the counts addressed by Mr. Kennard, the  
18 duplication of facilities -- excuse me, addressed by PACT,  
19 with the predatory pricing and unfair competition and the  
20 rate discrimination, I think we need the opportunity to  
21 submit at least two rounds, if not three rounds, of  
22 discovery.

23 If we are in the situation where the discovery  
24 responses are due within 15 days of having them be  
25 propounded, and assuming we have no fights over them, and

1 you have to get the information before your technical  
2 experts, I think that's too aggressive.

3 I also submit that if the last discovery responses,  
4 if they were received at the end of January, two weeks to  
5 prepare testimony based upon those responses and other  
6 matters, is too tight of a time schedule. I think a  
7 minimum of another 45 days slippage would be in order.

8 MR. KENNARD: From our prospective, Your Honor, two  
9 and a half months to accomplish two rounds of discovery  
10 cannot be characterized as too aggressive. We think that's  
11 fair.

12 MR. THOMAS: You have already had discovery now.  
13 We haven't seen the responses.

14 JUDGE NEMEC: Yes, and I think what is clear, at  
15 least to me at this point, is the two sides need to come to  
16 an agreement on a protective order that will work. Once  
17 that's in place, I think things should speed up.

18 MR. KENNARD: We can do that within a couple of  
19 days.

20 JUDGE NEMEC: Let's do best efforts to complete  
21 discovery by the end of January and have direct testimony  
22 due the end of February. That gives you another two weeks.

23 MR. KENNARD: Excuse me.

24 JUDGE NEMEC: Correct me if I am wrong, Mr.  
25 Kennard, but it looks like you are giving yourself about 30

1 days for Peoples' and Intervenor's testimony after  
2 Equitable's testimony is received.

3 MR. KENNARD: Yes.

4 JUDGE NEMEC: Do you need that much time?

5 MR. KENNARD: Well, I don't know what -- it sounds  
6 like we are going to get a bunch of economic -- though  
7 Equitable is unwilling to state what their presentation is  
8 going to be, it sounds like we are going to get economic  
9 witnesses.

10 If that's the case and they hire several, I think  
11 they said, outside experts, if we could have 45 days, we  
12 could turn our testimony around in that period of time. My  
13 suggest is April -- if they are due the end of February...

14 JUDGE NEMEC: Their direct testimony would be due  
15 tentatively February 27th.

16 MR. KENNARD: If we could submit ours April 16th, a  
17 little over 45 days?

18 JUDGE NEMEC: If we are going to speed this up...

19 MR. KENNARD: I understand, but we have given  
20 Equitable three and half months. If this case was being  
21 tried on its facts, that would be one thing. If they are  
22 going to bring in economic testimony that we have not seen  
23 before, 30 days -- I am trying to move this along, Judge.

24 I'm just being a little cautious on this note  
25 because we are going to have all this policy type evidence

1 brought in that we won't have been able to discovery until  
2 they file their testimony. That's my concern.

3 MR. THOMAS: If it may please Your Honor, in  
4 fairness to all the parties, we had anticipated that they  
5 may possibly need discovery upon receipt of our testimony.  
6 That is the reason why we were looking at a schedule that  
7 went that far in to the year and the reason why we thought  
8 second prehearing conference following the end of discovery  
9 might be appropriate.

10 MR. KENNARD: If we could make Equitable due on the  
11 13th, February 13th, we could hit the end of March.

12 MR. THOMAS: That's too early, Your Honor.

13 MR. KENNARD: That's three months, Judge.

14 JUDGE NEMEC: If theirs was due February 27th, your  
15 proposal is that you would have yours in what, April 16th?

16 MR. KENNARD: Yes.

17 JUDGE NEMEC: What about rebuttal or surrebuttal.

18 MR. THOMAS: It would be the rebuttal of all  
19 parties, I would think that we would need at least three  
20 weeks in that we would have to do discovery. Perhaps at  
21 the second prehearing conference, we might have an  
22 expedited schedule for discovery responses once we get into  
23 the submission of testimony phase.

24 JUDGE NEMEC: You lost me.

25 MR. THOMAS: What I am saying is that I think we

1 would need at least three weeks for rebuttal testimony  
2 anticipating a possible need for discovery.

3 JUDGE NEMEC: Okay, that would take us to May 7th.

4 MR. THOMAS: And, what I am asking for is that if  
5 we get to that stage is that perhaps we have a ten-day  
6 discovery turn-around time versus the fifteen. Although  
7 this is not an R docketed rate case, we may have to go to  
8 the ten-day period in order to get the testimony in.

9 If you look at our prehearing memo, you are going to  
10 see a period for surrebuttal testimony. I thought we would  
11 have surrebuttal testimony and then we would go to hearing.  
12 I think if we have that and we look at Memorial Day and  
13 some of the others, it puts us right in to June.

14 We are all aware of what June means to the larger  
15 gas utilities as to the 1307(f) filings. One of us will  
16 probably have hearings the first week of June and other one  
17 the second week of June. I didn't think we would want to  
18 have hearings in this proceeding interfering with the  
19 1307(f) hearings and a possible settlement of those  
20 matters.

21 I know it's been our experience that many of the  
22 settlements of the 1307(f) really get accomplished during  
23 the hearing phase, through the first day of hearings or  
24 whatever. We haven't had very many settle well ahead of  
25 the hearing dates.

1 We thought that it would be appropriate for this  
2 case for hearings in the summer. I know technically summer  
3 may not begin until somewhere around June 20th. I don't  
4 know what the date is this year, I haven't looked at the  
5 stars, but that's summer.

6 MR. KENNARD: That's right. The way it is with the  
7 large three and half month period of discovery, it pushes  
8 us into June, which is what we are trying to avoid. We are  
9 trying to litigate this case before 1307(f) case gets in  
10 the way because it has a statutory conclusion period. If  
11 we don't do it before then, that pushes us into July which  
12 is exactly what we are trying to avoid.

13 Again, we go back and suggest that Equitable's  
14 testimony has to be due sooner or we are into July.

15 MR. THOMAS: Your Honor, we are the party with the  
16 burden, at least the initial burden. It's our complaint  
17 and it just can't be done more quickly than the schedule we  
18 have just gone through.

19 Your Honor suggested dates and as we considered  
20 responsive testimony and rebuttal testimony and surrebuttal  
21 testimony, we arrived at the same time period that we have  
22 been running around the track in our office since my  
23 conversation with Mr. Kennard who envisioned, during that  
24 conversation, hearings in April

25 MR. KENNARD: Let's have hearings in April. That's

1 exactly what I said.

2 MR. THOMAS: We can't do it. We have run through  
3 them, and we haven't had three and a half months. We  
4 didn't even know who the players were until today, and it  
5 wasn't until the 27th of October that Equitable filed its  
6 response to the PACT petition to intervene.

7 MR. KENNARD: Your office had a motion to dismiss  
8 the complaint...

9 JUDGE NEMEC: All right. Whatever your discussions  
10 were, they were. Let's see if we can work out something  
11 that everybody can live with here. Why can't we have the  
12 hearings in May?

13 MR. KENNARD: Yes.

14 JUDGE NEMEC: If the rebuttal, surrebuttal is due  
15 May 7th, why can't we have hearings the next week; what's  
16 wrong with that? By that point, everybody ought to be on  
17 the same page in terms of what your positions are. We have  
18 the week of May 11th, May 18th. I don't think the hearings  
19 are going to take very long, one day, two at the most.

20 MR. THOMAS: Your Honor, we would think that just  
21 out of precaution, three days should be scheduled.

22 JUDGE NEMEC: We can do that, but the way things  
23 are being scheduled right now, I'm being scheduled for  
24 March.

25 MR. THOMAS: The week of May 18th is fine with us.

1 JUDGE NEMEC: Mr. Simms, any position from OTS on  
2 the scheduling here?

3 MR. SIMMS: No, Your Honor, we are satisfied with  
4 what you have announced already.

5 MR. SHILOBOD: Your Honor, would there be anything  
6 inappropriate about conducting hearings after the filing of  
7 Equitable's direct testimony and cross examination, get  
8 that out of the way before we have to file our own  
9 testimony?

10 JUDGE NEMEC: That's always an option. We used to  
11 do it that way all the time, but we haven't been for the  
12 decade or so.

13 I don't know if it would speed it up or not,  
14 actually. You have to wait for the transcripts and so on,  
15 so I don't think it helps.

16 MR. THOMAS: If it please Your Honor, Mr. Shilobod  
17 and I were involved in proceedings where we went months  
18 with that practice, and we found that the new practice  
19 probably in the long run saves time. The old practice  
20 where we would have three days of hearings each week for a  
21 couple of months just wasn't as efficient as today's  
22 practice.

23 Although, I will say this, the examination under the  
24 old system was far more thorough than it is today. You  
25 could go a week on depreciation alone, but we don't do that

1 any more.

2 JUDGE NEMEC: Those were the good old days.

3 MR. THOMAS: At least, maybe, for the lawyers they  
4 were the good old days.

5 MR. KENNARD: With this schedule would Dominion  
6 Peoples being oral surrebuttal?

7 JUDGE NEMEC: We can do that. I prefer at least an  
8 outline.

9 MR. KENNARD: We can do that.

10 MR. PICADIO: Is it May 18th then for the hearings?

11 JUDGE NEMEC: That's fine with me.

12 MR. KENNARD: Are we going to set aside three days?

13 JUDGE NEMEC: We can do that. Any preference in  
14 terms of days of the week for anybody? Is it easier to do  
15 Tuesday, Wednesday, Thursday?

16 MR. THOMAS: Tuesday, Wednesday, Thursday is good.

17 JUDGE NEMEC: So that would be the 18th, 19th and  
18 20th.

19 MR. THOMAS: Could we have a date for the  
20 surrebuttal outline, Your Honor.

21 JUDGE NEMEC: May 7th?

22 MR. THOMAS: We took down May 7th for the rebuttal.

23 MR. KENNARD: The 14th, give us a week?

24 MR. THOMAS: That's fine.

25 JUDGE NEMEC: Okay, folks, what I have now is that

1 discovery ends January 30th. Equitable's testimony  
2 delivered in-hand to the parties in Harrisburg February  
3 27th. Peoples' and Intervenors' testimony is due April  
4 16th. Rebuttal testimony is May 7th with surrebuttal  
5 outline May 14th. Hearings are May 18, 19 and 20.

6 MR. KENNARD: When we say discovery -- just a point  
7 of clarification, Judge. When we say discovery ends on  
8 January 30th, that's the preliminary round of discovery.  
9 We will be doing discovery on each other's testimony.

10 JUDGE NEMEC: Preliminary discovery.

11 MR. THOMAS: That's not to say if there is  
12 discovery outstanding prior to that date, that it doesn't  
13 have to be answered. It's not an athletic contest with  
14 time expiring.

15 MR. KENNARD: That thought hadn't even occurred to  
16 me.

17 JUDGE NEMEC: I think once you get the protective  
18 order in place, you folks have been doing this long enough  
19 that hopefully you will be able to work out your schedules.

20 MR. KENNARD: We are agreeable to 15 days for  
21 discovery in this case?

22 JUDGE NEMEC: As in the Commission rules?

23 MR. KENNARD: The Commission rules in this case  
24 would be 20. I think the suggestion was made earlier for  
25 15 days.

1 JUDGE NEMEC: Okay, responses due in 15 days.

2 MR. KENNARD: Then after January 30th, we will go  
3 to a ten-day?

4 MR. THOMAS: Yes, that's our position.

5 MR. KENNARD: Discovery directed to testimony, ten  
6 days.

7 MR. THOMAS: Yes.

8 JUDGE NEMEC: We have actually reached some  
9 agreement here. Anything else?

10 (No response.)

11 I expect to hear from counsel for Equitable and  
12 Peoples with regard to the protective order. As I said, I  
13 will be here through tomorrow, but I will be gone all next  
14 week and not back until the following Tuesday.

15 In terms of the petition to intervene, you can  
16 assume that that is granted, but I would like to have the  
17 pleadings I do not have. I can get those and I will get  
18 those from the file room.

19 Anything else?

20 MR. KENNARD: I guess one caveat, one request with  
21 regard to holiday cheer. Please don't serve us with  
22 discovery on December 20th and ask us to work over the  
23 holiday. We've got an extended period of time. We've got  
24 three and a half months to do discovery. If you have  
25 discovery, we wish you would put in quickly and let us work

1 through it and let's take the end of the December off.

2 MR. THOMAS: I've never had the luxury to take the  
3 end of December off in my life, Your Honor. We will take  
4 Mr. Kennard's request under advisement. It would be great  
5 if we could all do that.

6 JUDGE NEMEC: Best efforts.

7 MR. THOMAS: Best efforts.

8 JUDGE NEMEC: Mr. Simms, anything else?

9 MR. SIMMS: No, Your Honor.

10 JUDGE NEMEC: If no one has anything further, we  
11 will adjourn at this time. I thank you for your  
12 participation.

13 I will prepare a prehearing order. You can  
14 anticipate a standard briefing schedule once we have  
15 completed the hearing process, but I won't include that at  
16 this point in the prehearing order.

17 I will wait to see what the protective order has to  
18 say and we will move on from there. If problems arise, do  
19 not hesitate to contact me. We can do informal telephone  
20 conferences on very short notice without any problem.

21 MR. PICADIO: The prehearing order, that will  
22 reflect the fact that we can file our answer as well?

23 JUDGE NEMEC: Yes, and you may file your answer  
24 within 20 days, and that is on the record, too.

25 Okay, folks, we are adjourned.

(Whereupon, at 10:45 a.m., the hearing was adjourned.)

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were reported 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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