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BEFORE

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THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE
Public Utility Commission

In re: R-822169 - Pennsylvania Power & Light Company.
Investigation into a requested \$315 million
dollar annual rate increase. Prehearing
Conference.

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THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: R-822169 - Pennsylvania Power & Light Company.
Investigation into a requested \$315 million
dollar annual rate increase. Prehearing
Conference.

Verbatim report of hearing held in
Hearing Room 1, North Office Building,
Harrisburg, Pennsylvania,

Thursday,
January 5, 1983
at 10:00 a.m.

BEFORE

MORRIS MINDLIN, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

ALLISON K. TURNER, ESQUIRE
JULIAN S. SUFFIAN, ESQUIRE
JOHN M. QUAIN, ESQUIRE
ALBERT W. JOHNSON, III, ESQUIRE
P. O. Box 3265
Harrisburg, Pennsylvania 17120
Appearing on behalf of PUC Prosecutory Staff

ROBERT H. YOUNG, ESQUIRE
DAVID B. MacGREGOR, ESQUIRE
MORGAN, LEWIS & BOCKIUS
123 South Broad Street
Philadelphia, Pennsylvania 19109
AND
G. D. CALIENDO, ESQUIRE
PAUL E. RUSSELL, ESQUIRE
Two North Ninth Street
Allentown, Pennsylvania 18101
Appearing on behalf of Pennsylvania Power & Light
Company, Respondent

1 APPEARANCES: (Continued)

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3 DAVID BARASCH, ESQUIRE
4 IRWIN POPOWSKY, ESQUIRE
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7 Appearing on behalf of Office of Consumer Advocate

8 CHARLES B. ZWALLY, ESQUIRE
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10 1801 North Front Street
11 Harrisburg, Pennsylvania 17108
12 Appearing on behalf of Milton Manufacturing Co.;
13 Crown American Corp.;
14 Hess's Department Stores, Inc.

15 DAVID M. KLEPPINGER, ESQUIRE
16 HENRY R. MACNICHOLAS, ESQUIRE
17 MCNEES, WALLACE & NURICK
18 100 Pine Street
19 Harrisburg, Pennsylvania 17108
20 Appearing on behalf of Lehigh Valley Power
21 Committee, et al

22 BERNARD A. RYAN, JR., ESQUIRE
23 CHERYL USSERY, ESQUIRE
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Appearing on behalf of Susquehanna Township,
Swatara Township, et al

1 APPEARANCES: (Continued)

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5 Harrisburg, Pennsylvania 17101
6 Appearing on behalf of CEPA, Bernard King

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9 Lewisburg, Pennsylvania 17837
10 Appearing on Behalf of Susquehanna Alliance

11 JUDITH SCHIMMEL, ESQUIRE
12 10 North Market Square
13 Harrisburg, Pennsylvania 17101
14 Appearing on behalf of City of Harrisburg

15 EUGENE P. STILP, ESQUIRE
16 1037 Maclay Street
17 Harrisburg, Pennsylvania 17103
18 Appearing on behalf of PP&L Taxpayers Coalition
19 Against The Rate Increase

20 NATHANIEL M. CARTMELL, III, ESQUIRE
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23 Appearing on behalf of Pennsylvania Industrial
24 Coalition

25 THERESA WANICK
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Appearing on behalf of Hazleton Taxpayers Association

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JUDGE MINDLIN: We are ready to convene. On November 22, 1982 -- and I am going to interrupt myself to say this. We do not have amplifying equipment here. However, we ought to be able to make ourselves heard. Whether counsel, the parties or the people in the audience, if anyone has difficulty hearing the speaker, please indicate. Let us know.

All right, then, again on November 22, 1982, Pennsylvania Power and Light Company filed Supplement Number 2 to its tariff Electric Pennsylvania PUC Number 199, which contains, among other things, proposed rate increases.

On December 3, 1982, our Commission adopted an order instituting an investigation, among other things, of the proposed and the existing rates of the respondent, Pennsylvania Power and Light Company. Meanwhile, a number of parties have filed formal complaints against the tariff filing.

In due course, and after due notice, we are sitting for purposes of a prehearing conference in what will constitute a general rate proceeding, pursuant to the Commission's investigation and pursuant to the several complaints.

This proceeding is docketed at Commission Docket Number R-322169, and its associated complaint docket numbers. We propose now to order a consolidation of the Commission's

1 investigation and the several formal complaints heretofore
2 filed or hereafter to be filed against the pertinent tariff
3 filing for purposes of hearing and disposition. Is there
4 any objection?

5 MR. YOUNG: No objection.

6 MS. TURNER: No objection.

7 JUDGE MINDLIN: There is none. Therefore, it is so
8 ordered.

9 We, at this point, want to be sure that all formal
10 parties either present in person or represented by counsel
11 have entered their appearance on the appearance sheet. Is
12 there anyone here who was not aware of the necessity and has
13 not done so? By formal parties we mean a party who has
14 filed a formal complaint or a party who may have filed a
15 petition to intervene. At any time.

16 Are there any motions or petitions preliminary to our
17 proceeding with the other items on our agenda?

18 (No response.)

19 JUDGE MINDLIN: There appear to be none. Then, our
20 next item on the agendum is to note the prehearing con-
21 ference memoranda which we have received to this moment. If
22 we inadvertently omit any, of course, we shall be reminded.
23 If there are any others, we shall give you the opportunity
24 to file them and make further disposition.

25 We have a memorandum from the Pennsylvania Power and

1 Light Company, the Commission's Prosecutory Staff, the
2 Consumer Advocate, Crown American Corporation and Hess's
3 Department Stores; Milton Manufacturing Company, Bethlehem
4 Steel, Lehigh Valley Power Committee, and St. Regis Paper
5 Company.

6 First of all, insofar as we have received copies, have
7 I noted all that have been filed with us. The next question
8 is has distribution be made?

9 MR. MANN: Susquehanna Alliance filed about three days
10 ago.

11 JUDGE MINDLIN: You say you filed. What do you mean
12 by that? I certainly know that you filed a complaint. We
13 are talking about a prehearing conference memorandum, which
14 is a paper helping us with our agendum.

15 MR. MANN: I am sorry.

16 JUDGE MINDLIN: We take it that those parties who have
17 filed now their memorandum with us have also arranged for
18 appropriate distribution and we shall talk about appropriate
19 distribution in a few moments.

20 Insofar as other formal parties are concerned, we are
21 ordering that all formal parties intending to participate
22 shall file by January 21, 1983, a prehearing conference
23 memorandum in which they shall set forth a summary statement
24 of their position, a summary statement of the issues to be
25 filed or raised, and a declaration of intention with respect

1 to the presentation of testimony, together with a list of
2 witnesses and a description of their areas of testimony, if
3 they will, in fact, be offered.

4 Is there any question now with respect to prehearing
5 memoranda? Of course, the memoranda have just been filed
6 and there is a problem of our ability adequately to deal
7 with them or to deal with them at all really, this morning.
8 Therefore, it is appropriate to note that they will be
9 studied. The prehearing conference is a continuing
10 conference used for purposes of helping us to regulate the
11 progress of the case. So whatever is not adequately dealt
12 with this morning and contained in these memoranda will be
13 dealt with in due course. If it will become appropriate a
14 little later in our conference, we will take some time to
15 review the contents of one or more of these memoranda. We
16 shall make provision for that. Any comment on that item?

17 (No response.)

18 JUDGE MINDLIN: Next we would ask the company to
19 report on the distribution of supporting data, prepared
20 testimony and associated exhibits to this point.

21 MR. YOUNG: Your Honor, all of those items have been
22 distributed to all of those people who we understood to be
23 parties. Anybody who hasn't received a copy of the
24 company's filing and various exhibits, let us know and we
25 can arrange for that but I think they have been broadly

1 distributed to the parties at the time of the filing and all
2 parties from the last case, as a matter of fact.

3 JUDGE MINDLIN: We shall take occasion to propose
4 generally to order that the formal parties to these
5 proceedings shall be required where service and distribution
6 of documents, other than pleadings, are otherwise appro-
7 priate to serve and to distribute copies of such documents
8 without request only to active parties and otherwise, timely
9 to notify other parties of the availability of such copies
10 upon request.

11 This is a procedure which we followed in prior cases.
12 We have proposed to follow it in this case. The obvious
13 purpose of this order is to avoid broadcast and wasteful
14 distribution of paper, which serves an environmental purpose.
15 Any objection to that proposed order?

16 MR. BARASCH: Your Honor, just a question of
17 clarification. I take it active parties would be something
18 that would be determinable from those who show up for the
19 hearings? Is that what you mean?

20 JUDGE MINDLIN: We have never taken, assumed the
21 burden of defining active parties. We have always been able
22 to determine them from their activity. So we will rest with
23 that until we encounter a problem, and we anticipate none.
24 We have never had any. I think as far as recipients are
25 concerned, they won't want to be burdened with unnecessary

1 and useless papers and so there ought to be no problem.

2 Now, our next item is to note this. At the initial
3 hearing, the respondent similarly, to its recently preceding
4 cases, shall identify its supporting data and its prepared
5 testimony and associated exhibits as marked.

6 In connection with such identification, the respondent
7 shall supply a written summary description of the several
8 documents to be offered and a specification of the
9 responsible witnesses. Our purpose is to save the oral
10 recitation. It is anticipated that the respondent will
11 supply, as in recently prior proceedings, a comprehensive
12 index of subject matter. That, I believe it has already
13 supplied with its filing material.

14 MR. RUSSELL: Yes, Your Honor. That was included.

15 JUDGE MINDLIN: Next, we propose that in the case of
16 prepared testimony and associated exhibits intended to be
17 offered for the record an appropriate certification may
18 suffice for and supply the authentication otherwise required
19 of the witness responsible for the prepared testimony and
20 the associated exhibits.

21 Thus, for example, respondent's counsel would be
22 permitted as appropriate, to certify collectively to the
23 authentication of the initially prepared testimony and
24 associated exhibits upon the occasion of their initial
25 identification.

1 Our purpose for this proposal is to anticipate and to
2 save the recitation of authentication by each witness in the
3 situation of prepared testimony and associated exhibits.
4 And in the presence have the opportunity for
5 cross-examination and the opportunity for a motion to strike.

6 First, is there any question about what we intend? We
7 have followed that procedure before. Is there any objection?

8 (No response.)

9 JUDGE MINDLIN: All right, then, our proposed order is
10 so ordered.

11 Our next item on the agendum is simplification of
12 issues. It is apparent from a survey of the respondent's
13 initial filing that the limits of time for litigation will
14 be strained more than usually. It is therefore more than
15 usually desirable that the issues be dealt with
16 expeditiously.

17 Expeditious treatment entails limitation and
18 simplification of issues. We are confident that the parties
19 will try hard to resolve as many issues as possible by
20 compromise and stipulation. We would expect that the
21 parties would agree that it is preferable to deal adequately
22 with fewer issues.

23 The forthcoming placement of a major nuclear
24 generation plant in service is a predominant aspect of this
25 proceeding. It entails a complex of particular issues

1 involved with cost and benefit. If these particular issues
2 are to receive proper and adequate attention, other, more
3 ordinary issues of lesser impact must be wisely limited or
4 simplified or resolved through stipulated compromise.

5 So we shall ask are the parties prepared to respond in
6 any respect now in terms of simplification of issues? For
7 example, in the area of rate base and measures of value?

8 MR. YOUNG: Your Honor, included in the company's
9 memorandum is a suggestion on Page 4 that there be some
10 agreement or stipulation of issues reached with respect to
11 all of the non-Susquehanna aspects of this case with the
12 possible exception of rate of return and rate design.

13 It's the company's view that with respect to the
14 non-Susquehanna rate base revenues and expenses, the issues
15 and the presentation which the company has made is not only
16 consistent with but actually a conservative version of
17 recent decisions by this Commission involving this company
18 as well as involving other utilities in this State and
19 therefore, it's our view that little will be gained by
20 extensive perusal and wrestling with those issues and that
21 the case will be able to focus, as you suggested on the
22 major issues of the case involving Susquehanna if some
23 agreement or stipulation in that area is reached. We have
24 proposed that in our pre-trial memorandum.

25 JUDGE MINDLIN: We would think it no exaggeration to

1 say that considering the issues involved with the
2 Susquehanna Nuclear Generating Plant in this case are
3 monumental. My recollection of such of the filing material
4 as we have covered is that the non-Susquehanna issues
5 represent approximately a third of the filing.

6 Now, you have heard the context in which counsel for
7 the company has placed those issues. It is only fair to say
8 that it certainly may be too early for any kinds of
9 commitments to be made this morning. But it certainly has
10 been both experience in this case and in other cases that
11 the effort at resolution of issues is a continuing effort.

12 We trust that there has been some beginning. If there
13 hasn't been, we encourage a beginning now to address the
14 resolution of as many issues, particularly in the area other
15 than Susquehanna to make as great an effort as possible to
16 simplify those issues and resolve them where that's possible.

17 Do any of the other parties have any comment in this
18 area at this time?

19 MS. TURNER: Your Honor, staff has had only
20 preliminary discussions with the company about settlement of
21 these issues but staff is open to considering it and has
22 begun giving it some thought and I am sure, along with other
23 parties, will be willing to discuss settlement of those
24 issues.

25 JUDGE MINDLIN: Needless to say, wise compromise is a

2 repeat that to the extent that we save time from, not only
3 for the purpose of saving time, but in the context of
4 reasonable dealing, save time from the non-Susquehanna
5 issues, we shall have more time to devote to that part of
6 the case which involves at least two thirds of the filing,
7 not to speak of the unique and complex issues, particularly
8 related to that aspect.

9 All right. Any comment by other parties?

10 (No response.)

11 JUDGE MINDLIN: There isn't any. Therefore, we would
12 repeat one more time that we expect the parties will engage
13 in continuing efforts to limit and to simplify issues.

14 MS. DOBBINS: Your Honor, I would like to be notified
15 of any of these conferences that will be taking place so
16 that either I could come or send somebody down from our
17 office.

18 JUDGE MINDLIN: That you may expect. At a later point
19 in our -- although there is no reason for waiting for it --
20 but at a later point in our agenda, when we deal with the
21 question of discovery, we are going to particularly deal
22 with also the question of informal conference and this part
23 of it that has to do with seeing that everybody properly
24 interested in the conference be notified. That has always
25 be the practical case that interested parties are given

1 notice. Yes, sir.

2 MR. STILB: I just was a little bit worried about that
3 in the sense that if that does represent one third of the
4 rate asked for, \$100 million, that that be not looked at
5 lightly. That's all I would say, that it not be glossed
6 over. Thank you.

7 JUDGE MINDLIN: There is nothing that will be looked
8 at lightly. Nothing. There is nothing that hasn't been
9 looked at day by day now since the day of the filing by one
10 party or another.

11 The fact of the matter is that in the past history,
12 particularly of the two preceding cases, there has been in a
13 preceding case, a complete settlement and anyone not
14 familiar with that might study the effort that went into
15 that disposition and in the prior case, there was a
16 resolution of issues, for example, in the area of rate
17 structure and you might look into that or seek guidance for
18 the type of effort that was made there to resolve that group
19 of issues.

20 Now, we have to pay our respects to, and that's about
21 what it amounts to, to the possibilities of settlement. It
22 is only realistic from a survey of the respondent's initial
23 filing to recognize that the potential for an overall
24 settlement is doubtful, to say the least.

25 The special and particular issues involved in nuclear

1 generation are of such magnitude and complexity and
2 controversial nature as to render their litigation an
3 inevitable mode of resolution in a general rate proceeding
4 such as the one before us. I don't even know if there's
5 room for comment but the opportunity is afforded.

6 (No response.)

7 JUDGE MINDLIN: Then we shall move on. The next item
8 on our agenda deals with discovery. We encourage the
9 judicious use of discovery procedures, particularly through
10 formal interrogatories and informal conference, and
11 especially through informal conference for developing
12 relevant and material information and data and relevant and
13 material evidence.

14 We take note of the inappropriateness of the use of
15 cross-examination and the waste of hearing time for purposes
16 of discovery, essentially. We have, for example, all
17 witnessed the waste of time incurred when witnesses rummage
18 for data and information during hearing time.

19 For the purpose of regulation, moving on with this
20 topic, we fix ten calendar days as the time for answering or
21 objecting to written interrogatories. We expect counsel
22 reasonably to accommodate each other with agreed extensions
23 where these are reasonable; or to make other provision among
24 themselves.

25 Counsel, in past experience, have always been wise and

2 reasonable in their own interests and interest of their
3 clients, to cooperate in expediting the discovery process.
4 There have been occasions where there have been serious
5 complaints where there are problems in the way of either
6 response or objection. We, of course, will always be
7 available to deal with them, if necessary, by telephone
8 conference.

9 MR. YOUNG: Your Honor, I would like to respectfully
10 request that either ten business days or 15 calendar days be
11 used for response. I am perfectly happy to have a shorter
12 period for objection. It seems to me that we have had that
13 kind of a time frame in the past and the voluminous numbers
14 of interrogatories that flood the company make response
15 within ten calendar days, particularly when they often
16 arrive on Saturdays or Fridays, a very difficult thing and I
17 think that the proceeding would not be delayed.

18 We are certainly prepared to respond as quickly as we
19 can, but I think to save repeated requests for an additional
20 few days it would be more constructive to use ten business
21 days or 15 calendar days.

22 JUDGE MINDLIN: That certainly appears to us to be
23 reasonable. Of course, we may have given undue emphasis in
24 our own mind to what practically will occur in any event and
25 where there is difficulty in responding and perhaps to
anticipate ten calendar days will immediately invite diffi-

1 where there is difficulty, counsel generally has
2 been able to resolve that difficulty. In some instances,
3 not.

4 We are prepared to change that order to ten working
5 days. We do so for the present --

6 MR. SUFFIAN: Your Honor, for a point of clarification
7 would the ten day period commence from the date appearing on
8 the interrogatories prepared by the proponent or the date of
9 receipt by the recipient?

10 JUDGE MINDLIN: I think the time for answering inter-
11 rogatories is the time of service.

12 MR. SUFFIAN: The date appearing --

13 JUDGE MINDLIN: The time of service is the date of
14 receipt. I think that is -- am I correct in that? That is
15 a technical provision for counting time. For answering
16 interrogatories or responding to pleadings.

17 MR. BARASCH: Your Honor, I agree with Mr. Young's
18 suggestion. I think that's an appropriate period of time
19 for responding. My serious concern is that the time period
20 for objecting to interrogatories be changed because if we
21 are not going to be getting answers, we would like to know
22 sooner.

23 JUDGE MINDLIN: How about five days for objections?

24 MR. YOUNG: Five business days for objections would be
25 fine with us.

1 JUDGE MINDLIN: Without reworking our statement
2 previously, I think it's sufficiently clear that objections
3 are to be made within five working days of service of the
4 interrogatory.

5 Of course, we do emphasize that we shall afford
6 protective limits upon objection or petition where discovery
7 is untimely or unjustifiable.

8 MR. MCCLELLAND: Your Honor, if I may speak for a
9 moment, we share your concern with the problem of cross
10 examination and discovery. To that end, we have been trying
11 to do some informal discovery. We hope to be successful in
12 that.

13 It does take some time to render the products of
14 informal discovery for the record and we will do our best to
15 do that a part from cross examination, but at this early
16 point in the process, we have, of course, not completed that
17 and we look forward to doing that in the future, but it will
18 take a lot of reduction of some of the problems with the
19 construction of the plant to a written form which we can
20 then handle.

21 JUDGE MINDLIN: We are confident that counsel will
22 deal with that situation wisely. We do wish to emphasize,
23 because it has been a recurring experience, however, that it
24 is feasible and it should be expectable that cross examina-
25 tion not be used for purposes of making data requests,

1 except in special circumstances where the timing is such
2 that that might be the best procedure.

3 Anything that can be anticipated that needs to be
4 elicited in the way of information or data should not be
5 given to a witness who sits in the witness chair surrounded
6 by mountains of material and assistants and we have to spend
7 time and sit around while rummaging begins. That sort of
8 thing ought not to occur. It's really a waste of time and
9 that is something of which we will have probably an
10 insufficiency for this case.

11 Now, so far as informal conferences are concerned, as
12 we have made earlier reference, when circumstances suggest a
13 potentially general interest, and certainly potentially
14 general interest would be there if there is any resolution
15 of issues, not to say settlement. When circumstances
16 suggest a potentially general interest in informal
17 conference on particular matters, counsel are encouraged --
18 and we really expect that they would do so -- are
19 encouraged to notify and to arrange joint participation of
20 potentially interested parties.

21 Certainly everyone will wish to avoid wasteful
22 duplication of conference time. So far as service of
23 interrogatories and answers are concerned, we, of course,
24 wish to be served with the interrogatories and the answers
25 and further service then will be governed by our earlier

rule with respect to active parties.

Are there any questions, then, in that area?

MS. TURNER: Your Honor, I do have a question.

JUDGE MINDLIN: Yes.

MS. TURNER: Staff has specifically noted in its section on discovery, its prehearing memorandum that it intends to oppose the wholesale introduction of interrogatory answers into the record. That is that we would attempt to limit the introduction of interrogatory answers to those issues which are actually litigated, and we request that you would make a ruling on such interrogatory answers which would be introduced into the record at the close of the case. I wanted to know your opinion on --

JUDGE MINDLIN: It's been our conviction and our practice to prevent wholesale introduction of interrogatories and answers and accumulated exhibits at one time or another and we remember nothing so well as the first Bell case when there were perhaps a stack of documents, answers to interrogatories to the ceiling and they were all offered for the record. No.

Our practice is in terms of interrogatories and answers and those final exhibits to have the parties collect them. We also, in the presence of mountains of interrogatories, and we probably are not exaggerating, ultimately, will certainly amount to lofty mounds.

1 We don't want to be in a position of having to rummage
2 through them for those interrogatories and answers which
3 will be offered for the record. In such case as you go
4 along and as counsel have planned for their inclusion, make
5 arrangements to collect them and at the end of the case, to
6 introduce them by a suitable composite exhibit. Yes.

7 MR. BARASCH: Your Honor, for the record, I would note
8 that to date the Consumer Advocate's Office has served some
9 129 formal interrogatories on the company consisting of four
10 sets. And those areas all relate to matters other than the
11 construction audit that our office is undertaking on the
12 Berwick Nuclear Plant.

13 We started our presentation and preparation for the
14 Berwick portion of the case late this summer, long before
15 the company filed it's rate case and have propounded, at
16 this date, some 223 what we call informal interrogatories to
17 the company in that area.

18 I would point that out to Your Honor and request that
19 you make the appropriate ruling that those heretofore
20 informal interrogatories be considered part of what, the set
21 of rules that you have now established for the formal
22 interrogatories that we have served since we have filed our
23 complaint and since this case has been under way.

24 JUDGE MINDLIN: I think counsel will stipulate with
25 you.

1 MR. YOUNG: I don't have any trouble with that.
 2 They're proceeding, -- the only question I would have is
 3 that there are some 202 of the so-called informal
 4 interrogatories and whether answers to all of them will be
 5 complete within ten business days of today, I would not say
 6 because many of them are extremely complex and involve
 7 extensive research on the part of the company, but other
 8 than that, I am perfectly happy to have them treated as
 9 interrogatories in the proceeding.

10 JUDGE MINDLIN: We believe this situation is a typical
 11 example of how, on a typical matter of arrangement,
 12 accommodation can be made between the parties and between
 13 counsel.

14 MR. YOUNG: We have also been having informal
 15 conferences since late November on this subject with the OCA.

16 JUDGE MINDLIN: It may be appropriate at some stage in
 17 the proceeding, and we state this as a generality -- this
 18 procedure has been followed in the past, for example, in
 19 dealing with the broad outline of rate structure, dealing
 20 with an allocation study.

21 It may be appropriate to have, perhaps a totally
 22 informal conference in an area dealing with this nuclear
 23 generation issue. I don't know. I am suggesting that the
 24 parties might keep that in mind, where there will be a
 25 running amplification of what is presented in a reduced form.

1 in the evidence.

2 I don't know if that's meaningful to you or not, but
3 some of you may have experienced that kind of conference,
4 for example, in dealing overall with a subject such as rate
5 structure. Is there anything else, then, in that area?

6 (No response.)

7 JUDGE MINDLIN: Now, we come, of course, to the
8 easiest part of all of this and that's scheduling.

9 MS. TURNER: Your Honor, I would like to comment as a
10 transitional comment, I believe, that staff has also served
11 discovery. The interrogatories are not as numerous as the
12 Consumer Advocate's. We have a number of interrogatories
13 outstanding in both the non-Susquehanna and the Susquehanna
14 areas.

15 We believe that we would need answers to those
16 interrogatories, for instance, before entering any
17 substantive settlement discussions and certainly to allow a
18 time for preparation of cross examination. I would just
19 like to note that for the record here that we do have
20 outstanding interrogatories and that responses to them will
21 facilitate both settlement discussions and preparations for
22 hearing.

23 JUDGE MINDLIN: Of course, everything has its time and
24 its relatedness. We understand that and we understand that
25 particularly in respect of scheduling. Yes.

1 MR. BARASCH: Your Honor, a preliminary comment on
2 scheduling. I know you have not had a chance review the
3 prehearing memos, but I point out to the best of my
4 knowledge, at least three of parties have made extensive
5 schedules of their own; the staff, Consumer Advocate and the
6 company.

7 Without getting into the particulars contained in that,
8 I am sure you can look at that even as we are speaking, I
9 would just state the Consumer Advocate's view of what we
10 should try to attempt to achieve here. I think it is a very
11 good thing that the Commission suspended the rate increase
12 early.

13 I think it is an excellent thing that a prehearing
14 conference is being held some six weeks after the case was
15 filed because I think this will help us to rout through all
16 of the complexity that you, Your Honor, have made reference
17 to.

18 I think that for purposes of today, that any attempt
19 at setting a schedule should be limited to a skeletal
20 outline of begining, closing, dates for filing of testimony,
21 but that the ability of anybody at this point to know when
22 they can cross what witness and things of that nature, I
23 think would probably be better dealt with a couple weeks
24 from now, either among ourselves, after the discovery has
25 progressed further or perhaps in a second prehearing

1 conference closer to the beginning of the trial of the case.

2 I think an attempt to establish now when the rate of
3 return witnesses are going to appear when rate of return
4 interrogatories have not been filed is one of the necessary
5 negatives of having an early prehearing conference.

6 But if we don't attempt to solve that problem today, I
7 think the discussion of scheduling would be very helpful in
8 terms of when the hearing should start, the direct should be
9 completed. Direct testimony of opposing parties, rebuttal
10 and surrebuttal and the like and that's what I think we
11 ought to try to emphasize today in the discussion of
12 scheduling.

13 MR. YOUNG: Your Honor, I have just three things to
14 say on that subject. First, the company in this case filed
15 all of its testimony and exhibits on November 22. So unlike
16 a case where we might have brought a good bit of that
17 material in at this prehearing conference, it has been
18 available for the six weeks which have now lapsed.

19 Second, we have problems with the multitude of
20 witnesses we have in meeting their own schedules. A good
21 many of those people are busy company officials who are
22 involved in the operation and bringing on line of this
23 nuclear station and we can't simply get them to hearings on
24 a moment's notice, so that we do need advance information as
25 to when they will be required.

1 Finally, I think probably our most significant view
2 with respect to the scheduling other than insuring that the
3 case is concluded within the required time is that the
4 testimony which will be produced in this case with respect
5 to both the need for Susquehanna and the cost of Susquehanna
6 is undoubtedly going to be complex and involving computer
7 analyses and other problems of that kind which I don't
8 anticipate that the company can rebut within the usual week
9 to two-week period.

10 We would like to set up a schedule which permits us to
11 have at least four weeks to deal with those two features of
12 the testimony. With respect to the rest, we are prepared to
13 move as fast as usual and handle testimony and cross
14 examination whenever it can be scheduled, but we do want to
15 make it clear that with respect to that particular area in
16 developing our rebuttal testimony to whatever comes into the
17 case with respect to cost of Susquehanna and its need, we
18 will need more than the usual time.

19 MR. BARASCH: Your Honor, I suspect that is exactly
20 the area in which we will have the most difficulty in
21 arranging the schedule. There have been discussions prior
22 to today. I think it's fair to say that everybody made
23 gallant efforts to try to resolve those matters, but they
24 have not yet been resolved. When we get to that point, I
25 have some suggestions to make.

JUDGE MINDLIN: We came here today with the awareness
that there would be difficulties in the schedule. Some of
these difficulties have been alluded to. We are also aware
that they will all be resolved for the simple reason that
this case must be disposed of by this Commission by August
22. Is that not the end of the suspension period? Of this
year. Consequently, all the planning must be directed to
that end.

What we propose is to make some few general
observations and then not to clutter the record with our
free wheeling discussion of scheduling problems. After such
free wheeling discussion, when we have reached some
consensus and the time arrives for some order, we will
return to the record.

So what we will do now, of course, is again, to
emphasize that the suspension period ends** August 2, 1983.
We are presently suggesting, and we have not been able to
deal with the suggested schedules in the various memoranda.
They will be discussed when we reach that informal
discussion.

But our present suggestion is, and we want to put this
in some sort of a perspective is that testimony end on April
8, 1983. I want to put this in the context for counsel. We
have counted 54 working days between January 24 and April 8.
54 working days. We have suggested -- we are suggesting

1 that main briefs be filed by April 29.

2 You will notice that that is 21 days after the close
3 of testimony. We are suggesting that the reply brief be
4 filed by May 10. That, you will notice, we are speaking
5 here now of calendar days. That, you will notice is 11 days.
6 That date is 11 days after the filing of the main brief.

7 We are suggesting that if there is to be oral argument,
8 and we will determine that at the end of the case, oral
9 argument take place on May 16. That will be one day after
10 the scheduled in-service date of the Susquehanna plant.

11 We are suggesting a recommended decision be filed by
12 June 15. That, you will notice is approximately a month
13 after argument and perhaps five weeks after the reply briefs
14 are in. If you have had experience with the volume of
15 briefing, particularly from the volume of the formal parties,
16 that leaves approximately two months for exceptions to be
17 filed, for the Commission to study the record and to enter
18 its decision.

19 The smallest record that we have experienced in a PP&L
20 case has been approximately 2,000 pages. That was the first
21 of these cases and that did not involve a nuclear generating
22 plant. Yes, Mr. Zwally.

23 MR. ZWALLY: Your Honor, if I may suggest, that
24 schedule looks very ambitious to me. Perhaps the parties
25 could consider either reducing the time for exceptions or

1 making some other arrangement for exceptions in order to
2 reduce the time period and allow more time in terms of
3 developing the record.

4 JUDGE MINDLIN: Well, we have --

5 MR. ZWALLY: And the filing of briefs.

6 JUDGE MINDLIN: This has not been --

7 MR. ZWALLY: Two months between the recommended
8 decision and the Commission's final order is perhaps a time
9 period that could be reduced.

10 JUDGE MINDLIN: What's that, again, sir?

11 MR. ZWALLY: It's a period of time that could be
12 reduced.

13 JUDGE MINDLIN: What's that again?

14 MR. ZWALLY: Two months between the recommended
15 decision and the Commission's final order.

16 JUDGE MINDLIN: We have to understand, inevitably,
17 there will be slippage. But the amount of slippage that you
18 have, certainly the Commission can't be afforded fewer than
19 six weeks. The Commission expects, as a matter of general
20 rule, two months. So the most you have to play with, really,
21 and this seems to be quite beyond dispute, would be
22 approximately two weeks with this framework.

23 MS. TURNER: Your Honor, I might suggest I also think
24 that the schedule will, as you have proposed it, will
25 shorten the opportunities of the parties on the record. I

1 can see three areas where the parties might be able to, at
2 the end of the schedule, waive certain things which would
3 allow somewhat more time without getting into the front of
4 the schedule, that is waiving oral argument and waiving
5 reply briefs and reply exceptions.

6 I think that if oral argument is not required by any
7 party, unless Your Honor requires it, that that could be
8 waived at this time. I think that adequate main briefs and
9 adequate exceptions can, without replies, can significantly
10 reduce the paper load and the amount of complexity of
11 documents to be dealt with.

12 I would suggest that all parties consider waiving oral
13 argument, reply briefs and reply exceptions.

14 JUDGE MINDLIN: Well, all parties can consider many
15 things and nothing that has been said to this point has been
16 engraved in stone. We have afforded a framework. Let us
17 then go off the record and set about implementing,
18 confronting the actual problem and then these problems will
19 take on a more pragmatic statement.

20 MR. BARASCH: If I could make one statement before you
21 go off the record.

22 JUDGE MINDLIN: Yes.

23 MR. BARASCH: I would just point out -- and you
24 haven't had a chance to look at the document. -- if you
25 took a look at the three proposed hearing schedules that the

1 parties I know of, in the case of the staff and the company,
2 they are proposing closing the record some five weeks after
3 it was anticipated and fully six weeks when the Consumer
4 Advocate saw the record closing.

5 I take to heart your comments and certainly our office,
6 with the presence of three attorneys here should indicate
7 something for the magnitude of this case for our office. We
8 have undertaken the Susquehanna analysis which you describe
9 as monumental, unique and complex and by the time we look at
10 the record, the time period being allotted and some of the
11 requests the company has made for time to respond, we would
12 probably have to file our testimony last week in order to
13 comply with this schedule.

14 JUDGE MINDLIN: Let me just articulate a thought and
15 that is this. It is just as important to allow ourselves
16 adequate time to think about the issues and the resolution
17 as it is to spend our time multiplying the record for which
18 we would then afford ourselves less opportunity to think.

19 You have to understand that there will be many
20 complicated things to be considered. So the place to
21 economize, the place to economize is as well in the area of
22 amplifying the record or increasing the record as it is in
23 the area of allowing for proper disposition. I really can't
24 see any quarrel with that.

25 MR. BARASCH: Your Honor, so you can understand the

2 just of where we are coming from, I don't think we are
3 going to be in hearings five days a week, even under your
4 own schedule. It's not a question of the magnitude of the
5 report. It's the question of magnitude of the facts you
6 want to put on the record. I doubt that we will be in 40
7 days of cross examination of the company. I highly doubt
8 that.

9 JUDGE MINDLIN: I couldn't agree with you more that
10 it's certainly a very important matter as to which facts go
11 on the record. So let's go off the record presently and set
12 about beginning the task of scheduling. All right. We are
13 off the record

14 (Discussion off the record.)

15 JUDGE MINDLIN: We are ready to go on the record. We
16 order the present schedule. That schedule is subject to
17 change as circumstances may require. In the absence of
18 proper raising of those circumstances with the presiding
19 officer, the schedule will remain as presently indicated.

20 We note for the record prior to our setting out this
21 schedule that we shall, from hearing week to hearing week,
22 be available for and give attention to the schedule as we
23 present it and the problems of counsel and the parties.
24 Such changes, in such case will be made as circumstances
25 ongoing at those times will be brought to our attention.

We propose that hearings start the week including the

1 following scheduled dates, January 25, 26, 27 and 28. We
2 require that the following company witnesses be prepared for
3 appearing and testifying and that the parties be ready for
4 cross examination.

5 If any party is not ready for cross examination, that
6 party will indicate why, upon the record. Those company
7 witnesses for the first week are Messrs. Fortune, Hecht and
8 Vanderslice. So far as Mr. Hecht is concerned, it will be
9 agreeable with this presiding officer that his cross
10 examination in the area of the Susquehanna Generating Plant
11 is postponed until those times when this general subject
12 will be dealt with. He will otherwise be subject to cross
13 examination on the other parts of his testimony.

14 We schedule presently February 1, 2, 3 and 4 and
15 require that the company present Messrs. McNair, Hoch and
16 Beamer. We presently schedule February 8, 9, 10 and 11 --

17 MR. BARASCH: Your Honor, a question? Is Mr. Beamer's
18 presentation going to be his entire presentation or only
19 those matters that don't relate to Susquehanna?

20 JUDGE MINDLIN: In answer to that question, Mr. Beamer,
21 by description of the nature of his testimony, is to testify
22 in the area of lifespan depreciation, book reserve and the
23 modified sinking fund depreciation and sales forecasts.

24 He will be available for cross examination on all
25 those areas. If this will be good reason why an area, for

2 the modified sinking fund depreciation related
3 to the nuclear generating plant should be dealt with at a
4 subsequent time, then we will make provision for his
5 reappearance at a subsequent time. Does that answer your
6 question?

7 MS. TURNER: The same might be said for sales
8 forecasting.

9 JUDGE MINDLIN: The same is true of sales forecasting.
10 We schedule, presently order the scheduling of February 8, 9,
11 10 and 11 and we direct the appearance of the following
12 company witnesses: Messrs. Bernini, Berish and Mr. Baldwin
13 in the area of revenue adjustments.

14 We schedule February 15, 16, 17 and 18 and we direct
15 the appearance of Messrs. Brennan, in the area of rate of
16 return as a company witness and Baldwin in the area of rate
17 structure. We schedule February 22, 23, 24, 25, February
18 28 March 1, 2 and 3 for company testimony dealing with the
19 Susquehanna Nuclear Generating Plant. More specific
20 arrangements, more specific scheduling of witnesses will
21 take place at a subsequent date.

22 We are keeping March 8, 9, 10 and 11 in reserve
23 presently for miscellaneous purposes. We are scheduling
24 March 15, 16, 17 and 18 and March 22, 23, 24 and 25
25 generally for Staff and Consumer Advocate testimony. We are
scheduling March 29, 30, 31 and April 1 for the testimony of

2 presented by other parties.

3 We bear in mind that as we give further attention to
4 the scheduling, some of the witnesses intended to appear for
5 the other parties may be scheduled during the periods set
6 aside also for the staff and Consumer Advocate.

7 We presently are setting aside only April 6, 7 and 8
8 for rebuttal and surrebuttal testimony and we will make the
9 observation that the maximum cushion that we can possibly
10 contemplate for further scheduling, taking account of the
11 requirements for briefing, preparing the recommended
12 decision and the Commission's entering its final decision,
13 two weeks are the maximum cushion of time that we can
14 contemplate beyond the April 8 date.

15 Are there any further questions so far as dates?

16 MR. BARASCH: Your Honor, you made reference to
17 testimony of other parties. I presume that you would
18 anticipate the presentation of all rate structure testimony
19 at the same time?

20 JUDGE MINDLIN: Generally, that has been the practice.
21 We have tried to bring rate structure testimony in at the
22 same time so that the witnesses have an opportunity to hear
23 each other.

24 MR. BARASCH: If that were the case, Your Honor, I am
25 just guessing but I imagine the bulk of other parties'
testimony is going to be rate design and perhaps, well, as

1 you know from our off the record comments, we find the
2 presentation of our own direct case coming much too early,
3 but perhaps the first week of that three week block should
4 be for rate structure and at least at a minimum, push back
5 the bulk of what has to be done into the second two weeks,
6 of that three week period.

7 MR. YOUNG: I would not be enthusiastic about that
8 because that shortens the time for preparation of rebuttal.
9 Particularly rebuttal.

10 JUDGE MINDLIN: We thought that -- well, our thinking
11 simply is that the timing for rate structure and the timing
12 for rate of return is best in that period. It affords what
13 was indicated to be the required time.

14 MR. BARASCH: Which time period?

15 JUDGE MINDLIN: The time period, our scheduling of Mr.
16 Brennan and Mr. Baldwin in the week of March 15.

17 MR. BARASCH: We are talking about the opposing
18 parties on rate structure.

19 MR. ZWALLY: But that's directly related and we would
20 like to have --

21 JUDGE MINDLIN: I can't hear you, Mr. Zwally.

22 MR. ZWALLY: I think the two are directly related
23 which I think was your point. We don't feel we would have
24 sufficient time following the cross examination of Baldwin
25 to provide the direct testimony on rate structure in the

2 originally suggested schedule.

3 MR. RYAN: Perhaps part of the answer is to put the
4 Consumer Advocate's rate structure witness in, say, that
5 same week, the 29th of March.

6 MR. BARASCH: We would certainly do them all at the
7 same time.

8 JUDGE MINDLIN: We can give further attention to that
9 at subsequent consideration of scheduling.

10 All right. That stands, then as the outline of the
11 schedule. The next item --

12 MR. BARASCH: Before we go to the next item I would
13 like to state on the record the Consumer Advocate's views on
14 the scheduling. The early starting date that has been
15 proposed for the hearings will present serious problems in
16 terms of completing discovery.

17 The Consumer Advocate's Office also presents some
18 staff problems in terms of scheduling for who can cover
19 these hearings. The presentation of Mr. Vanderslice, a
20 major accounting presentation that early in the case
21 basically means we are not going to be able to prepare for
22 that testimony at that time.

23 The bulk of the dates you have mapped out are probably
24 pretty decent. The real problem again is when we get to the
25 end of the cross examination, insufficient time is given for

1 the preparation and presentation of our own direct case.

2 I again urge you to reconsider the filing dates, move
3 them back so that this monumental case that's so unique and
4 complex has adequate time to be developed.

5 JUDGE MINDLIN: Let me say with all emphasis -- and
6 this is absolute -- that the agreement of the parties with
7 respect to rendering a recommended decision on or about July
8 8, exceptions by July 25, reply exceptions by July 28 and a
9 PUC Order by August 19 is utterly and totally unsatisfactory.

10 If that is the case, and that we say with all emphasis
11 is the case, then it becomes necessary to move up the
12 schedule and that is exactly what we have done and we want
13 to make it as clear as it can possibly be made that if the
14 Consumer Advocate has any kind of problems, they will raise
15 them in public hearing.

16 We will deal with them in public hearing and we will
17 afford and we can guarantee a fair disposition to the
18 Consumer Advocate with the time available to us. We have
19 set aside 54 days for hearing. The last case entailed 19
20 days. There are 35 more days available than the first case
21 tried in the last three. 35 more days. We can guarantee
22 that our schedule is going to work.

23 MR. BARASCH: The last comment I would make is as I
24 have indicated off the record, the problem is not hearing
25 dates, the problem is the number of weeks to prepare for the

2 time for rebuttal and surrebuttal under this schedule will
3 probably make it impossible.

4 JUDGE MINDLIN: This is the last word. To afford the
5 Commission a period of three weeks after the entry and study
6 of exceptions for the preparation of an order in this case
7 is fantastic. Fantastic. We don't understand the rationale
8 involved.

9 Certainly, the amount of time that is necessary for
10 the staff, the Commission Staff to review all of the record,
11 all of the exhibits, all of the briefs, all of the
12 exceptions and to write out an order and afford the
13 Commission an opportunity to review the order, discuss it in
14 public hearing, reach agreement and then issue a final order,
15 to afford three weeks for that, really, I understand how
16 counsel views things from its viewpoint and that is an
17 example of a perspective from counsel's vantage point.

18 We have tried to, now, give the perspective from the
19 Commission's viewpoint and our viewpoint. That is the last
20 word. That is the last word except for continuing
21 consideration of the voice of reason.

22 MS. TURNER: Your Honor, in that case, staff will just
23 note its objection also to the schedule.

24 JUDGE MINDLIN: Fine. The next item for consideration
25 is the matter of places of hearing. It is our suggestion

2 set of hearings be held at Allentown.
3 What's the comment of counsel?

4 MR. BARASCH: Allentown presents serious problems for
5 us in that week, Your Honor.

6 MR. YOUNG: We have no objection to that.

7 MR. HOFFMAN: We would have no objection, Your Honor.

8 JUDGE MINDLIN: Are you prepared to tell us what the
9 problems are?

10 MR. BARASCH: It has to do with the commitment of
11 counsel to other matters.

12 JUDGE MINDLIN: Well, how would it be, then, if we met
13 in Harrisburg the first week and then in Allentown the
14 second week? How is that?

15 MR. BARASCH: If we are going to Allentown, Your Honor,
16 the third and fourth weeks will be far more preferable. One
17 counsel is tied up in another matter and another counsel has
18 personal obligations that conflict with going out of town?

19 JUDGE MINDLIN: All right. How would it be to have
20 Allentown the third week?

21 MR. BARASCH: That's fine, Your Honor.

22 MS. TURNER: That's not fine with us.

23 JUDGE MINDLIN: And Harrisburg the first two weeks?
24 We are going to go off the record.

25 (Discussion off the record.)

JUDGE MINDLIN: On the record. The first set of

2 Harrisburg. The second set of hearings scheduled to begin
3 on February 1 will be scheduled for Allentown. The third
4 set of hearings will be scheduled for Harrisburg.

5 MR. MCCLELLAND: Will the Allentown hearings be public
6 input hearings?

7 JUDGE MINDLIN: We will deal with public input
8 hearings separately. I can say almost certainly the
9 Allentown hearings will be. But we have that as a separate
10 subject.

11 Now, beyond that, the only specific requests that we
12 have had for places of hearings have been Hazleton,
13 Wilkes-Barre, and Scranton. As to those three cities it
14 would appear that Scranton and Wilkes-Barre are sufficiently
15 close to avoid separate hearings. One has to bear in mind
16 that there is considerable extra cost that's part of the
17 decision making process involved in moving hearings out of
18 Harrisburg.

19 First of all, the staff has to travel and that costs
20 money. I don't know how it affects, necessarily the
21 witnesses and other parties. Yes, sir.

22 MR. HOFFMAN: Your Honor, I would like an opportunity
23 to respectfully suggest a couple of other locations for your
24 consideration.

25 JUDGE MINDLIN: Yes, go ahead.

1 MR. HOFFMAN: I would like to point out from our
2 perspective one evening of public hearings is sufficient.
3 If you would want to put it at the end of the week in
4 Allentown, that might make it easier to get back. We don't
5 need a whole week of hearings in that one location, if that
6 would be preferable.

7 JUDGE MINDLIN: In scheduling non-evidentiary public
8 input hearings, it is best to schedule them early in the
9 week, because the hearings may wind up sooner than the end
10 of the week and in that case it would require parties to
11 come back, particularly the company and the staff and
12 Consumer Advocate to come back. For scheduling, what other
13 requests do you have, sir?

14 MR. HOFFMAN: Lancaster, Williamsport, Pottsville and
15 the Bloomsburg/Berwick area, Your Honor. I would also, on
16 the record, Your Honor, make a request on behalf of my
17 client, CEPA, that the public hearings be on the record,
18 that the public witnesses be have an opportunity to be
19 placed under oath and be subjected to cross examination, if
20 other parties wish to. We would like to have evidentiary
21 hearings for the public, Your Honor.

22 JUDGE MINDLIN: Do you have any idea what that entails?

23 MR. HOFFMAN: Your Honor, I believe I do. I believe
24 it is inappropriate to not to consider public input as part
25 of the evidence of this case. This case has generated an

1 immense amount of public interest. It is the largest rate
2 case in the history of this Commonwealth and we believe it's
3 significant enough, if people want to have the opportunity,
4 and we believe they do, to present their thoughts and have
5 it included in the record, that they should be so afforded
6 that opportunity.

7 JUDGE MINDLIN: First of all, your suggestions will be
8 taken under advisement. We are not going to complete our
9 schedule today. We are going to give thought to various
10 suggestions. I would want to know whom is it you represent?

11 MR. HOFFMAN: CEPA, Your Honor.

12 JUDGE MINDLIN: CEPA?

13 MR. HOFFMAN: Consumer Education Protective
14 Association.

15 JUDGE MINDLIN: What is CEPA's affiliation with the
16 Lancaster area or each of the other areas you have
17 enumerated?

18 MR. HOFFMAN: CEPA has chapters in most, if not all of
19 these areas.

20 JUDGE MINDLIN: Specifically which areas do you have
21 chapters and --

22 MR. HOFFMAN: There will be formal complainants in each
23 of the areas which I have requested hearings. If you would
24 like more specific information regarding specific areas, I
25 would have to consult with my clients who are in the area

1 but I need a couple minutes to do that.

2 JUDGE MINDLIN: If you don't mind, we would like to
3 note for the record first of all, to which complaint,
4 specific complaint does your representation extend?

5 MR. HOFFMAN: At this point, Your Honor?

6 JUDGE MINDLIN: Yes.

7 MR. HOFFMAN: To the complaint filed in the Bethlehem
8 area at this point.

9 JUDGE MINDLIN: The Bethlehem area?

10 MR. HOFFMAN: Yes.

11 JUDGE MINDLIN: Can you indicate for the record, what
12 connection, if any, there is between your representation of
13 the Bethlehem area and your requests for hearings in the
14 Lancaster, Williamsport, Pottsville, Bloomsburg and Berwick
15 areas?

16 MR. HOFFMAN: I would be glad to if I might have a
17 minute to confer with my clients.

18 MR. MANN: Your Honor, perhaps I could help. I would
19 second the suggestions of Mr. Hoffman. Susquehanna Alliance
20 does have members in all of those areas. Where it is true
21 that Scranton and Wilkes-Barre are close geographically,
22 there are many people who are an hour's drive from Scranton.
23 If they would have to go to Wilkes-Barre it would be an hour
24 and a half.

25 It's a very large geographic area and we have members

1 in all of these areas and we have tried to pick cities that
2 would be centrally located so people would not have to drive
3 more than an hour if they wish to participate.

4 JUDGE MINDLIN: Yes, sir.

5 MR. STILP: Being very familiar with the Wilkes-Barre
6 area and the number of elderly there who would like to
7 attend such hearings, there is no easy public transportation
8 between Wilkes-Barre and Scranton area and no transportation
9 to points in between there which would be suitable for
10 public hearing. So I would join my comment with that that
11 Wilkes-Barre and Scranton would require a public hearing.

12 JUDGE MINDLIN: First of all, would you be able to,
13 within a reasonable time -- and we will then determine
14 what a reasonable time is -- would you be able to indicate
15 to the presiding officer how many members of the public you
16 would expect to attend at these public input hearings in the
17 places for which you have made requests and how many of
18 those attending you would expect to wish to testify under
19 oath and to the extent that you are able to, within whatever
20 this reasonable time may be, identify those witnesses who
21 would want to testify under oath to do so. Would you be
22 able to respond to that?

23 MR. MANN: I would say it would be very difficult to
24 put anything other than an estimate on those numbers. My
25 understanding of the nature of a public input hearing is

1 people will not have to sign up the names at any advance
2 period and people would be able to show up that evening.
3 Our indications are there will be significant numbers in
4 each of those areas but as to the exact numbers, it would be
5 very difficult to ascertain.

6 MR. HOFFMAN: Your Honor, we would be able to provide
7 the vast majority of that information to you by the 21st
8 when we file our prehearing memorandum, if that is timely.

9 JUDGE MINDLIN: We will ask each of the parties to
10 make their best statement in response to our request in your
11 memorandum. We will also extend the requirement for a
12 prehearing memorandum to those parties who are presently
13 proposing to use the public input hearings for purposes of
14 presenting testimony.

15 Now, what is the response, if any, from counsel for
16 other parties to place requests? Several suggestions,
17 including place requests?

18 MS. TURNER: It depends on what hearings would be
19 scheduled in terms of for staff, in terms of expense of
20 transporting witnesses. There are some hearings which
21 counsel may be able to handle singly. There are other
22 subject matters where counsel would want an expert, during
23 cross examination and we certainly feel that we would prefer
24 to have our testimony in Harrisburg, so that indeed, in
25 terms of scheduling, in a variety of areas, I think we would

1 have to know a little more specifically what would be
2 required of us in terms of travel cost. Our main problem is
3 travel cost and being able to fully examine an issue either
4 in cross examination or in direct testimony. I don't know
5 what the other --

6 MR. YOUNG: Your Honor, I think we would prefer to
7 have --

8 JUDGE MINDLIN: Excuse me, Mr. Young. I would prefer
9 to have the staff counsel conclude.

10 MR. YOUNG: I am sorry. I thought she was through.

11 MS. TURNER: Actually, I thought I was through too,
12 but I am not. Particularly in terms of the fact that we
13 will be preparing testimony during, for instance when cross
14 examination is going on. So if staff must come out of the
15 office, that will slow that process up. So outlying
16 hearings which will involve travel or overnight stay can
17 present a problem.

18 JUDGE MINDLIN: All right. Mr. Young.

19 MR. YOUNG: I think our preference would be to have
20 hearings concerned with the regulatory evidence, with the
21 possible exception of the Allentown hearing here in
22 Harrisburg and that if public hearings are to be held, they
23 be held on some nighttime basis unconnected with the
24 continuing process of these regulatory hearings here. I
25 think we would agree with Commission Counsel that the major

concerned with witnesses and their cross examination, who are dealing with the regulatory issues should be not transported around throughout the entire territory.

JUDGE MINDLIN: Consumer Advocate.

MR. BARASCH: Your Honor, I generally support the desire for public input hearings suggested by Mr. Hoffman and Mr. Mann and Mr. Stilp, and I hope they will correct me if I am wrong, but I gather that their major interest was in the public input presentations.

It appears to me from the list of locations that many of the locations being suggested could be reached by car from Harrisburg in the evening of a day when there may have been other hearings, so I don't necessarily think there is any conflict between our needs which are similar to the staff's, of not running up incredible amounts of travel expense if just an attorney can be present at the public input hearings in the evening.

Lancaster, certainly, I am not aware of exactly the time and distances but I am sure somebody could point it out to me, but it appears most of these places could be reached by car in the evening of a hearing.

MS. TURNER: Perhaps I was incorrect. The request was not that part of the evidentiary hearings be held up there?

MR. BARASCH: I am not clear on that.

MR. HOFFMAN: Your Honor, I initially suggested that.

1 However, we would be willing to just have hearings with
2 public input and not have a technical side of it. I was
3 trying to make a more judicious use of our time. If we are
4 going to Allentown, we might as well handle some of the
5 technical stuff.

6 We have no objection to what the company is proposing
7 and what the other folks are proposing and just hold public
8 hearings outside of Harrisburg and keep the technical stuff
9 here.

10 JUDGE MINDLIN: I hope you will give attention, in
11 your memorandum, to the legal implications of a public
12 hearing with sworn testimony. Were you going to say
13 something?

14 MR. MANN: I was just going to say also our primary
15 interest was in having public input hearings. I would
16 suggest if we could schedule at least one week in the
17 northern part of the territory would be preferable. But our
18 primary concern is having public input hearings
19 geographically placed so that people can reach them with
20 relative ease.

21 MR. BARASCH: You can go ahead with evidentiary
22 hearings in Allentown and some of the locations that are
23 more easily reached from there in the evening than from here.
24 The point is to schedule the formal, technical presentations
25 in Harrisburg and Allentown. I think probably somebody

1 could correct me that has a good understanding of geography,
2 to reach those spots in the evening --

3 MS. TURNER: Let me just register here the fact that
4 if the same attorney is expected to cross examine Monday and
5 Tuesday and I have a Monday night public input session, it's
6 going to be pretty hard for that attorney to travel and
7 prepare for the next day. I think if the attorneys for the
8 various parties are expected to attend, that that's going to
9 put quite a strain.

10 JUDGE MINDLIN: Our catalog of problems has been
11 somewhat increased. But they, too, will be solved.

12 MR. YOUNG: I was going to say with respect to the
13 public hearings, I guess my sense would be that they should
14 not be evidentiary, on-the-record presentations or if they
15 are, there ought to be some clear understanding as to the
16 import and substance for which that testimony is being
17 presented.

18 I think if, out in some distant city, an accountant is
19 going to get on who hasn't looked at any of the material in
20 this case and testify an hour on the merits of the case,
21 that he's assessed from an accounting standpoint, because we
22 are going to have to go there, track him down, cross examine
23 and everything else.

24 If those people are going to be presenting testimony
25 as to their personal non-expert view as to how they feel

1 about the rate case, I don't care if that's made a matter of
2 record, and I don't think it is necessary at that point for
3 a large troupe to go out there and cross examine. That's
4 the parameter we have got to establish if it's going to be
5 evidentiary.

6 JUDGE MINDLIN: We don't want to multiply the
7 paperwork. There certainly will be enough paperwork in this
8 case. We are going to take the question of places of
9 hearing and non-evidentiary and the question of non-
10 evidentiary or public input evidentiary hearings under
11 advisement.

12 We do propose, however, in connection with the
13 Allentown hearing to set an evening public hearing. We will
14 have to determine, by that time, the nature of that hearing,
15 but what we started to ask then was for the parties who wish
16 to do so, be kind enough to submit a memorandum to the
17 presiding officer on the matter of the place of hearings and
18 the manner of dealing with public input hearings.

19 I don't know that there is anything further to be said
20 at this time.

21 MR. MANN: Your Honor.

22 JUDGE MINDLIN: Yes.

23 MR. MANN: May I request that we consider having some
24 sort of lead time in terms of announcement of these public
25 hearings? For example, if we are not going to reconvene

1 until the first week of hearings, to announce that the
2 following week there will be a public hearing, that won't be
3 enough time to make the public aware of a public hearing.

4 JUDGE MINDLIN: There will be a notice that will go
5 out to all formal parties and such parties who have
6 indicated a desire to the Secretary's Office to receive
7 notices. So scheduling will go out and scheduling will
8 include a non-evidentiary hearing in Allentown.

9 We shall have to make some kind of determination as to
10 the sworn or unsworn record or evidentiary record or non-
11 evidentiary record of these public input hearings. That we
12 will properly do at the hearing here in Harrisburg the first
13 week.

14 So far as the interested parties, that doesn't make
15 any difference. If you are parties of record, you will have
16 people present and who are going to testify, and our rulings
17 are impacted greatest to the majority of parties and we will
18 somehow have to deal with that impact.

19 I want to, in all honesty tell you, I have the gravest
20 doubts about the legal status of permitting a random number
21 of people to testify under oath for purposes of creating an
22 evidentiary record upon which this case is to be decided.
23 That has monumental problems connected with it. Is there
24 anything else presently?

25 MR. YOUNG: Your Honor, I have one point. As a result

1 of the Declaratory Order which the Commission entered in
2 this case, there is one evidentiary matter which will, at
3 some point have to fit into the schedule but which we
4 haven't dealt with at the moment and I simply wanted to
5 highlight it at this point.

6 That is if Susquehanna comes on line at some time
7 during this proceeding, that Declaratory Order provides for
8 the reserving of the costs connected with that plant,
9 setting aside of the fuel and the energy consequences and
10 then some amortization of those costs at some later stage.

11 In the company's original presentation there is simply
12 no way of knowing what they will come out to, but the
13 Commission has indicated that in this proceeding there will
14 be a discussion of over what period those costs will be
15 amortized and how they will be analyzed and determined.

16 At some point that will arise and we will have to
17 determine before the end of the case

18 JUDGE MINDLIN: Which order are you referring to, Mr.
19 Young?

20 MR. YOUNG: Declaratory Order issued by the Commission
21 I believe in June of last year at the request of the company
22 which indicated that if the company brought Susquehanna on
23 line before the end of this case, it could reserve and set
24 aside in a deferred accounting, the costs that were con-
25 nected with Susquehanna during the period until the rates in

1 this case become effective and that some amortization of
2 those costs would be provided for.

3 It also provided that if Susquehanna came on after
4 this proceeding was concluded there was a so-called late
5 window with respect to dealing with the rate consequences of
6 that fact and that Declaratory Order, so far as I am
7 concerned, is a part of these proceedings and we would have
8 to deal in connection with it.

9 JUDGE MINDLIN: I am not familiar with the contents of
10 that order. Does that case have a docket number?

11 MR. YOUNG: P-820367.

12 JUDGE MINDLIN: P-820367?

13 MR. YOUNG: Right.

14 JUDGE MINDLIN: We will have to study that.

15 MS. TURNER: Your Honor, our interpretation of that
16 order is congruent with the company's to the extent of
17 deferring but not the concept of amortization of those costs
18 to be included in this rate case. It is our understanding
19 that that issue was to be deferred to a subsequent rate case.

20 MR. CALIENDO: No. The order is very clear.

21 MR. YOUNG: It's quite clear in the order.

22 JUDGE MINDLIN: If you will, please, all that we need
23 be aware of now is that the order exists. We shall have to
24 study it and take account of it the and afford the parties,
25 all interested parties an opportunity to deal with it by way

1 of evidence, law or otherwise.

2 MR. YOUNG: That's my only point.

3 MR. BARASCH: I would note for the record we are
4 heavily involved in that Declaratory Order. There were
5 extensive negotiations which preceded the filing of it.
6 Extensive negotiations that followed the Commission's Order
7 in that matter. And our appeal to the Commonwealth Court
8 was subsequently withdrawn. I would agree that's not the
9 substance of that order. I would submit that any increase
10 in the amount that's filed I think amounts to a multi stage
11 rate filing and is illegal under the Public Utility Code.

12 JUDGE MINDLIN: We have a number of decisions to make
13 before we reach a decision on that particular point. Is
14 there anything else for this morning's disposition? Yes,
15 sir.

16 MR. STILP: With regard to the Allentown hearing, you
17 say you will know more about it later. What about with
18 regard to the Harrisburg hearing? Any indication of when
19 that might be or any kind of discussion on that? Is that
20 too early.

21 MS. TURNER: Harrisburg public input?

22 JUDGE MINDLIN: No. We haven't set any time for that.

23 MR. STILP: I was wondering if it might occur within
24 the first week of hearings here.

25 JUDGE MINDLIN: No, it will not. We have had no

1 information of a desire for a public input hearing in
2 Harrisburg.

3 MR. MANN: Your Honor, I would like to give you that
4 indication of the desire for public hearings. That was to
5 be included as part of the cities we were requesting.

6 JUDGE MINDLIN: And who is it you represent, sir?

7 MR. MANN: Susquehanna Alliance. We have members in
8 all of the cities I have mentioned.

9 JUDGE MINDLIN: How many members do you have in the
10 City of Harrisburg?

11 MR. MANN: I can't tell you offhand.

12 JUDGE MINDLIN: Well, would you inform us perhaps in
13 the next day or so. Just inform us. We will have to make
14 our judgment about the wisdom, reason and necessity for that
15 kind of a hearing.

16 MR. HOFFMAN: Point of clarification. Was that
17 information that you had requested before regarding the
18 various locations, is that due on the 21st with our
19 prehearing memorandum or are you looking for that
20 information within a couple of days?

21 JUDGE MINDLIN: I am looking for that by the time of
22 the prehearing memorandum. But as far as Harrisburg is
23 concerned, we are going to meet shortly so I would want to
24 know shortly about Harrisburg specifically.

25 MR. HOFFMAN: Fine, Your Honor. One other point.

1 Will you be attaching a service list to your prehearing
2 order? Would that be possible?

3 JUDGE MINDLIN: We do not see a necessity for a
4 separate formally drawn order. Our various rulings as they
5 have been recorded in the transcript of this hearing will
6 constitute orders for purposes of this proceeding. So there
7 will be no separate prehearing order.

8 MR. HOFFMAN: Thank you, Your Honor.

9 MR. EATON: With respect to the determination of the
10 active participants, could we have a copy of the entry of
11 appearances which are made today in order that we can
12 appropriately serve parties participating in this hearing
13 with the additional prehearing memorandum that were filed?

14 JUDGE MINDLIN: I think the Court Reporter will
15 cooperate with you to afford you an opportunity to have a
16 copy made while you are here. Yes?

17 MR. STILP: The public is a nebulous body. I am
18 wondering if you can give some guidance on the amount of the
19 public you would like to see applying to you for a public
20 hearing before that would trip the balance in favor of a
21 public hearing. Some guidance? Is there any guidance?

22 JUDGE MINDLIN: I can't presently. I simply can't. I
23 won't improvise. Anything else?

24 MR. BARASCH: One other matter. So it's clear in my
25 mind the rationale behind the schedule that's been set here,

1 under your schedule, you are assuming when, as a date for
2 your recommended decision to the Commission?

3 JUDGE MINDLIN: My recommended decision, June 15.

4 MR. BARASCH: And I think you said five weeks for the
5 preparation of the decision? From the close of the record?

6 JUDGE MINDLIN: From the close of the record? No, not
7 from the close of the record. From the filing of the reply
8 briefs.

9 MR. BARASCH: Five weeks from the filing of reply
10 briefs?

11 JUDGE MINDLIN: Yes. Is there anything else?

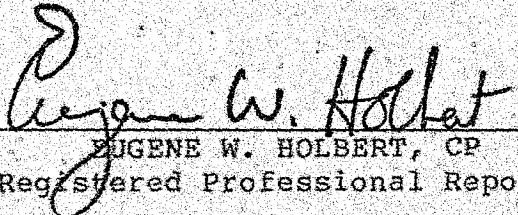
12 (No response.)

13 JUDGE MINDLIN: Then we shall next be meeting at our
14 first hearing and we now are in recess.

15 (Whereupon, at 1:00 p.m., the prehearing conference
16 recessed.)

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