

1 Procedural Conference - 9-8-2016

2
3 STATE OF NEW YORK
4 DEPARTMENT OF PUBLIC SERVICE

5 16-G-0058 PROCEEDING ON MOTION OF THE COMMISSION AS TO THE
6 RATES, CHARGES, RULES AND REGULATIONS OF KEYSpan
7 GAS EAST CORP. DBA BROOKLYN UNION OF L.I. FOR GAS
8 SERVICE.

9 16-G-0059 PROCEEDING ON MOTION OF THE COMMISSION AS TO THE
10 RATES, CHARGES, RULES AND REGULATIONS OF THE
11 BROOKLYN UNION GAS COMPANY DBA NATIONAL GRID NY
12 FOR GAS SERVICE.

13 14-G-0091 IN THE MATTER OF THE ACTS AND PRACTICES OF THE
14 BROOKLYN UNION GAS COMPANY D/B/A NATIONAL GRID NY
15 AND KEYSpan GAS EAST CORPORATION D/B/A NATIONAL
16 GRID REGARDING BILLING OF EACH COMPANY'S SC NO.2
17 CUSTOMERS FROM MARCH 2008 TO MARCH 2014.

18 14-G-0503 PETITION FOR APPROVAL, PURSUANT TO PUBLIC SERVICE
19 LAW, SECTION 113(2), OF A PROPOSED ALLOCATION OF
20 CERTAIN TAX REFUNDS BETWEEN KEYSpan GAS EAST CORP.
21 D/B/A NATIONAL GRID AND RATEPAYERS.

22 13-G-0498 PETITION FOR APPROVAL, PURSUANT TO PUBLIC SERVICE
23 LAW, SECTION 113(2), OF A PROPOSED ALLOCATION OF
24 CERTAIN TAX REFUNDS BETWEEN KEYSpan GAS EAST
25 CORP., D/B/A NATIONAL GRID AND RATEPAYERS

Cont'd

PROCEDURAL CONFERENCE

Thursday, September 8, 2016
10:00 a.m.

Public Service Commission Albany Offices
Three Empire State Plaza, 19th Floor Boardroom
Albany, New York

DAVID R. VAN ORT
Administrative Law Judge
Three Empire State Plaza
Albany, New York 12223-1350

Procedural Conference - 9-8-2016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

12-G-0544 IN THE MATTER OF THE COMMISSION'S EXAMINATION OF
THE BROOKLYN UNION GAS COMPANY D/B/A NATIONAL GRID
NY'S EARNINGS COMPUTATION PROVISIONS AND OTHER
CONTINUING ELEMENTS OF THE APPLICABLE RATE PLAN.

11-G-0601 PETITION FOR APPROVAL, PURSUANT TO PUBLIC SERVICE
LAW SECTION 113(2) OF A PROPOSED ALLOCATION OF
CERTAIN TAX REFUNDS BETWEEN KEYSpan GAS EAST
CORP., D/B/A NATIONAL GRID AND RATEPAYERS/

1 Procedural Conference - 9-8-2016

2 (On the record 10:02 a.m.)

3 A.L.J. VAN ORT: These are Cases 16-G-0058,
4 16-G-0059, 14-G-0091, 14-G-0503, 13-G-0498, 12-G-0544 and
5 11-G-0601.

6 The first two obviously are with respect to
7 the rate filings by KEDLI and KEDNY. Three of the other
8 cases deal with tax refunds, and then we have the cases
9 related to the -- one with respect to an operational audit
10 and, which one did I miss? The -- the last case is with
11 respect to the S.C. Two refund.

12 The reporter obviously has been provided, I
13 believe, with a copy of the notice and you can copy the --
14 the -- you have nothing. Then I will give you mine. You
15 can copy the titles of each of the cases into the
16 transcript. I don't need to spend time doing that.

17 We're here for the purpose of finalizing a
18 schedule for the remainder of this case and discuss any
19 issues that you folks may have with respect to the further
20 process in this case.

21 On August 19th I circulated a draft
22 schedule to all the parties on the -- on the parties list
23 and to date I haven't heard anything back in opposition to
24 the schedule. And unless there's something that is
25 critical to -- to make a change in that schedule, I'm

1 Procedural Conference - 9-8-2016

2 inclined to adopt that schedule and would -- would issue a
3 ruling just memorializing that.

4 MR. RIGBERG: May -- may I -- may I be
5 heard, your Honor?

6 A.L.J. VAN ORT: Yes.

7 MR. RIGBERG: Thank you. This is Sal
8 Rigberg from Public Utility Law Project. We appreciate
9 the -- the time that -- that your Honor needs to bring the
10 case to the Commission, but we'd like to propose a
11 alternative schedule that I -- I think would still allow
12 you to have that time.

13 We would like to suggest moving up the
14 evidentiary hearing to September 26 and then have post
15 hearing briefs thereafter -- you know, due -- you know, a
16 week or so after the hearing so that you still have enough
17 time to do your work, but would give PULP the opportunity
18 to introduce into evidence responses to IRs that we're
19 beginning to ask on the JP and that we will continue to
20 ask.

21 And also cross examination of the -- the --
22 the witnesses. There are a number of staff panels that we
23 wish to cross examine as well as the witnesses who are
24 sponsoring and support the JP. I note the settlement
25 guidelines do allow an opposing party the opportunity to

1 Procedural Conference - 9-8-2016

2 cross examine proponents of the settlement, so we -- we
3 think it makes sense to have the -- the comments or what
4 -- you know, the briefs due after that rather than before,
5 so that we can incorporate in our filing what evidence is
6 derived from the hearing.

7 A.L.J. VAN ORT: Are you -- are you
8 suggesting no statements in support and opposition?

9 MR. RIGBERG: Correct.

10 A.L.J. VAN ORT: Okay.

11 MR. RIGBERG: So -- so we would just flip
12 the order. Have the hearing earlier and then write our
13 briefs after and still have time for you to -- to -- you
14 know, for all the time you need to -- to do your -- you
15 know, to get the case to the Commission. So if we could
16 have the hearing, for instance, September 26 that gives us
17 enough time to continue sending our IRs and -- and getting
18 responses.

19 And then, you know, perhaps maybe -- you
20 know, I -- I don't have a lot of cross examination,
21 although there are several panels I wanted to cross, but
22 I'm -- I'm hoping that could be just a one-day hearing.
23 And then as soon as the transcript is posted maybe just,
24 you know, five days after that we can submit our -- our
25 briefs or, you know, post hearing briefs. And -- and

1 Procedural Conference - 9-8-2016

2 you'll -- since originally you had the evidentiary hearing
3 set for the 26th of October I think we can do all this and
4 still have -- and meet your -- and have everything done by
5 October 26th.

6 A.L.J. VAN ORT: Yeah. One -- one of the
7 things in trying to squeeze the -- getting to October 26
8 was trying to avoid conflicts that many folks have
9 indicated with other cases, as well as there's a number of
10 holidays that are --

11 MR. RIGBERG: Yes. Yes.

12 A.L.J. VAN ORT: -- going forward.

13 MR. RIGBERG: No, I'm aware of that. And I
14 -- I mean, we are -- we have a hearing -- well, we have
15 testimony due September 14th and, again, September 23rd in
16 two other cases. And we have hearings in the Suez case
17 October 5th.

18 So we -- we are being squeezed by this
19 proposal. But we're trying to be cognizant of your need
20 to have time to prepare your recommendation to the
21 Commission.

22 I mean, ideal -- this is not a good
23 schedule for us but it seems to be a -- the only doable
24 way of giving PULP the opportunity to have due process.
25 And -- and I would note in the -- in the Suez case which,

1 Procedural Conference - 9-8-2016

2 you know, the company and staff in that case brought a
3 joint proposal -- you know, filed a joint proposal last
4 week. And the -- Judge Phillips issued a ruling actually
5 requiring the company and staff to file testimony and
6 exhibits supporting the JP and to produce witnesses at the
7 evidentiary hearing that are qualified to answer questions
8 about the evidence, testimony and exhibits supporting the
9 J.P.

10 So she has established a process for that
11 JP. The JP was filed September 2nd. The company and
12 staff have to file testimony and exhibits September 14th.
13 Responsive testimony exhibits September 23rd and then the
14 evidentiary hearing begins October 5th. So, you know, so
15 she recognized that opponents to the JP have -- have the
16 right to a due process -- to due process.

17 And so what we're saying is we're -- we're
18 trying to send out our IRs as quickly as possible. I
19 would note that the -- the JP was just filed yesterday,
20 and in your original proposed schedule the JP was going to
21 be filed, I think, August 31st. So it doesn't really give
22 us much time to even file your original schedule. The
23 opposition would be due next week. So that's another
24 issue.

25 So that's why we're suggesting having a

1 Procedural Conference - 9-8-2016

2 hearing the 26th of September and briefs, you know, soon
3 thereafter so that everything's wrapped up by the time of
4 your evidentiary hearing that you had proposed of October
5 26th. So, you know, so this still gives you all the time
6 that you had wanted before, but it -- it gives PULP our
7 due process rights.

8 A.L.J. VAN ORT: Yeah. Just a couple
9 observations. One is that I spoke with Ms. Jorgensen in
10 the past -- last week some time and she had raised these
11 similar issues. And I mentioned to her that she should
12 touch base with the company about the discovery that she
13 was planning to issue and -- and discuss the possibility
14 of shortened discovery response times. And I -- one, I'd
15 like to know is did she do that?

16 MR. RIGBERG: Well, she -- she thought you
17 said she -- she's -- no, she -- she thought you said to
18 contact staff so she did contact staff.

19 A.L.J. VAN ORT: Whoever she was issuing
20 discovery to.

21 MR. RIGBERG: Well --.

22 A.L.J. VAN ORT: She had mentioned the
23 company and I also mentioned to her about talking to staff
24 so that everyone was on board that the discovery was
25 coming essentially and that the request would be for a

1 Procedural Conference - 9-8-2016

2 shortened time frame for responding. Mr. Goodrich?

3 MR. GOODRICH: So I -- I can respond to
4 that and then I would also like the opportunity to respond
5 to the number of issues raised by Mr. Rigberg just now.

6 A.L.J. VAN ORT: Go ahead.

7 MR. GOODRICH: So first, Ms. Jorgensen did
8 reach out to me and ask for a commitment to respond in a
9 shortened time frame. And while I -- I responded and told
10 her that, you know, I can't commit not seeing the
11 questions yet what -- what time frame would be -- you
12 know, that we could do a -- a time frame shorter than ten
13 days. I did say that we would work to provide responses
14 as expeditiously as possible.

15 And PULP did submit IRs -- I'm sorry, if it
16 was yesterday or -- or this morning, I don't know which,
17 and I believe that the signatory parties to whom the IRs
18 were -- were asked in -- in total will be providing
19 responses, you know, as quickly as possible and definitely
20 in advance of September 16th.

21 Second, Mr. Rigberg raised issues of due
22 process rights and seemed to be implying or at least
23 allowing one to infer that PULP's due process rights are
24 -- are -- would be violated somehow. And I, quite
25 frankly, don't see that. PULP had an opportunity to file

1 Procedural Conference - 9-8-2016
2 its prefiled testimony. PULP had an opportunity to
3 participate in the negotiation process which PULP did
4 throughout.

5 Even after PULP, you know, signified that
6 it was intending to oppose it was copied on all
7 information that -- that was provided including drafts of
8 the joint proposal, so it's seen the drafts throughout.

9 You know, so PULP has known what was in
10 this joint proposal well before it was filed yesterday.

11 Second, Mr. Rigberg seemed to suggest
12 wanting to cross examine a number of panels. I'm -- I'm
13 not sure if he means panels that -- that put in prefiled
14 testimony, but that's traditionally not done when there's
15 a joint proposal as the joint proposals sort of supersedes
16 as I understood the -- the -- you know, prefiled
17 testimony. And prefiled testimony might be used as
18 evidence of -- of range of litigation positions but not --
19 not something that's cross examined on.

20 And I would note that Mr. Rigberg in -- in
21 citing to the -- the settlement guidelines himself noted
22 that what is allowed is questioning of the supporters of
23 the joint proposal on the joint proposal not on prefiled
24 testimony filed months before the joint proposal.

25 A.L.J. VAN ORT: Can -- can -- just before

1 Procedural Conference - 9-8-2016

2 you -- you want to -- can you -- you give me a sense as to
3 the scope of issues that you're talking about, Mr.
4 Rigberg?

5 MR. RIGBERG: Which exact issues we -- we
6 oppose?

7 A.L.J. VAN ORT: Yeah, what -- PULP has
8 been involved in a number of the public statement
9 hearings. Are you talking about those sort of issues?
10 Are we talking about other issues and what issues might
11 there be?

12 MR. RIGBERG: R.O.E., the earnings sharing
13 mechanism. The recovery of SIR costs. The -- let's see,
14 the termination and arrears incentive program of -- and
15 may be others. There might be a rate design issue. But
16 going back to what Mr. Goodrich said, I'm not -- the --
17 the question about how quickly staff and the company can
18 respond to IRs is -- is really a side issue because we
19 would want the IRs -- if we chose to, we would want to be
20 able to put IRs in the record and also maybe follow-up
21 questions during the hearing of -- based on the IR
22 responses.

23 And we might have more questions as -- as
24 we finalize, you know, our thoughts on -- on preparing for
25 the hearing. Also the -- you know, I realize what's

1 Procedural Conference - 9-8-2016

2 traditional but there's things -- things are sometimes
3 more fluid. So, for instance, Judge Philips said though
4 some new testimony and exhibits likely will be needed,
5 parties are encouraged to also introduce previously
6 prefiled testimony or exhibits that they continue to rely
7 on to support or oppose the JP.

8 So clearly there's an ability -- and that's
9 from her interpretation the settlement guidelines, because
10 the -- the settlement guidelines do say that proposals
11 should -- shall be supported by documentation of the
12 quality and detail required for major rate case filings.

13 So the way I think Judge Philips
14 interpreted all that is parties do have the ability to
15 cross examine the witnesses who provided prefiled direct
16 and rebuttal testimony. And to help probe whether the JP
17 is in the public interest, parties are able to ascertain
18 or attempt to ascertain what the -- what the witnesses who
19 filed -- filed testimony, you know, to compare and
20 contrast their -- their testimony to what ended up in the
21 joint proposal.

22 MR. GOODRICH: Your Honor --.

23 MR. RIGBERG: So -- so, I'm just -- I'm
24 sorry, I'm just saying in a sense the issue it -- it
25 doesn't make sense to have a hearing and then -- and

1 Procedural Conference - 9-8-2016
2 introduce exhibits and have no way for a party to pull
3 together and marshal their arguments based on the evidence
4 obtained at the hearing. So if we did the initial
5 comments first and we had a hearing what -- that just
6 leaves us hanging.

7 So what we're saying is let's just have the
8 hearing and then we'll do our -- you know, you can still
9 call them comments if you want. But then we can put
10 together all our arguments and -- and still give you all
11 the time you need to bring the matter to the Commission.

12 A.L.J. VAN ORT: You -- you keep going to
13 how much time that I need, but I -- I will make that
14 determination how much I need.

15 MR. RIGBERG: Oh, that was just based on
16 your October 26 hearing.

17 A.L.J. VAN ORT: Go ahead, Mr. Goodrich.

18 MR. GOODRICH: A couple things. Mr.
19 Rigberg keeps referencing the Suez case and I would just
20 note that that is a completely separate case. Has a very
21 different and distinct history to it both -- both the
22 current case and the -- the immediately preceding rate
23 case that -- that lends to a perhaps different needs in
24 that -- in that proceeding. I would note that in this
25 case, you know, we have a number of parties supporting the

1 Procedural Conference - 9-8-2016

2 joint proposal and to my knowledge and -- and from -- from
3 attendance here, one party opposing it on limited issues.

4 We have had such situations in the past. I
5 note in the Orange and Rockland cases 14-E-0493 and 14-G-
6 0494 there was opposition to the joint proposal by some of
7 the municipalities. And that was done through a statement
8 in support opposition followed by a hearing at which the
9 -- the municipalities were able to question the -- the
10 witnesses from the company and -- and staff who were
11 supporting the joint proposal.

12 That seems totally appropriate in this
13 instance as well. I think that a statement -- statements
14 in support and opposition before a hearing help to clarify
15 what issues are actually in play as opposed to leaving
16 questions open and not knowing even what witnesses may be
17 necessary at a hearing.

18 And, quite frankly, in -- in a case such as
19 this at the moment, I do not believe that post hearing
20 briefs would be necessary. However, I would note that,
21 you know, that's a question that your Honor is able to
22 pose at the hearing based on what's introduced at the
23 hearing. I -- I just -- I think that -- that flipping
24 around the schedule in this case is -- is simply
25 unwarranted and -- and perhaps detrimental to the process.

1 Procedural Conference - 9-8-2016

2 A.L.J. VAN ORT: One -- one of the things
3 just share with you and I'm kind of -- I'm inclined to
4 agree with you, Mr. Goodrich, is that I would like the
5 parties -- I'd like to see what their arguments are as
6 early as possible in the process. Understandably that --
7 that PULP will be engaged in discovery. And obviously
8 with respect to the discovery you're going to want to --
9 you may want to put responses into the record.

10 The issue -- I -- I think I'm -- we're
11 probably wrestling with is what sort of post hearing
12 arguments would be allowed. You're referring to post
13 hearing briefs. The possibility might be that we could
14 allow for closing arguments at the end of the hearing,
15 short closing arguments where you could summarize your --
16 the -- the testimony in your arguments in support of your
17 position.

18 Obviously, I'll take these under
19 advisement. You know, it's -- the time constraints that
20 we're under here it's -- it's not just my own as is I'm
21 sure you -- you're well aware. There's -- there's others
22 involved in the -- the review process so that my time
23 frame isn't -- isn't solely my own. And obviously the
24 schedule, as Mr. Rigberg acknowledges, we're -- we're
25 trying to wrestle between some of the other cases that

1 Procedural Conference - 9-8-2016

2 multiple folks, PULP and -- and others are dealing with as
3 well as holidays.

4 So I've -- I've got to be very sensitive to
5 trying to not frustrate people in the -- in the process
6 with the other cases they're dealing with. But I'll take
7 this under advisement and -- and obviously come out with a
8 formal ruling.

9 MR. RIGBERG: Your Honor, it's -- it's
10 really only PULP that's having the conflicts with those
11 other cases, so --.

12 A.L.J. VAN ORT: I thought U.I.U. was in
13 the other cases also.

14 MR. RIGBERG: They're not, no. They're not
15 in Suez. I mean, they're -- they're not active in Suez.

16 A.L.J. VAN ORT: They're not active. Okay.

17 MR. RIGBERG: And --

18 A.L.J. VAN ORT: Thank you.

19 MR. RIGBERG: -- and the Jewish holidays
20 are my own issue as well. So this is a -- this schedule
21 is a burden for us but it -- it gives us the due process
22 that -- that we require and --.

23 A.L.J. VAN ORT: And -- and knowing what
24 Mr. -- Mr. Goodrich had pointed out, obviously, Mr.
25 Rigberg's reference to the due process, he -- I'm sure he

1 Procedural Conference - 9-8-2016
2 recognizes that different cases will be handled
3 differently between different judges. It doesn't change
4 due process. I -- I think he's just trying to actively
5 persuade on his behalf for a change in the schedule, and I
6 appreciate that. So it's -- it's not something that I --
7 I take offense to.

8 One of the things I -- I just want to go
9 back to is if we can is the discovery. You mentioned that
10 there -- Mr. Goodrich, you mentioned that there were
11 questions that you were asked. How many questions were
12 you asked that you need to get back on?

13 MR. RIGBERG: I think there's just six
14 right now.

15 A.L.J. VAN ORT: Six. Now do you plan on
16 issuing a discovery to any other parties?

17 MR. RIGBERG: No, the -- the -- no, the
18 discovery went to the proponents of the joint proposal.

19 A.L.J. VAN ORT: So other parties get to
20 answer those same questions?

21 MR. RIGBERG: If they wanted to.

22 MR. GOODRICH: I believe we were hoping to
23 answer the questions as -- provide one response from the
24 -- the parties.

25 A.L.J. VAN ORT: Okay.

1 Procedural Conference - 9-8-2016

2 MR. GOODRICH: To each question.

3 A.L.J. VAN ORT: So and -- you're -- until
4 those are responded to you're not planning to answer or
5 ask any other discovery, is that correct?

6 MR. RIGBERG: Well, I -- I -- I think we
7 would not have too many more, but I'm -- I'm going through
8 it now.

9 A.L.J. VAN ORT: Okay.

10 MR. RIGBERG: But we were -- we were busy
11 with the Suez and -- and Con Ed and NFG cases. The -- one
12 -- one difficulty with relying on statements in support
13 and opposition is that they're not evidence. And I have
14 been in cases in which the panel that staff and the
15 company put up to support the JP were not totally familiar
16 with the statement in support that their attorneys filed
17 and could not answer questions during cross examination.

18 So that is why we -- I think Judge Philips
19 directed staff and the company to actually file testimony
20 in support of the joint proposal.

21 MR. GOODRICH: I can assure your Honor that
22 we will ensure that the witnesses that we put up will be
23 familiar with the -- the statement in support. And, in
24 fact, if I had to write the statement in support on my own
25 without their assistance it would not be a successful

1 Procedural Conference - 9-8-2016

2 statement in support.

3 A.L.J. VAN ORT: Okay.

4 MR. GOODRICH: So they will be fully,
5 intimately aware of -- of the information in the statement
6 in support.

7 A.L.J. VAN ORT: I -- I understand. I
8 understand what you're both saying and -- and essentially
9 what it comes down to is the statements of fact are things
10 that the -- the -- if it's a staff panel or a company
11 panel or any other party, they can -- they can testify to
12 the statements of fact in there. If there's a legal
13 conclusion from that, obviously, that's not something that
14 they can be held accountable for. But, you know, to that
15 extent, the statements in support --

16 MR. RIGBERG: Right.

17 A.L.J. VAN ORT: -- could be their
18 testimony. It can serve as their testimony in the case.

19 MR. RIGBERG: Okay. I mean, if they adopt
20 the statement in support as their testimony, but I -- I
21 wouldn't want them to say well that -- that's a legal
22 opinion so I can't testify to that. And --

23 A.L.J. VAN ORT: Well, they --

24 MR. RIGBERG: -- and then have arguments --

25 A.L.J. VAN ORT: -- they could say that.

1 Procedural Conference - 9-8-2016

2 MR. RIGBERG: -- all day about what's fact
3 and what's not.

4 A.L.J. VAN ORT: They could say that. They
5 could -- they could testify to their familiarity with
6 policies of the Commission. They could testify to the
7 fact that their understanding of the way a provision
8 applies. Whether or not that is a legal opinion that is
9 binding upon them is a solely separate matter. But they
10 can actually indicate --

11 MR. RIGBERG: Okay.

12 A.L.J. VAN ORT: -- what their
13 understanding is.

14 MR. RIGBERG: And -- and just to complete
15 the -- the discussion, I made a preliminary list of the
16 staff -- it's mostly the staff witnesses that we wish to
17 cross examine. It would be -- I don't know how to
18 pronounce his name, Mr. Qadir -- Qadir.

19 A.L.J. VAN ORT: Who was that?

20 MR. RIGBERG: How do you -- Q-A-D-I-R.

21 MR. GOODRICH: Think he's talking about a -
22 - a witness on --.

23 MR. RIGBERG: R.O -- R.O.E. -- the R.O.E.
24 I don't -- how do you pronounce his name?

25 MR. GOODRICH: I -- I don't know that I

1 Procedural Conference - 9-8-2016

2 pronounce it correctly either. I believe it's Qadir but I
3 don't know.

4 MR. RIGBERG: I don't know. So it's Q-A-D-
5 I-R, is that correct? Anyway, the staff SIR panel, the
6 staff policy panel.

7 MR. GOODRICH: I -- I mean this is -- we're
8 not -- we won't be putting up a panel with -- I believe
9 the SIR panel had like six people that filed prefiled
10 testimony. We'll -- we will happily put up someone who
11 can speak to SIR issues.

12 A.L.J. VAN ORT: What's -- what's -- just
13 -- we'll finish with Mr. Rigberg first and then we'll
14 address that.

15 MR. RIGBERG: Yes, so I -- yeah, I'm not --
16 I'm not saying your whole panel has to go up. I'm just
17 telling you the testimony.

18 A.L.J. VAN ORT: You're just talking about
19 the nature of the --.

20 MR. RIGBERG: The testimony. So --.

21 A.L.J. VAN ORT: Gas policy was the last
22 one you said?

23 MR. RIGBERG: Yeah, staff -- there's a
24 staff policy panel then there's also the staff gas policy
25 and safety panel. Staff consumer services panel and then

1 Procedural Conference - 9-8-2016

2 the company shared services panel.

3 A.L.J. VAN ORT: Okay. Okay. Do you -- do
4 you have something to say?

5 MR. GOODRICH: Can I just say I think it
6 would be easier if as we approach the hearing if PULP and
7 -- and your Honor, who I assume will have questions,
8 identify the issues on which they -- there are questions
9 to be asked --

10 A.L.J. VAN ORT: Well, I -- I can tell you
11 --.

12 MR. GOODRICH: -- instead of stating panels
13 and --.

14 A.L.J. VAN ORT: Well, I -- I just wanted a
15 heads up to see -- kind of see --

16 MR. GOODRICH: Yeah.

17 A.L.J. VAN ORT: -- how much time. And I
18 think Mr. Rigberg has been very up front with indicating
19 that maybe it could complete this in one day possibly two
20 days. And I think he's giving us a sense as to what we
21 might be involved in and I think that's helpful here.

22 MR. RIGBERG: Right, right. Yeah, my
23 intent would not be to belabor the cross. It would just
24 be a few -- maybe a small amount of time for each subject
25 area.

1 Procedural Conference - 9-8-2016

2 A.L.J. VAN ORT: Right.

3 MR. RIGBERG: And I -- I would hope we can
4 do this in one day.

5 A.L.J. VAN ORT: Yeah, and one -- one of
6 the things as -- as we go forward here -- that's why this
7 -- this conference is beneficial. We're going to be --
8 I'm going to be asking the parties and I -- I do so at
9 this point is ask the parties to come up with a -- an
10 exhibit list. And what we will be doing is putting the --
11 both the prefiled testimony on an exhibit list. It would
12 be designating exhibit as well as the prefiled exhibits.

13 Any hearing exhibits would -- would be --
14 would be taken care of at the hearing. We would just
15 sequentially number them after that. But what I'd like
16 the parties to do so that we have an -- everyone has an
17 understanding of what exhibits we're referring to is come
18 up with a -- an exhibit list that shows what the company's
19 prefiled testimony will be. I could -- we will start with
20 the company both direct and then rebuttal. And then we
21 will have the staff panel and then we will -- we'll go to
22 New York City. And then -- and follow with the rest of
23 the parties after that so we know what numbers we're
24 working with.

25 And when parties are referring to prefiled

1 Procedural Conference - 9-8-2016
2 testimony they can simply refer to both in their briefs
3 and at a hearing, you know, the prefiled numbers that --
4 that we have now designated as part of the exhibit list.
5 It's very tedious to have to search through a long list
6 without having, you know, a roadmap.

7 So I -- I think I'd ask the company and
8 staff to work together and then, you know, the two of you
9 to assemble it as one document. And the document will be
10 posted in DMM for anyone else to see.

11 One of the things while I'm on this topic
12 what I -- I think we need to do is where you've got the --
13 you've got the -- the list, you show the witness. If it's
14 a panel please identify who the -- the witnesses are
15 within that panel. Just, you know, parens, whoever the
16 witnesses are so that we know, you know, who we're talking
17 about. And obviously a little short description as to
18 what the topics that they're dealing with so that -- I
19 don't know about the other folks but I find that very
20 helpful to be able to go back quickly without having to
21 remember the countless volumes that I've received to date
22 as to testimony.

23 MR. GOODRICH: Your Honor, may I ask a
24 couple clarifying questions?

25 A.L.J. VAN ORT: Go ahead.

1 Procedural Conference - 9-8-2016

2 MR. GOODRICH: You want -- the exhibit list
3 you have -- for example, Exhibit One would be the
4 company's prefiled testimony and exhibits in total or
5 testimony or -- or one particular company panel?

6 A.L.J. VAN ORT: One -- one particular --
7 one panel each.

8 MR. GOODRICH: Okay.

9 A.L.J. VAN ORT: Yeah.

10 MR. GOODRICH: And do you want reference to
11 where that is in -- in DMM?

12 A.L.J. VAN ORT: You -- if it's convenient
13 for you to do that you can do so. I'm more concerned with
14 having that. That is the key that I see. It's also
15 something as I'm going through a hearing following that I
16 can find the rest. But if I don't have a roadmap or if
17 I've got ten different exhibit lists, it's very difficult
18 to keep up with you folks.

19 MR. GOODRICH: And are you -- were you
20 asking for that before the statements?

21 A.L.J. VAN ORT: No. You can -- you can --

22 MR. GOODRICH: Okay.

23 A.L.J. VAN ORT: -- submit the -- well, if
24 -- if we go forward -- if we -- if we adopt these -- the
25 process that I have outlined previously as opposed to the

1 Procedural Conference - 9-8-2016

2 one Mr. Rigberg has proposed, obviously, it will -- it
3 will need to be done in advance or submitted with the
4 statements.

5 MR. GOODRICH: That is -- coming up with
6 this exhibit list sounds simple, but it -- I found that it
7 is a time-consuming process, and to -- to add that to the
8 burdens of staff and the company's counsel while they're
9 trying to provide a -- a substantive, useful statements is
10 -- is --.

11 A.L.J. VAN ORT: Well, the company's
12 already done that on the letters that they had filed with
13 testimony. That would simply be converted to a
14 spreadsheet.

15 MR. RIGBERG: Your Honor, may -- may I
16 suggest something? I -- I think -- I can't remember which
17 recent case we were in, but the -- the judge assigned at
18 -- that would be today's hearing, like the company had all
19 its exhibits would be in -- in the one hundreds. And then
20 the staff's were all two hundreds. And then the judge
21 picked the other party, said you have three hundreds, four
22 hundreds, five hundreds. And in that way the parties
23 don't have to find out who -- what number did someone
24 leave off.

25 And, you know, and -- and then there was

1 Procedural Conference - 9-8-2016

2 less discussion among the parties about oh you start with
3 number seventy-three because I finished at seventy-two.
4 And that way we could all start working on that now.

5 A.L.J. VAN ORT: You can all start working
6 on it now and circulate it to be --

7 MR. RIGBERG: Yeah.

8 A.L.J. VAN ORT: -- incorporated as to --
9 because you're committing to what your exhibits are.

10 MR. RIGBERG: Right.

11 A.L.J. VAN ORT: And all someone is doing
12 is just putting them into order.

13 MR. RIGBERG: Right. And -- and in the
14 recent case, I forget which judge it was, but who had us
15 -- we had a column in the spreadsheet for the DMM number
16 too, so.

17 A.L.J. VAN ORT: Yeah, that's what we were
18 talking about just a moment ago.

19 MR. RIGBERG: Yeah.

20 A.L.J. VAN ORT: That's -- that's -- that's
21 fine. It's very easy to do, but I'd like to have it all
22 on one list. That's --

23 MR. RIGBERG: Yeah.

24 A.L.J. VAN ORT: -- that's the only reason
25 why I say that is --. Okay. So I'm going to leave that

1 Procedural Conference - 9-8-2016

2 to staff or the company, which you can decide between the
3 two of you who is going to assemble it into one document.
4 But the parties are going to need to get them within the
5 next few days as to the number of exhibits that they've
6 got. Just simply indicate what the exhibits are, prefiled
7 exhibits.

8 Both testimony will be identified as one
9 testimony followed by the exhibits related to that
10 testimony. So that way there -- and if you've got those
11 as one list you'll say we've got ten or fifteen and here's
12 what they are in order, and they will be able to be put
13 into the spreadsheet. Okay? Thank you.

14 Okay. One of the -- one of the things I --
15 and if I didn't mention this I apologize previously, but
16 it's -- it's imperative having dealt with a number of
17 cases in the past -- I think the folks from National Grid
18 probably know it from dealing with the PESA case, some of
19 the parties were submitting briefs that didn't have cites
20 to the prefiled testimony or the record itself. And it's,
21 you know, it's critical that -- and I'm not saying or
22 suggesting that National Grid did that, but it's one of
23 the things that it's critical that those, you know, cites
24 to the record, whether it be the transcript page or if it
25 cites to prefiled testimony that something be there so

1 Procedural Conference - 9-8-2016

2 that we can go back and find it just to verify what the
3 statements were.

4 So I'd -- I'd appreciate it if people could
5 make sure that anyone that is assisting them ensure that
6 they -- if it's a reference to the witness and the -- and
7 the page number there, the testimony. If -- if it's
8 prefiled and you don't have it as part of the record, the
9 transcript yet, cite to the prefiled testimony. If it's
10 part of the transcript, cite to the transcript.

11 Same way with the exhibits. If it's -- if
12 the witness and exhibit and it's on the exhibit list, cite
13 to the exhibit list as well as the schedule and the page.
14 That would be appreciated. Okay.

15 Now, Mr. Rigberg, if I can just go back to
16 you for a moment, excuse me, you mentioned about some of
17 the interrogatories you might be looking to put in as
18 exhibits. Are any of the interrogatories you're talking
19 about interrogatories that have been previously -- for
20 which previous requests were made for confidential
21 treatment of --?

22 MR. RIGBERG: Not to my knowledge, your
23 Honor.

24 A.L.J. VAN ORT: Okay. If it is, if you
25 just take a look.

1 Procedural Conference - 9-8-2016

2 MR. RIGBERG: I -- I don't -- I don't think
3 so.

4 A.L.J. VAN ORT: Okay.

5 MR. RIGBERG: I mean, they're based on the
6 JP.

7 A.L.J. VAN ORT: They're based -- okay.

8 And I didn't get a chance to review the JP since it came
9 in last night. Is any of the information in the JP based
10 upon interrogatory responses for which confidential
11 treatment is requested? And I see shaking heads no.
12 Okay. Okay. So that's not an issue. Okay.

13 I'm drawing a blank at the moment here
14 trying to think of any other issues that I think we need
15 to cover for today.

16 MR. RIGBERG: Your Honor, if I -- just to
17 continue. If -- if your Honor could issue your ruling as
18 soon as possible because we might consider further process
19 if -- if the ruling is adverse to what we believe are our
20 due process interests.

21 A.L.J. VAN ORT: Understood.

22 MR. RIGBERG: Thank you.

23 A.L.J. VAN ORT: Does any -- do any of the
24 other parties have any issues we need to address in
25 addition to what we discussed today?

1 Procedural Conference - 9-8-2016

2 MR. O'BRIEN: Judge, at least from the
3 company -- company just wants to note that, you know, that
4 issues that Mr. Rigberg had talked about, you know, for
5 example, ROE, the termination, arrears incentive program,
6 earnings sharing, you know, the two parties who put
7 extensive testimony in on those subjects were the company
8 and staff.

9 You know, PULP did not have testimony on
10 those subjects. So we just wanted to note that for the
11 record.

12 A.L.J. VAN ORT: Okay. Okay. Now at -- at
13 some point we're going to need to discuss the -- the time
14 frame that you're going to be looking for. I -- I'm not
15 hearing anyone else indicating that they would have cross
16 examination, but there may be some redirect based upon
17 your testimony. But I don't think we need to deal with
18 that today. But -- and I -- I won't call another
19 procedural conference but I'll probably just do it by e-
20 mail for the parties to circulate a list as to, in your
21 case, Mr. Rigberg, how much time you've got planned for
22 cross examination of what witnesses that you have. So
23 that way there we can plan how much time we will need at
24 the hearings. Okay.

25 MR. RIGBERG: Yes, your Honor. And one --

1 Procedural Conference - 9-8-2016

2 one thing I would follow up though, PULP put in extensive
3 testimony about affordability and -- and rates of -- and
4 -- and so the issues that identified directly implicate
5 the -- the rates the company charges.

6 MR. GOODRICH: And, your Honor, if I may, I
7 would like to note that if PULP, you know, seems to want
8 to challenge -- seems to be challenging the -- the --
9 whether the joint proposal's in the public interest then
10 and, you know, I mean, if PULP is providing some sort of
11 alternative or relying on its -- its prefiled testimony at
12 that point, you know, the parties should be allowed and
13 staff certainly should be allowed to -- to cross examine
14 PULP -- PULP and its witnesses to -- to --.

15 MR. RIGBERG: Absolutely.

16 A.L.J. VAN ORT: I don't think -- I don't
17 think anybody's questioning that. The -- the -- you --
18 you sponsored two witnesses, is that correct?

19 MR. RIGBERG: One, your Honor. And -- and
20 -- and we agree totally that Mr. Yates would be available
21 for cross examination just as we're asking that the
22 witnesses who filed prefiled direct and -- and rebuttal
23 testimony in this case are available for cross
24 examination. We -- we -- we agree that it has to be
25 equivalent.

1 Procedural Conference - 9-8-2016

2 A.L.J. VAN ORT: So you'd expect to bring
3 them to the hearing?

4 MR. RIGBERG: If -- if anyone wishes -- we
5 would -- as -- as you've asked me if anyone -- either any
6 party wishes to cross Mr. Yates, of course, he would be
7 available.

8 A.L.J. VAN ORT: Yeah. I -- I don't think
9 anybody objects to that. No. Okay. Okay. One of the
10 things that I -- I just realized that I didn't mention
11 before is I don't believe, and correct me if I'm wrong,
12 does the joint proposal discuss the status of the
13 operations and management audits?

14 MR. O'BRIEN: It discusses the staffing
15 audit and it references incidentally the data audit. So,
16 in other words, a lot of the recommendations from the data
17 audit are built in, but it doesn't specifically say that.

18 A.L.J. VAN ORT: Okay. Because obviously
19 one of the things that we will need to address as -- as
20 part of this either -- and -- and I just wanted to make
21 sure that whether it's in testimony or whether it's in
22 brief, the status of the audits because we've -- we've got
23 that obligation under Section Sixty-six nineteen of the
24 Public Service Law. And --.

25 MR. O'BRIEN: The main audit is the -- the

1 Procedural Conference - 9-8-2016

2 gas management audit, and there is -- there's been
3 extensive testimony on that.

4 A.L.J. VAN ORT: I'm -- I'm familiar with
5 the -- the extensive testimony, but the parties -- the
6 parties have reached a joint proposal and there may be
7 some changes since that point in time. The way Section
8 Sixty-six nineteen is crafted it -- it refers to the
9 status, the report to the -- with regarding the -- a
10 recent management audit. But obviously you've got more
11 than one going on so I -- I would expect that, you know,
12 the status of the audit or audits would be addressed as to
13 -- as to compliance, so.

14 MR. GOODRICH: I believe the only one that
15 is in implement -- in the implementation phase is the --
16 the most recent gas management audit.

17 A.L.J. VAN ORT: Okay.

18 MR. GOODRICH: And we -- that was addressed
19 in testimony and staff can certainly summarize -- put in a
20 summary statement on that in its -- in a statements in
21 support.

22 A.L.J. VAN ORT: Thank you. That would be
23 great. Thank you. Okay. Is there anything else for this
24 morning? No, there's not. I want to thank you all for
25 coming. Going to conclude it at this point in time.

1 Procedural Conference - 9-8-2016

2 Thank you much. Let's go off the record.

3 (Off the record 10:43 a.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Procedural Conference - 9-8-2016

STATE OF NEW YORK

I, Howard Hubbard, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 35, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 15th day of September, 2016.

Howard Hubbard, Reporter