

1 STATE OF ALASKA
2 REGULATORY COMMISSION OF ALASKA
3
4 Before Commissioners: Robert Pickett, Chairman
5 Stephen A. McAlpine
6 Rebecca L. Pauli
7 Norman Rokeberg
8 Janis W. Wilson
9
10 In the Matter of the Tariff Revision)
11 Designated as TA357-121 Filed by the)
12 MUNICIPALITY OF ANCHORAGE d/b/a) U-17-008
13 MUNICIPAL LIGHT & POWER DEPARTMENT)
14 _____)
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16 REGULATORY COMMISSION OF ALASKA
17 701 West Eighth Avenue, Suite 300
18 Anchorage, Alaska 99501
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20 PREHEARING CONFERENCE
21 March 13, 2017
22 9:31 a.m.
23
24 BEFORE JOHN P. WOOD
25 Administrative Law Judge

1 APPEARANCES:

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1 P R O C E E D I N G S

2 (On record - 9:33 a.m.)

3 ALJ WOOD: Good morning. It's
4 approximately 9:30 a.m., March 13th, 2017, in
5 the Commission's hearing room in Anchorage,
6 Alaska.

7 This is the time and place set
8 for the prehearing conference in the
9 consolidated proceedings in the matter of the
10 request filed by the Municipality of
11 Anchorage, doing business as Municipal Light
12 & Power Department, for approval to establish
13 depreciation rates. That's given Docket No.
14 U-16-094. And in the matter of the Tariff
15 Revision designated as TA357-121, filed by
16 the Municipality of Anchorage, doing business
17 as Municipal Light & Power Department. It's
18 given Docket No. U-17-008. This is John P.
19 Wood, Administrative Law Judge for the
20 Commission presiding.

21 This prehearing conference was
22 scheduled by Order No. 1, issued in Docket
23 U-17-008 on February 13th, 2017. The dockets
24 were consolidated by Order U-16-0942,
25 U-17-0086 that was issued on March 10th,

1 2017.

2 I'll take appearances on behalf
3 of the parties.

4 On behalf of ML&P.

5 MR. THOMPSON: Good morning, Your
6 Honor. Dean Thompson with the law firm of
7 Kemppel, Huffman & Ellis appearing on behalf
8 of ML&P. And with me is Robert Royce, also
9 with KH&E representing ML&P.

10 ALJ WOOD: Thank you,
11 Mr. Thompson. KHE, I don't think I've heard
12 you say that one before.

13 MR. THOMPSON: Oh, sorry.
14 Kemppel, Huffman & Ellis, for the record.

15 ALJ WOOD: Attorney General.

16 MR. WALLER: Good morning. Jeff
17 Waller and Janet Fairchild-Hamilton.

18 ALJ WOOD: Thank you, Mr. Waller.
19 Providence Health and Services.

20 MR. JUNGREIS: Thank you, Your
21 Honor. It's Michael Jungreis and Craig
22 Gannett from Davis Wright Tremaine here on
23 behalf of Providence Health and Services.

24 ALJ WOOD: Thank you, Mr.
25 Jungreis.

1 On behalf of the Federal
2 Executive Agencies.

3 CAPTAIN CEPAK: Good morning,
4 Your Honor. This is Captain Natalie Cepak
5 and Major Andrew Unsicker on behalf of FEA.

6 MR. JERNIGAN: Sir, Jerry
7 Jernigan is also on the phone.

8 ALJ WOOD: Are you a captain or a
9 Mr., Mr. Jernigan? Are you still a Mr.?

10 MR. JERNIGAN: Sir, today I'm a
11 Mr. Today I'm a Mr.

12 ALJ WOOD: All right. Thank you,
13 Captain Cepak, Mr. Jernigan.

14 On behalf of JL Properties.

15 MR. GUERRIERO: Tony Guerriero
16 with Brena, Bell & Clarkson for JL
17 Properties, Inc.

18 ALJ WOOD: Thank you, Mr.
19 Guerriero.

20 And on behalf of ENSTAR.

21 MS. SMITH: Moira Smith, Vice
22 President and General Counsel on behalf of
23 ENSTAR Natural Gas Company.

24 ALJ WOOD: Thank you, Ms. Smith.
25 And on behalf of the Alaska

1 Native Tribal Health Consortium.

2 MS. GROVIER: Good morning, Your
3 Honor. This is Tina Grovier with Stoel Rives
4 on behalf of ANTHC, and also on the phone is
5 John Lowndes with Alaska Native Tribal Health
6 Consortium.

7 ALJ WOOD: Than you, Ms. Grovier.

8 All right. I've just got a
9 fairly short list of tasks to accomplish this
10 morning. That's to establish a procedural
11 schedule and inquire about a confidentiality
12 order in this docket.

13 I believe Order No. 1, that was
14 issued suspending ML&P's rate case, I
15 indicated that I would require interveners to
16 indicate whether they were planning to
17 challenge the prudence of Plant 2A with the
18 thought that that might somehow impact the
19 procedural schedule. After further research,
20 I'm not sure that it will impact the
21 schedule. That's up to you guys to decide
22 what you're going to do, but we'll go through
23 the exercise this morning and in order.

24 Mr. Waller.

25 MR. WALLER: Do you want to know

1 if we're going to challenge prudence?

2 ALJ WOOD: Yes.

3 MR. WALLER: Okay. At this time,
4 no, Your Honor. We unfortunately do not have
5 the resources to mount a determination of
6 prudence. And just for Your Honor and the
7 Commission's understanding, RAPA wouldn't
8 approach this as the idea of we make a
9 predecision that it's imprudent and prove
10 it's imprudent. If we brought in a prudence
11 expert, that expert would determine whether
12 it was prudent or not. And so we could just
13 as easily have an expert say it's prudent or
14 imprudent, but unfortunately we don't have
15 the resources for that today.

16 ALJ WOOD: Okay. Thank you, Mr.
17 Waller.

18 Mr. Jungreis.

19 MR. JUNGREIS: Thank you, Your
20 Honor. Providence Health and Services does
21 intend to challenge the prudence of the
22 Sullivan 2A Plant.

23 ALJ WOOD: Captain Cepak.

24 CAPTAIN CEPAK: Yes, Your Honor.
25 The FEA does intend to challenge prudence, as

1 well.

2 ALJ WOOD: Thank you, Captain

3 Cepak.

4 Mr. Guerriero.

5 MR. GUERRIERO: JL Properties

6 does not intend to put on an affirmative

7 prudence case; but we reserve the right to

8 certainly chime in, if appropriate at a later

9 time, in the way of briefing or

10 cross-examination, things like that.

11 ALJ WOOD: Thank you, Mr.

12 Guerriero.

13 Ms. Smith.

14 MS. SMITH: Similar to JL

15 Properties, ENSTAR does not intend to put on

16 an affirmative case; but reserves its rights

17 to comment as the case develops.

18 ALJ WOOD: Thank you, Ms. Smith.

19 And Ms. Grovier.

20 MS. GROVIER: Like ENSTAR and JL

21 Properties, ANTHC will not have an

22 affirmative witness on prudence, but does

23 reserve its rights on the issue.

24 ALJ WOOD: Thank you, Ms.

25 Grovier.

1 This might give us a little more
2 information to use and develop a procedural
3 schedule. Have the parties had the
4 opportunity to confer at all, look at dates,
5 or come up with any proposed hearing
6 schedule?

7 MR. THOMPSON: Your Honor, there
8 have been e-mails exchanged by two of the
9 parties, and ML&P had a conversation with one
10 of the parties, but there is still work to be
11 done.

12 ALJ WOOD: Okay. All right.
13 Do the parties have any questions
14 before we go off record and let you guys talk
15 -- guys and gals talk amongst yourselves?

16 MR. THOMPSON: One question, Your
17 Honor, and you may have said all that needs
18 to be said or can be said, but I was curious
19 if there's any information you can provide us
20 based on your comment that upon further
21 research, you're not sure that the statement
22 in the Order was -- I wouldn't say correct,
23 but that there may not be a need for parties
24 to propose a schedule that accommodates
25 procedures for prudence.

1 If there's any elaboration you
2 can provide, that might be helpful.

3 ALJ WOOD: Certainly. And the
4 parties -- so I guess to be clear, the
5 parties do need to have a schedule that
6 accommodates a prudence challenge.

7 MR. THOMPSON: Yes.

8 ALJ WOOD: The Commission, I
9 guess not so recently anymore, but went
10 through a large TAPS proceeding where
11 prudence was an issue, and the way to address
12 prudence in that procedural schedule just got
13 all bollixed up, I guess, for lack of a
14 better word.

15 MR. THOMPSON: Yes.

16 ALJ WOOD: So there was some
17 thought that we might need a different --
18 additional rounds of testimony, I guess, to
19 accommodate a prudence challenge.

20 Upon further research, I believe
21 it would be satisfactory to me and the
22 Commission if the parties decide amongst
23 themselves to go with the standard, you know:
24 Utility, you have filed your case. Prudence
25 can come in with responsive testimony and

1 then, Utility, you've got your reply there.

2 I think that would be acceptable
3 to the Commission. If the parties propose
4 something different, I'll consider it; but
5 that was what was the thought process behind
6 Order No. 1. Then, further research
7 indicates that it does not necessarily need
8 to have additional rounds of testimony.

9 MR. THOMPSON: Thank you. That's
10 helpful.

11 ALJ WOOD: Any further questions?

12 All right. I think the best
13 thing we can do is go off record and let the
14 parties discuss a procedural schedule.

15 So by my count, we've got nine
16 witnesses so far just with the utilities'
17 affirmative case. We've got six additional
18 parties. So I urge the parties just to be
19 realistic when you're looking at how many
20 weeks we're going to need for a hearing --
21 potentially need for a hearing in this
22 docket.

23 The other thing I want the
24 parties to do when we're off record is to
25 discuss proposed confidentiality orders.

1 All right. We will go off
2 record.

3 (Break - 9:42 a.m. to 3:10 p.m.)

4 ALJ WOOD: All right. We are
5 back on record.

6 Counsel, Mr. Thompson, what have
7 you come up with?

8 MR. THOMPSON: We have been
9 working diligently to try to find a
10 procedural schedule that would satisfy all of
11 the parties. We have traded multiple
12 versions, offered, counteroffered, and we
13 don't think we will be able to get there
14 today. We haven't called an impasse yet.

15 Some of us are still going to be
16 talking with our clients, and we're going to
17 send out clarified versions; but we were not
18 able to agree to it. And if we do -- if we
19 are not able to agree to it sometime
20 tomorrow, although some of us can't be
21 actively negotiating, then we will probably
22 have to just each of us submit to the
23 Commission our position on the appropriate
24 procedural schedule and statutory timeline.
25 But I encourage my --

1 ALJ WOOD: Yeah, I'm just
2 glancing at my calendar here --

3 MR. THOMPSON: Okay.

4 ALJ WOOD: -- and I'll let
5 everyone else chime in.

6 One second, Mr. Waller.

7 Mr. Waller.

8 MR. WALLER: Yeah. I think to --
9 owing to what Mr. Thompson said, I think what
10 we're going to try to do is see if we can
11 agree to something tomorrow morning that
12 several people have to talk with their
13 clients about. If we cannot, then we would
14 just advise Your Honor through an e-mail with
15 all of us that we could not, and we would
16 like to then submit proposed schedules with
17 explanations by the end of the week and then
18 have the Commission break the tie where we
19 can't.

20 ALJ WOOD: So you're looking for
21 continuing this on paper rather than come
22 back in and let me listen to you argue and
23 rule from the bench?

24 MR. WALLER: Yes, I think that's
25 the consensus, that we'll try to make one

1 last stab tomorrow, see if we can get an
2 agreement, and if we can't, then file
3 something in writing explaining -- suggesting
4 each schedule that each one -- each party
5 likes and explain why that should be the
6 appropriate schedule and let the Commission
7 make the decision.

8 ALJ WOOD: Mr. Jungreis, do you
9 have anything to add?

10 MR. JUNGREIS: No. Just to
11 concur that I think that's -- we didn't come
12 up with a solution to the problem, but we
13 came up with a procedure at any rate.

14 ALJ WOOD: Thank you. Captain
15 Cepak, are you still there? I believe it's
16 quite late where you're at.

17 MAJOR UNSICKER: She's gone.
18 It's Major Unsicker. Yes, I am still here,
19 sir.

20 ALJ WOOD: Okay. Thank you,
21 Major Unsicker. And I'm guessing you agree
22 with what has been articulated so far?

23 MAJOR UNSICKER: Yes, sir.

24 ALJ WOOD: Thank you, Major.

25 Mr. Guerriero.

1 MR. GUERRIERO: I have nothing to
2 add. I think it's already been said.

3 ALJ WOOD: Ms. Smith.

4 MS. SMITH: Nothing to add except
5 that nobody ever enjoys putting the
6 Commission in this position, and this
7 instance is no different. Thanks.

8 ALJ WOOD: Thank you, Ms. Smith.
9 And Ms. Grovier.

10 MS. GROVIER: The same.

11 ALJ WOOD: Thank you, Ms.
12 Grovier. Okay. Have the parties had the
13 chance to -- you've been very busy --
14 confidentiality order?

15 MR. THOMPSON: Yes, Your Honor.
16 We discussed that we believe that we know the
17 type of confidential discovery order that we
18 would all support. Reference was made to the
19 traditional or the typical discovery order,
20 but we think we know what we're referring to;
21 but I suggested that ML&P would distribute
22 what it believes is a recent version of that
23 order that everyone can agree to. I would
24 circulate it to the other counsel and if we
25 all agreed, then we would submit it, similar

1 to how we have done in other dockets.

2 ALJ WOOD: Thank you, Mr.

3 Thompson. I think that's a good idea because
4 there is some level of disagreement on what
5 is traditional, or there are at least a
6 couple different versions out there that have
7 been used, so --

8 MR. THOMPSON: Yes.

9 ALJ WOOD: -- to pin that down is
10 good. All right.

11 Do the parties have any
12 questions? Would you like me to look at any
13 dates, anything that would be useful to help
14 speed your discussions along or make them
15 easier?

16 And I neglected to make note.
17 The intention is to advise me by e-mail as to
18 the status of things tomorrow by sometime,
19 and if you do not reach a resolution, to file
20 statements by this Friday; is that accurate?
21 I'm seeing head nods. All right.

22 MR. WALLER: Yes, Your Honor.

23 ALJ WOOD: All right. I'll set 5
24 o'clock tomorrow as the deadline for filing
25 -- not filing. Send me an e-mail, copy all

1 counsel, or you can each send me e-mails
2 copying each other with the status of things.
3 I'll set Friday at 5 o'clock standard filing
4 time if you're unsuccessful tomorrow.
5 Hopefully you will be successful, but if
6 you're not, I'll set Friday at 5:00 for the
7 deadline to submit your various proposed
8 schedules and statements.

9 We'll include the confidentiality
10 order at the same time, please.

11 Anything further?

12 Mr. Jungreis.

13 MR. JUNGREIS: Thank you, Your
14 Honor. In this case an interim and
15 refundable rate increase has been granted for
16 the duration of this matter. ML&P has
17 elected to escrow the funds. We are --
18 because by doing so, of course, they are
19 avoiding having to pay 10-and-a-half percent
20 interest on monies that they would otherwise
21 be collecting, we are interested in knowing
22 how the funds are going to be escrowed and
23 that they will be placed in a way that
24 generates some kind of return for what will
25 be probably about a year's worth of 30

1 percent increase in their rates. So we just
2 would like to follow up on that and make sure
3 that that gets taken care of.

4 ALJ WOOD: Are you making a
5 request for some type of order from the
6 Commission?

7 MR. JUNGREIS: I guess what I'm
8 doing, first of all, is asking whether ML&P
9 can tell us what their plans are. If their
10 plans are reasonable and appropriate, then we
11 wouldn't need the Commission's intervention.
12 So we just want to know, I guess, what --
13 what's going to be happening with the
14 escrowed funds.

15 ALJ WOOD: You're certainly
16 welcome to ask Mr. Thompson. He represents
17 ML&P. If for whatever reason your
18 discussions need to be carried forward in
19 front of the Commission with some type of
20 motion, proceed that way; but I can't tell
21 you what ML&P is going to do as far as an
22 escrow. What I've seen in the past is
23 generally a utility will place the amount
24 into escrow. They are not very -- there will
25 be an interest rate that they receive from

1 the escrow account and -- I'm going off the
2 top of my head, and that's probably not very
3 helpful. So why don't you talk to Mr.
4 Thompson and, if necessary, bring it in front
5 of the Commission. I will also note that
6 ML&P, by putting it in escrow, is foregoing
7 the use of the funds for the length of this
8 proceeding as well, so -- I mean, that's the
9 -- it goes both ways.

10 Anything further? Hearing
11 nothing, we're adjourned. Someone make note
12 this has been a six-hour prehearing
13 conference, and I think that's a record.
14 Thank you all very much. We're adjourned.

15 MR. THOMPSON: Thank you.

16 (Adjourned - 3:18 p.m.)

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1 TRANSCRIBER'S CERTIFICATE

2

3 I, Leslie J. Knisley, hereby
4 certify that the foregoing pages numbered 4
5 through 20 are a true, accurate, and complete
6 transcript of the Prehearing Conference of
7 the Regulatory Commission of Alaska, Docket
8 U-17-008, held on March 13, 2017, and
9 transcribed by me from a copy of the
10 electronic sound recording to the best of my
11 knowledge and ability.

12

13

14

Date

Leslie J. Knisley, Transcriber

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