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Township of Springdale v. Duquesne Light : Docket No.  
Company and West Penn Power Company. : C-00967749  
 :  
 Prehearing Conference. :  
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Pages 1 through 25  
 State Office Building  
 300 Liberty Avenue  
 Pittsburgh, PA 15222  
 Thursday, July 25, 1996

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

BEFORE:

JAMES D. PORTERFIELD, Administrative Law Judge

APPEARANCES:

STEPHEN YAKOPEC, JR., Esquire  
 1706 5th Avenue  
 Arnold, Pennsylvania 15068  
 (For the Township of Springdale)

RICHARD S. HERSKOVITZ, Esquire  
 411 Seventh Avenue 16-066  
 Pittsburgh, Pennsylvania 15230  
 (For Duquesne Light Company)

JOHN L. MUNSCH, Esquire  
 800 Cabin Hill Drive  
 Greensburg, Pennsylvania 15601  
 (For West Penn Power Company)

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APPEARANCES (Continued):

CHARLES HILLMER, JR.  
Box 3265  
Harrisburg, Pennsylvania  
(For PUC Mediation)

C O N T E N T SWITNESSESDIRECT   CROSS   REDIRECT   RECROSS

(No witnesses called.)

E X H I B I T SNUMBERSFOR IDENTIFICATION IN EVIDENCEFor West Penn Power:

No. 1 (Prehearing memorandum)	22	22
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For Duquesne Light Company:

No. 1 (Prehearing memorandum)	23	23
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For the Township of Springdale:

No. 1 (Prehearing memorandum)	24	24
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P R O C E E D I N G S

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10:25 a.m.

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ADMINISTRATIVE LAW JUDGE JAMES D. PORTERFIELD: Good morning. I am Administrative Law Judge James Porterfield, the presiding officer assigned by the Office of Administrative Law Judge for the Pennsylvania Public Utility Commission to hear the matter captioned Township of Springdale versus Duquesne Light Company and West Penn Power Company at Docket Number C-00967749.

It being July the 25th, 1996 at approximately now 10:25 a.m., it is the date and the approximate time set for a prehearing conference in the above captioned matter.

Counsel and I are in the 11th floor hearing room of the Pittsburgh State Office Building and we have contacted by telephone, pursuant to notice to the parties dated May 31st, 1996, Charles Hillmer, Jr., a possible mediator in the subject proceeding.

This morning Attorney John L. Munsch has entered and appearance on behalf of West Penn Power Company, Richard S. Herskovitz, Esquire, has entered an appearance on behalf of Duquesne Light Company and Stephen Yakopec, Jr., Esquire, has entered an appearance on behalf or the complainant, Township of Springdale.

In advance of this morning's hearing, I was in receipt of a prehearing memorandum presented on behalf of Duquesne

1 Light Company, and this morning before going on the record,  
2 Mr. Munsch has provided me with a prehearing memorandum on  
3 behalf of West Penn Power Company.

4 Also before going on the record, I suggested that  
5 perhaps we get a nutshell summary from counsel as to how  
6 they see the proceeding and their positions on the issues  
7 at this point.

8 It might be helpful, I think, since the Township of  
9 Springdale has a rather limited and perhaps easily  
10 satisfied position in this matter and there doesn't seem to  
11 be a lot of disagreement as between Duquesne Light Company  
12 and the Township of Springdale on the other, for that  
13 reason I will ask Mr. Yakopec to give us the position of  
14 the Township.

15 Mr. Yakopec.

16 MR. YAKOPEC: Yes, Your Honor. Approximately two  
17 years ago, I think it was on or around May 16th, 1994, the  
18 Township of Springdale forwarded to West Penn Power as well  
19 as Duquesne Light Company petitions signed by approximately  
20 250 residents of the Township of Springdale requesting that  
21 the Harwick Village area in the Township of Springdale,  
22 which is currently served by Duquesne Light Company, that  
23 the facilities be transferred to West Penn Power for  
24 service due to the fact that this area was in West Penn  
25 Power Company's certified service area.

1           Those were forwarded, as I said, to both West Penn  
2 Power and Duquesne Light Company. There was then --  
3 various letters were exchanged. It appeared that Duquesne  
4 Light Company was willing to transfer the service in that  
5 area to West Penn Power and West Penn Power was willing to  
6 accept the service. I don't believe that is a dispute in  
7 this case.

8           The question then became what was the price to be  
9 paid. The parties were negotiating, but, at least in my  
10 own opinion, became stalemated as to which theory of the  
11 purchase price applied to these distribution facilities.

12           At each Township meeting I would be questioned as to  
13 what was going on, where do we stand and what is occurring?  
14 As a result of that, I then decided to file the instant  
15 complaint.

16           The complaint was filed on behalf of those residents  
17 and the Township of Springdale itself solely to put the  
18 matter in front of the Public Utility Commission in order  
19 that the proper theory for the purchase of the distribution  
20 facilities would be applied.

21           JUDGE PORTERFIELD: Very good. That's where we are  
22 today. Basically you just want to see -- you are here on  
23 behalf of the Township to get the customers that are  
24 rightfully within the West Penn -- I don't think there's  
25 any dispute that it is West Penn Power's certificated

1 territory where the customers at issue are located.

2 MR. YAKOPEC: Yes, Your Honor.

3 JUDGE PORTERFIELD: Is that your understanding also  
4 Mr. Herskovitz?

5 MR. HERSKOVITZ: That's correct, Your Honor.

6 JUDGE PORTERFIELD: Mr. Munsch?

7 MR. MUNSCH: That's my understanding.

8 JUDGE PORTERFIELD: All right. I don't know if this  
9 is the appropriate time, but I will ask this question; what  
10 is physically involved, aside from the purchase pricing, in  
11 getting the customers transferred?

12 MR. HERSKOVITZ: I really don't know myself.

13 MR. MUNSCH: I should have brought a witness with me,  
14 Your Honor, but I can -- not being an engineer, but I can  
15 say that it is not a complicated matter and can be  
16 accomplished.

17 JUDGE PORTERFIELD: If there were an interim order  
18 doing that, without forgetting the lawyers' views of the  
19 matter, perhaps 60 days might be sufficient to affect that  
20 change?

21 MR. MUNSCH: I can't say.

22 JUDGE PORTERFIELD: I guess, Mr. Herskovitz, since you  
23 are advancing what may be the out of the ordinary view in  
24 this matter, maybe we could have your presentation on  
25 Duquesne's position next.

1 MR. HERSKOVITZ: Thank you. Just as a follow-up to  
2 what Mr. Yakopec stated with regard to the complaint and  
3 the fact that we agree that these customers are located in  
4 West Penn Power's service territory, one other item that  
5 should be put on the record here, which was in our answer,  
6 is that the reason Duquesne Light Company was serving these  
7 customers was because of a 1917 agreement between Duquesne  
8 Light Company and West Penn Power.

9 Generally that agreement gave Duquesne Light the right  
10 to serve customers that were located on mining properties  
11 that were owned or controlled by Duquesne Light. Of  
12 course, I guess some of those properties, if not all, were  
13 sold off back on the 1960s, I believe. Don't hold me to  
14 the dates, but Duquesne Light has been serving these  
15 customers for 25, 30 years after those properties were  
16 sold.

17 It is our position, Duquesne Light's position, that  
18 the agreement is at best ambiguous as to what happened  
19 after those properties were sold off. There is no  
20 provision in those agreements as to whether or not service  
21 should revert back to West Penn Power or stay with Duquesne  
22 Light. Of course, our position is that it stays with  
23 Duquesne Light.

24 However, be that as it may, it is within West Penn's  
25 service territory and we are willing to transfer those

1 facilities that serve those customers to West Penn Power,  
2 and of course the issue is how much is it going to costs  
3 West Penn and how much does Duquesne Light want for it.

4 Our position is that Duquesne Light is entitled to,  
5 what now is the buzz-word, stranded costs, and because of  
6 Duquesne Light's expectation of serving those customers and  
7 investing in facilities to serve those customers, it should  
8 be compensated for those costs that have been stranded  
9 costs.

10 As far as this proceeding is concerned, because of the  
11 Commission's competition proceeding that is going on, there  
12 will be -- right now how stranded costs are calculated is  
13 not certain. The Commission has not really given any  
14 definitive guidelines as to the calculations, but it is  
15 anticipated as time goes on, they will.

16 So, it is our position at this point that we should be  
17 entitled to stranded costs in this proceeding and it's  
18 difficult to calculate those at this point because we don't  
19 know how the Commission is going to rule as to what the  
20 elements are in the calculation.

21 We are willing to physically transfer those facilities  
22 as soon as possible so that the residents can be served by  
23 West Penn Power Company as soon as possible, but we would  
24 request a stay until April of 1997 at which time we feel  
25 the Commission will have developed some guidelines on

1 calculating stranded costs.

2 I know in the prehearing memo of West Penn Power, they  
3 are saying stranded costs are not an issue. Our position  
4 is that it is. I just haven't developed a legal response  
5 to that just having seen this particular document this  
6 morning. If we have to brief that issue, I will be more  
7 than glad to do that. I am just not prepared at this point  
8 to legally argue that issue.

9 JUDGE PORTERFIELD: I think you will agree, though,  
10 that the Commission initiative was toward retail  
11 competition that you are relying on for this concept of  
12 stranded costs.

13 MR. HERSKOVITZ: Retail competition, but also it deals  
14 with stranded generation. The question also is the fact  
15 that Duquesne Light has been serving these customers and  
16 even though it was in West Penn Power's certificated  
17 territory, is this not really some form of competition  
18 here?

19 I haven't thought it quite through yet, just having  
20 seen this particular argument this morning, but I think  
21 there is some argument to be made there and I would like  
22 time to review the report again of the Commission and apply  
23 it to this particular situation. I was not prepared to  
24 make that legal argument this morning.

25 JUDGE PORTERFIELD: You just received a copy of the

1 prehearing memorandum also?

2 MR. HERSKOVITZ: Right before you came in, yes.

3 JUDGE PORTERFIELD: I think you make a good point in  
4 the prehearing memorandum as to Duquesne seeking the stay,  
5 because it is you, Duquesne, that is not being compensated.

6 MR. HERSKOVITZ: Yes, that was the other point I  
7 wanted to make. In my opinion, we are the one that would  
8 be prejudiced by a stay because we are the ones that would  
9 be getting the compensation. So, if we are the ones who  
10 would be prejudiced by it and we are willing to waive that,  
11 then I don't see any harm.

12 JUDGE PORTERFIELD: It seems to me the only issue as  
13 far as transferring the facilities -- I'm addressing  
14 counsel for Duquesne Light and West Penn, have the involved  
15 -- let me back up a little.

16 The basis for this question is that Mr. Munsch seems  
17 to indicated there is some uncertainty as to how many of  
18 the 250 residents who signed the petition are in the  
19 affected area. Is there any dispute as to whether certain  
20 customers -- whether they signed the petition or not seems  
21 to me is irrelevant, it's whether they are in the service  
22 territory.

23 MR. HERSKOVITZ: We had calculated, I think, 221, but  
24 I don't think the fact that they are saying there is 37  
25 more is an issue. That's something that can be determined.

1 That's going to be factual.

2 JUDGE PORTERFIELD: A factual matter, right. Are you  
3 concluded for the most part?

4 MR. HERSKOVITZ: Yes. Basically, as I stated in my  
5 prehearing memorandum, we are requesting a stay because we  
6 feel stranded costs are an issue, and to get a better  
7 handle on the calculation of stranded cost, we feel that we  
8 have to wait for some more definition by the Commission on  
9 how to calculate, which will be coming through their  
10 electric competition proceeding.

11 Their proposal was that electric utilities file plans  
12 by April of 1997, which would include calculations of its  
13 costs. At that time we would have a better grasp of how to  
14 calculate those.

15 That is why we are requesting a stay and at the same  
16 time we are willing to transfer the facilities to West Penn  
17 Power so that the customers can be transferred.

18 JUDGE PORTERFIELD: Is it your understanding that  
19 there are dedicated facilities, that there are specific  
20 facilities to be transferred that will satisfy all the  
21 customers in the Village of Harwick?

22 MR. HERSKOVITZ: That's my understanding.

23 JUDGE PORTERFIELD: I don't mean to short circuit you,  
24 Mr. Munsch, but one thing that occurs to me in what I have  
25 heard so far that I might satisfy everybody at this point,

1 everybody but Duquesne Light, is that if there is no  
2 disagreement over the transfer, we could get Springdale out  
3 of this proceeding by stipulating as to what customers are  
4 involved and getting them to sign on to a settlement  
5 agreement as to this complaint only without prejudice to  
6 Duquesne's petition for just and reasonable compensation  
7 for the facilities transferred when Duquesne Light feels  
8 they are ready to advance their theory.

9 MR. MUNSCH: Your Honor, I did not respond to the  
10 prehearing memo in which that idea of a stay was put forth  
11 by Duquesne Light. I received Duquesne's prehearing memo  
12 yesterday afternoon and did not respond to it in my  
13 prehearing memo.

14 Let me respond to the idea of a stay until April of  
15 1997. It's not as harmless as it sounds. First of all  
16 from a business point of view it seems to me, for my  
17 client, to make terrible business sense to agree to take  
18 title to facilities and use facilities without knowing how  
19 much it is going to cost West Penn Power.

20 The stranded costs claim that Duquesne Light could  
21 come in with could be enormous in comparison to the custom  
22 that we have had in the past of applying trended original  
23 costs minus depreciation.

24 By the way, the figure that West Penn Power has put  
25 forth using trended original costs is about \$149,000.

1 That's to say that just as a business decision, I don't see  
2 how I could go home and tell my client that we had bought  
3 Duquesne Light's facilities in Harwick Village but we don't  
4 know how much it is going to cost.

5 Second of all, from a legal point of view the question  
6 of stranded costs is as ripe today as it will ever be in  
7 that stranded costs are not applicable here because we are  
8 not talking about assets that have been devalued as a  
9 result of the market place. We are talking about monopoly  
10 assets that the Township has asked to be transferred  
11 because there is a border dispute. The Township and West  
12 Penn are saying that Duquesne Light has served in a  
13 particular area at its own risk for many years.

14 Therefore, the concept of stranded costs is not  
15 applicable because it is based on this idea of a regulatory  
16 compact where Duquesne Light was guaranteed the service  
17 territory and they poured money into the service territory  
18 to serve it. Harwick Village was outside the service  
19 territory.

20 As I pointed out in my prehearing memo, though not  
21 actually responding to Duquesne Light's memo, stranded  
22 costs recovery is not applicable here because even in the  
23 Commission's report of July 3rd, they are talking about  
24 assets that are devalued due to generation competition.  
25 That's not what we have here.

1 Another reason we really can't -- I think the Township  
2 would not be willing to go forward with a stay and a  
3 transfer of the facilities pending a later determination.  
4 It is not clear who is going to pay the stranded costs if  
5 there are stranded costs. It could be any of three  
6 entities.

7 It could be the parties of the Township that are  
8 leaving Duquesne and coming to West Penn who would pay the  
9 so-called stranded costs, it could be the remaining  
10 customers of Duquesne Light who would assume the costs and  
11 it could be West Penn Power that assumes the costs.

12 These are questions that remain to be answered if  
13 stranded costs were held to be applicable here. Again, I  
14 emphasize that West Penn Power's position is that stranded  
15 costs do not apply to this situation. That's why we would  
16 point out that we definitely do not feel that we could  
17 agree to a stay until April of 1997.

18 JUDGE PORTERFIELD: Thank you, Mr. Munsch.

19 At this point, Mr. Hillmer, do you have any comments  
20 or something that you want to bring to our attention or  
21 questions for counsel?

22 MR. HILLMER: Well, if Mr. Munsch doesn't want to go  
23 along with the stay, he doesn't want to -- this is a  
24 question, Mr. Munsch. Would you go along with the stay and  
25 not transfer the customers for one year or not?

1 MR. MUNSCH: I would prefer not to. I think the case  
2 is ripe for deciding right now and I...

3 MR. HILLMER: Your Honor, what I would like to state  
4 is that under the rules of mediation at our 52 PA Code,  
5 Subsection 69.392, it states -- I won't read it all, just  
6 pick out the one sentence that I think applies here; "That  
7 the party with the burden of proof must agree to use the  
8 ADR, or the alternative dispute resolution, process."

9 In this particular case, of course, we have in the  
10 prehearing memo from Duquesne Light that they would like a  
11 stay. If the parties, if all the parties, do not agree to  
12 be able to give and take, if you know what I am trying to  
13 say, that both parties must give something and by doing  
14 that and working out a number somewhere in between what one  
15 party wants compared to the other party, then the ADR  
16 process does not apply here.

17 I would have to know -- the parties from Duquesne  
18 Light and West Penn would have to be willing to give or  
19 take and discuss the dollar amount that we are talking  
20 about. Then it seems to me that it should go directly to  
21 hearing before Your Honor.

22 JUDGE PORTERFIELD: Thank you.

23 It seems to me, and Mr. Herskovitz, you can jump in  
24 here at your pleasure so I don't make a fool of myself, but  
25 it would seem to me that Mr. Herskovitz is saying that he

1 doesn't even know how to calculate at this point what they  
2 are seeking in terms of compensation for the transfer of  
3 facilities. Is that correct?

4 MR. HERSKOVITZ: That's correct because there are a  
5 couple unknowns at this point. One which I referenced in  
6 my prehearing memo is the number of years to be used in  
7 calculating stranded costs. That affects the result, and  
8 that is something that we believe the Commission will  
9 resolve within the next nine months to a year.

10 JUDGE PORTERFIELD: That, for the most part, addresses  
11 your concern, does it not, Mr. Hillmer?

12 West Penn is indicating at this point there is no  
13 willingness to give on a figure since they don't even know  
14 what the figure is yet.

15 MR. MUNSCH: I think that is right, Your Honor. From  
16 our point of view, the problem with going ahead with the  
17 mediation is that we don't know the boundaries of the  
18 dispute. We know the area of West Penn's position of  
19 \$149,000.

20 If Duquesne were close to that and its stranded costs  
21 claim were small, maybe this could be rapped into a black  
22 box type settlement and be done with it. If its stranded  
23 costs were astronomic, there's no way we are going to even  
24 get into that process.

25 MR. HILLMER: Your Honor.

1 JUDGE PORTERFIELD: Yes.

2 MR. HILLMER: I can understand Mr. Munsch's concerns  
3 here as far as having the customers transferred and not  
4 knowing how much they are going to have to pay. I can  
5 understand his position very well. If the parties want to  
6 proceed through hearing in front of you, that probably  
7 would be the best way to go.

8 JUDGE PORTERFIELD: I certainly appreciate your input,  
9 Mr. Hillmer, in advising the parties about what the  
10 concerns are for mediation. Do you have any desire then,  
11 Mr. Hillmer, to continue this morning? If not, I will hang  
12 up and we will move on as if we are moving toward hearing.

13 MR. HILLMER: Well, from what I have heard so far, and  
14 correct me if I am wrong, the parties' position is that  
15 they do not seek mediation at this point in time. Am I  
16 correct in that, Mr. Munsch and Mr. Herskovitz?

17 MR. MUNSCH: That's correct.

18 MR. HERSKOVITZ: Correct.

19 MR. HILLMER: At that juncture, Your Honor, I see no  
20 reason why I should continue in this hearing.

21 JUDGE PORTERFIELD: Very well, Mr. Hillmer. Thank you  
22 so much for your participation and input. I'm sure I will  
23 be talking with you on other matters soon. Take care and  
24 good day.

25 MR. HILLMER: Thank you very much.

1 MR. YAKOPEC: Your Honor, if I may.

2 JUDGE PORTERFIELD: Certainly.

3 MR. YAKOPEC: I am not a PUC lawyer and don't pretend  
4 to be, but at least looking at the prehearing memorandum of  
5 West Penn Power, Mr. Munsch raises an issue as to whether  
6 or not the stranded costs theory is even applicable in this  
7 case.

8 I might suggest to the Court that before you even get  
9 to a point of determining whether it's -- how you calculate  
10 it, that the determination be first made as to whether or  
11 not this theory even applies in this instance. Given the  
12 fact that Mr. Munsch is saying on this report -- I have  
13 never seen this report, but he is alleging on pages 2 and  
14 3, "that stranded costs may not be recovered absent  
15 statutory changes to the used and useful standard of  
16 Section 1315," and then in number 5, that it's not  
17 stranded.

18 If that threshold issue is resolved one way or  
19 another, then you know how complicated the case will be.  
20 If it's not a stranded costs issue, then it would clearly  
21 be trended original costs minus depreciation and this thing  
22 would probably be resolved rather quickly.

23 JUDGE PORTERFIELD: I think perhaps one vehicle we  
24 might consider is a certified question to the Commission on  
25 whether or not stranded costs are applicable.

1 I would be inclined, given that Mr. Munsch's  
2 representations are accurate in that historically stranded  
3 costs have not been used, that rather trended value minus  
4 depreciation as been the course of conduct between the  
5 utilities, a certified question might be an appropriate  
6 vehicle to move the case along. Let's go off the record  
7 for a second.

8 (Discussion off the record.)

9 JUDGE PORTERFIELD: We are back on the record. What I  
10 am inclined to do, and it puts a modest burden on counsel,  
11 is -- as I indicated, I think this might be an appropriate  
12 occasion to certify a question to the Commission on whether  
13 or not the concept of stranded costs has an applicability  
14 to this proceeding.

15 Given that, I would ask counsel to submit, let's say  
16 within 20 days, a statement of the question they think is  
17 involved. As I understand it, either the presiding officer  
18 or counsel can certify a question to the Commission. Is my  
19 recollection of the rules correct?

20 MR. HERSKOVITZ: I think you are correct. I'm not  
21 sure. Can we go off the record?

22 JUDGE PORTERFIELD: Let's go off the record.

23 (Discussion off the record.)

24 JUDGE PORTERFIELD: Back on the record. We have had  
25 extensive discussions off the record and I am not sure

1 exactly where to pick things up except to say that I have  
2 indicated to counsel that I am not inclined to stay the  
3 proceeding. We are going to go forward with the schedule  
4 as proposed by West Penn Power and I will issue an interim  
5 order confirming that.

6 During the discussions off the record Mr. Herskovitz,  
7 when I imputed their position that they were relying on  
8 some proceedings of the Commission's, wanted to clarify his  
9 prehearing memorandum regarding Duquesne's position in  
10 respect to stranded costs.

11 Mr. Herskovitz.

12 MR. HERSKOVITZ: Yes. Just simply without getting  
13 into the details, number one, as I mentioned and it was  
14 mentioned off the record, we feel it is tied into  
15 competition, the stranded costs that we would claim in this  
16 case.

17 Even if it is not tied into the Commission's official  
18 competition proceeding, Duquesne's position is that it is  
19 still entitled to stranded costs recovery regardless of how  
20 the Commission determines stranded costs and how you  
21 calculate it. We feel that we are entitled to it and it  
22 doesn't have to be tied into the Commission's proceeding.

23 If we are to proceed, we will present our own version,  
24 basically, of what we think the stranded costs should be  
25 and why it is applicable in this situation.

1 MR. MUNSCH: May I respond to that on the record?

2 JUDGE PORTERFIELD: Sure.

3 MR. MUNSCH: I wasn't on the record when I responded  
4 to that before. West Penn Power's position with respect to  
5 Duquesne's attempt to recover stranded costs is that we are  
6 talking about monopoly retail service territories and if  
7 Duquesne Light was serving outside its retail service  
8 territory, it was doing so at its own risk, and it was its  
9 own unilateral actions in the 1960s to cease controlling  
10 Harwick Mine that caused the territory to no longer come  
11 under Duquesne's control.

12 Therefore, Duquesne Light could have no assurance  
13 under the old regulatory compact of recovery of its costs  
14 of serving the Township, and West Penn's position is that  
15 West Penn is willing to pay in accordance with the prior  
16 course of conduct between Duquesne and West Penn an amount  
17 representing trended original costs minus depreciation,  
18 which comes to approximately \$149,000.

19 JUDGE PORTERFIELD: Thank you, Mr. Munsch.

20 I would just mention that what Mr. Munsch has proposed  
21 in his prehearing memorandum is FERC style consecutive days  
22 of hearing preceded by development of prepared written  
23 testimony and rebuttal testimony and roughly in a 90-day  
24 time frame, proceed to hearing.

25 Is there anything else that counsel can think of that

1 they wish to have placed on the record today?

2 MR. HERSKOVITZ: Duquesne has nothing else, Your  
3 Honor.

4 JUDGE PORTERFIELD: Mr. Yakopec?

5 MR. YAKOPEC: No, Your Honor.

6 JUDGE PORTERFIELD: Mr. Munsch?

7 MR. MUNSCH: Procedurally I would like to make my  
8 prehearing memorandum West Penn Power Prehearing Exhibit  
9 Number 1.

10 JUDGE PORTERFIELD: Very well. It will be so  
11 identified as WPPC Prehearing Exhibit Number 1.

12 (Whereupon, the document was marked  
13 as WPPC Prehearing Exhibit No. 1 for  
14 identification.)

15 You have no objection to that, Mr. Herskovitz?

16 MR. HERSKOVITZ: No, I have no objection.

17 JUDGE PORTERFIELD: WPPC Prehearing Exhibit No. 1 is  
18 received.

19 (Whereupon, the document marked as  
20 WPPC Prehearing Exhibit No. 1 was  
21 received into the record.)

22 MR. HERSKOVITZ: Similarly I would like my prehearing  
23 memorandum identified as Duquesne Light Company Prehearing  
24 Exhibit Number 1.

25 JUDGE PORTERFIELD: Yes. That will be DLC Prehearing

1 Exhibit Number 1.

2 (Whereupon, the document was marked  
3 as DLC Prehearing Exhibit No. 1 for  
4 identification.)

5 No objection, Mr. Munsch?

6 MR. MUNSCH: No objection.

7 JUDGE PORTERFIELD: All right. That will be admitted.

8 (Whereupon, the document marked as  
9 DLC Prehearing Exhibit No. 1 was  
10 received into the record.)

11 Anything additional?

12 MR. YAKOPEC: Just one thing, Your Honor, you said  
13 there would be some consecutive days of hearings; where  
14 would those hearings...

15 JUDGE PORTERFIELD: They follow the rebuttal that -- I  
16 would say probably commencing 20 days after the rebuttal  
17 testimony.

18 MR. YAKOPEC: Then the briefs would be after the  
19 hearings?

20 JUDGE PORTERFIELD: Right.

21 MR. YAKOPEC: Okay. I guess I will offer this as  
22 Springdale Township's Number 1, the June 5, 1996 letter  
23 that I sent to you and that Mr. Munsch and Larry Crayne  
24 were copied on.

25 JUDGE PORTERFIELD: I will identify that as Township

1 Prehearing Exhibit Number 1, and we will get copies.

2 (Whereupon, the document was marked  
3 as Township Prehearing Exhibit No. 1  
4 for identification and was received  
5 into the record.)

6 Is there anything else this morning?

7 MR. HERSKOVITZ: Nothing else, Your Honor.

8 MR. MUNSCH: No, Your Honor.

9 JUDGE PORTERFIELD: Then we will conclude this  
10 morning's prehearing conference and I will issue an interim  
11 order.

12 (Whereupon, at 11:25, the prehearing conference was  
13 adjourned.)

1

C E R T I F I C A T E

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I hereby certify, as the stenographic reporter,  
that the foregoing proceedings were reported by me and  
thereafter reduced to typewriting by me or under my  
direction; and that this transcript is a true and accurate  
record to the best of my ability.

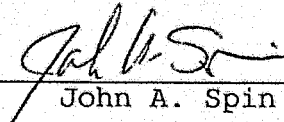
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KEENAN REPORTING SERVICE

8

9

BY:

  
\_\_\_\_\_  
John A. Spin

STEPHEN YAKOPEC, JR.  
ATTORNEY AT LAW

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BY APPOINTMENT:  
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LOWER BURRELL, PA 15068  
TELEPHONE: (412) 335-8773

DOCKETED  
AUG 16 1996

June 5, 1996

DOCUMENT  
FOLDER

The Honorable James D. Porterfield  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1103 Pittsburgh State Office Building  
Pittsburgh, PA 15222

Re: Township of Springdale v. Duquesne Light Company  
and West Penn Power Company  
No. C-00967749

INFO. CONTROL DIV.  
95 AUG -8 PM 2/15

Dear Judge Porterfield:

Reference is made to the May 31, 1996 Notice of Pre-Hearing Conference in the above captioned case.

The complainant, the Township of Springdale, has claimed that residents currently serviced by Duquesne Light Company request service from West Penn Power Company. Duquesne Light Company and West Penn Power Company are stalemated in the transfer of electric service in the area over a dispute as to how to calculate the purchase price of the distribution facilities of Duquesne Light by West Penn in the certified service area of Springdale Township.

In Paragraph 10 of West Penn Power Company's Answer, West Penn Power Company admits that "Duquesne and West Penn have been unable to come to terms over the price to be paid for transfer of the facilities."

Paragraph 3f of the Answer of Duquesne Light Company admits that "Duquesne admits that it is engaged with West Penn in a dispute over how to calculate the purchase price of Duquesne's Springdale Distribution facilities."

In Paragraph 3c of its Answer, Duquesne Light "agrees generally that a public utility has an obligation under the public utility code to provide service upon request from a person or persons located within its certified service area."

TS-PH-1  
C-00967749  
7-25-96  
PITTS  
JAS

The Honorable James D. Porterfield  
June 5, 1996  
Page 2

In Paragraph 3d of its Answer, "Duquesne admits that Springdale is physically located within the borders of West Penn's certificated service area."

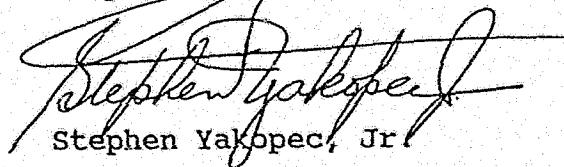
The Answers of both West Penn and Duquesne Light make clear that a dispute exists as to how to calculate the purchase price of the distribution facilities of Duquesne Light Company by West Penn Power Company in Springdale Township. A review of the Answers of Duquesne Light and West Penn Power indicate that West Penn Power is willing to serve these residents of Springdale Township (West Penn Answer Paragraph 13) and that Duquesne Light is willing to transfer these customers and facilities to West Penn (Duquesne Answer Paragraph 3f).

The dispute in this matter is solely over how to calculate the purchase price of the distribution facilities by West Penn Power.

Accordingly, based upon the admissions of the respondents, Springdale Township will have limited participation in these proceedings.

If you have any questions, please feel free to call.

Respectfully submitted,



Stephen Yakopec, Jr.

SYJR/cd

cc: John L. Munsch, Esquire  
West Penn Power Company

Larry R. Crayne, Esquire  
Assistant General Counsel

John G. Alford, Secretary  
Pennsylvania Public Utility Commission

DOCKETED  
AUG 16 1996

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Exh. N. 1

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TOWNSHIP OF SPRINGDALE )  
)  
v. )  
)  
DUQUESNE LIGHT COMPANY )  
and )  
WEST PENN POWER COMPANY )

Docket No. C-00967749

INFO. CONTROL DIV.  
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DOCUMENT  
FOLDER

PREHEARING MEMORANDUM  
OF DUQUESNE LIGHT COMPANY

I. History of the Case

The instant proceeding was initiated by the Township of Springdale ("Township") against Duquesne Light Company ("Duquesne") and West Penn Power Company ("West Penn") by a Complaint filed on February 28, 1996. The Complaint alleges, *inter alia*, that more than 200 residents of the Township who are being served by Duquesne are located within West Penn's certificated service area. These residents now request electric service from West Penn in lieu of Duquesne. The Township requests the Commission to resolve the dispute between West Penn and Duquesne over the purchase price of the facilities to be transferred from Duquesne to West Penn to serve these residents.

In its Answer and New Matter filed on March 20, 1996, Duquesne contends, *inter alia*, that it is willing to transfer the customers and facilities to West Penn without delay, and that the issue of calculating the purchase price of Duquesne's Springdale distribution facilities can be determined at a later stage of the proceeding. Duquesne submits that the appropriate compensation for the transfer of the Springdale customers and facilities should reflect the

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C-00967749  
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*Stranded customers  
v. stranded costs*

generation, transmission, and other regulatory asset costs which will become stranded as a result of the transfer of these customers.

In its Answer and New Matter, West Penn contends, *inter alia*, that it is willing to pay a value representing trended original cost minus depreciation for the transfer of the facilities.

By Notice dated May 31, 1996, a Prehearing Conference was scheduled on July 25, 1996, before Administrative Law Judge Porterfield. The Notice also advised that a Commission Mediator would be contacted and present by telephone at the time of the conference.

II. Issues

As neither Duquesne nor West Penn object to the transfer of the Springdale customers and facilities as requested by the Township, the primary issue in this proceeding is the compensation due Duquesne for the transfer. As stated above, Duquesne requests recovery of "stranded costs" for the transfer, while West Penn is only willing to pay the value of trended original cost minus depreciation.

III. Preliminary Order

Duquesne has no objection to the issuance of a Preliminary Order directing it to immediately transfer the Springdale customers and facilities to West Penn.

IV. Stay of Remainder of Proceeding

Duquesne has not calculated a final figure as to what it claims is due the Company as stranded costs in this proceeding primarily because the Commission has not yet defined the components of such a calculation. As part of the Commission's Report and Recommendation to the Governor and General Assembly (re: restructuring of the electric industry) issued on July 3, 1996, which resulted from its investigation concerning electric competition at Docket No. I-

00940032, the Commission recommended that all Pennsylvania electric utilities file a tentative restructuring plan by April 1997. These plans are to include the utility's proposal for calculating its stranded costs.

Once Duquesne develops its calculation of stranded costs in compliance with Commission directives, it will be in a position to accurately calculate the costs it seeks as compensation in this proceeding. Until such time as its calculation of stranded costs is fully developed in the restructuring proceeding, any such calculation will be difficult due to the uncertainty involved in the components of the calculation. (For example, at this time it is uncertain as to the number of years to be used in calculating stranded costs.) It is anticipated that the Commission will set guidelines on such variables as the restructuring of the electric industry evolves.

In light of the above, Duquesne requests that the determination of its compensation for the transfer of its customers and facilities to West Penn in this proceeding be stayed until April 1997, at which time Duquesne anticipates that its recovery plan will be developed and filed with the Commission pursuant to the above-referenced Report. No party will be prejudiced by such a delay in this proceeding inasmuch as the actual transfer of the customers and facilities will have already taken place by virtue of the Preliminary Order recommended above. In addition, Duquesne is the only party that will be due any compensation for this transfer, and it is willing to defer the determination and receipt of that amount until next year.

#### V. Mediation

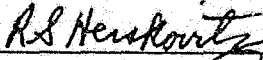
Due to the requested stay of this proceeding and the reasons therefore, Duquesne does not desire mediation at this time.

VI. Conclusion

Based on the foregoing, Duquesne requests issuance of a Preliminary Order directing the immediate transfer of its Springdale customers and facilities to West Penn and a stay until April 1997, of that portion of the proceeding involving the appropriate compensation due Duquesne for the transfer.

Respectfully submitted,

DUQUESNE LIGHT COMPANY  
By Counsel:

  
Richard S. Herskovitz  
Corporate Attorney  
Duquesne Light Company  
411 Seventh Avenue, 16-006  
P.O. Box 1930  
Pittsburgh, PA 15230-1930  
412/393-6129  
412/393-6645 (FAX)

RSH/njp:025CX

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TOWNSHIP OF SPRINGDALE )

v. )

DUQUESNE LIGHT COMPANY )  
and )  
WEST PENN POWER COMPANY )

Docket No. C-00967749

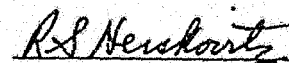
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Stephen Yakopec, Jr., Esquire  
1706 Fifth Avenue  
Arnold, Pennsylvania 15068

John L. Munsch, Esquire  
West Penn Power Company  
800 Cabin Hill Drive  
Greensburg, Pennsylvania 15601

Dated this 23rd day of July, 1996.



Richard S. Herskovitz, Esquire  
Corporate Attorney

Duquesne Light Company  
411 Seventh Avenue, 16-006  
P.O. Box 1930  
Pittsburgh, Pennsylvania 15230-1930

RSH/njp:025CXX



West Penn and Duquesne negotiated about the transfer of facilities owned by Duquesne to West Penn, but were unable to come to terms on price of the facilities.

On or about February 20, 1996, the Township filed a formal Complaint against both Duquesne and West Penn requesting that the Commission decide the dispute concerning the purchase price of distribution facilities.

On or about March 20, 1996, Duquesne and West Penn separately filed an Answer and New Matter, followed by Answers to each other's New Matter.

II. WEST PENN'S ISSUES

1) It must be ascertained which of the 258 residents who signed the two petitions are within the affected area.

2) Duquesne's right and duty to serve the area of Harwick Village ceased when Duquesne's operation of its mine ceased.

3) The issue of "stranded costs" raised by Duquesne to increase the transfer price of its facilities is inapplicable. The concept of stranded cost is inapplicable because the investment was made at Duquesne's sole risk.

4) The Commission has recognized that in its Report and Recommendation on Electric Competition at Docket No. I-940032, issued

July 3, 1996, that stranded costs may not be recovered absent statutory changes to the "used and useful" standard of Section 1315 of the Public Utility Code. (Report p.4)

5) Even if the concept of stranded cost were a legitimate issue, the facilities Duquesne would claim to be "stranded" do not fit the definition of the term applied by the Commission in its Report of July 3, 1996. The Report states at page 22 that "Commission-authorized recoverable stranded costs must be limited to costs which have decreased in value as a result of the change to a competitive generation market." The facilities arguably stranded here are stranded due to a territory dispute prior to the beginning of competitive generation.

6) West Penn and Duquesne have had a course of conduct in exchanging distribution facilities in areas where one utility was serving outside its service area. In those instances, the transfer price was trended original cost minus depreciation, which in this case would amount to \$149,774.00.

### III. SCHEDULES

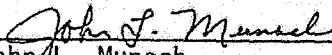
The petitions were presented by the residents more than two years ago, and should be ruled upon without procedural delay. West Penn submits the following proposed schedule:

- Discovery: 60 days
- Written Direct Testimony - all parties: 30 days thereafter

- Written Rebuttal Testimony - all parties: 30 days thereafter
- Briefs: 45 days thereafter.

Respectfully submitted,

Date: July 24, 1996

  
\_\_\_\_\_  
John L. Munsch  
Attorney I.D. #31489

David L. Williams  
Attorney I.D. #58624

Attorneys for  
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(412) 838-6210