

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission,  
et al. v. Equitable Gas Company, a  
Division of Equitable Resources, Inc.

Docket No.  
R-2008-2029325,  
et al.

Further Hearing.

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Pages 313 through 332

Hearing Room 2, Plaza Level  
Commonwealth Keystone Building  
Harrisburg, Pennsylvania

Thursday, November 20, 2008

Met, pursuant to adjournment, at 1:03 p.m.

BEFORE:

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WITNESS INDEX

WITNESSES

DIRECT   CROSS   REDIRECT   RECROSS

(None.)

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FORM 2

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P R O C E E D I N G S

1  
2 ADMINISTRATIVE LAW JUDGE JOHN H. CORBETT: Good  
3 afternoon, everyone. This is the time and place scheduled  
4 for further hearing on the matter involving the Pennsylvania  
5 Public Utility Commission, et al. vs. Equitable Gas Company  
6 at Docket No. R-2008-2029325, et al.

7 I note for the record the presence of counsel for the  
8 various parties.

9 We were scheduled to resume the hearing this morning  
10 at 11:00. And prior to the hearing I had a discussion with  
11 Mr. Clearfield, representing the Independent Oil and Gas  
12 Association of Pennsylvania.

13 At that time Mr. Clearfield indicated that the  
14 parties were in the process of negotiating a settlement,  
15 that they needed additional time to consider the various  
16 proposals that were outstanding, and asked that we postpone  
17 the start of today's hearing until 1:00; which I granted to  
18 the parties. So we're now beginning this afternoon at  
19 approximately 1:00.

20 I also understand at this point that a settlement has  
21 been achieved between Equitable and IOGA. But Mr. Thomas,  
22 I'll let you address that at this point.

23 MR. THOMAS: Thank you, Your Honor.

24 Sometime after 12:30, we were able to achieve a  
25 settlement as between the company and IOGA, which would mean

1 that we have reached a settlement with the statutory parties  
2 and IOGA.

3 There are a couple of parties with whom we have  
4 technically reached a settlement. The U.S. Steel, through  
5 the named EII, and The Techs, we need to share the  
6 settlement we've reached with them, as well as Dominion  
7 Retail.

8 We were unable to include the other parties in our  
9 discussions, simply because we didn't have enough time in  
10 our discussions, especially the discussions into the evening  
11 last night and today with IOGA were so IOGA issue-specific,  
12 that we just didn't have the time.

13 We do not have the settlement reduced to writing yet.  
14 We're working on that. It's kind of complicated as far as  
15 some of the language and schedules, but we have achieved  
16 that settlement.

17 What we would propose, Your Honor, consistent with  
18 your prehearing order, would be that we would reduce the  
19 settlement to writing among the parties, we would bring in  
20 the parties that haven't had a chance to take a look at the  
21 settlement that was achieved, and that we would present the  
22 settlement with supporting statements no later than, I  
23 believe, the date you set in the prehearing order was the  
24 date for the reply briefs. But we would certainly like to  
25 submit it much earlier than that; hopefully no later than

1 the date of the main briefs.

2 JUDGE CORBETT: Okay.

3 MR. THOMAS: And Your Honor, I should also add in  
4 connection with that, by agreement between the two settling  
5 parties this afternoon, it would obviate the need for  
6 witnesses to take the stand and to be cross-examined.

7 JUDGE CORBETT: Okay.

8 Does anyone else wish to be heard on this matter at  
9 this point?

10 (No response.)

11 JUDGE CORBETT: Okay. There are some housekeeping  
12 matters we need to take care of.

13 Mr. Clearfield, will you be putting in the record the  
14 prepared testimony of your witnesses?

15 MR. CLEARFIELD: Yes, Your Honor.

16 JUDGE CORBETT: All right. Do you wish to do that at  
17 this point?

18 MR. CLEARFIELD: Mr. Moody wishes to do that at this  
19 point.

20 JUDGE CORBETT: Okay, very good.

21 Mr. Moody?

22 MR. MOODY: Thank you, Your Honor.

23 JUDGE CORBETT: Sure. Give me just one moment to get  
24 my matrix here.

25 (Pause.)

1 JUDGE CORBETT: All right, Mr. Moody, you may  
2 proceed.

3 MR. MOODY: Well, Your Honor, we had previously  
4 distributed to Your Honor and the parties the prepared  
5 written testimony of our witnesses. I've handed the court  
6 reporter two copies as well.

7 I can go through the direct testimony first. The  
8 direct testimony of Diane Meyer Burgraff, which we've  
9 pre-marked as IOGA Statement No. 1, which includes Exhibits  
10 DMB-1 through DMB-6.

11 We also have the rebuttal testimony of Diane Meyer  
12 Burgraff, pre-marked as IOGA Statement No. 1-R, with  
13 Exhibits DMB-7.

14 And we also have the surrebuttal testimony of  
15 Diane Meyer Burgraff, pre-marked as IOGA Statement No. 1-SR,  
16 which includes Exhibit DMB-8.

17 Then we have the direct testimony of Keith Mangini,  
18 which we've pre-marked as IOGA Statement No. 2. That  
19 includes Exhibits KM-1 and KM-2. And that's all the  
20 testimony for Mr. Mangini.

21 We have the direct testimony of Mike Hillebrand.  
22 That's been pre-marked as IOGA Statement No. 3. And that's  
23 all the testimony from Mr. Hillebrand.

24 Then we have the direct testimony of D. Marc Jacobs,  
25 pre-marked as IOGA Statement No. 4. And that includes two

1 exhibits, Exhibits DMJ-1 and DMJ-2.

2 And then we have the surrebuttal testimony of  
3 D. Marc Jacobs, which we've pre-marked as IOGA Statement No.  
4 4-SR.

5 Then we have the direct testimony of Milissa Bauer,  
6 pre-marked as IOGA Statement No. 5. That includes Exhibits  
7 MB-1 through MB-4.

8 We also have the surrebuttal testimony of  
9 Milissa Bauer, pre-marked as IOGA Statement No. 5-SR.

10 Then we have the direct testimony of James Crist,  
11 which was previously admitted into evidence yesterday on the  
12 motion of Mr. Povilaitis. And so we have on behalf of IOGA  
13 only surrebuttal testimony of James Crist, which we pre-  
14 marked as IOGA Statement No. 6-SR. And that includes  
15 Exhibits JLC-5 through JLC-8.

16 We would ask that they be identified as pre-marked.

17 JUDGE CORBETT: Yes, they'll be marked and identified  
18 as such.

19 **(Whereupon, the documents were marked**  
20 **as IOGA Statement Nos. 1, 1-R, 1-SR, 2,**  
21 **3, 4, 4-SR, 5, 5-SR and 6-SR for**  
22 **identification.)**

23 **(Whereupon, the documents were marked as**  
24 **IOGA Exhibit Nos. DMB-1 through DMB-8,**  
25 **KM-1 & KM-2, DMJ-1 & DMJ-2, MB-1 through**

1 MB-4 and JLC-5 through JLC-8 for  
2 identification.)

3 MR. MOODY: And per the agreement of the parties, or  
4 at least with the understanding of the settlement, that we  
5 would ask they be admitted into the record.

6 JUDGE CORBETT: All right. You're moving for their  
7 admission by stipulation?

8 MR. MOODY: Yes, I am.

9 JUDGE CORBETT: All right. Any objection to the  
10 admission by stipulation?

11 MR. THOMAS: No objection, Your Honor.

12 JUDGE CORBETT: All right. Hearing no objection,  
13 they will be so admitted.

14 (Whereupon, the documents marked as  
15 IOGA Statement Nos. 1, 1-R, 1-SR, 2,  
16 3, 4, 4-SR, 5, 5-SR and 6-SR were  
17 received in evidence.)

18 (Whereupon, the documents marked as  
19 IOGA Exhibit Nos. DMB-1 through DMB-8,  
20 KM-1 & KM-2, DMJ-1 & DMJ-2, MB-1  
21 through MB-4 and JLC-5 through JLC-8  
22 were received in evidence.)

23 JUDGE CORBETT: One moment, please.

24 (Pause.)

25 JUDGE CORBETT: Okay.

1 MR. THOMAS: May it please Your Honor, just one  
2 additional matter, perhaps two. In an effort to expedite  
3 today's hearing because of the extended settlement  
4 discussions, Equitable had circulated rejoinder testimony in  
5 prepared form. We would propose that we simply withdraw  
6 that testimony and not admit it into the record.

7 JUDGE CORBETT: All right.

8 MR. THOMAS: And Mr. Niesen yesterday had identified  
9 and admitted by stipulation all of Equitable's statements  
10 relating to IOGA's presentation. So they are already in the  
11 record.

12 JUDGE CORBETT: Okay. Anything else?

13 MR. THOMAS: No, Your Honor.

14 JUDGE CORBETT: According to my matrix, that takes  
15 care of all the testimony of all the parties that have  
16 submitted and served prehearing testimony.

17 I believe Mr. Kanaskie had something on an errata  
18 sheet that he wanted to have admitted.

19 Mr. Kanaskie?

20 MR. KANASKIE: Thank you, Your Honor.

21 Yesterday, and I had been marking and identifying  
22 documents for admission into the record, did not  
23 specifically identify an errata sheet that had been served  
24 in accordance with the Certificate of Service on October 23.  
25 To clarify the record, I'd like to do that at this time.

1 Your Honor, I have previously distributed to the  
2 parties, and two copies to the court reporter this  
3 afternoon, a document entitled Direct Testimony of  
4 Debra Backer, OTS Statement No. 2 Errata Sheet. And  
5 accompanying that was OTS Exhibit 2, Schedule 10 Corrected.  
6 And I ask that they be marked for identification at this  
7 time.

8 JUDGE CORBETT: Yes, be so marked and identified.

9 MR. KANASKIE: Thank you, Your Honor.

10 **(Whereupon, the document was marked**  
11 **and identified as "Direct Testimony**  
12 **of Debra Backer, OTS Statement No. 2**  
13 **Errata Sheet"; "Exhibit 2, Schedule 10**  
14 **Corrected" for identification.)**

15 MR. KANASKIE: The two sheets included here  
16 represented updates to Ms. Backer's original testimony, and  
17 were distributed to the parties early enough should  
18 responsive testimony be needed.

19 They would be subject to the same qualifications  
20 presented yesterday in terms of authentication that they  
21 were indeed prepared by the witness and represent her  
22 opinions.

23 At this point, Your Honor, I'd ask that they be moved  
24 into evidence, subject to any motions from the parties or  
25 cross examination.

1 JUDGE CORBETT: Yes, they will be so marked and  
2 identified, and admitted, subject to the usual motions and  
3 cross examination.

4 MR. KANASKIE: Thank you, Your Honor.

5 JUDGE CORBETT: All right.

6 **(Whereupon, the document marked and**  
7 **identified as "Direct Testimony of**  
8 **Debra Backer, OTS Statement No. 2**  
9 **Errata Sheet"; and "Exhibit 2,**  
10 **Schedule 10 Corrected" was received**  
11 **in evidence.)**

12 JUDGE CORBETT: You also have an errata sheet,  
13 Mr. Niesen?

14 MR. NIESEN: Yes, Your Honor. We distributed today  
15 an errata sheet. It identifies three minor corrections to  
16 testimony of Ms. Gras, Mr. Ross, and Ms. Gagorik in  
17 connection with their testimonies.

18 These we had actually pencilled in on their record  
19 copies yesterday. They would be reflected already in  
20 pencilled form on the record copies.

21 We've distributed the sheet to the other parties. I  
22 don't believe there's any objection to these minor  
23 corrections to their testimony.

24 And if Your Honor pleases, I'd like to have the page  
25 marked as Equitable Exhibit: Testimony Errata.

1 JUDGE CORBETT: Yes, it will be so marked and  
2 identified.

3 **(Whereupon, the document was marked**  
4 **and identified as "Equitable Exhibit:**  
5 **Testimony Errata" for identification.)**

6 MR. NIESEN: And if Your Honor pleases, I request  
7 that it be admitted into the record.

8 JUDGE CORBETT: Yes, it will be so admitted.

9 MR. NIESEN: Thank you.

10 **(Whereupon, the document marked and**  
11 **identified as "Equitable Exhibit:**  
12 **Testimony Errata" was received in**  
13 **evidence.)**

14 MR. NIESEN: And I did give two copies to the  
15 reporter.

16 JUDGE CORBETT: All right. Thank you, Mr. Niesen.

17 MR. NIESEN: Perhaps one other matter.

18 JUDGE CORBETT: All right.

19 MR. NIESEN: Mr. Povilaitis mentioned yesterday that  
20 still outstanding is the motion to strike certain lines of  
21 Mr. Quinn's rebuttal testimony.

22 Given the evolution of the case, and that we're at  
23 the point where we've reached a settlement with the Hess  
24 Corporation, we would not ask Your Honor to rule on that.  
25 We voluntarily withdraw those few several lines from

1 Mr. Quinn's rebuttal statement.

2 JUDGE CORBETT: All right, very good. And the record  
3 will so reflect.

4 Anyone else have any matters they'd like to bring to  
5 my attention at this point?

6 MR. STEWART: Yes, Your Honor.

7 Yes, Mr. Stewart.

8 MR. STEWART: Just a word of caution, just so the  
9 Court would note, but we haven't signed the settlement.  
10 Granted, we didn't promote any testimony in this case, but  
11 just in case there is a -- that we do not settle, I would  
12 ask you to be mindful that we may need in the schedule some  
13 provision for non-settlement parties.

14 JUDGE CORBETT: All right.

15 MR. STEWART: To address the settlement.

16 JUDGE CORBETT: As I understand, the non-settling  
17 parties at this time are Dominion Retail, EII. And what  
18 other parties?

19 MR. NIESEN: Techs Industries.

20 JUDGE CORBETT: Oh, Techs Industries. Okay.

21 Mr. Thomas, you had indicated that you intend to have  
22 the settlement reduced to writing and circulated among the  
23 parties by the date that main briefs are due?

24 MR. THOMAS: We will try to do it sooner, Your Honor.  
25 But we needed access to some of the OCA attorneys yesterday,

1 and there was another matter requiring their attention, so  
2 we weren't able to start that.

3 And we still have to reach a written agreement with  
4 Mr. Clearfield and Mr. Moody for IOGA. We've reached the  
5 agreement in principle, but it needs to be reduced to  
6 writing.

7 But I would think, Your Honor, no later than the date  
8 that you had set for main briefs, but we're going to try to  
9 do it sooner.

10 And of course, as soon as we have it reduced to  
11 writing, we will provide copies to the non-settling parties,  
12 the non-settling active parties.

13 JUDGE CORBETT: Okay. Well the date set for main  
14 briefs, according to the litigation schedule, was  
15 December 17.

16 (Pause.)

17 JUDGE CORBETT: I'm just trying to think in my own  
18 mind how this would play out for any party objecting to the  
19 settlement so far as time limits and so forth.

20 With December 17 being the settlement date, I'm  
21 thinking ten days for objections. Which would put it at  
22 December 27. And then if a hearing's necessary, we would do  
23 that sometime early January.

24 But I'll let that play out. In my mind right now, I  
25 think we'll let those things play out and see how that works

1 out. I'll be in touch with the parties if we need to set  
2 something up like that.

3 I'm thinking if a hearing is necessary, we'll do that  
4 perhaps by telephone or something. I'll set up a hearing  
5 room here, and I'll preside by telephone from Pittsburgh.  
6 That's shooting from the cuff right now. Subject to change.

7 Does anyone else wish to be heard on that matter?

8 (No response.)

9 JUDGE CORBETT: All right. Are there any other  
10 business or any other matters we need to take care of before  
11 we adjourn?

12 MR. THOMAS: Your Honor, I think on behalf of all of  
13 the settling parties, we very much appreciate the courtesy  
14 extended to us to allow us to reach an agreement and to  
15 delay the start of the hearings. We wish you didn't have to  
16 travel all the way to Harrisburg for a matter that got  
17 resolved, but we just couldn't do it before you left town.

18 JUDGE CORBETT: I appreciate that, Mr. Thomas. It's  
19 always good to see counsel face to face once in a while. A  
20 few more gray hairs we all get, and a little more in the  
21 paunch.

22 (Laughter.)

23 JUDGE CORBETT: But that's understandable. It's  
24 always good to see you folks.

25 I do want to say that, sitting on this side of the



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By: William J. Horst (initials)

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