

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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PENNSYLVANIA PUBLIC
UTILITY COMMISSION, et al.,

Docket No.
R-2012-2286118

vs.

AUDUBON WATER COMPANY

Rate Increase
Initial Pre-hearing
Conference

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Pages 1 through 17

State Office Building
Conference Room
801 Market Street
Philadelphia, Pennsylvania

Tuesday, April 10, 2012

Met, pursuant to notice, at 9:40 a.m.

BEFORE:

CHRISTOPHER P. PELL, Administrative Law Judge

APPEARANCES:

THOMAS SNISCAK, Esquire
JANET MILLER, Esquire
100 North Tenth Street
Harrisburg, Pennsylvania 17101
(For Audubon Water Company)

CHARLES DANIEL SHIELDS, Esquire
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1 P R O C E E D I N G S

2 ADMINISTRATIVE LAW JUDGE CHRISTOPHER PELL:

3 Good morning. This is the prehearing conference
4 scheduled at Docket Number R-2012-2286118. That's
5 the Pennsylvania Public Utility Commission versus
6 Audubon Water Company.

7 For the record, I am Administrative Law
8 Judge Christopher Pell. I'm in a conference room in
9 the Philadelphia Office. Present with me is a court
10 reporter. We have several participants appearing
11 telephonically from Hearing Room 4 in the Keystone
12 Building in Harrisburg and one participant from
13 another location by telephone.

14 Just to get the parties to identify
15 themselves, beginning with counsel for Audubon, would
16 you please, in turn, identify yourselves and spell
17 your names for the record.

18 MR. SNISCAK: Good morning, your Honor and
19 parties. I'm Tom Sniscak. I have with me --
20 Sniscak, S-N-I-S-C-A-K. I have with me Janet Miller,
21 M-I-L-L-E-R, from the law firm of Hawke McKeon &
22 Sniscak on behalf of Audubon Water Company.

23 JUDGE PELL: Thank you.

24 Would counsel for the Office of Consumer
25 Advocate please identify yourself for the record?

1 MS. GANNON: Yes, your Honor. This is Erin
2 L. Gannon for the Office of Consumer Advocate. And
3 that's G-A-N-N-O-N.

4 JUDGE PELL: And would counsel for the
5 Bureau of Investigation and Enforcement please
6 identify yourself for the record?

7 MR. SHIELDS: I will indeed, your Honor.
8 It's Charles Daniel Shields. I use my full middle
9 name. My last name is spelled S-H-I-E-L-D-S.

10 JUDGE PELL: Is there anyone else present in
11 the conference room?

12 MR. SHIELDS: There's nobody else here in
13 Hearing Room 4 in Harrisburg.

14 JUDGE PELL: And Ms. Gannon, I take it
15 you're by yourself?

16 MS. GANNON: I am, your Honor.

17 JUDGE PELL: I have received prehearing
18 memos from all of you, and according to our Infomat,
19 the internal docketing system, there's only been one
20 complaint filed, and that's the complaint of the OCA
21 at Docket Number C-2012-2291571. This is the only
22 complaint that I'm aware of. Is anyone aware of any
23 additional complaints?

24 MS. GANNON: Your Honor, this is Erin
25 Gannon. I'm not aware of any other formal

1 complaints. The docket entries indicated that there
2 are multiple rate protests. However, we've only been
3 able to obtain two of them from the file room.

4 MS. MILLER: Your Honor, this is Ms. Miller.
5 There are three letters of protest that are filed.
6 That's the only ones we've been able to obtain from
7 the Commission's file room.

8 JUDGE PELL: In the event that you do become
9 aware of any complaints, please let me know. There
10 are times when the company becomes aware or the OCA
11 becomes aware of the complaint but it doesn't make it
12 onto the docketing system, and if it's not there, I
13 don't know about it. So if you do hear of it, please
14 let me know.

15 Let's talk about the service lists. As
16 everyone knows, each party is entitled to one entry
17 on the official service list but you can have
18 additional names for that one entry. I'm going to go
19 through it now just to make sure I have it correct.

20 For Audubon, I believe it's Mr. Sniscak and
21 Ms. Miller; is that correct?

22 MR. SNISCAK: Yes, your Honor.

23 JUDGE PELL: For BI&E, Mr. Shields, it's
24 just you; correct?

25 MR. SHIELDS: That's correct, your Honor.

1 JUDGE PELL: For OCA, we have Ms. Gannon and
2 Ms. Hoover; is that correct?

3 MS. GANNON: Yes, your Honor.

4 JUDGE PELL: And in the event we do have any
5 individual complainants, service on them shall be
6 made directly.

7 Regarding service of any documents, parties
8 may arrange service amongst themselves as they agree.
9 Pursuant to 52PA Code Section 5.154(c), parties are
10 permitted without further order to limit the service
11 of documents to parties who indicate that they do not
12 wish to be served with such documents. Of course
13 what I'm talking about is, in the event that we do
14 have any customer complainants, whether or not they
15 wish to receive any discovery, discovery responses,
16 or testimony, either Mr. Sniscak or Ms. Miller, in
17 the event we do have any customers, if you would
18 please just contact them and see how they wish to be
19 served in the event that there are any such
20 complaints.

21 MR. SNISCAK: Yes, your Honor.

22 JUDGE PELL: Parties may serve documents
23 electronically by 4:30 p.m. to meet any required due
24 date with a hard copy to follow by regular first
25 class mail.

1 Does everyone agree to that?

2 MR. SHIELDS: Yes, your Honor.

3 MR. SNISCAK: Yes, your Honor.

4 MS. GANNON: Yes, your Honor.

5 JUDGE PELL: Again, with one provision, that
6 large documents not able to be transmitted
7 electronically may be hand delivered to parties in
8 Harrisburg on the due date and received the next
9 business day by parties located outside of
10 Harrisburg.

11 Does everyone agree to that; the Company,
12 Mr. Sniscak or Ms. Miller?

13 MR. SNISCAK: Yes, your Honor.

14 JUDGE PELL: Mr. Shields?

15 MR. SHIELDS: Certainly, your Honor.

16 JUDGE PELL: Ms. Gannon?

17 MS. GANNON: Yes, your Honor.

18 JUDGE PELL: I do have an informal e-mail
19 distribution list. I just want to make sure I have
20 everyone's e-mail address correct. Whatever you do
21 send to me, I just request that you do send it to my
22 legal assistant, that's Kathy Niesborella. Her
23 e-mail address is K-N-I-E-S-B-O-R-E-L@PA.gov. I may
24 have actually already provided it to you with my
25 prehearing conference order, but I'll make sure to

1 get that to you again.

2 Just to make sure who I have for e-mail
3 distribution, for the Company, I have Mr. Sniscak and
4 Ms. Miller; correct?

5 MR. SNISCAK: Yes, your Honor.

6 JUDGE PELL: For BI&E, Mr. Shields; correct?

7 MR. SHIELDS: Yes, your Honor.

8 JUDGE PELL: And for OCA, Ms. Hoover and Ms.
9 Gannon; correct?

10 MS. GANNON: Yes, your Honor.

11 JUDGE PELL: Moving on to discovery.

12 According to the prehearing memos, I didn't see
13 anything in either BI&E or OCA's memos regarding
14 discovery. Audubon did propose several modifications
15 to the Commission's standard discovery rules. These
16 proposed modifications -- I believe there was an
17 attachment to the prehearing memo, attachment A.
18 They appear to be fairly standard. I've seen them
19 before. Instead of going through them one by one,
20 I'll just ask if the parties agree to these
21 modifications.

22 First you, Mr. Shields?

23 MR. SHIELDS: Yeah, it's fine, your Honor.

24 JUDGE PELL: Ms. Gannon?

25 MS. GANNON: Yes, your Honor. Those are

1 acceptable.

2 JUDGE PELL: Anything else with discovery
3 before I move on; from the Company, anything else?

4 MR. SNISCAK: No, your Honor.

5 JUDGE PELL: Mr. Shields, anything else?

6 MR. SHIELDS: Nothing further, your Honor.

7 JUDGE PELL: And Ms. Gannon?

8 MS. GANNON: Nothing, your Honor.

9 JUDGE PELL: I did note that in Audubon's
10 prehearing memo they mentioned a protective order and
11 that they'd be working with the parties to develop a
12 protective order. When do you anticipate submitting
13 this proposed protective order to me?

14 MS. MILLER: Your Honor, this is Ms. Miller.
15 It was drafted yesterday. We'll circulate it to the
16 parties sometime this afternoon, and once we have
17 their agreement as to the terms, we'll send it to
18 your Honor.

19 JUDGE PELL: Okay. Great.

20 Moving on to the schedule. Yesterday
21 afternoon I believe it was you, Ms. Gannon, who
22 e-mailed me a copy of the proposed schedule, the
23 revised schedule; correct?

24 MS. GANNON: Yes.

25 JUDGE PELL: And I believe you indicated

1 that everyone worked together to develop the
2 schedule; is that correct?

3 MS. GANNON: That is.

4 JUDGE PELL: I'm just going to read it into
5 the record so we have it. We have April 23rd,
6 Company serves written direct testimony. May 23rd,
7 active non-company parties serve written direct
8 testimony. June 7th, written rebuttal testimony
9 including any response by Company to public input
10 hearing testimony. June 15th by noon, written
11 surrebuttal testimony. June 18th by 4 p.m., all
12 rejoinder outline. June 19th through 21st, hearings
13 in Harrisburg. June 22nd, close of the record. July
14 12th, main briefs. July 23rd, reply briefs. October
15 25th, public meeting, and October 27th, end of
16 suspension.

17 I reviewed the proposed schedule. I don't
18 have any problem with it. Just to make sure that I
19 have an agreement on the record, is it acceptable to
20 the Company?

21 MR. SNISCAK: Yes, your Honor.

22 JUDGE PELL: And to you, Mr. Shields?

23 MR. SHIELDS: Yes, your Honor, you correctly
24 recited the dates we agreed to, and they're
25 acceptable.

1 JUDGE PELL: And Ms. Gannon, since you
2 submitted it, I assume you agree.

3 MS. GANNON: Yes.

4 JUDGE PELL: We have three days for the
5 hearings. That's fine. My hope is that we won't
6 need all three days. The hearings will be in
7 Harrisburg. I just want you to keep in mind that
8 since we're scheduling three days of hearings, I'm
9 interested in having full hearing days, so make sure
10 that your witnesses are available to testify. I'm
11 going to be traveling to Harrisburg so I don't want
12 to get to Harrisburg and have to wrap by noon because
13 someone isn't available.

14 Anything else with regard to the schedule
15 before I move on?

16 MR. SHIELDS: Nothing further, your Honor.

17 MR. SNISCAK: Nothing from the Company.

18 MS. GANNON: Nothing from OCA.

19 JUDGE PELL: Moving on to the topic of
20 public input hearings. In OCA's prehearing memo,
21 they indicated that they are not proposing a public
22 input hearing at this time, but if they become aware
23 of sufficient interest, they will notify me and the
24 parties.

25 Is that still the case, Ms. Gannon?

1 MS. GANNON: It is.

2 MR. SNISCAK: Your Honor, this is Tom
3 Sniscak on behalf of the Company. One related issue
4 to public input, we just want to make sure that in
5 the event that there is -- and again, the nature of
6 those proceedings is that you don't have notice of
7 what a given public witness may want to put into the
8 record. We want to make sure that -- again, if there
9 were to be a public input session, that we would have
10 sufficient time, if necessary, to do discovery, and
11 my suggestion would be at this point that we sort of
12 cross that bridge when and if it materializes.

13 I would say that from the Company standpoint
14 that it is rare in my 30 years of experience that we
15 would need to do discovery relative to a public input
16 witness. In fact, I can recall only ever doing it
17 once. But we just want to reserve that right in the
18 event that something that's more than what you
19 commonly see at public input testimony or exhibits is
20 attempted to be put into the record.

21 JUDGE PELL: Okay. Anything else on public
22 input hearings?

23 (No response.)

24 JUDGE PELL: Hearing nothing, we'll move on.
25 Testimony. Motions with respect to

1 objections to written testimony must be presented in
2 writing no later than three days prior to the date
3 the witness sponsoring the testimony is scheduled to
4 testify. Answers to such motions may be filed within
5 three days or sooner if circumstances warrant. Oral
6 motions other than for good cause will not be
7 accepted.

8 Moving on to briefs. I just want to note
9 that since this is a base rate case, there are
10 special instructions for the formatting of briefs,
11 and those instructions will be attached to my next
12 prehearing order. Please make sure you have a table
13 of contents no matter how short your brief is.
14 Electronically serve me not just your PDF as filed
15 brief but also as a copy in word. It makes it easier
16 to highlight and copy portions of your briefs.

17 Does anyone have any issues or questions
18 regarding briefs; from the Company?

19 MR. SNISCAK: No, your Honor,

20 JUDGE PELL: From you, Mr. Shields?

21 MR. SHIELDS: No, your Honor.

22 JUDGE PELL: Ms. Gannon?

23 MS. GANNON: No, thank you.

24 JUDGE PELL: That's the end of my notes.

25 Since it is Commission policy to encourage

1 settlements, I'd just like to conclude by urging you
2 to settle as much as possible. If you can't settle
3 the whole case, my hope is that you can settle parts
4 of it.

5 Is there anything that you wish to address
6 before we conclude that I haven't gone over; first,
7 from the Company?

8 MR. SNISCAK: No, your Honor.

9 JUDGE PELL: From you, Mr. Shields?

10 MR. SHIELDS: Yes, your Honor. One small
11 item. Johnny Simms, the director of the Bureau of
12 Investigations and Enforcement, we are trying to come
13 out of the gate with the new Bureau and be referred
14 to colloquially as I&E rather than BI&E.

15 JUDGE PELL: So you must be hating the
16 decisions I've been writing calling you BI&E then;
17 right? I didn't know how you wished to be addressed.
18 That's just how I did it, but I will make sure to
19 call you I&E as opposed to BI&E.

20 MR. SHIELDS: That's very kind, your Honor.
21 I appreciate that. If the parties could keep that in
22 mind, that would also be appreciated. That's all I
23 have, your Honor.

24 JUDGE PELL: Ms. Gannon?

25 MS. GANNON: No, I'm just going to keep

1 calling them trial staff.

2 JUDGE PELL: If there's nothing else, I'd
3 like to thank you for your attendance and
4 participation in this morning's prehearing
5 conference, and the conference is concluded.

6 (Whereupon, at 9:53 a.m., the hearing was
7 adjourned.)

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C E R T I F I C A T E

10 I hereby certify, as the stenographic
11 reporter, that the foregoing proceedings were taken
12 stenographically by me, and thereafter reduced to
13 typewriting by me or under my direction; and that
14 this transcript is a true and accurate record to the
15 best of my ability.

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17 BY: Emilie S. Posnan [Ⓢ]

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