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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: R-00974104 R-00974104C0001-C0002 Duquesne Light Company Application for approval of a Restructuring Plan. Initial and Further Hearings.

- - - - -

Pittsburgh, Pennsylvania
December 15, 1997

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Pages 1 to 294, inclusive

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THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: R-00974104 R-00974104C0001-C0002 Duquesne Light Company Application for approval of a Restructuring Plan. Initial and Further Hearings.

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Stenographic report of hearing held in Hearing Room 2, State Office Building, Pittsburgh, Pennsylvania,

Monday,
December 15, 1997
9:00 o'clock AM

- - - - -

BEFORE

JOHN CORBETT, JR, ADMINISTRATIVE LAW JUDGE

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<u>FOR DUQUESNE LIGHT:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
David Marshall	15	21		
Donald J. Clayton	188	194		

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25E-X-H-I-B-I-T-SFOR DUQUESNE LIGHTMARKEDADMITTED

Exhibit DDM 1 ✓✓✓

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Exhibit DJC-1 through DJC-25 ✓✓✓✓✓✓

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Exhibit DJC-26 ✓✓

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FOR HHS

Cross-Exam. 1 ✓✓

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Cross-Exam. 2 ✓✓

257

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S-T-A-T-E-M-E-N-T-SFOR DUQUESNE LIGHT:MARKEDADMITTED

Duquesne Statement 1 ✓✓

16

Duquesne Statement 1 - Rejoinder ✓✓

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Duquesne Statement 2 ✓✓✓✓

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Duquesne Statement 2-R ✓✓

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1 JUDGE CORBETT: We will open the record at this
2 time.

3 This is the time and place scheduled for
4 hearings on the case of the Pennsylvania Public
5 Utility Commission versus Duquesne Light Company.

6 This case was docketed with the Commission at
7 Number R-00974104.

8 I am Administrative Law Judge John Corbett, and
9 I have been assigned to hear this case and to render
10 a recommended decision to the Commission.

11 I will briefly read through the appearance
12 sheet.

13 If I don't call your name, then let me know
14 after I call the list, and we will add you to the
15 list.

16 Rodney Akers, for the City of Pittsburgh?

17 MR. AKERS: Present, Your Honor.

18 JUDGE CORBETT: Bruce Americus, for the City of
19 Pittsburgh?

20 MR. AMERICUS: Present.

21 JUDGE CORBETT: David Hughes, representing
22 himself?

23 MR. HUGHES: Here.

24 JUDGE CORBETT: Kandace Melillo and Wayne Scott
25 for the Commission's Office of Trial Staff?

1 MS. MELILLO: Present, Your Honor.

2 JUDGE CORBETT: Todd Stewart for Mid-Atlantic
3 Power Supply Association?

4 MR. STEWART: Present, Your Honor.

5 JUDGE CORBETT: Samuel Braver for the City of
6 Pittsburgh.

7 (No response.)

8 JUDGE CORBETT: James Dougherty and --

9 MR. DOUGHERTY: Pamela Polacek, Your Honor.
10 Good morning.

11 JUDGE CORBETT: Good morning. Thank you for
12 the help on the name. I couldn't read it. Thank
13 you.

14 Kenneth Wiseman and Robert Lamkin for Hospital
15 Shared Services and Administrative Resources, Inc?

16 MR. WISEMAN: Here, Your Honor.

17 JUDGE CORBETT: Scott Rubin, for the IBEW?

18 MR. RUBIN: Good morning, Your Honor.

19 JUDGE CORBETT: Good morning.

20 Marisa Sifontes and Edmund Berger, for the
21 Office of Consumer Advocate?

22 MR. BERGER: Good morning, Your Honor.

23 JUDGE CORBETT: Good morning.

24 Angela Jones, for the Office of Small Business
25 Advocate?

1 MS. JONES: Present, Your Honor.

2 JUDGE CORBETT: Dan Clearfield, for ENRON.

3 MR. CLEARFIELD: I am here, Your Honor.

4 JUDGE CORBETT: Larry Crayne, for Duquesne
5 Light.

6 MR. CRAYNE: Here, Your Honor.

7 JUDGE CORBETT: Ken Zielonis for the
8 Pennsylvania Retailers Association?

9 MR. ZIELONIS: Here, Your Honor.

10 JUDGE CORBETT: John Moot, for Duquesne Light
11 Company?

12 MR. MOOT: Here, Your Honor.

13 JUDGE CORBETT: Alan Barak, for the
14 Environmentalists.

15 (No response.)

16 JUDGE CORBETT: Victor -- I'm sorry. I can't
17 read the last name.

18 MR. CONTRACT: Contract. Present, Your Honor.

19 JUDGE CORBETT: Okay. For Duquesne Light
20 Company.

21 Anyone else that I have not read or called?

22 Okay.

23 MS. MELILLO: That's Alan Barak who just
24 entered.

25 JUDGE CORBETT: Okay. Thank you. Just a

1 couple of housekeeping matters before we begin this
2 morning.

3 First of all, we will take a mid-morning
4 recess, as well as a luncheon recess. The luncheon
5 recess will be about 12:30, or whenever there is a
6 convenient break in the testimony.

7 It will be for one hour.

8 One item that I need to straighten out with the
9 parties would be the transcript turn-around, how
10 quickly the parties need the transcript from each
11 day's hearing.

12 I talked to Mr. Moot I believe last week, and I
13 believe, Mr. Moot, we left it that you do not need a
14 one day turn around -- is that right -- or you did?

15 MR. MOOT: No. We did, and someone confirmed
16 that from the reporting service.

17 JUDGE CORBETT: Okay. Very good. Is there
18 anyone else that needs one-day turn around on the
19 transcript?

20 Okay. I would ask you to turn off all beepers
21 and cell phones, so that we don't interrupt the flow
22 of the testimony.

23 You can bring coffee and soda pop in the room,
24 if you wish, so long as it doesn't become a problem.
25 I would ask you that at the end of each day, though,

1 to please pick it up and take it with you or somehow
2 dispose of it.

3 There is very little -- there has been very
4 little proprietary information involved in the
5 prepared testimony, as I remember, and when we get to
6 the point in the testimony or the cross examination
7 where proprietary information will be brought out, I
8 would ask the attorney asking the questions to first
9 of all try to batch their questions so that all
10 proprietary information is requested at the same
11 time.

12 I will then ask parties who are not parties to
13 the proprietary order to leave the hearing room.

14 I will ask counsel for Duquesne Light to
15 confirm that the parties, that the remaining parties
16 in the room are parties to the proprietary order, and
17 then we will hear testimony concerning proprietary
18 information.

19 That part of the transcript dealing with
20 propriety information will then be under seal, so I
21 would ask you, for the least amount of disruption in
22 the hearing process, to try to batch your questions
23 so that proprietary information is handled all at one
24 time.

25 I am hoping that most or all of you have

1 received the last prehearing order that I sent out
2 last week. In that proprietary order, I asked you to
3 begin thinking about briefs. One item that I
4 neglected to put in that prehearing order was
5 information that we asked you to consider in the
6 second prehearing order, and that concerns the format
7 for tables and schedules to be attached to your
8 briefs.

9 The tables and schedules format that was
10 attached to the second prehearing order is mandatory.

11 If you have any claim dealing with any of the
12 information on those tables and schedules that is not
13 presented in that table and schedule format, it will
14 not be considered when we read your briefs.

15 We need the information in the table and
16 format, the table and schedule format that was
17 presented with the second prehearing order, so I
18 would ask you to look at that carefully, and also, I
19 would ask the coordinators to begin thinking about a
20 common brief outline.

21 It is not too early in the process to
22 begin that, to begin that procedure, and I will have
23 more to talk about this upon conclusion of the
24 hearings, but since we have most of the parties here,
25 I thought it would be worthwhile to bring it up this

1 morning.

2 MR. MOOT: Your Honor?

3 JUDGE CORBETT: Yes?

4 MR. MOOT: If I may, on the common brief
5 outline, we had indicated to at least one party that
6 we would be willing to take the lead in at least
7 drafting a straw man outline and circulating it to
8 the parties for comment, and it was my anticipation
9 that we would do that during the break between the
10 two weeks of hearings, and perhaps even by the first
11 day of the second week, we could have an agreement,
12 and we could have a draft outline for you, and if
13 not, we could go back and forth during that week and
14 fix it up, so that you would have something in hand
15 at latest at the end of that week, it would be the
16 hope.

17 JUDGE CORBETT: Okay. Well, thank you very
18 much.

19 All right. Those are most of the items that I
20 wished to cover with you this morning before we
21 began.

22 Are there any other preliminary matters that
23 need to be addressed?

24 Yes, Miss Melillo:

25 MS. MELILLO: Your Honor, the Office of Trial

1 Staff had discussions with the company about having
2 the testimony of the rate of return witnesses entered
3 by stipulation.

4 Those two witnesses would be the company's
5 witness, Dr. Malcolm, and our witness, Mr. VanJeskie.

6 I would like to simply state at this time, if
7 anyone here intends to cross examine Mr. VanJeskie,
8 please let me know, because otherwise, we would not
9 intend to bring him the first week and would ask that
10 his testimony also be moved in by stipulation.

11 JUDGE CORBETT: Okay. Very good.

12 Yes, Mr. Zielonis?

13 MR. ZIELONIS: Your Honor, I don't know if Mr.
14 Mills, who formerly represented the Pennsylvania
15 Retailers, signed the protective order, but I am
16 willing to do that.

17 I have not signed it personally at this time,
18 but I am willing to commit to that today in the
19 hearing room and then sign it at a later date.

20 JUDGE CORBETT: All right. Well, maybe you can
21 take that up with counsel for Duquesne Light during a
22 recess or during the lunch break.

23 Yes?

24 MS. JONES: Good morning, Your Honor.

25 JUDGE CORBETT: Good morning.

1 MS. JONES: Angela Jones for OSBA. I, too, do
2 not know if Miss Moury signed the protective order.

3 I have not signed it and am willing to sign it
4 for OSBA.

5 Also, contrary to the score board schedule for
6 the witnesses, it is noted that OSBA is going to
7 cross examine Clayton.

8 We will not be doing that today. Consequently,
9 we are giving up our seat as a statutory party at the
10 table and have offered it too another party.

11 JUDGE CORBETT: Okay. Very good. Thank you.

12 Yes.

13 MR. BARAK: Your Honor, Alan Barak, for the
14 Environmentalists.

15 I wasn't here I was down the hall in the other
16 case. I asked Mr. Hughes to keep me informed as for
17 my presence here, and I will be spending most of my
18 time down at the other hearing.

19 JUDGE CORBETT: Okay. Anyone else? Any other
20 preliminary matters that need to be addressed?

21 (No response.)

22 JUDGE CORBETT: Okay. Well, then, let's get
23 started.

24 Mr. Moot, do you want to call the first
25 witness?

1 MR. MOOT: The first witness is David Marshall.

2 JUDGE CORBETT: All right, sir. Would you
3 raise your right hand and be sworn, please?

4 DAVID MARSHALL, called as a witness, having
5 been duly sworn, testified as follows:

6 JUDGE CORBETT: All right. Would you -- very
7 good. Would you begin by giving us your full name,
8 and spell your last name for the court reporter,
9 please?

10 THE WITNESS: David D. Marshall,
11 M-a-r-s-h-a-l-l.

12 JUDGE CORBETT: All right. Mr. Moot?

13 DIRECT EXAMINATION

14 BY MR. MOOT:

15 Q Good morning, Mr. Marshall.

16 A Good morning.

17 Q Did you previously submit direct and
18 rebuttal testimony in this case?

19 A Yes.

20 MR. MOOT: I would like at this time to submit
21 to the court reporter two copies of Mr. Marshall's
22 direct and rebuttal testimony and exhibits.

23 JUDGE CORBETT: Okay. They are marked as
24 Duquesne Statement No. 1, and what is the rebuttal
25 marked as?

1 MR. MOOT: The rebuttal is marked as Statement
2 No. 1-R, and the exhibit thereto is DDM 1.

3 (Thereupon, Duquesne Statement 1 and
4 Exhibit DDM 1 were marked for identification.)

5 MR. MOOT: Your Honor, I didn't see it in your
6 prehearing orders, but in other cases, judges have
7 asked for it, and we have prepared an index of our
8 testimony exhibits, with the number appearing in the
9 left-hand margin, and a brief description appearing
10 in the middle, and two boxes at the right for someone
11 to make a notation of when it was identified and
12 admitted.

13 If that would help you follow along, we would
14 be happy to provide that to you, the reporter, and
15 the other parties.

16 JUDGE CORBETT: Sure. That will be fine.

17 MR. MOOT: Not knowing whether this would be
18 helpful, and the fact that we have a lot of people, I
19 don't have enough copies yet, but we could commit to
20 getting them copied and circulated at the lunch break
21 for everyone else.

22 JUDGE CORBETT: That would be fine. If you
23 could hand them out, that would be appreciated.
24 Thank you.

25 BY MR. MOOT:

1 Q Mr. Marshall, were the answers given in your
2 direct and rebuttal testimony true and correct, to
3 the best of your knowledge, information, and belief?

4 A Yes.

5 Q Mr. Marshall, do you have any rejoinder
6 testimony?

7 A Yes.

8 MR. MOOT: Your Honor, at this time, I would
9 like to offer to circulate to the parties a brief
10 piece of rejoinder testimony prepared by Mr.
11 Marshall.

12 It is only two pages long.

13 One of the parties in this case requested that
14 if we were to do any brief oral rejoinder -- or
15 strike that -- if we were to do any brief rejoinder,
16 that it be submitted in written fashion, if possible,
17 and we said we would try to accommodate that wish.

18 We have done so with Mr. Marshall, and if it's
19 not objectionable to Your Honor and the other
20 parties, we would at this time circulate copies of
21 this and give the parties as much time as they would
22 like to take a look at it and come back and prepare
23 for cross examination on that testimony.

24 JUDGE CORBETT: Okay. Would you care to go
25 ahead and do that?

1 MR. MOOT: I am now handing to the court
2 reporter two copies of testimony that is marked
3 "Rejoinder Testimony of David Marshall" --

4 JUDGE CORBETT: Thank you.

5 MR. MOOT: -- one copy to the Judge, a copy to
6 the witness, and I am circulating copies for the
7 parties.

8 JUDGE CORBETT: All right. This document will
9 be marked and identified as Duquesne Statement No. 1
10 - Rejoinder.

11 (Thereupon, Duquesne Statement No. 1 -
12 Rejoinder was marked for identification.)

13 MR. MOOT: I would note for the record that
14 this statement does not appear on the index list that
15 we just give you.

16 The index list was prepared before the
17 rejoinder.

18 BY MR. MOOT:

19 Q Okay. Mr. Marshall, do you recognize the
20 rejoinder testimony presented to you?

21 A Yes.

22 Q Are the statements in that testimony true
23 and correct, to the best of your knowledge,
24 information and belief?

25 A Yes.

1 MR. MOOT: Your Honor, one housekeeping matter.
2 Would you prefer that counsel move into evidence the
3 testimony and exhibits of the witness prior to cross
4 examination, or would you prefer that that is held
5 until the close of cross?

6 JUDGE CORBETT: Why don't we do it at this
7 point, subject to proper motions --

8 MR. MOOT: Okay.

9 JUDGE CORBETT: -- and any motions to strike.

10 MR. MOOT: I would hereby move into evidence
11 the direct, rebuttal and rejoinder testimony and
12 exhibits of Mr. Marshall.

13 JUDGE CORBETT: Okay.

14 MR. CLEARFIELD: Your Honor, Dan Clearfield. I
15 would object to moving in at this time the rejoinder.

16 We haven't had an opportunity to review it as
17 to whether it is proper rejoinder, whether it is
18 appropriate to make a motion with respect to that
19 testimony.

20 MR. MOOT: I think, as the Judge stated, all
21 motions to admit the testimony will be subject to a
22 later motion through cross examination or otherwise,
23 and if there is an objection to it, we can deal with
24 it at that time.

25 JUDGE CORBETT: I think that is how we will

1 handle it, Mr. Clearfield.

2 Anything else?

3 (No response.)

4 JUDGE CORBETT: Okay. Basically, I am going to
5 follow the grid for cross examination prepared,
6 coordinated by the Office of Consumer Advocate, and I
7 note that the Office of Trial Staff does not have any
8 cross examination for this witness.

9 The first party that has cross examination is
10 the Office of Consumer Advocate.

11 JUDGE CORBETT: I'm sorry.

12 MS. MELILLO: I requested, from the Office of
13 Consumer Advocate, if I could ask a couple of
14 questions? A couple of questions surfaced over the
15 weekend that were prepared on Thursday or Friday, we
16 have agreed --

17 JUDGE CORBETT: Okay.

18 MS. MELILLO: -- if I could take a moment to
19 review the rejoinder?

20 JUDGE CORBETT: All right.

21 MR. MOOT: Your Honor, I think it would
22 probably be most helpful if we took a short break,
23 maybe fifteen minutes, to allow the parties to review
24 this, if they need to discuss it among themselves to
25 make any adjustments in cross examination.

1 If it is less time, that's great, but I
2 think it would only be fair.

3 JUDGE CORBETT: Okay. That seems to be
4 consensus in the room.

5 All right. Well, then, let's take a short
6 break. Let's make it -- let's make it fifteen
7 minutes. Okay. Thank you.

8 (Recess taken.)

9 JUDGE CORBETT: We are back on the record.
10 Miss Melillo?

11 MS. MELILLO: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MS. MELILLO:

14 Q Good morning, Mr. Marshall.

15 A Good morning.

16 Q I just have a very few questions for you
17 this morning.

18 If I could refer you to your Duquesne
19 Statement No. 1 --

20 A Yes.

21 Q -- at the bottom of Page 18, you respond to
22 a question which says, "Please describe Duquesne's
23 past mitigation efforts."

24 Do you see that reference?

25 A Yes.

1 Q And part of your response mentions the
2 placement into cold reserve of the Phillips Power
3 Station and a portion of Brunot Island.

4 Do you see that?

5 A Yes.

6 Q All right. So Duquesne is referencing the
7 placement into cold reserves of these units as part
8 of their indication of past mitigation --

9 A Yes.

10 Q -- of Duquesne? Is that correct?

11 A Yes.

12 Q All right. Now, you mention also the
13 company taking immediate steps to deal with the loss
14 of 700 megawatts of load.

15 That 700 megawatt loss, that was as a result
16 of the decline in the steel industry in the early
17 1980s?

18 A Yes.

19 Q Was the removal of a portion of Brunot
20 Island and the Phillips Power Station from rate base
21 and the placement into cold reserve of those units a
22 response to an excess capacity issue which occurred
23 at that time, due to the 700 megawatt loss of load in
24 the Pittsburgh area?

25 A It was really related to just an economic

1 fact, that the plants were not economic to operate,
2 and that our company and our customers could save
3 money by shutting it down.

4 Q You are saying that a factor was not an
5 excess capacity of it, that Duquesne had too much
6 capacity at that time, due to the loss of load?

7 A No. I am just characterizing it that it was
8 really the core economics that led to the plant being
9 shut down.

10 Clearly the economic excess capacity
11 situation of the company was one of the factors, and
12 the capacity factor on the plant at the time, my
13 recollection is that it had dropped to maybe fifteen
14 to less than twenty percent, and it just wasn't
15 economic for us to keep that plant open, and so that
16 is why the plant was shut down.

17 Q Now, when you say the plant was shut down,
18 you mean Phillips and the portion of Brunot Island
19 that was shut down?

20 A Yes.

21 MS. MELILLO: That's all I had. Thank you.

22 JUDGE CORBETT: Okay. Mr. Berger, will you be
23 cross examining?

24 MR. BERGER: Yes, I will, Your Honor.

25 CROSS EXAMINATION

1 BY MR. BERGER:

2 Q Okay. Good morning, Mr. Marshall.

3 A Good morning.

4 Q Mr. Marshall, first, with respect to your
5 rejoinder and the rebuttal testimony, you discuss in
6 there the divestiture of the company's generating
7 stations in response to some of the proposals of
8 Consumer Advocate witnesses, Mr. Kahal. Do you
9 recall that?

10 A Yes. We refer to it as an auction of the
11 company's assets.

12 Q Now, do I understand that the company --
13 that that proposal, as a possibility, would apply
14 whether or not the company merged with APS or not?

15 A No, no. Definitely not. This testimony is
16 for a stand-alone case.

17 You will note in the testimony that was
18 filed in our combined case that that is not the same
19 proposal.

20 Q Do you indicate anywhere in your rebuttal or
21 your rejoinder that that proposal does not apply in
22 the context of the merger?

23 A Well, this testimony is based on what our
24 position is on a stand-alone basis.

25 The testimony in the combined case is the

1 testimony that says what our proposal is in the
2 combined case.

3 Q So if the merger went through, the company
4 would basically withdraw its proposal for the
5 possible divestiture?

6 Is that correct?

7 A Again, I think the testimony that we provide
8 in the combined case we ought to do in the combined
9 case.

10 I would be glad to respond to it in the
11 combined case.

12 The testimony here today I am talking about,
13 what we are going to do in the stand alone case if
14 the merger does not go, if the merger does not go
15 through.

16 Q When you talk about the "combined case," you
17 are talking about the merger case, I assume?

18 A Yes.

19 Q But the merger case doesn't create a
20 stranded cost valuation in that proceeding, does it?

21 You haven't proposed a stranded cost
22 valuation in the context of that proceeding?

23 A Yes. We have a proposal in that case that
24 is different than the proposal in this case.

25 I believe -- again, I don't know. Is it

1 useful? Should I? I don't --

2 Q Okay. Mr. Marshall, the company proposes a
3 competitive transition charge that includes a fixed
4 customer charge? Is that correct?

5 A Yes. To be quite honest with you, there are
6 a lot of details in the rate design.

7 You probably ought to ask Mr. Clayton, if
8 you are going to get into each component of the rate.

9 Q Well, do you know how much of the additional
10 fixed customer charge it would be?

11 A No, I don't.

12 Q Okay. Would you agree with me that the
13 company's proposal would require a final or residual
14 valuation of the stranded costs in the year 2003, if
15 not before?

16 A Yes, sir.

17 Q And would you agree with me that the
18 residual calculation would require determination of
19 the market price and generation revenue requirements
20 for the life of the plant for the period after 2003?

21 A Are you talking about under our proposal?

22 Q Under your proposal, yes. Would there have
23 to be estimates made for those periods with respect
24 to revenue requirements and market price?

25 A The method that we had proposed for residual

1 value calculations would look at a host of market
2 data for determining what the residual value is, so
3 if your question is, would we use forecasts of that
4 kind of information to determine the market price,
5 the answer is no.

6 We would rely more on external data, market
7 data, asset sales that are taking place, future
8 prices on the price of power, forward contracts that
9 have been signed that would indicate what plants are
10 worth.

11 Now, clearly, we would have to look at
12 estimated cost of operating the plants in determining
13 what the asset value would ultimately be as a result
14 of that market data.

15 Q Okay. But all that market data is based on
16 projections?

17 Would you agree with that?

18 A No. The market data would be based on
19 observable information in the market, willing buyers
20 and sellers.

21 Q Okay. But if you are trying to determine
22 what the market price will be in the year 2010 when
23 you are in the year 2003, are you saying you are
24 simply increasing the value in the year 2003 to what
25 you believe is based on inflation of the value in the

1 year 2010?

2 A No. That is not what I just said.

3 Q So when you are talking about, for example,
4 future contracts --

5 A Yes.

6 Q -- forward contracts --

7 A Yes.

8 Q -- as the basis for the determination --

9 A The basis, yes, willing buyer and seller,
10 what people are willing to pay for power in our
11 region --

12 Q And --

13 A -- observable market data.

14 Q And that market data, but that is based upon
15 those investors' viewpoint about what the price will
16 be -- am I correct -- in the year 2010, let's say, if
17 we are talking about market prices?

18 A There's no question -- there is no question
19 that any time you are dealing with market data,
20 people will be basing what they think a plant is
21 worth on their view of the future, but the
22 fundamental difference is that we are not relying on
23 a particular expert to tell us what the value of our
24 plants are.

25 We are going to look to the market, what

1 people are actually willing to pay for them, and then
2 they will base that on a host of factors, how they
3 will use it in their own portfolio, what then they
4 can do in terms of operating the plants, their own
5 expectations with environmental costs, and the key
6 point here of course is that the company will be in a
7 position that it can make a related determination.

8 In other words, if there is a market at that
9 price, and that is the price that is determined, we
10 can make a decision as to whether we agree with that
11 price and want to keep the plants, or we want to sell
12 the plants at that price, in which case we hedge our
13 risk, so the point here is that we have to rely on
14 market data for making that determination, willing
15 buyers and sellers.

16 Q But wouldn't you agree with me that
17 investors' expectations are their estimated
18 expectations?

19 They don't have a crystal ball to see
20 exactly what the price will be in 2010?

21 They are making an estimate? They are
22 making a guess?

23 A Yes, sir.

24 Q Would you agree with that?

25 A Yes, sir.

1 Q And would you agree with me when the Fort
2 Martin plant was sold, that that was based upon a
3 guess of what prices would be?

4 A That was one data point, yes.

5 Q Okay. Would you agree with me, Mr.
6 Marshall, that for an asset to have stranded costs
7 associated with it, that means that it has a negative
8 economic value?

9 In other words, the dollars generated by
10 that asset are exceeded by the cost of that asset?

11 A Well, the stranded costs, by definition, are
12 the costs that -- the cost of the plant versus what
13 it is worth on the market.

14 By definition, that is what stranded costs
15 are.

16 Q And would you agree with me that in a
17 competitive market that asset would typically not
18 operate if the revenues from that asset do not exceed
19 the long-run marginal cost for operation of that
20 asset?

21 Would you agree with that?

22 A No. I think that -- no, I do not. There
23 are many times in a competitive market that a plant
24 will be operated as long as there is an expectation
25 going forward that the short run marginal cost will

1 be less than the expected revenues that would be
2 received, and so there may be a particular year where
3 you may lose money, but you make it up in latter
4 years.

5 Clearly, in the market as well, I don't
6 think you tend to look at fixed costs.

7 You tend to look at variable costs, you look
8 at avoidable costs, and that is how we have done our
9 analysis.

10 Q Would you agree with me that investors'
11 expectations regarding a return on investment
12 associated with generation assets has changed over
13 time?

14 A Yes, sir.

15 Q Would you agree with me that an investor in
16 a competitive effort would expect the return to
17 differ, based upon changes in the economics of that
18 investment decision?

19 A I'm sorry?

20 Q Would you agree with me that an investor in
21 a competitive market would expect their return to
22 differ based upon changes in the economics of that
23 investment decision --

24 A What investment?

25 Q -- in other words, opportunities for using

1 their capital elsewhere to provide different returns?

2 A That would certainly be one factor that
3 investors may look at. They look at a whole host of
4 factors.

5 Q Now, you talk about the regulatory contract
6 in your rebuttal testimony.

7 Do you recall that?

8 A I believe I talk about that in my direct and
9 rebuttal testimony, but my direct, I think.

10 Q Did the Legislature ever provide an explicit
11 promise that the terms of regulation wouldn't change?

12 A I have not -- I am not aware of that.

13 Q Would you agree with me that changes in the
14 terms of regulation for the electric power market in
15 Pennsylvania have been expected for some time?

16 A The specific changes in the Customer Choice
17 Act?

18 Q Not the specific changes, but that the
19 restructuring of the electric industry in
20 Pennsylvania has been expected for a number of years?

21 A I would say that my own expectation -- is
22 that what you are asking?

23 A No. Investors' expectations.

24 A I don't know. I assume that each investor
25 has a different view of that issue.

1 Some investors would expect it would happen
2 sooner. Some investors would expect that it would
3 happen later.

4 There is clearly a lot of information in the
5 marketplace going on on a nation-wide basis about
6 moving away from regulated markets.

7 Pennsylvania is one of the first to actually
8 begin this long process, so I don't -- I mean, I
9 can't tell you exactly what the typical investor may
10 think about that, but there is a lot of information
11 in the marketplace about this, and my own view is
12 that certainly we have had hearings on this now for a
13 couple of years.

14 That's all a matter of record.

15 The PUC looked at this starting a couple of
16 years ago, so certainly for some time now this is
17 something that the people have been expecting.

18 Q Now, part of your proposal, as a ROE, return
19 on equity spill-over mechanism, under which, if the
20 company's earnings exceed eleven and a half percent,
21 I think it is, it would establish a deferred revenue
22 credit account which would ultimately be used to fund
23 accelerated depreciation and amortization?

24 Is that correct?

25 A Yes, to the extent that the ROE spill over

1 would allow us to accelerate our depreciation, we
2 would do that.

3 Q And if the returns fell below eleven and a
4 half percent, there would be a debit to that account?

5 Is that correct?

6 A Well, no. Actually, one of the critical --
7 one of the critical elements of our plan is that we
8 have a minimum amortization requirement, and I think
9 we may be the only company in the state to offer
10 this.

11 Our plan actually guarantees that we will
12 amortize a minimum amount regardless of what happens,
13 regardless of what our return is, so that it is
14 really a down sizing thing.

15 To the extent that we don't earn eleven and
16 a half percent, we still commit to take these costs
17 off the book.

18 On the other hand, we are offering upside
19 potentials. To the extent that we can amortize more,
20 and still earn eleven and a half percent, we commit
21 to do even more than that minimum amount, so it is an
22 asymmetric thing where we have been taking a risk
23 that we may not be able to earn a living of eleven
24 and a half percent, so I --

25 Q Now, have you put forth a specific proposal

1 as to how this mechanism will operate?

2 A Yes. Mr. Clayton discusses that in his
3 testimony.

4 Q Well, I will ask Mr. Clayton where in his
5 testimony.

6 Do you have any understanding of when that
7 ROE spill-over mechanism will be determined?

8 Is it an annual determination? Is it a
9 monthly determination? How is that determined?

10 Do you have any idea?

11 A I think you can ask Mr. Clayton the details
12 of that.

13 Just to tell you generally, that we would
14 utilize the process that's in place at the PUC now
15 for evaluating returns.

16 I mean, companies make filings with the
17 Commission all the time to show what our earnings
18 are, and we would utilize that process and that
19 standard pro forma process with the Commission to
20 ensure that we don't over earn, but he could explain
21 the specific details of that.

22 Q Okay. You were saying that there is no down
23 side on the ROE spill over mechanism, since the
24 company is committed to the minimum amortization of,
25 I think, 1.7 billion? Is that right?

1 A I said it is an asymmetric proposal, where
2 we are at risk.

3 Q Okay. But let's say that company has excess
4 earnings in the year 1999 of fifty million dollars,
5 and then in the following year, it has -- it falls
6 below the eleven and a half percent by fifty million
7 dollars.

8 Would you agree with me that under the
9 proposed ROE spill over mechanism, those two years
10 would cancel each other out, and there would be no
11 excess earnings from the customers?

12 A Again, you would have to go over the
13 specifics with Mr. Clayton, but there are a number of
14 scenarios.

15 For example, if sales levels are not
16 achieved as in our plan, or we are not able to
17 achieve the aggressive cost reduction goals that we
18 have in our plan, it is very possible that we will
19 not earn eleven and a half percent during that
20 period.

21 Our earnings will suffer, and this ROE spill
22 over will provide us with no opportunity to recover
23 those costs, and as far as I am aware, we are the
24 only company in the state that has offered this kind
25 of asymmetric minimum obligation to amortize costs

1 through the period.

2 Q Would you agree with me that the ROE spill
3 over mechanism requires a regulatory determination as
4 to returns earned on all utility plants, including
5 those subject to the competitive market?

6 A I am not sure I follow your question. I
7 would say --

8 Q Well, generation assets are subject to the
9 competitive market.

10 They are competing in that marketplace,
11 right?

12 A Yes.

13 Q Would you agree that in order to determine
14 whether there should be any -- whether there are any
15 excess earnings, that some regulatory determination
16 has to be made, unless you are saying that the
17 Commission should allow Duquesne to make that
18 determination on its own?

19 A No. I think I said earlier that we would be
20 filing regularly with the Commission under a
21 Commission approved process for determining allowed
22 rate of return --

23 Q And that --

24 A -- and there is one there now, and to the
25 extent that the Commission felt that it needed to be

1 modified, they could propose that, but I think Mr.
2 Clayton will go into that with you in some detail.

3 Q But that process right now, that doesn't
4 affect rates, whereas your proposal would ultimately
5 reflect -- affect rates?

6 Is that correct?

7 A Yes. We are talking about the measurements
8 of what our rate of return is, and I am explaining,
9 there is a process in place now that makes that
10 determination, where we are trying to use that
11 process and continue that process.

12 Q Okay. But the Commission doesn't go in and
13 audit your quarterly earnings, of course, and say,
14 "No, we disagree with that," and it doesn't give
15 other parties the right to challenge that, does it?

16 A I believe that any party can challenge our
17 earnings at any time.

18 Q They can challenge the earnings, but they
19 don't challenge your earnings with reports per se, do
20 they, since rates aren't adjusted based on those
21 earnings reports?

22 MR. MOOT: I would object to the question.

23 We have gotten to the point where counsel
24 has stopped concluding his testimony with a question,
25 and I would appreciate it if he asked questions,

1 rather than testify himself.

2 MS. BERGER: I disagree with that
3 observation, but I will try to frame this to your
4 liking as a question, if it doesn't seem like that.

5 BY MR. BERGER:

6 Q To get back to the point, the point is that
7 a quarterly -- would you agree with me that the
8 quarterly earnings reports do not -- are not used to
9 adjust rates?

10 I think you already said that.

11 A Today?

12 Q Today, yes.

13 A Under the kind of proposal we are offering,
14 they don't do it today.

15 Ours is a new proposal. I think I said we
16 are the only ones in the state to offer this kind of
17 proposal.

18 If you want to understand the specific
19 details of how we would be monitored, people's
20 opportunity to look at those numbers, to audit those
21 numbers, you should ask Mr. Clayton --

22 Q I will.

23 A -- about his detailed testimony.

24 Q I will speak with Mr. Clayton about that,
25 but my question to you is, if there is even a process

1 for adjusting the rates, or subsequently or
2 triggering a final valuation, as I understand the way
3 your proposal works, if there is that process, would
4 you agree with me that other parties, other
5 interveners and potential complainants would have a
6 right to challenge that rate adjustment, should have
7 a right?

8 A Whatever procedures the Commission puts in
9 place to monitor our proposals, as long as they are a
10 just and reasonable process, the company is not going
11 to object to it, and I don't have the specific
12 answers to your questions.

13 It is related to the specific details of the
14 proposal, and I keep telling you that, and you keep
15 asking me specific questions.

16 I can't answer these specific questions. It
17 is outside the scope of my testimony.

18 Q Mr. Marshall, am I correct that the company
19 expects to have some transmission-related merger
20 savings in the event of a merger?

21 A Yes, and maybe it would be helpful to me. I
22 am assuming all the questions you had asked us about
23 the merger synergies, you would want to ask us in the
24 merger case, as opposed to today's hearing, which is
25 more focused on the stand alone case? I am just

1 trying to understand.

2 Q I think we have to make a stranded cost
3 determination in this case.

4 That is why I am asking questions about the
5 synergies here, because as you know, our testimony
6 quantifies bought with the merger and without the
7 merger the stranded cost estimate, and we believe
8 that it needs to be determined here specifically, the
9 stranded cost.

10 Now, I think -- and I guess I am really
11 arguing with the witness, when I should be arguing
12 with counsel, if that's necessary.

13 MR. MOOT: Your Honor, Mr. Marshall has
14 probably a total of nine lines in his testimony
15 discussing the merger, and it briefly states that
16 there is a specific quantity of savings that are
17 estimated for customers, and he notes that this is an
18 additional mitigation opportunity that Duquesne has
19 entered into, and to the extent Mr. Berger wants to
20 ask him questions about those nine lines in his
21 testimony, he is welcome to do it.

22 To the extent that he wants to probe him on
23 other aspects of the merger, there is a docket on
24 that, and we will object.

25 This particular question went to savings, and

1 we don't have an objection to Mr. Marshall answering
2 it to the extent he can.

3 In he can't, then he can answer so, and if we
4 get into other areas, then --

5 JUDGE CORBETT: All right. Let's see where we
6 go.

7 BY MR. BERGER:

8 Q Again, the question was: Am I correct that
9 the company expects to have some transmission-related
10 merger savings?

11 A Yes. My recollection of Mr. Morgan's --
12 Morgan O'Brien's testimony in the merger case is that
13 there are a small amount of transmission merger
14 savings --

15 Q And am I correct that --

16 A -- allocated to Duquesne.

17 Q -- the merger savings have not be been
18 reflected by Duquesne in this case?

19 Is that correct?

20 A This case is strictly what our proposal is
21 in the event we do not have a merger, so no, in this
22 case, we do not talk about any impacts of
23 merger-related activities.

24 Q But you would agree with me that stranded
25 costs should be adjusted to reflect

1 transmission-related merger savings, as well as
2 distribution and generation-related merger savings?

3 MR. MOOT: This is where we will start to
4 object.

5 He is asking questions about, if the merger is
6 approved, how should that effect Duquesne's rates,
7 and we have a docket for that.

8 We have a case for that. We have testimony on
9 that, and we would object to that line of questioning
10 in this case.

11 MR. BERGER: Well, I disagree, Your Honor.
12 This case is to determine stranded costs for the
13 company.

14 Now, there are two possible scenarios.

15 One is if the merger is approved.

16 Now, the other case is to address the approvals
17 of the merger. It is not to address what stranded
18 costs are in the context of the merger.

19 The company has indicated in that case what it
20 believes to be the savings from the merger, but I
21 don't think that that case is an appropriate place to
22 determine what the stranded costs are, and I think we
23 have to consider, and since we are doing both of
24 these cases in unison, I think this is the
25 appropriate case, since this is the restructuring

1 case, to determine in both cases, with merger or
2 without merger, what the savings are --

3 MR. MOOT: Your Honor --

4 MR. BERGER: -- and I think this is more a
5 difference of -- I don't think this is a real
6 substantive difference, but I think because,
7 obviously, we are probably going to have the numbers
8 either way, but I do think that the appropriate place
9 is here, since this is where the stranded cost
10 determination is made.

11 MR. CLEARFIELD: Your Honor, I would join in
12 opposing that objection from ENRON.

13 I think it is important that we understand
14 precisely what the company is proposing here, and how
15 it would be affected if the merger were approved.

16 There is no reason to put it off to another
17 docket, and to clarify it here so that all the
18 parties will understand the proposal. It is
19 particularly important with respect to proposals that
20 are in essence voluntary on the part of the company
21 to be withdrawn if the Commission couldn't order the
22 company, possibly couldn't order the company to take
23 a certain action.

24 MR. MOOT: Your Honor, I will just conclude by
25 saying, it is clear in Mr. Marshall's testimony that

1 we have got a commitment to reduce Duquesne
2 customers' rates with merger savings.

3 I interpreted Mr. Berger's question as either
4 not aware of that statement, or as going well beyond
5 that statement.

6 If he is not aware of it, he can ask it. Mr.
7 Marshall can answer it.

8 If he is going beyond that statement, he is
9 going beyond the scope of the case, and the objection
10 would stand.

11 JUDGE CORBETT: Okay. I think the question as
12 posed is relevant to this case, so we are going to
13 allow it.

14 The objection is overruled.

15 We will allow you to pursue it, Mr. Berger, to
16 the extent this witness can answer the questions you
17 have on the merger.

18 BY MR. BERGER:

19 Q Just to reiterate, then, the question was:
20 Has the company reflected any of those savings in
21 this case?

22 MR. MOOT: Can I does him: What he means by
23 "reflected"?

24 Are you talking about rates? Are you talking
25 about on a piece of paper?

1 Please clarify the question.

2 BY MR. BERGER:

3 Q Have you reflected in rates the savings
4 generated by the merger in this proceeding?

5 A My understanding is, all the schedules that
6 are put together in this docket do not in any way
7 take account of any savings in any way associated
8 with the merger.

9 All of this information, the rate design, the
10 cost proposals, everything has been done on a stand
11 alone basis, so there is nothing in anybody's
12 testimony, in any of the detailed exhibits, in our
13 proposals that reflect the merger case.

14 Q Okay.

15 A Does that answer the question?

16 Q That answers my question. Is the company
17 prepared to increase its minimum amortization
18 commitment if those merger savings -- if the merger
19 is approved?

20 A Yes. We have made that commitment in our
21 merger case, and we have witnesses that testified to
22 that in that case.

23 Q Am I correct that in that case, the company
24 has only proposed to go through to customers a
25 twenty-five million dollars per year distribution

1 savings beginning in the year 2001?

2 MR. MOOT: Objection, Your Honor. He is asking
3 questions about the testimony in that case. That
4 is --

5 MR. BERGER: I will make it --

6 MR. MOOT: That case, he has got a hearing for
7 that case, and he can do it there.

8 MR. BERGER: It gets back to the same question,
9 Your Honor.

10 We are trying to determine stranded costs in
11 this case on the basis of with merger and without
12 merger, because of the possibility that either could
13 occur, and then that is why we are saying that the
14 stranded costs need to be determined here.

15 All the -- many of the parties here have not
16 participated in the merger case, because there wasn't
17 a belief that stranded costs was at issue in that
18 case.

19 What was at issue is the application for the
20 merger.

21 JUDGE CORBETT: The objection is overruled.

22 MR. MOOT: Your Honor, if I may, if Mr. Berger
23 is going to go and ask Mr. Marshall about testimony
24 in the merger case, I think it is only fair that he
25 gets that testimony out, and that he show it to the

1 witness, so that the witness has an opportunity to
2 review it.

3 He did not come here today having reviewed
4 testimony in another docket, and he has a right to do
5 that.

6 JUDGE CORBETT: I agree.

7 BY MR. BERGER:

8 Q Let me ask you this: Do you know how much
9 distribution-related merger savings there will be?

10 A Subject to checking the testimony in that
11 case, with my general recollection, that we have
12 offered in that case, to increase the minimum
13 amortization associated with some of the merger
14 savings.

15 In addition, we have agreed to actually reduce
16 rates to account for some of the synergy savings, and
17 the ROE spill over, to the extent there are any other
18 savings that have not been reflected explicitly in
19 one of those other two adjustments that I described,
20 would then flow through any additional synergy
21 benefits, so those are the three ways in the
22 merger-related case that the benefits of the merger
23 are reflected.

24 Q But you don't know what the savings are
25 dollar wise, right, which was my question?

1 A You mean off the top of my head?

2 Q Okay.

3 A No. I mean, I am not the witness on that.
4 There are witnesses that go through that in some
5 detail.

6 Q Do you know what the transmission-related
7 merger savings are?

8 A Not off the top of my head.

9 Q Do you know that the company has projected
10 generation related merger savings over a twenty-year
11 period?

12 A Yes.

13 Q Would you agree with me that those have not
14 been reflected in this case?

15 A I think I have already answered that in this
16 particular case in these exhibits, nothing associated
17 with the merger has been reflected.

18 Q Would you agree with me that the proposal
19 would enable the company to earn a full return on its
20 assets over the seven-year period of the CTC recovery
21 mechanism?

22 A No. I think I already answered that
23 question to point out that under our minimum
24 amortization and our aggressive cost reduction
25 programs that we put into that case to fully mitigate

1 our stranded cost there is a chance that we would not
2 earn our full rate of return during the transition
3 period.

4 Q Okay. But it would provide the company an
5 opportunity, depending on what the market price
6 turned out to be?

7 A We believe our plan provides a just and
8 reasonable opportunity for the company to earn, as is
9 required under the legislation.

10 Q Now, the company's assets are going to be
11 subjected to generation assets, are going to be
12 subjected to competition? Would you agree with that?

13 A What do you mean by "subjected to"? But,
14 you know, we are all in agreement.

15 Q Operating in an independent market.

16 A We are operating in a competitive market for
17 generation.

18 JUDGE CORBETT: Excuse me just a minute. Try
19 to let one party at a time speak, so that you don't
20 talk over one another, and the court reporter gets a
21 clear record.

22 MR. BERGER: Okay.

23 JUDGE CORBETT: Thank you.

24 BY MR. BERGER:

25 Q Would you agree with me that competitive

1 providers of generation service will not experience a
2 regulated return on their investment?

3 A I will agree with you that people that are
4 involved in making decisions to get involved in
5 competitive generation markets, once they do that,
6 and they acquire assets, that those assets will earn
7 returns the same way all assets in competitive
8 markets earn returns, and I think that --

9 Q But the company based -- I'm sorry.

10 A -- and I think I go into some length in my
11 direct case about the difference between our
12 situation, where we have had obligations to serve,
13 where we have had regulated requirements, where we
14 have had to provide service, and how that differs
15 from competitive markets, and so that our view of the
16 Customer Choice Act is that it provides a reasonable
17 transition period and a reasonable transition process
18 from one totally different world to another totally
19 different world.

20 Q But the company has based its proposal upon
21 its claim of a eleven and a half percent return on
22 equity -- is that correct -- in its stranded cost
23 proposal?

24 A The rate of return that we have proposed in
25 our case is eleven and a half percent.

1 Q And that is a critical component -- would
2 you agree with me -- of the stranded cost proposal?

3 A I think the return on equity is a critical
4 component any time you are dealing with regulated
5 rates.

6 Q And would you agree with me that the
7 company's assets, generating assets will be operating
8 in a competitive market for a period after they are
9 no longer regulated?

10 MR. MOOT: Objection, Your Honor. This
11 question has now been asked for a third time, and he
12 has answered it twice already.

13 MR. BERGER: I will withdraw the question.
14 That's all I have, Your Honor.

15 JUDGE CORBETT: All right. OSBA has indicated
16 they will not engage in cross of this witness.

17 The next party up would be the City. Who will
18 be crossing for the City?

19 MR. AMERICUS: Your Honor, we don't have any
20 questions of the witness.

21 JUDGE CORBETT: All right. Duquesne
22 Interruptible Complainants then would be the next
23 party up.

24 MR. DOUGHERTY: Good morning.

25 JUDGE CORBETT: Good morning.

1 CROSS EXAMINATION

2 BY MR. DOUGHERTY:

3 Q Good morning, sir.

4 A Good morning.

5 Q My name is Jim Dougherty. I am here on
6 behalf of the Industrial Interveners.7 I want to apologize. I have a cold, and I
8 am in the process of losing my voice, so if you can't
9 hear me, please let me know, and thanks to my
10 colleagues from the Consumer Advocate and Trial
11 Staff, I have just a few questions for you this
12 morning.13 Sir, am I correct that you state that with
14 the exception of the Industrial Interveners and the
15 Consumer Advocate, all other parties agree that
16 market forces not forecasts should be used?17 Specifically, I am referring to your
18 rebuttal testimony.19 A Well, I think even the Industrial
20 Interveners and the Consumer Advocate admit that
21 market methods are superior to administrative
22 determinations of stranded costs.23 I think the point I make in rebuttal is that
24 I believe the Industrials and the Consumer Advocates
25 argue that unless there is -- the company is willing

1 to divest immediately, a one-time determination, that
2 they believe other market methods are not superior to
3 administrative determination, but I think as a
4 general matter, every group that we have deposed and
5 every group that we have asked generally agrees that
6 market methods are a better determination of market
7 value than administrative forecasts, just based on
8 the long history of failure from that process.

9 Q Do you equate silence from other parties on
10 this issue as support for the company's proposition?

11 A No. I rely more on the depositions, and I
12 think I have included them in my rebuttal testimony.

13 Q Sir, your testimony discusses what will
14 occur if the proposed asset auction does not produce
15 value sufficient to terminate the CTC within a short
16 period? Am I correct?

17 A I think the testimony talks about the
18 relationship between the auction and the problem
19 created by an obligation to serve under rate cap
20 legislation.

21 Q But it also specifically notes that if the
22 asset option does not produce values sufficient to
23 terminate the CTC?

24 A Yes.

25 Q Am I correct?

1 A That there is a continuing problem. To the
2 extent that we have a need to continue to collect the
3 CTC, we still need to set annual market credits, and
4 that is the point that I am trying to make.

5 Q I understand. Thank you. Who will make
6 this determination, and when will it be known?

7 A Which determination?

8 Q The determination whether or not the values
9 are sufficient to terminate the CTC?

10 A Well, under our proposal, it would be, the
11 Commission would ultimately make that decision based
12 on recommendations from the panel of experts dealing
13 with market information.

14 Q Your testimony also indicates that the
15 company requests from the Commission assurance that
16 the Commission will fairly address the rate cap? Am
17 I correct?

18 A Yes.

19 Q Is the company contemplating a specific type
20 of Commission action?

21 A Well, I think we have mentioned in the
22 testimony, one thing to do would be to waive the rate
23 cap obligation at that time.

24 The critical issue here is that the company
25 needs some opportunity to recover costs associated

1 with the taking the risk that customers may come back
2 under rate cap legislation when market prices go up,
3 and if the company has divested its assets, it
4 doesn't have any ability to hedge that risk on its
5 own, and so we are just asking that there needs to be
6 some way of reconciling that to make sure that any
7 lost dollars, that the company should not be at risk
8 for, and eliminating the rate cap I think we propose
9 is one way of doing that at that time.

10 Q Hypothetically, if the Commission does not
11 address this issue fairly what then would be the
12 company's response?

13 A Well, I guess ultimately, with all the
14 Commission's decisions, I mean, we trust that the
15 Commission will address things fairly, and we would
16 pursue whatever remedies that we have available.

17 I also don't view this as something that
18 can't be dealt with.

19 I will tell you that in other states --

20 Q I'm sorry. "Cannot be dealt with," you
21 said?

22 A Yes. I am not saying that -- let me
23 rephrase. We believe that this can be dealt with in
24 a reasonable way.

25 We also believe that our particular

1 proposal, with a flexible trigger and a sliding scale
2 as to when the options may be held, or when this
3 market determination may be made, has been designed
4 to minimize any problem that would result because of
5 this, so to the extent that we really try and watch
6 what happens to market indicators, we should be able
7 to time this so that when we end the CTC, we will
8 have collected our stranded costs, and we won't have
9 a continuing obligation to serve --

10 Q I understand.

11 A -- so our proposal is designed to minimize
12 that.

13 Q Thank you. Sir, you would agree that
14 mitigation efforts are not the only factor that the
15 Commission may consider in considering stranded cost
16 levels to be recovered from rate payers?

17 A Under what authority? Just in general? The
18 Commission can look at a whole host of factors in
19 setting regulated rates of returns for companies.

20 Q Would you agree that the Commission must
21 look to the overall effect on rate payers in setting
22 stranded cost levels?

23 A I think that would be one thing that they
24 would look at.

25 Q Would you also agree that the Commission

1 must look at the overall effect of the recovery level
2 of a utility?

3 A I would think they would have to look at
4 that, yes.

5 Q Am I correct that your testimony suggests
6 that some of the proposals in this proceeding
7 conflict with the Customer Choice Act?

8 A We believe they do, yes, sir, and Mr.
9 Clayton goes into that in some detail.

10 Q Do you believe that you are sufficiently
11 familiar with the Customer Choice Act to make that
12 statement?

13 A Yes, I do.

14 Q Could you tell me where in the legislation
15 it addresses the concept of generic sharing of
16 stranded costs?

17 A I argue that it does not address generic
18 sharing.

19 My testimony is that it does not --

20 Q I understand.

21 A -- that sharing is not in the legislation,
22 and my testimony is that that is one of the problems
23 that I have with some of the other companies'
24 testimony.

25 Q How does the sharing concept deviate from

1 the legislation?

2 A Well, I think the way my testimony reads is
3 that the parties somehow say that it is required, and
4 I don't believe that it is required, and I don't
5 believe that's consistent with the legislation.

6 Q Am I correct that your testimony suggests
7 that rate payers will not be harmed if the generation
8 credit is not equal to the actual market price?

9 A Would you say that one more time, please?

10 Q Your testimony suggests that rate payers
11 will not be harmed if the generation credit is not
12 equal to actual market price?

13 MR. MOOT: Your Honor --

14 Q I am referring to your rebuttal testimony.

15 MR. MOOT: -- I would ask for a page
16 reference.

17 I think it would be helpful with regard to
18 the nature of the testimony, and it is a double
19 negative.

20 BY MR. DOUGHERTY:

21 Q Page 21 of your rebuttal testimony.

22 A Okay. Let's see.

23 Okay. Now, would you point out -- what line
24 is that?

25 Q 16 through 20.

1 A Yes. The way this is, the point I am making
2 here is, under rate cap legislation, customers can
3 come back to the utility at any time, regardless of
4 what happens to market prices, and they will never
5 have to pay more than the current rate cap.

6 If market prices go below what is implicit
7 in these market credits, customers aren't harmed
8 there, either, because they get the full benefit of
9 them, and I am just saying that under any
10 circumstance, they are protected.

11 It is the company that has the concern that
12 if, you know, credits are set very high, then there
13 is no way that that reflects the actual market price.
14 The company can't possibly have a reasonable
15 opportunity to collect its just and reasonable
16 stranded costs.

17 Q Are you familiar with the Industrial
18 Intervenors' proposal in this proceeding regarding
19 stranded cost recovery?

20 A Generally. I mean, they are fairly complex
21 proposals.

22 Which element are you referring to?

23 Q Would you agree that there is a relationship
24 between market price and the total amount of stranded
25 costs that the company will be permitted to recover?

1 A I believe we are very clear that we do not
2 believe administrative determinations of market price
3 are a known and measurable methodology for
4 determining stranded cost, so if your question was
5 market prices, not market prices determined by
6 administrative determination.

7 Q But to the best of your knowledge, under the
8 Industrial Intervenor's proposal, if the market price
9 forecasts increased, wouldn't the stranded cost total
10 decrease, to the best of your understanding?

11 A I -- I am not comfortable testifying on the
12 Industrial Intervenor's proposal.

13 I would be glad to answer any specific
14 question that you have.

15 Q Thank you. No.

16 MR. DOUGHERTY: Thank you, Your Honor. That's
17 all I have for this witness.

18 Thank you, sir.

19 JUDGE CORBETT: Okay. Mr. Wiseman?

20 MR. WISEMAN: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. WISEMAN:

23 Q I am Kenneth Wiseman, representing Hospital
24 Shared Services and Administrative Resources, Inc.

25 Good morning, Mr. Marshall.

1 A Good morning.

2 Q Before I start with my own questions, I
3 wanted to follow up with something you said earlier
4 in response to a question from OCA.

5 I believe you said that if an auction took
6 place, that Duquesne would take a look and see what
7 the price is that was bid, and then determine whether
8 or not it wanted to sell at that price or retain the
9 asset.

10 Did I hear you say that?

11 A I can't remember. I -- I can't remember.
12 You would have to take me back.

13 I don't remember the specific question they
14 asked. I will try and paraphrase what I think that
15 statement means --

16 Q That would be fine.

17 A -- if you would like me to. One of the
18 problems that exists when you use administrative
19 determinations of market value is that a particular
20 expert can come in and say, "You ought to be able to
21 sell your power at five cents," and if he is wrong, I
22 have got no ability to sell the generation at five
23 cents.

24 One of the nice things about relying on
25 market data is, it is indicative of what is actually

1 being traded in the market on a day-to-day basis, and
2 therefore, if somebody comes in and says, "Hey, the
3 market price is three cents," then I can either sell
4 them to that market, or if I think I can beat that
5 market, I can sell it to somebody else.

6 That is the importance of being able to
7 actually mitigate your costs to actually be able to
8 sell your output that I was referring to.

9 Q All right. Then let me ask you the question
10 directly about the auction proposal.

11 Would Duquesne --

12 A Excuse me. Which auction, because there are
13 a lot of auctions in the market.

14 Q This is Duquesne's auction proposal.

15 A But there are a lot of auctions.

16 Q Oh, I'm sorry.

17 A We have an oil auction. We have a long-term
18 RCI auction. We have an asset auction.

19 Q This is like Duquesne's asset auction
20 proposal.

21 A The asset auction proposal.

22 Q Under that asset auction proposal, would
23 Duquesne retain the right to say, "No, the price is
24 not high enough; we don't want to take that price; we
25 will retain the asset"?

1 A What we believe, it would be reasonable that
2 since we are providing an opportunity for the
3 Commission to say that they believe that is the best
4 method to determine market value, that the company
5 should similarly have the right to decide that it
6 believes that it could do that if it believes it is
7 the best method for determining market prices.

8 I think -- so that is the answer to my
9 question.

10 Q Well, I'm sorry, but I don't think that is
11 responsive, Mr. Marshall.

12 What I want to know is if Duquesne -- I'm
13 sorry -- if the Commission approves the asset auction
14 proposal by Duquesne, and a bidder submits a bid for
15 a particular asset --

16 A Yes.

17 Q -- and Duquesne determines in its own
18 discretion that that price is not high enough, that
19 the bid is not high enough --

20 A Oh, I see.

21 Q -- would Duquesne retain the option to say,
22 "No, we don't want to sell that asset; we will retain
23 that particular asset"?

24 A No. Let me clarify the question. I think
25 this goes to the issue of whether or not Duquesne --

1 or let's start with a stand alone case, because that
2 is what this is.

3 We are saying that if we -- if the
4 Commission decides that we should use the auction
5 process to determine the market value of the plants,
6 that Duquesne would agree to use that process, and we
7 would agree to abide by the result of that process,
8 and we state that we do not anticipate, as a stand
9 alone company, participating on an arm's length basis
10 in that auction.

11 We also say in the testimony that if we did
12 want to bid in that auction along with other bidders,
13 that we would do that in an arm's length way.

14 We would submit the specific procedures to
15 the PUC that they would approve ahead of time as to
16 how we would do that, but we would in no way have any
17 advantage over other participants in the auction
18 process, so no, we would not have a right of first
19 refusal, or no, we would not have any additional
20 information or any advantage over anyone else that
21 might bid in the process.

22 The point of this is to use Commission
23 determined and approved procedures.

24 We would submit all of our procedures to the
25 PUC on how this auction ought to work, and we would

1 follow those procedures.

2 Q Is it Duquesne's position that the results
3 of the auction will establish fair market value for a
4 particular generation asset?

5 A It is one way to do that, yes, sir.

6 Q And I take it from something you said
7 earlier, that is because if they -- if a bidder who
8 submits a bid is willing to pay a particular amount
9 of money, that that amount of money establishes fair
10 market value? Is that correct?

11 A Yes, sir.

12 Q All right. Are you familiar with the fact
13 that New England Electric System recently sold
14 approximately 4,000 megawatts of generation capacity
15 to U.S. Generating Company?

16 A I am generally familiar that they have sold
17 their assets.

18 Q If I were to tell you that the price of
19 those assets was approximately 1.59 billion dollars,
20 would that sound right to you?

21 A I don't have familiarity with the specific
22 numbers.

23 Q If I were to tell you that the assets sold
24 at approximately one and a half times book value,
25 were you aware of that fact?

1 A Very generally, as reported in the
2 literature.

3 I think there is some question as to what
4 exactly is being sold, or a power contract being sold
5 or assets being sold, and auctions are very complex.

6 I mean, you know, what -- you know, how are
7 they dealing with obligations to serve?

8 How are they dealing with obligations to
9 employees? And there are a lot of complexities that
10 have to be taken into account.

11 Also, I would -- but yes. Generally I am
12 aware that in Massachusetts, New England Electric
13 System has sold assets into the market, and I believe
14 they have come back with a price higher than book
15 value.

16 Q Are you aware of the sale by PG&E out in
17 California in November, the sale of its assets,
18 generation assets?

19 A I am familiar that some asset sales have
20 taken place in California as well.

21 Q And is it your understanding that when PG&E
22 sold its generation assets that the buyers paid
23 approximately 1.3 times net book value for those
24 assets?

25 A I don't have the specific numbers.

1 Q Are you aware that Southern California
2 Edison Company sold generation assets in November of
3 1997?

4 A I am aware in general that a number of
5 companies in California have done it, that a number
6 in Massachusetts have done it, a number are being
7 discussed in New York to do it.

8 I don't have the specific numbers.

9 I would note they are all in different
10 markets and different time frames and different
11 elements of what is being auctioned off, including
12 assets and liability, but yes, I am aware that this
13 is happening on a wide-spread basis.

14 Q Well, let me ask you just generally, then:
15 Are you aware, with respect to the sales of assets in
16 Massachusetts and California that all of those assets
17 have been sold at some multiple of net book value?

18 A Again, I don't have a comprehensive
19 analysis, but the ones that I am aware of have been
20 done above book value, yes.

21 Q In your --

22 A I would also say, I am only aware that
23 either gas or coal plants have actually been
24 auctioned off at this point.

25 I am not aware that there has been an

1 auction of a nuclear plant yet, but that is a general
2 understanding.

3 Q Would you agree that the sales that had
4 taken place to date demonstrate that there is a
5 market out there that is in fact willing to pay a
6 multiple of net book value for generation assets?

7 A Again, as I described to you, and I think we
8 say in our testimony, what is critical is that it is
9 comparable, but in the market that you described,
10 under the conditions that you have described, they
11 have been above book value, yes.

12 Q All right. Now, let's talk about your
13 proposal in your rebuttal testimony.

14 I believe you say there that if assets sold
15 at above net book value, that you would credit the
16 excess recovery against any over collections of CTCs?
17 Is that correct?

18 A You mean at the time of a final
19 reconciliation?

20 Q Yes.

21 A Yes, that is correct.

22 Q And I take it, then, that you are saying
23 that the excess revenues would, in essence, mitigate
24 stranded costs?

25 Is that right?

1 A Yes. I think the full proposal we make is,
2 by virtue of the way that we have early triggers,
3 that we would expect to do this in such a way that
4 when we sold it, there would not be excess revenues.

5 To the extent that we missed it a little
6 bit, we are saying, yes, we would refund it.

7 I mean, I think that is the full scope of
8 our testimony.

9 Q I apologize. I can't give you a specific
10 reference on this. I think it is in Mr. Clayton's
11 testimony, but let me see if you agree with the
12 statement that Duquesne intends to fully mitigate its
13 stranded costs to the extent possible?

14 A Yes, sir.

15 Q All right. I want to ask you a
16 hypothetical.

17 Let's just assume that you have a generation
18 asset that has net book value of 100 million dollars,
19 and there is a buyer out there that is willing to pay
20 150 million dollars for that generation asset.

21 Would the fifty million dollars excess
22 recovery in that hypothetical then be used to offset
23 other stranded costs?

24 A Yes, sir, as we did in the Fort Martin sale,
25 for example.

1 Q All right. Now, in fact, that is exactly
2 where I wanted to go next, the Fort Martin sale.

3 Am I correct that the Fort Martin plant sold
4 at approximately 169 million dollars? Is that right?

5 A It sounds about right.

6 Q All right. And Duquesne's net book value
7 was approximately 37 million dollars? Does that
8 sound right?

9 A You could check the details with Mr.
10 Clayton, but I don't have the specific number in
11 mind.

12 Q Generally, does that sound correct?

13 A Generally, it was a multiple of book value,
14 but I couldn't tell you exactly what the number was.

15 Q Would you agree with the proposition that
16 APS's purchase of the Fort Martin plant, of
17 Duquesne's interest in the Fort Martin plant,
18 established fair market value of that interest at the
19 time?

20 A At that time for that plant, yes, sir.

21 Q All right. Now, if the Commission rejects
22 the market-based proposals that Duquesne has made,
23 and for that matter, rejects other parties' market
24 based proposals, and instead determines to go with an
25 administrative determination, a one-time

1 administrative determination of stranded costs,
2 should the Fort Martin sale be considered as one data
3 point for the Commission to consider in valuing
4 Duquesne's remaining assets?

5 A I cannot support the use of administrative
6 process under any circumstances, so I can't. I do
7 not believe that is the appropriate way to do it.

8 Q Have you read Mr. Schnitzer's rebuttal
9 testimony, Mr. Marshall?

10 A I am generally familiar with it, yes.

11 Q Mr. Schnitzer says that if the Commission
12 rejects the market based proposals of Duquesne, that
13 then Duquesne's position is that it is entitled to
14 1.9 billion dollars in stranded cost recoveries based
15 upon Mr. Schnitzer's forecasts of market prices.

16 Is that Duquesne's proposal?

17 MR. MOOT: Your Honor, here again we are asking
18 about testimony that the witness didn't sponsor and
19 hasn't had an opportunity to review before he answers
20 the question.

21 I just ask that he have an opportunity to look
22 at what Mr. Wiseman is talking about before he
23 answers the question.

24 JUDGE CORBETT: All right. Fair enough.

25 MR. WISEMAN: Your Honor I apologize. I don't

1 have a specific cite on this right now.

2 I could find it, if this would be a convenient
3 time to take a break.

4 JUDGE CORBETT: We were going to take a break
5 after your cross anyway, so why don't we take a
6 ten-minute recess, so we will be back here at quarter
7 to.

8 (Recess taken.)

9 JUDGE CORBETT: We are back on the record. Mr.
10 Wiseman?

11 MR. WISEMAN: Thank you, Your Honor.

12 BY MR. WISEMAN:

13 Q Mr. Marshall, would you please refer to Mr.
14 Schnitzer's rebuttal testimony, and I would direct
15 you to Page 4, Lines 17 through 20.

16 Have you had an opportunity to read that?

17 A Yes. I see that.

18 Q All right. It says there, "Should the
19 Commission reject this proposal in favor of a
20 one-time administrative determination, the company
21 has put forward adequate evidence to support a
22 stranded cost determination of one thousand nine
23 hundred sixteen million dollars as of January 1,
24 1999.

25 Did I read that correctly?

1 A That is what this says, yes.

2 Q All right. Is that Duquesne's -- now, is
3 that Duquesne's proposal, in the event that the --
4 I'm sorry -- that a market based determination is
5 rejected?

6 A Well, there may be -- you will have to ask
7 Mr. Schnitzer this.

8 My view of this is that he has put together,
9 based on the best evidence, market evidence that we
10 have, if you want to make a one-time determination,
11 the best evidence we have relevant to market gives us
12 the result of 1.9 million, and I think what he is
13 trying to emphasize here is this notion of a one
14 time.

15 We don't think that it makes sense, for all
16 the reasons in my rebuttal testimony, to do a
17 one-time determination now, and he is saying, if they
18 reject everything else, the best information we have
19 now, based on market evidence and our forward RFP,
20 would suggest that that is the kind of stranded costs
21 we have --

22 Q Mr. Marshall --

23 A -- but that is my interpretation of it.

24 Q Mr. Marshall, am I correct, Mr. Schnitzer is
25 not an employee of Duquesne? Is that correct?

1 A That is correct.

2 Q And you are Duquesne's CEO? Is that
3 correct?

4 A That's correct.

5 Q So you are Duquesne's policy witness in this
6 proceeding?

7 A That's correct.

8 Q Well, I am asking you, as Duquesne's policy
9 witness, if the Commission rejects the market-based
10 proposals that Duquesne has made, and that other
11 parties have made --

12 A Right.

13 Q -- is it Duquesne's position that it is
14 entitled to 1.9 billion dollars in stranded costs,
15 based upon an administrative determination?

16 A We are saying that based on the best
17 information we have today, that we estimate the
18 number at 1.9 billion.

19 We do not believe that that method is
20 adequate to determine a stranded cost calculation
21 today.

22 We don't believe it should be done today,
23 and we are recommending that if the Commission wants
24 to make a one-time determination today, that we give
25 them the opportunity to offer divestiture.

1 That is our position.

2 Q In other words, you do not support this
3 Commission finding that Duquesne has 1.9 billion
4 dollars in stranded costs, based upon Mr. Schnitzer's
5 calculations? Is that correct?

6 A I think -- let me restate it again. We
7 believe that the Commission should not make a final
8 determination.

9 We are providing a proposal to them if they
10 want to.

11 We believe our proposal is one that is based
12 on a just and reasonable and known and measurable
13 standard, and all we are saying here, and all Mr.
14 Schnitzer is saying is that the best information we
15 have today is 1.9 billion.

16 You know, when we see a final Commission
17 order, and we look at the whole order, you know, the
18 Commission may not agree with us.

19 We will have to look at that, and we will
20 have to ask ourselves, do we feel that it meets a
21 known and measurable standard, and that we are being
22 given a reasonable opportunity to collect our
23 stranded costs, so I mean, I can't -- that's our
24 position.

25 MR. WISEMAN: Your Honor, I asked the witness

1 for a question that required a yes or no answer.

2 I have no objection to the witness explaining
3 his answer, but I believe I am entitled to have a
4 direct answer to my question, and particularly given
5 that this is Duquesne's CEO, and he is the policy
6 witness, and this is in fact the core issue in this
7 proceeding that I have asked him about.

8 MR. MOOT: Your Honor, I think in general it is
9 fair to ask a witness to begin with a yes or no
10 answer, but I think two things need to happen.

11 One is, the reporter needs to read back the
12 question, unless Mr. Wiseman wants to rephrase it,
13 and if the question is read back, I believe I will
14 have an objection, because it misstates what he just
15 said.

16 It says in the last clause that we would
17 support an administrative determination, which is
18 exactly contrary to what Mr. Marshall had just told
19 him.

20 JUDGE CORBETT: Okay. Let's have the question
21 read back, and then let's take it from that point.

22 Can we do that, Mary Ellen?

23 (Record read.)

24 JUDGE CORBETT: Can you answer the question in
25 a yes or no fashion, Mr. Marshall?

1 MR. MOOT: Your Honor, does he have need to
2 follow that up with a proper clarification?

3 JUDGE CORBETT: Yes. Let me just say that
4 usually in my preliminary remarks, what say first
5 thing, the first day of the hearings, is that
6 normally I would ask the witnesses to answer a
7 question in a yes or no fashion if the question asks
8 for that type of a response, and then I will give the
9 witnesses a reasonable opportunity to explain the
10 answers, so Mr. Marshall, with that, can you answer
11 the question in that fashion?

12 THE WITNESS: Can I understand the
13 instructions, that I could try and clarify it before
14 I answer yes or no?

15 JUDGE CORBETT: No. I would like to have a yes
16 or no first, and then I will give you a reasonable
17 opportunity to explain.

18 A Okay. We would support that the best
19 information we have today, if we had to make the
20 determination today, is that the number is 1.9
21 billion, but what I would like to clarify is, we are
22 giving a lot of material and a lot of recommendations
23 to the Commission on why we think that is not the
24 right way to go, so when you say to me, do we support
25 it, we support all of our proposals, and we give very

1 strong reasons why we don't think a one-time
2 determination today is the right way to do it, but
3 we are trying to be responsive, and we are saying, if
4 the Commission is to ask us, based on the best
5 information we have, what would the number be, it is
6 1.9, but when you say, do I support it, I don't
7 support it, because of all the other reasons that we
8 have just laid out.

9 Now, is that fair? Well, that is what I am
10 trying to clarify.

11 Q So then I take it the answer to my question
12 was yes, with your clarification?

13 A The answer is exactly as I just gave it.

14 Q Well, you never used the word yes or no, I
15 believe.

16 MR. MOOT: Ken, just for clarification, was the
17 question designed to be, "Do you support Mr.
18 Schnitzer's statements with the caveats you just
19 gave?"

20 Is that in a sense what you are posing to him?

21 MR. WISEMAN: I can go with that question for
22 now.

23 THE WITNESS: And I can go with a yes.

24 MR. WISEMAN: Thank you, Mr. Moot. If I give
25 him the questions to ask, it works.

1 BY MR. WISEMAN:

2 Q All right. Again, if there is an administrative
3 determination, meaning the market based proposals are all
4 rejected, should the Commission consider as data points the
5 sales of assets by PG&E, SoCal Edison, Boston Edison, the
6 New England Electric System and the Fort Martin
7 transaction?

8 A I would be very, very careful when the Commission
9 -- I would ask the Commission to be very, very careful
10 when they look at data to make sure that they look at a
11 comparison between what those prices mean in one area
12 versus what they mean in another.

13 But they look at, how they compare in terms of
14 whether they are in a constrained transmission area.
15 Whether they are in a pool that's largely oil or gas
16 fired. Whether -- how long into the future these numbers
17 may go, the average life of these plants. I would have
18 them look at the environmental issues associated with these
19 plants.

20 I would have them make sure they did a complete
21 evaluation and again, my recommendation is that they not
22 follow that process.

23 Q Going back to my question, is it your testimony,
24 then, that with the, with your explanation that you have
25 just provided that the Commission should consider those

1 sales of assets as data points?

2 A Again, you have to tell me under what
3 circumstances. I feel like I am saying the same thing over
4 and over again. Maybe I am not being responsive.

5 MR. WISEMAN: Your Honor, I believe it's a simple
6 question; calls for a yes or no answer. He provided an
7 explanation. He didn't say yes or no.

8 MR. MOOT: I think we are at the same point that we
9 were with the last set of questions and the question, with
10 those qualifications, is the answer yes.

11 MR. WISEMAN: That is precisely the question.

12 JUDGE CORBETT: Okay. And Mr. Marshall, your
13 answer?

14 THE WITNESS: The Commission should look at whatever
15 data is available, yes.

16 BY MR. WISEMAN:

17 Q Now, I take it from your various statements that
18 you do not, you obviously do not believe that price
19 projections are consistent with the known and measurable
20 standard. Is that correct?

21 A I just --

22 Q And does that include Mr. Schnitzer's price
23 projections?

24 A I believe that the major element of Mr.
25 Schnitzer's proposal is the reliance on the first quarter

1 of RFP. The next question is self -- so I think the
2 majority of my reliance on his data is based on the best
3 market as part of our eight-year forward price option.

4 MR. MOOT: Can I ask for a clarification if you
5 continue to go on this line, Ken? You mean when you
6 describe price projections, do you mean the witness to
7 consider both projections by expert witnesses using
8 modeling data and expert witnesses using market data or is
9 it just one or the other.

10 MR. WISEMAN: Specifically, I was referring to all
11 of it, actually. It would be the price projections of Mr.
12 Schnitzer during the period 1999 through 2005 and they are
13 based upon one methodology and his price projections for
14 the period 2006 and beyond which are based upon a different
15 methodology.

16 MR. MOOT: Again, I think the answer is that's best
17 information we have if we are forced to make a market
18 determination.

19 MR. WISEMAN: That wasn't my question.

20 BY MR. WISEMAN:

21 Q My question was are Mr. Schnitzer's price
22 projections -- now I'll make it very specific to the period
23 2006 and beyond -- are those price projections consistent
24 with the known and measurable standard?

25 A No.

1 Q Now, I want to go back one last time hopefully to
2 the question. If there is an administrative determination
3 in this case, all market based proposals shall be rejected
4 and the Commission were to find, based on Mr. Schnitzer's
5 forecasts, that Duquesne is entitled to \$1.9 billion in
6 stranded costs will Duquesne commit to sell generation, the
7 output of its plants, at market prices forecast by Mr.
8 Schnitzer throughout the period of his forecasts, which I
9 believe extend out to the year 2026.

10 MR. MOOT: I'd like to ask for a clarification. The
11 question asked for whether Duquesne would commit to sell at
12 those prices and I think it's fair for the questioner to
13 inform the witness commit to sole to whom, under what
14 scenarios. What does he mean.

15 MR. WISEMAN: To sell at retail prices to its
16 customers.

17 MR. MOOT: One clarification, to Duquesne's
18 customers or to other customers.

19 MR. WISEMAN: Duquesne's customers, they are the
20 ones this are bear in the stranded costs.

21 THE WITNESS: I think Duquesne's position is we can't
22 even commit that we are going to be in the generation bills

23 BY MR. WISEMAN:

24 Q So you would not make that commitments?

25 A Duquesne can't even commit that it's going to be

1 in the generation base. And based on a stand-alone basis
2 that it will.

3 Q The answer is no, you cannot make that
4 commitment?

5 A That is correct.

6 Q Two final areas of inquiry. First, do you have
7 Mr. Clayton's rebuttal testimony there? It's in the same
8 volume as your own. Under the second tab.

9 A Yes. It looks that it is.

10 Q Could you turn to page 4 of Mr. Clayton's
11 rebuttal testimony. I would refer you to lines 10 through
12 14. Would you review that, please?

13 A I am sorry. What pages?

14 Q Page 4, lines 10 through 14. Okay. As
15 Duquesne's policy witness could you first paraphrase that
16 sentence that's there?

17 A As Duquesne's policy --

18 MR. MOOT: I guess I'd object to that question.
19 There's no general obligation that witnesses paraphrase
20 things that are sitting on a piece of paper. It says what
21 it says.

22 MR. WISEMAN: All right. I'll paraphrase the
23 question and ask the witness if he agrees.

24 BY MR. WISEMAN:

25 Q Is it a fair characterization of that testimony

1 that Duquesne is saying there that it reserves the option
2 to reject the market valuation of the generation portfolio
3 if the Commission granted its own general assets sales. Is
4 that correct?

5 A Yeah. That, let me tell you what the company's
6 policy is on this, because I think this is a little
7 misleading.

8 Q That would be fine.

9 A I don't think it would be reasonable if we set up
10 a process that Duquesne could wait and see what the final
11 numbers are from a market valuation process and then decide
12 whether or not it wanted to look at market valuation. I
13 don't I think that's a reasonable proposal.

14 I think what that's trying to get at is we would
15 reserve the right for us to recommend to the Commission
16 that rather than do a market valuation, if we believed
17 based on things that are happening in the market either for
18 lack of data or for whatever we believe a better way to do
19 it is to do divestiture.

20 We would say to the company we reserve the right to
21 do that and where before the market valuation process took
22 place. I don't think it's fair for us to wait and see what
23 the answer is, but just^s as the commission has the option to
24 decide whether or not they think we should do divestiture
25 or we should rely on the market valuation process before

1 it's done. I think the company should have the right, as
2 well, to make that determination.

3 Q Has Duquesne, as part of this case, proposed any
4 guidelines, if you will, that would explain when Duquesne
5 or under what circumstances Duquesne would have the right
6 to exercise the options that you just discussed?

7 A No; any more than we have laid out the grounds as
8 to what the Commission should do as to which market method
9 they would want to choose. Our key point is that market
10 method offered for sale of nuclear units. It would suggest
11 a number of markets.

12 MR. WISEMAN: Nothing further.

13 JUDGE CORBETT: I believe the next party up is
14 Pennsylvania Retailers. Mr. Zielonis?

15 MR. ZIELONIS: Thank you, Your Honor. Good morning,
16 Mr. Marshall.

17 THE WITNESS: Good morning.

18 BY MR. ZIELONIS:

19 Q Would you agree with me that market participants
20 use short term forecasts, medium term forecasts and long
21 term forecasts before they decide to engage in an
22 investment strategy?

23 A I am sure that's one methodology that they look
24 at, yes.

25 Q And would you agree with me that at times in the

1 past the market, itself, or market participants have made
2 bad decisions?

3 A As defined in hindsight after the fact?

4 Q Yes. For example, in the gas industry we had the
5 take or pay problem regarding gas pricing; correct?

6 A I take it any decision on is made from forecast
7 of a future performance. Looking back, it's easier to say
8 either yes, it's a good decision or yes, it's a bad
9 decision.

10 Q Your basic problem with the administrative
11 position is the fact that it uses forecasts or that the
12 decision is wrong in hindsight?

13 A I think the basic reason is because there's much
14 better information available. I think it means much more
15 for -- there's a huge difference between a paid expert to
16 come in and say I forecast based on my computer models that
17 this plan is worth X.

18 There's a big difference between that and somebody
19 that comes in with their money in hand and says I am
20 willing to pay you this much money for the asset. When you
21 say to me how do investors, what kinds of things do
22 investors look at, investors would look much more closely
23 at the second kind of process when they make investments
24 than they would at the first kind because the world is
25 fully expecting, the real question is in a competitive

1 market are what are people going to pay for things. That's
2 why I think that's what ought to be used in this case.

3 Q No matter what the decision is by the investors?

4 A That's what markets are about.

5 Q Now, would the, under your proposal, Duquesne's
6 proposal, would the, this three person panel have the
7 opportunity to examine long term forecasts?

8 A They'd have an opportunity to examine whatever
9 they wanted. But the point of it should be that they
10 should rely on external, market driven information.
11 Therefore, when you talk about forecasts, there are visible
12 data and visible contracts that you can look at in a market
13 where there's a lot of activity.

14 All of a sudden, Pennsylvania is the first to be at
15 this process. Soon Ohio will be in the process, West
16 Virginia will be in the process, Maryland will be in the
17 process. There will be much more vigorous and clear
18 competition. People will have a sense of when it's going
19 to happen, how it's going to happen.

20 There are going to be a lot more plant sales taking
21 place, a lot more futures pricing, a lot more delivery
22 points. All the transmission issues that are still
23 unresolved in terms of how pools are going to work and how
24 pricing is going to work.

25 These environmentalists, all of these are going to

1 become much clearer and there will be observable data that
2 will be much more relevant to the panel than a computer
3 model on a 40 year forecast.

4 Q So your answer is yes, they could take a look at
5 long term pricing forecasts?

6 MR. MOOT: Your Honor that's contrary to what he
7 said, I think maybe we ought to have Mr. Marshall's answer
8 read back to him. Because it's not what he said.

9 MR. ZIELONIS: Then, Your Honor, he hasn't answered
10 the question. I'll ask it again, and see if we get a yes
11 or no answer this time. Is the, would this panel.

12 MR. MOOT: I think my statement holds. Mr. Marshall
13 answered his question once. The record will reflect it
14 said they can look at whatever they want. I think you
15 should look at market volumes. That's exactly what he
16 said. It's in the record. I don't know what further needs
17 to be said --

18 MR. ZIELONIS: I thought he did answer yes in a
19 round about way. I'll take Mr. Moots's testimony as the
20 answer.

21 BY MR. ZIELONIS:

22 Q Would you agree with me, Mr. Marshall, that the
23 true-up contained in the statute in the competition statute
24 for the CTC is rather unique and a change from traditional
25 rate making processes regarding recovery of investment by

1 utilities?

2 A I think there have been -- what's really
3 different about the legislation, and that issue in
4 particular, is Commission's talking about making a long
5 term decision and saying to the companies you have got to.

6 Q A seven-year period?

7 A You've got to stay out during the seven-year
8 period. You are not sure exactly what's going to happen in
9 this environment in a seven-year period. So they are
10 providing some kind of true-up to make sure that what
11 people estimate to be the -- in a depreciation environment
12 you could come in every year. In a traditional
13 environment, you have an ECR rate. It's a complex question
14 and I --

15 Q Would you agree with me that under traditional
16 rate making process in Pennsylvania between rate cases,
17 both rate payers and shareholders bore some risks as to
18 change in sales levels?

19 A Yes.

20 Q And would you agree with me with the true-up for
21 the CTC which recovers for your company stranded
22 investment, that that is, that takes away some of the risk
23 of the change in sales levels from year to year.

24 MR. MOOT: Your Honor, I'd object to this line of
25 questioning. I don't think the questioner is familiar with

1 Duquesne's plan. He's presuming things that just aren't in
2 this case.

3 MR. ZIELONIS: No, Your Honor. I am talking about
4 the policy witness' testimony regarding the risk, relative
5 risk between shareholder and rate payers the reason why you
6 have to utilize the methodology of a market valuation
7 sometime in the future.

8 Because of the risks that the rate payer or the
9 shareholder may run depending on what the market price is,
10 versus the forecast.

11 JUDGE CORBETT: I think he can testify to that. The
12 objection is overruled.

13 THE WITNESS: I'll go back to what I have already
14 stated in this regard. Our true-up mechanism is an
15 asymmetric ROE spillover that places risk on us above what
16 would traditionally be risks that we would face in a rate
17 case.

18 We are committing for a seven-year period, no matter
19 what happens, to a minimum amortization that is more risk
20 than we would normally have. We have not operated in that
21 environment. In fact, we are saying we will absorb these.
22 We will find to a way to meet these mitigation plans on
23 costs. Please hear me out.

24 In addition, we are saying, however, that to the
25 extent we do better than our fully mitigated plan. We will

1 give all those dollars back. I view that as slightly more
2 risk than we have had in the past.

3 Q Is your proposal, the Duquesne proposal to have
4 the true-up based on charges in sale level once the CTC is
5 set?

6 A Our proposal is any additional earnings from any
7 single source will be flowed back to rate payers. And any
8 shortfall from any source will have to be absorbed with our
9 minimum amortization. And it's a risky proposition. And I
10 don't think any other company in the state has offered that
11 kind of commitment.

12 MR. ZIELONIS: Your Honor, that's all the questions
13 I have.

14 JUDGE CORBETT: All right. Is Mr. Barak in the
15 room?

16 MR. BARAK: Yes, I am, Your Honor, and our group, I
17 guess, Your Honor Mr. Hughes was listed first.

18 JUDGE CORBETT: All right. Mr. Hughes.

19 BY MR. HUGHES:

20 Q How long have you been with Duquesne Light
21 Company?

22 A Approximately 13 years.

23 Q So at the time of the last rate case, 1987, '88,
24 what was your position with the company?

25 A General Manager of Planning Budgeting Rates.

1 Q What of the estimate that you have given on
2 stranded cost with this client the 1.9 billion that's been
3 referred to, what percentage of that estimate or dollar
4 amount of that estimate can you attribute to cost of
5 service with percentages associated with Perry 1 and Beaver
6 Valley 2.

7 A I don't have that number. Mr. Clayton probably
8 has that in his testimony.

9 Q Ballpark?

10 A You'd have to ask Mr. Clayton.

11 Q Do you have an idea whether it's half or 75
12 percent, roughly? Just -- you must have some idea?

13 A If it would be helpful, I think it's a
14 significant amount. I don't know exactly what that amount
15 is.

16 Q In your both in your direct testimony and your
17 rebuttal testimony, you used the word prudent or version of
18 prudent, time after time, many times. I am wondering
19 without, unless you want specific references, you talk
20 about that it wouldn't be fair to penalize investors for
21 prudent investments.

22 Investments that were determined to be prudently
23 made or whatever. And I am wondering if you could just
24 explain what you mean by prudent in that regard?

25 A I think what I have testified to is that the

1 Customer Choice Act provides that in the transition to
2 competition, the Commission shall provide a just and
3 reasonable opportunity for companies to recover their
4 prudently incurred expenses.

5 Q Where in the Act do you find --

6 A I believe there are a couple.

7 Q We may need the Act.

8 MS. MELILLO: I have a copy.

9 MR. HUGHES: Could you give him a copy?

10 MR. MOOT: What section of the act --

11 THE WITNESS: I am --

12 MR. HUGHES: I have a couple questions here. I'll
13 be making reference to the Act.

14 BY MR. HUGHES:

15 Q It's your position that in the Act, it says that
16 you should have, Duquesne should have a fair opportunity to
17 earn a return of a non-prudent investment?

18 A It's my position that not only does the Act say
19 that we should have a reasonable opportunity to recover our
20 stranded costs, it's my strong belief that the Constitution
21 of the United States provides us reasonable assurance that
22 we would be treated fairly for our prudently incurred
23 expenses.

24 Q I have not question the Act or Public Utility
25 Code or the Constitution in terms of a fair opportunity to

1 earn a return on an investment.

2 What I am talking about is specifically where does
3 it say in any of those three places that you have a fair
4 opportunity to earn a return on another investment based on
5 a prudence determination?

6 A Again, I think you started out with the notion of
7 prudence. What I have been testifying to.

8 Q No, I don't?

9 JUDGE CORBETT: Let's not argue with the witness.

10 MR. HUGHES: Okay.

11 THE WITNESS: I think what our testimony has been is
12 that we should have a JUST and reasonable opportunity to
13 recover our stranded costs. Stranded cost by definition,
14 the difference between costs that are deemed to be
15 reasonable to include in rates, reasonable to be collected
16 in rates, compared to what's happening to prices as a
17 result of moving to competitive markets.

18 I, my own view is I don't understand how costs and
19 prices that are just and reasonable on Tuesday, all of a
20 sudden are no longer just and reasonable on Wednesday.

21 It's there. They are reasonable costs. They have
22 been deemed to be reasonable. We have been charging costs
23 at this level with these investments. The investments have
24 been deemed reasonable.

25 Q Let me ask you this, Mr. Marshall.

1 The determination whether or not Duquesne's
2 investment in Perry 1 and Beaver Valley 2 was prudent or
3 not, was not a determination made by the Commission before
4 those plans were in rate base?

5 A I don't understand the question.

6 Q I mean, you were the head, the manager of rates,
7 as you described earlier back in '87-88. Doesn't the
8 Commission investigate whether the investment in these
9 units is prudent or not prior to deciding whether to rate
10 base them?

11 A I don't know. I believe there's a long history
12 of Commission involvement in the State of Pennsylvania in
13 terms of resource planning, encouraging companies to build
14 plants, evaluating those plans. Evaluating plans to cancel
15 plants. Accelerating construction. There's a long history
16 as a matter of public record. I don't have that on the tip
17 of my fingers.

18 Q Do you recall whether or not the Commission
19 investigated and made, issued an order with regard to the
20 construction costs whether they were prudent or not and in
21 connection with Perry 1 or Beaver Valley 2.

22 A Yes. There was definitely a prudent review.
23 There was a management audit. Extensive evaluation of the
24 costs of both plants and the Commission found that the
25 investments were prudently incurred. And that's a matter

1 of public record.

2 Q And did not, wasn't that determination by the
3 Commission made before the rate base case was decided?

4 MR. MOOT: Your Honor, I have one, I have an
5 objection or a request for clarification if we are going on
6 with this. The objection is that issues in this case have
7 arisen with regard to what happened in the last rate case
8 Mr. Hughes has raised them. Mr. Clayton has repeated them,
9 not Mr. Marshall. That's what we are getting into.

10 Mr. Clayton will be available today, so I object on
11 the basis this is beyond the scope of Mr. Marshall's
12 testimony. And if the objection is accepted I don't have
13 to ask for a clarification.

14 MR. HUGHES: Your Honor, Mr. Marshall, on pages 4
15 and 19 of his rebuttal testimony, page 22 to 24 of his
16 direct testimony, has referred over and over, five times on
17 those two or three pages in his direct testimony, about the
18 prudence, the prudent decision to invest in these plants,
19 if you look at that.

20 It goes back to those historical issues on those
21 pages. Again, in the rebuttal that was on 4 and 19 and in
22 the direct it was on 22 to 24. I am trying to get clear on
23 this, I am trying to set a context here for additional
24 questions.

25 MR. MOOT: Your Honor, for clarification, Mr.

1 Marshall has an example on page 4 does state that the
2 proposals to share stranded costs is contrary to sound rate
3 making principles because they deprive shareholders an
4 opportunity to earn a fair return on prudently incurred
5 costs and to the extent Mr. Hughes is saying that Mr.
6 Marshall uses the word prudent, he's correct.

7 But to the extent he's saying that Mr. Marshall in
8 his testimony has gotten into any details at all about the
9 last rate cases, he is incorrect and Mr. Clayton has done
10 that and he's the rate witness.

11 JUDGE CORBETT: It seems to me, Mr. Hughes, that
12 your questions concerning this line of questioning would be
13 better brought up with Mr. Clayton.

14 While Mr. -- I tend to agree that Mr. Marshall does
15 use prudence or the word prudent in his testimony, but Mr.
16 Clayton really addresses your concerns, I believe,
17 concerning Perry and Beaver Valley, generators.

18 MR. HUGHES: Well, there's a significant amount of
19 testimony from Mr. Marshall attempting to discuss --

20 JUDGE CORBETT: Point me to it.

21 MR. HUGHES: Discuss --

22 JUDGE CORBETT: Point me to it.

23 MR. HUGHES: As he said on his direct testimony,
24 it's on pages 22 and to 24 and rebuttal on pages 4 and 5.
25 And what he's essentially doing here is claiming that the

1 company is entitled to full recovery of stranded costs
2 because these investments were determined to be prudent.
3 It's important to know what he means by that so that we can
4 take a look at it.

5 He's setting the context. Mr. Marshall is setting
6 that context. I didn't write his testimony.

7 MR. MOOT: There's two points on that. On pages 22
8 to 24 of the direct testimony, Mr. Marshall again refers to
9 the fact that disallowances of stranded costs denies the
10 opportunity to earn fair return on prudently incurred
11 costs.

12 Again, he entered into no discussion in the last
13 rate cases and he has answered the question about whether
14 he believes that the Commission in those cases made a
15 determination that the costs were reasonable and I answered
16 that question already.

17 JUDGE CORBETT: I am going to sustain the
18 objection. Mr. Hughes, you can take that up with Mr.
19 Clayton when he testifies.

20 MR. HUGHES: Oh.

21 BY MR. HUGHES:

22 Q Let me ask you this, Mr. Marshall. You did state
23 earlier that there was a determination by the Commission on
24 the prudence of investments in the two units that we are
25 talking about?

1 A That's construction prudence. It's a matter of
2 public record.

3 Q When the Commission issued its order in the rate
4 base case in 1988, March of 1988, the Commission made an
5 economic excess capacity adjustments for both of those
6 units. Is that not true?

7 A Yes.

8 Q So that after the Commission already determined
9 that these investments were prudent, the Commission then
10 made an adjustment or a disallowance on those investments
11 based on the economics of the units? Is that not correct?

12 A Well, just as a general matter, one was a
13 construction review.

14 Q Right.

15 A And the other didn't deal with construction per
16 se. The other one dealt with what amounts are just and
17 reasonable to include in rates.

18 Q All right. But the Commission did make an
19 adjustment on those exact same investments after the
20 Commission determined that those investments were prudent,
21 did it not. Yes or no?

22 A Yes.

23 Q It did?

24 A But it was not related to -- well, they were
25 different issues.

1 Q Is it your understanding of traditional rate
2 making that the Commission cannot make an adjustment on an
3 investment once that investment is rate based?

4 A I think the Commission has a number of tools
5 available to them in rate cases to deal with a number of
6 different issues.

7 I think my testimony largely goes to the practice
8 that has been followed in Pennsylvania and in most other
9 states for a period of 50 years and the general practice is
10 that at the end of the day they make a lot of different
11 adjustments but the companies are provided a reasonable
12 opportunity to earn a reasonable return on their prudently
13 incurred investments. I think that's been the practice in
14 the state.

15 There are little adjustments that are made here and
16 there for rates filed by these generation results and
17 that's its general practice and I believe that's a
18 Constitutional requirement.

19 Q Are you aware that in 1988 the Commission made a
20 major adjustment to PECO because of extended outages at the
21 Peach Bottom plant?

22 MR. MOOT: Objection, Your Honor. Now we are moving
23 on to other peoples' rate cases.

24 MR. HUGHES: Well, Mr. Marshall is saying that this
25 has never been done in the state in 50 years. I am just

1 asking him if is aware of an example that was done.

2 MR. MOOT: Mr. Hughes if you would like to show him
3 the order and ask him to verify what that, in fact, was
4 done, give him an opportunity to look at the order.

5 MR. HUGHES: All right.

6 BY MR. HUGHES:

7 Q You have made a statement that the Act has,
8 Customer Choice Act does not, I believe -- I forget which
9 questioner was asking that, that you said it does not
10 require a sharing of costs, something like that. Do you
11 recall that?

12 A Yes.

13 Q I just wanted to draw your attention to a couple
14 parts of the Act, a couple little sections of the Act. On
15 page -- well, I am not sure what -- it would be on 2802
16 Section 2802, Number 8?

17 A Yes, sir.

18 Q It says whether -- it says moving towards greater
19 competition in electricity the generation market in the
20 Commonwealth must resolve certain of the transitional
21 issues in a manner that is fair to the customers, utilities
22 and their --

23 A The local community. Not including generators
24 and other affected parties.

25 Q Would you interpret that as the Legislature

1 wanting to see a sharing of the costs associated with
2 transitions of competition?

3 A Not as sharing is defined in these various
4 proposals.

5 Q Which proposals?

6 A The ones that I have referenced in my testimony.

7 Q No, but you had made a statement earlier that
8 there was no -- sharing is not required and is not a part
9 of the Act in essence, for the future. Anything that's not
10 in the Act, at all?

11 MR. MOOT: Mr. Marshall was referring to a
12 questioner talking about the proposal that had been made in
13 this case and that's what his testimony talks about. It's
14 not a theoretical situation. It's a fair answer.

15 MR. HUGHES: Plus Mr. Marshall is saying, Your
16 Honor, that the Act, there is no sharing required. In his
17 ten months --

18 JUDGE CORBETT: Let's move on and ask the question.
19 Maybe we go clarify things by asking a direct question of
20 the witness and see if the witness can answer.

21 MR. HUGHES: The direct question is does he see his
22 prior statements in regard to sharing included in his
23 testimony in any way contradicting either the spirit or the
24 letter of the Act?

25 A I am not quite sure I understand what the

1 question is.

2 Q Mr. Marshall -- on page 18 of your rebuttal?

3 A Page 18?

4 Q Right. Lines like 19 to 22.

5 A Yes.

6 Q You say the Act specifically makes no reference
7 at all to a generic sharing of stranded costs?

8 A Yes. My earlier statement if you read it back,
9 was directed to the reason I disagree with the statement
10 that was made earlier is it says these kinds of sharing
11 proposals are required under the Act and I said they are
12 absolutely not required under the Act.

13 This clearly provides no reasonable opportunity for
14 our investors to get a return on their investments. The
15 item number 8, I would point out to you, says in a manner
16 that isn't fair to customers and electric utilities and had
17 investors and so there's nothing contradictory in number 8
18 that contradicts what I have in my rebuttal testimony.

19 Q So generally you believe that the Act does
20 require a sharing of these burdens?

21 A No. That is absolutely not what I just said to
22 you.

23 Q So the answer is you do not --

24 MR. MOOT: He's answered this question now the
25 second time.

1 MR. HUGHES: I guess I am missing it.

2 THE WITNESS: I agree that until it says what Number
3 8 says

4 BY MR. HUGHES:

5 Q Would you look at pages 5 of the Act, 14?

6 JUDGE CORBETT: What was the reference?

7 MR. HUGHES: Page -- well, I'm sorry.

8 JUDGE CORBETT: Give me a section number.

9 MR. HUGHES: May be different than mine. I believe
10 it's 2804.

11 JUDGE CORBETT: Subpart?

12 MR. HUGHES: Subpart 14.

13 THE WITNESS: I see number 14, yes.

14 BY MR. HUGHES:

15 Q Would, again, it's essentially the same thing.

16 Would you have any disagreement with that particular number
17 14?

18 MR. MOOT: Let me make sure I understand the
19 question. Is the question does he disagree with Section 14
20 as it appears in the statute.

21 MR. HUGHES: I am trying to be specific. He says
22 the Act makes no reference to share. To me it says right
23 here there should be a sharing, wondering if there's any
24 contradiction between that it says in --

25 THE WITNESS: I don't think there's anything

1 contradictory in my testimony than what is said in item
2 number 14. Nothing contradictory about our proposal and
3 nothing contradictory in my rebuttal testimony.

4 BY MR. HUGHES:

5 Q Okay. On your direct testimony, on page 19,
6 let's take a look at page 20.

7 A Nineteen or 20?

8 Q Page 20.

9 A Line?

10 Q It would be line 1 through 3.

11 A Okay.

12 Q You refer to two figures, \$340 million in
13 stranded cost mitigation and \$700 million employed in rate
14 increases to date?

15 A Yes, sir.

16 Q Those figures are based on what?

17 A Those figures are based on a detailed analysis in
18 Mr. Clayton's testimony.

19 Q Oh. Okay. On the previous page, on page 19, at
20 line 7, beginning at line 7 --

21 A Yes, sir.

22 Q -- you talk about the company's decision to
23 cancel Erie nuclear units 1 and 2 Davis Besse 2 and 3.
24 Cold reserve Phillips and Brunot Island units and abandon
25 Perry 2. And then in line 11, you say consequently by the

1 time of Duquesne's '86 and 7 base rate case Duquesne had
2 mitigated the worst consequences of the steel decline.

3 Q Do I understand correctly that you are claiming
4 that these cancellations, prior cancellations of these
5 units in this testimony, you are including in your stranded
6 -- your mitigation quantifications?

7 A I think the point of this is that the Act
8 requires the Commission to look at what the companies have
9 done both prior, during and after the Act is passed to
10 mitigate their circumstance and I am just giving as a
11 matter of public record. These are things that take place
12 at our company that we did to deal with the problem that
13 faced --

14 MR. MOOT: Your Honor, by way of clarification --
15 and Mr. Hughes would be free to correct me if I'm wrong --
16 I think Mr. Hughes may be curious about whether the
17 cancellation of these units and the economic costs
18 associated with that are included in the \$340 million and
19 \$700 million numbers referenced on the next page.

20 THE WITNESS: Is that the question?

21 MR. MOOT: Because if that's the question I am not
22 sure Mr. Marshall understood it and I also understood that
23 Mr. Clayton knows what's in these calculations.

24 MR. HUGHES: I wanted to make sure that I was
25 correct in assuming that he's using or including these

1 cancellations, these early historical cancellations in 1980
2 and '86 as part of the mitigation?

3 MR. MOOT: As part of the mitigation generally or
4 are you asking him whether the costs associated with that
5 are in these 400 an 700?

6 MR. HUGHES: Both.

7 THE WITNESS; I'll be honest with you. I don't know
8 exactly what is in the 340. Mr. Clayton has made those
9 calculations in some detail and I am sure he could tell
10 you. I am just referring to some major items that are a
11 matter of public record as to what we have done, faced with
12 the problems we have. I am trying to provide some
13 context.

14 BY MR. HUGHES:

15 Q Okay. Just one more question. In Duquesne's
16 earlier today, Mr. Marshall, you, in answering a question
17 about Brunot and Phillips, the OTS' question, I believe,
18 you said that these planned cold reserves due to the fact
19 that they were uneconomical. Is that correct?

20 A Yes, sir at that time.

21 Q And in your 1994, the company's 1994 annual
22 report, there was -- there is a reference in there that
23 talks about how economical these plants are, how reliable
24 they are, how efficient they are, et cetera, I could show
25 you the reference if you'd like to look at it. I am

1 wondering what happened between the time to the company
2 decided to cold reserve them in, was it '85 or '86,
3 depending on which plant, and then '94 to make them --
4 sure?

5 MR. MOOT: I think it's fair that the questioner
6 could show the witness what he's talking about.

7 JUDGE CORBETT: Yes. Do you have that available,
8 Mr. Hughes?

9 MR. HUGHES: Yes, I do. It's the 1984 integrated
10 resource plan. Pages 123. If you would that take a look
11 at that.

12 THE WITNESS: This is -- I am sorry. This is a
13 document that's your testimony, and it has a quote that
14 isn't sourced.

15 Q Right before that it's sourced. That's why I
16 read that to you, 1994 integrated resource plan.

17 MR. MOOT: I'd like the record to reflect that the
18 questioner has shown the witness his own testimony. He has
19 not shown him the resource plan. He's asking about his own
20 testimony.

21 JUDGE CORBETT: Did you have the resource plan here,
22 Mr. Hughes.

23 MR. HUGHES: I do not.

24 THE WITNESS: I'd be glad to answer your general
25 question which goes to what has happened, what happened

1 between the time that Phillips and BI were closed down to
2 the early '90 period where we were actively marketing
3 capacity from Phillips and I would be glad to describe that
4 to you because I think it's instructive to show how much
5 markets do change and that at time we closed the plant, we
6 filed with the Commission detailed testimony explaining why
7 it was economical to shut those plants down. The
8 Commission agreed with that.

9 It was a lot of excess capacity. I have described
10 to you earlier there was a lot of fixed costs in keeping
11 the plant open which provided no particular value, terrible
12 heat rate. We just didn't need it. We could save money
13 and customers could save money by shutting that down over
14 time, the markets changed, all of a sudden there began to
15 be an active wholesale power market in the late '80s and
16 early '90s we had hopes that we could sell that capacity.

17 In fact, I would tell you that we view as one of our
18 major mitigation efforts rather than just taking Perry and
19 BI and writing them off and collecting the dollars, some
20 point in the future. We said, well, wait a second. These
21 things potentially have value. Let's go out and see if we
22 can create value.

23 That led us to a major undertaking with GPU where
24 they agreed to buy 500 megawatts from us. The prices were
25 high then. It was a very good deal. In fact, we showed in

1 the Commission hearing that there were over \$300 million of
2 benefits that were all passed, would have been passed back
3 to rate payers, as part of this proposal.

4 We viewed trying to find a maximum value out of
5 Phillips and BI as a very important part of our mitigation
6 efforts during this period. Ultimately what happened,
7 prices started to come down and the Energy Policy Act came
8 into account, prices kept coming done.

9 At one point GPU came back and said well the prices
10 we agreed to originally were too high. The prices have to
11 come down. So we agreed to renegotiate them and then they
12 kept coming down and it was at that point we tried to sell
13 Phillips and Brunot Island and prices continue to drop and
14 I think our testimony shows that.

15 Prices continued to drop over, steadily over the
16 last three or four years. So what you are saying is the
17 market changes, and I think competition has a lot to do
18 with that.

19 Q Was there anything done to those units to make
20 them more efficient or more economical between '86 and
21 '94?

22 A Well, they clearly would have had to spend some
23 dollars to reactivate them. Am I correct the exact dollars
24 there were fairly substantial. You would have to spend
25 about a hundred million dollars to reactivate. Duquesne

1 doesn't need them. We had enough capacity. People that
2 needed them were folks like PJM. They had capacity
3 deficiencies. They had no way to get power at this price
4 and that's why it was such a great opportunity. That's why
5 we tried to sell. We didn't need the output.

6 Q I understand there was excess capacity?

7 A The excess capacity. It wasn't economic. These
8 were the decisions that we tendered for our service
9 territory. It didn't support us. Why it became beneficial
10 was not for us, but because other people had a much greater
11 need for capacity than we did and they were the differences
12 in economic expectations.

13 Q I see. But in terms of the plants, themselves
14 between '86 and '94, the Commission didn't really do
15 anything to them to make them more efficient or more
16 economic?

17 A Suffered a lot of months trying to keep them
18 alive. Trying to find with you to achieve these savings
19 that ultimately would have been passed on the rebates.

20 Q Other than keeping them alive or maintaining them
21 in cold reserve you don't do anything to them to make them
22 more efficient operating plants?

23 A We did some preliminary engineering. Mr. Clayton
24 can talk about it in more detail. There is no -- we did
25 make engineering studies to try to get the maximum

1 available output of the plant. These were real dollars
2 that were spent trying to find a way to squeeze value out
3 of the assets. We do that part of our mitigation --

4 Q Just one final. You make a proposal, I believe
5 it's in your rebuttal, let me make sure, on page 5 where
6 you say that Duquesne is proposing to submit on or before
7 January 1, 1999 a study that addresses whether a particular
8 unit should be shut down and if so, the appropriate
9 treatment of the related costs. Are you familiar with
10 that?

11 A Yes.

12 Q I would assume that you'd make these kinds of
13 studies periodically as you go along? I mean, this
14 wouldn't be the first one you are doing? Is that correct?
15 About your units?

16 A We constantly ask ourselves what is the best way
17 to maximize the value of our costs, keep our costs as low
18 as possible and accelerate all of the stranded costs that
19 we have and we have a better record on this than anyone
20 else in the state.

21 We were the first company to shut down plants that
22 were based on economics, Phillips and BI. We were the
23 first company to sell an operating plant, Fort Martin,
24 again, to mitigate our stranded costs.

25 This particular issue is related to the fact that

1 parties have made a claim that somehow all of the costs at
2 these plants immediately disappear if you shut them down
3 and we show detailed testimony, Mr. Clayton, and Mr.
4 Schnitzer, that that is a flawed methodology in making that
5 evaluation. You have got to look at what your avoidable
6 costs are.

7 We also put in testimony issues, complexity of
8 transmission problems associated with El Rama. If El Rama
9 goes down we have got a first constituent problem in that
10 part of our service territory, is a very complicated issue
11 based on our analysis. We don't feel El Rama should be
12 shut down. Since other people have raised it. We have
13 said we'll be glad to do a detailed evaluation,
14 particularly about El Rama, to the Commission and if they
15 disagreed that it should be shut down, we'll be glad to
16 shut it down. We don't think that's the question.

17 There's one other issue I think is important.
18 Again, this is our stand-alone case. One plan, one thing
19 with respect to the merger with Allegheny, it provides us
20 with a way of operating all of our plants as part of a
21 bigger system and reduce our overhead.

22 Earlier we had questions about the synergy benefits
23 that are going to be flowed to rate payers. They are
24 explicitly coming from reducing duplicate overlays of El
25 Rama and Cheswick. Those plants will actually operate much

1 more efficiently with much allocation, with them as part of
2 the merger.

3 The point of all this is we don't believe based on
4 the evidence that it makes sense to shut it down, but we
5 are willing to address things that other parties raised in
6 the case to do that detailed --

7 Q Just to follow-up on this point, since you do
8 constantly assess and evaluate the economics of your
9 assets --

10 A Yes.

11 Q -- would you say that up until this point, the
12 economics of Perry 1 and Beaver Valley 2 are simply
13 something that you would define as good or bad, are these
14 plants economical or uneconomical. Could you do that just
15 in a -- based on --

16 A Mr. Clayton goes into great detail.

17 Q You wouldn't say --

18 A Explaining. I would be glad to characterize. He
19 goes into great detail to look at the economics, the
20 avoidable costs of Beaver Valley and Perry and he shows
21 essentially that there is not a just any indication for
22 shutting those plants down. That's in the testimony and
23 that's what he shows. So he's asking --

24 Q I am not asking that in relationship to shutting
25 them down or not. I am just asking whether you kept them

1 open or not based on those sizes that you say you
2 constantly do, would you characterize these investments as
3 economical or uneconomical?

4 A I'll answer that question because I think it's
5 very important. We talk about whether a plant is economic,
6 we look at incremental avoidable costs and ask ourselves
7 would it make more sense to either shut a plant down than
8 continue to operate it. That's what we mean when we say is
9 it economic. Other people may have some other methodology
10 that they use but we believe, and I believe that that's the
11 proper way to do an analysis in a company to try and
12 continue to find ways to squeeze dollars out to save money
13 if you can avoid it. If there's a cheaper alternative,
14 that's the way to do it.

15 MR. HUGHES: Thank you. Thank you.

16 JUDGE CORBETT: All right. Mr. Barak?

17 MR. BARAK: Thank you. Good morning. I represent
18 the environmentalists. I'll just follow up on that last
19 point. I have a few questions for you.

20 THE WITNESS: Yes, sir.

21 BY MR. BARAK:

22 Q Would you use the phrase "to go" costs as
23 descriptive of that last explanation you just made?

24 A Avoidable "to go" costs.

25 Q For your view, the company's recommendation for

1 how stranded costs should be treated, would you
2 characterize that as a "to go" costs kind of analysis?

3 A As answer an avoidable "to go" costs analysis.

4 Q In your view, is it appropriate to offset for the
5 preferred analysis "to go" revenues and "to go" costs?

6 A Now you are beginning to lose me. I am just
7 telling -- again, I'd have to --

8 Q I have lost you. Let me try this again.

9 When we come to those points in time where the
10 Commission would, under your proposal, examine revenues to
11 date, costs to date?

12 A Residual of the plants. Stranded costs.

13 Q When we get to those points you are looking at,
14 would it -- are you recommending also that the Commission
15 examine revenues from various lines of business of the
16 company?

17 A No. I believe that the Commission should look at
18 the regulated business of Duquesne Light Company and make a
19 determination as to money that it has in those regulated
20 businesses, environment has played in those regulations
21 businesses, as we go through this transition period to
22 provide a reasonable opportunity for those investments so
23 it doesn't if a totally other company as part of a holding
24 company has an investment in a totally different area, a
25 totally different profile, it has nothing to do with our

1 investment at this time.

2 Q How about off system sales? Where do you place
3 that in --

4 A I believe you'll find in Mr. Clayton's analysis
5 that all of our off system flowed through our mitigation
6 plan. I think it appears as part of our Customer Choice
7 Plan.

8 Q So in short, your recommendation to the
9 Commission is to include in these periodic examinations --

10 A Yes.

11 Q -- off system sales revenue?

12 A Yes. Anything that comes from the assets, this
13 should be included in it.

14 Q Let me ask you very quickly about another kind of
15 revenue. Company, for instance, has applied to the state
16 for permission to dispose of ash from some of its plants;
17 right?

18 A Yes.

19 Q And if the company succeeds in this general
20 permit it's applied for --

21 A Yes.

22 Q -- it will receive generic approval for call it
23 disposal capacity in excess of any one plant's disposal
24 requirements; correct? Is that right?

25 A Well, that's your scenario. You are describing a

1 scenario.

2 Q Oh, I don't mean it to be a hypothetical. When
3 you said yes, I thought you --

4 A No, I am listening to you. I thought you were --
5 maybe you'd better start over again.

6 Q Is this a correct statement? The company has
7 applied to the Commonwealth of Pennsylvania for a general
8 ash disposal permit approval?

9 A You are asking has Duquesne Light done that?

10 Q That's my question.

11 A I assume we have. I don't know that.

12 Q Let me make it a hypothetical. We'll ask
13 somebody else. Let's assume that that has happened and
14 let's assume that the nature of the permit would include or
15 permit capacity greater than that from, say, just El Rama,
16 just any one plant. Are you with me so far?

17 A Yes, for this ash disposal site.

18 Q Now, let's say the company merges with APS and
19 becomes an operating unit of APS?

20 A Yes.

21 Q And it takes in ash from other APS units for the
22 disposal site at which it is permitted.

23 A Okay.

24 Q How would the treated revenues in the context of
25 your recommendation to the Commission? Any revenues you

1 receive for that ash disposal?

2 A Well, that's a -- that's an interesting question
3 and it really goes to the synergy benefits associated with
4 the merger. I would certainly want to avoid any kind of
5 double counting of benefits that we provide as part of the
6 merger.

7 We have certainly tried to estimate as part of our
8 merger application, what these kinds of synergies are and
9 we have, in fact, made a commitment to reduce, increase our
10 minimum amortization. I think I said earlier we reduce
11 rates to account for those kinds of things. Under your
12 case I want to make sure we are not given it twice and so
13 you'd have to be very careful as to how that worked.

14 Q I don't want to put you in a position to create
15 a --

16 A What would be easier is if we would talk about
17 not being APS but somebody else. Let's do that.

18 Q I was going there in a minute. Maybe I should
19 have gone there first.

20 A Let's go right there. Clearly, we believe our
21 obligation, our obligation is to fully litigate our costs
22 to the extent that we have assets that we are collecting
23 dollars on. As part of the transition to customer choice
24 we should do everything we can and we do everything we can
25 to get any additional revenues in so we mitigate our

1 stranded costs. That's a fairly important thing to ask and
2 there's an obligation that he would have in selling if you
3 will take --

4 Q Selling disposal capacity to other utilities
5 than, say, the APS units?

6 A Yes.

7 Q Your recommendation to the Commission would be
8 take those into account, the revenues into account?

9 A If these assets are in the regulated business and
10 return on them any revenues that come in to support those
11 businesses should go as an offset. We don't intend to on
12 our ash days. This would be what we do with fly ash.

13 To the extent that there's fly ash that we could get
14 some revenues, I think that would be a particularly useful
15 offset to mitigate our costs.

16 Q But appropos your comments a moment ago, with
17 respect to APS, in general, your rule would be count the
18 revenues from another APS utility but an important
19 exception, don't double count?

20 A Yes.

21 Q Now, to some other topics. Did the company
22 support the passage of the Retail Competition Act that we
23 were discussing earlier today?

24 A Yes.

25 Q And did the company receive a, call it quid pro

1 quo, from the Legislature, or the Governor for that
2 support?

3 A If they did, nobody told me.

4 Q So in other words, there's no guarantee from the
5 company's point of view, you have no guarantee under the
6 Act to recover any particular level of stranded
7 investment. Is that right?

8 A I think we are very clear that the Act does not,
9 we do not have a right, we are not guaranteed a right, but
10 we are guaranteed a reasonable opportunity and I would
11 agree with you it is not a guarantee and as we have
12 described our plan is no guarantee that we are going to
13 earn a full rate of return.

14 As many parties in the case, I know this is relevant
15 to the question. We do not believe everything in the Act
16 makes complete sense. We do not think that's in the best
17 the interests. But that's okay. Overall in general we
18 have supported the Act as other parties have as well.

19 Q I know you have another witness whether is
20 addressing your universal service programs?

21 A Yes.

22 Q I just have a couple questions on those. I don't
23 know if you recall, but our testimony was a bit split
24 personality in that we think your LIRA programs are very
25 good. Is the company guaranteeing that irrespective of the

1 merger session with APS that it will continue at least at
2 present levels of funding and sort of activity, its
3 universal service programs.

4 MR. MOOT: Your Honor, I would like to interpose an
5 objection in the following manner. There's nothing in Mr.
6 Marshall's testimony at all on universal service. If, and
7 so any testimony on universal service is clearly outside
8 the scope of what he's filed, but what I think might be
9 pertinent and maybe this is where Mr. Barak's going but
10 there needs to be some foundation, that is that if he wants
11 to ask Mr. Marshall regarding the actual testimony on
12 universal service and whether the company would commit to
13 this in the absence of the merger.

14 Mr. Marshall being a policy witness I would ask Mr.
15 Barak to show Mr. Marshall the testimony he's talking about
16 and giving me some foundation for the question.

17 MR. BARAK: I'll withdraw the question and let me
18 recast it and make it very clear.

19 BY MR. BARAK:

20 Q I am asking as a policy matter and I am asking,
21 Mr. Marshall for you to focus on the merger situation. If
22 the merger goes through, Duquesne will become an operating
23 unit of APS?

24 A Duquesne Light will become an operating -- yes.

25 Q And would it be correct, then, that absence some

1 sort of contract to continue in effect its universal
2 service perhaps after the merger, the robustness or not of
3 the company's universal service program should be entirely
4 a function of the APS Management. Is that right?

5 A Well, that's a very hard question to determine.
6 I, you know, I think that we have a very well regarded
7 program in this area. Our smart comfort program and those
8 kinds of programs. I would hate to say that Duquesne Light
9 imagine many will have nothing whatsoever to do with how
10 those programs will be administered in the future.

11 I would expect we'll have a lot to do with how those
12 programs are administered in the future so if your question
13 is, and my expectation is that we would continue to do
14 those kinds of things, it's interesting you asked this
15 question right after the previous questions was you don't
16 think you are guaranteed a return, Mr. Marshall but if you
17 wants to know if you will guarantee that we'll continue it
18 I'd ask it right afterwards.

19 We couldn't guarantee anything, but I think our
20 general expectation is that we would do those kinds of
21 things and I believe Mr. Flynn talks about that and he
22 talks in his testimony about how the Commission will have
23 continuing review. That is a company issue. The
24 Commission will have continuing review of our customer
25 plans and so we will continue to be involved in that

1 process.

2 Q I'll ask you a sort of similar question to the
3 one I asked before at the risk of getting your last
4 answer. Are there, will there be any guarantees if the
5 merger goes through, that any of the company's personnel
6 will still be in place to manage any of the programs,
7 specifically the universal service program? Will there be
8 any such guarantee?

9 A If you mean a written guarantee, a guarantee, the
10 expectation is that our company's opinion, this is being
11 viewed as a quote, merger of equals. Of course, there's no
12 such as a merger of equals. One is always a little more
13 equal than the other, but be that as it may, I think that
14 we are operating during the transition process and expect
15 to operate going forward that both companies will be
16 involved in the decision-making process.

17 So I don't -- as you pointed out, there are no
18 guarantees in the world. We all have reasonable
19 expectations. The Commission will have continuing
20 jurisdiction of our customer programs.

21 Q What does the term divestiture mean to you? I am
22 talking about your assets now, divestiture of generating
23 assets?

24 A In our -- quite frankly I think there's
25 misunderstanding of the term. I believe our program, I'd

1 like to refer to it as an auction, an asset auction.

2 An asset auction may actually result in a complete
3 divestiture where somebody else owns the generation or it
4 could result in, and again, this is where we have, we are
5 getting into the stand alone case versus the merger case,
6 and he will state since we have gotten into this somewhat,
7 in the stand alone case, it is not our expectation that we
8 will bid in an auction. We are not big enough to be in the
9 generating business.

10 It is not our expectation that we would bend in
11 these actions, and so, on a stand alone basis, the action
12 would probably result in divestiture to the extent that we
13 got equal bids. If we got any bids.

14 Q You finished your answer with a term that I was
15 sort of asking you to define. By divestiture, is it your
16 intention to communicate a transfer of ownership?

17 A That's what I -- when I use the word divestiture
18 that's what I mean, so an action could result in a
19 divestiture whether somebody else buys it or not.

20 Q You have used the term expectation a number of
21 times in my last few questions and you used it just a
22 moment ago.

23 A Yes.

24 Q You say it's not your expectation that to be in
25 the generating business, you are not guaranteeing to the

1 Commission if it takes any particular action with respect
2 to the company's application, that the company will divest
3 in the sense that you have just defined it. Is that
4 correct? You are not making such a guarantee?

5 A No. And I would like to read to you in my
6 testimony what we do say on this point.

7 MR. MOOT: Page 17 of your rebuttal.

8 THE WITNESS: The commitment we do make to the
9 Commission is that yes, if circumstances change and we did
10 want to make a bid in this action, that we would file those
11 procedures and request the Commission, with appropriate
12 safeguards for their approval. So we would have no
13 competitive advantage or no information that other people
14 don't have that is the specific event commitment.

15 The reason I make it is in the combined case they
16 are, to the extent we do an auction, we would anticipate
17 making that bid. We believe the combined company would be
18 big enough that we would make a bid in auctions that might
19 occur. So that's why, I think I am making this in our
20 stand alone case.

21 Q Just a couple more questions. With statewide
22 retail competition right now your generating plans have
23 access to other utility customers in this state. Is that a
24 correct statement?

25 A I would say our plans are connected to the

1 regional transmission network. If that's your question.

2 Q No, actually I mean it more on a transactional
3 basis. Right now, Duquesne has an opportunity to sell
4 retail to customers other than those in its service
5 territory; correct?

6 A No. Duquesne is not in the retail marketing
7 business. And we do not believe that we are even in
8 authorized even under the Act to be in that business and we
9 do not plan on being in that business. We do not have the
10 capability of being in that business today.

11 Q So --

12 A Today.

13 Q So if we went to those situations where you did
14 not quote, divest, unquote, all of your generation, the Act
15 is still in force that in the future. And you are saying,
16 no, Duquesne will not be generating kilowatt-hours for
17 contracts with customers of other Pennsylvania electric
18 utilities? Is that what you are saying?

19 A No. What I am saying is under the Act, I think
20 it's hard for all of us. We tend to think of ourselves
21 vertically integrated companies. So we need to split
22 ourselves apart that the various component businesses that
23 we are going to go into as part of the Act.

24 One of the businesses is the generation business.
25 And we view that largely as the wholesale generation

1 business that's competing in bulk power markets. You are
2 selling kilowatt hours. You are doing wholesale trading.
3 That's one business. Duquesne does not anticipate being in
4 that business.

5 We do not think we are big enough to be in that
6 business, A, given the size of our generation is going to
7 be available and B, Duquesne Light, under the Act, is not
8 going to be in the retail market in interests. Affiliates
9 of the company, unregulated companies that may buy and sell
10 kilowatt hours, they would be in the retail business.

11 But not Duquesne Light and those businesses are
12 going to be strictly unregulated under the guise of the
13 Act.

14 Q Do you have such an affiliate now?

15 A No. Currently, and I don't know exactly where
16 this stand, have we filed on anything on this point
17 yesterday?

18 MR. CRAYNE: We have not filed. We asked to --

19 THE WITNESS: As part of our merger with Allegheny
20 we have executed an agreement where we would probe being a
21 fifty-fifty joint venture partner with Allegheny Power in
22 this system called Allegheny Energy Solutions and we are
23 planning on filing with the Commission to get certification
24 to participate as an unregulated stand alone company to
25 participate in those businesses along with the other 42

1 suppliers that are certified in the state under the Act.

2 Q I'd like to ask about customer education. Is the
3 company willing to participate in a statewide customer
4 education effort, that is, take dollars that it would have
5 managed, itself, place them in a common pool with other
6 utilities managed by a group that Duquesne would not
7 control?

8 MR. MOOT: I have to interpose an objection. Mr.
9 Hoffman, who is our witness on customer education makes
10 specific statements about this topic and I -- this is not a
11 topic that is addressed in any detail by Mr. Marshall. I
12 think it's a just a fair question for Mr. Hoffman.

13 MR. BARAK: I don't disagree that it's a fair
14 question for Mr. Hoffman. I am asking this on a policy
15 level and I am asking of course, because of the order that
16 came out just last week in the PECO case.

17 That order, of course provides for \$25 million to go
18 and do a common fund managed by a group that that utility
19 company would not control. So my question to Mr. Marshall
20 is just on a policy level, is this company prepared to
21 engage in such an enterprise? I think it's a fair question
22 to ask.

23 JUDGE CORBETT: With that basis, I think -- with
24 that understanding that it's a policy question I'll allow
25 the witness to answer. Objection is overruled.

1 MR. BARAK: Thank you, Your Honor.

2 THE WITNESS: To be quite honest with you, I
3 understand it's a fairly complex area. And I understand
4 the importance of customer education in terms of moving to
5 customer choice and unbundling. It's a very important
6 component of our customer choice plan.

7 You know, I, to be quite honest with you, I think
8 Mr. Hoffman gets into it in a fair amount of detail. And I
9 am not really prepared to say, you know, how your
10 particular hypothetical may be different than what he's
11 proposing and there are a lot of -- it's a carte blanche
12 matter. We should be involved in this process.

13 We want to make sure that what's communicated to the
14 customers is being followed and as the reliance to Duquesne
15 Light, it's company-specific, but I really don't feel
16 comfortable giving a strong understanding of this
17 situation.

18 Q Would it be fair to say that at this time, from
19 your personal perspective, you are not ready to commit or
20 no to whatever the process the Commission set up for
21 customers education from last week's order for PECO?

22 A I don't even think there's an order. I am not
23 sure there is an order out.

24 Q I am not sure. You are not ready -- whether that
25 motion that balances the statement -- you are not ready to

1 state?

2 A I don't know exactly what is in that thing. Is
3 that an order or is it a memorandum? And I don't know what
4 it is. I don't know what it says in that regard.

5 Q Just at couple more questions here. Again,
6 policy level, refer me to another witness if you don't feel
7 comfortable with this. Is it correct that at this point in
8 time, Duquesne is not claiming that it will be expanding
9 its environmental work that it would be undertaking any new
10 environmental programs?

11 A Is the question -- what is the specific
12 question?

13 Q Given the present level of environmental
14 activity, environmental protection activity, is Duquesne
15 planning to expand that?

16 A I don't think we have any major initiatives in
17 that area. I will say that there's going to be any type of
18 potential costs associated with the investment community.
19 We have all been reading about the Kyoto Conference and we
20 all know there is substantial costs associated with these
21 proposals.

22 In that regard we are always looking at
23 environmental issues and the most cost effective way to
24 apply. I don't think we have any new plans or new
25 initiatives.

1 Q I think I just have this one question area. I
2 heard some of your questions with Mr. Hughes and I was
3 unclear about one of your answers. Is it your position
4 that Duquesne Light Company built -- let me rephrase that.

5 Is it your position that Duquesne Light Company
6 became owner in new power plants, nuclear power plants
7 because this Commission in Pennsylvania ordered it to?

8 A I think my testimony is that the Commission has
9 determined that our investments in these plants are just
10 and reasonable. They have included them in rates, in
11 collecting rates on that basis.

12 Transition plan says to the Commission that they
13 ought to allow us a reasonable opportunity to collect our
14 stranded costs. The Commission has made the determination
15 that our investments are reasonable.

16 Q It sounds like the first particle, the first
17 thing you said was no and then an explanation. Did I hear
18 you correctly? Is it was a little hard to hear? Let me
19 ask the question again.

20 My question is was there an order to build those
21 plants? To take part in building those plants?

22 A I think it's a matter of public record. There
23 are a number of cases that show the Commission was very
24 concerned about the adequacy of capacity, electric capacity
25 in Pennsylvania and I think there are a number of public

1 documents that show that they really said to companies, you
2 have got to start building more baseload plants.

3 I think it's a matter of public record that people
4 are concerned as part of the energy crisis, that we
5 couldn't burn oil, we couldn't burn gas. People were very
6 concerned about coal and the Clean Air Act and that there
7 was strong endorsement by the Commission that we continue
8 to build these plants.

9 When we tried to cancel them, it's all a matter of
10 public record. When the company was going to cancel plants
11 the Commission wanted to -- they had a hearing on it and
12 they said we are not sure you can cancel these.

13 Are you going to have enough capacity? They have
14 been actively involved in that process and ultimately they
15 determined that these rates were just and reasonable and
16 that we should be able to collect it in rates.

17 Q The public record will show the Commission
18 ordered the company to take part?

19 A No. My answer is exactly what I just said. I
20 don't know what ordered means. I gave you more specific
21 information.

22 MR. BARAK: That's all I have, Your Honor.

23 JUDGE CORBETT: Okay. The next party up would be
24 Mid-Atlantic Power Suppliers, Mr. Stewart. Mr. Stewart,
25 how long do you believe that you have?

1 MR. STEWART: I think I can accomplish what I need
2 to in about ten or fifteen minutes.

3 JUDGE CORBETT: All right. If we can do it within
4 that, we'll go ahead with you at this point and then we'll
5 take a lunch break after that.

6 MR. STEWART: Good afternoon.

7 THE WITNESS: Good afternoon.

8 BY MR. STEWART:

9 Q Do you agree, Mr. Marshall, that the Customer
10 Choice Act has as one of its goals the development of a
11 robust competitive market for the retail sales of
12 electricity in Pennsylvania?

13 A Is there a particular section of the Act you want
14 to point me to in that regard.

15 Q Just a general statement. There are several
16 sections I believe in the Act that which mention this as
17 a goal and I am just getting your sense, personally
18 whether you believe that that is one of the goals of the
19 Act?

20 A I believe there are a lot of different goals of
21 the Act. I don't -- I am not sure I characterized it the
22 way you did. But if you could point me to something I'd
23 certainly take a look at it and see if I --

24 Q That's not necessary. Would you --

25 A They clearly, they are setting up a process so

1 the companies can transition to customer choice and you
2 will mainly go into competitive markets. That's the
3 purpose of the Act. Treat people fairly.

4 Q Do you agree that the customer generation credit
5 or CGC that's proposed in this proceeding, is the price
6 against which competitive suppliers will have to compete
7 for retail load?

8 A Under the price cap legislation, under the price
9 cap obligation, yes.

10 Q And would you agree that it is very likely that
11 if suppliers in general can't sell energy capacity at a
12 price that is equal to or less than that competitive
13 generation credit it's unlikely that they will gain
14 customers?

15 A I would argue that if they can't, you know, if
16 suppliers can't, in fact, provide benefits above, you know,
17 wholesale price of power today, that probably the
18 Competition Act isn't a good idea. I am not saying that.
19 I think that suppliers are going to develop all kinds of
20 products and services. They are going to be able to add all
21 kinds of value to customers and so I don't think it's
22 strictly a price issue.

23 Q So it's your testimony, then, that if a
24 supplier's price comes out just based on the price, if the
25 supplier can't sell energy and capacity to a customer below

1 the CGC that was proposed by Duquesne that that supply is
2 still maintaining customers?

3 A Depending on what other kind of value added they
4 provide to the customer. You know I would just note, you
5 know, that as you can tell from my rebuttal testimony, we
6 argue quite strenuously against the idea of rate cap
7 legislation.

8 You say what was the intent of the Act. I mean,
9 part of the problem is the Act has a lot of intents. We
10 feel that it made more sense not to have this obligation,
11 to have the utilities be provider of last resort at capped
12 rates and one of the reasons is just the reason that you
13 are describing.

14 It does make it hard if suppliers would had strongly
15 disagreed with that provision in the legislation and we
16 lost.

17 Q Is it Duquesne's view that did the phase-in that
18 a customer is going to have a choice between taking power
19 from Duquesne as the supplier of last resort or whatever
20 you want to call that function and between a competitive
21 supplier, the other people who intended to get into the
22 market?

23 A Yes.

24 Q And I would like to point to you page 3 of your
25 direct testimony at line 18. This is just a

1 clarification.

2 You state there that one of the benefits of
3 Duquesne's plan is that it allows for increased the
4 amortization and depreciation of strandable, and you use
5 the word strandable and assets. I am just clarifying, do
6 you mean you use the word strandable to equate to stranded
7 or do you mean strandable in a sense that they may become
8 stranded?

9 A I think this is a question of your ability to
10 mitigate costs. If you can't mitigate them, they are
11 stranded. If you can come up with ways to mitigate them,
12 then they are potentially stranded but they won't be
13 stranded if you find a way to actually take them off the
14 books and so that's what I mean by strandable.

15 Q A lot of the testimony we have heard, I get the
16 impression that Duquesne doesn't put a lot of faith in
17 forecasts of market price and you don't really have a lot
18 of credence of predictions of any forecast, really?

19 A I think we have learned a lot over the years from
20 administrative determination of long and intense duration.

21 Q They are not very -- and would you agree
22 because of that knowledge and understanding that Duquesne
23 has chosen instead to use the RFP process as one of the
24 gauges of market price for the purposes of its
25 restructuring?

1 A Yes.

2 Q And in fact, I believe that the RFP process
3 that's been proved and which you have used is the one that
4 is put together earlier this year I believe in summer
5 partially in preparation for the pilot programs?

6 A Yes.

7 Q Is it not true that Duquesne believes that
8 shareholders should not bear the risk of the market price
9 exceeding the customer generation credit in any given
10 year?

11 A Say that again?

12 Q Do you believe that Duquesne's shareholders
13 should not bear the risk of the market price whatever that
14 market price may be of electricity, exceeding customer
15 generation credit in any given year?

16 A I think what we believe is that we should not
17 build in a systematic program where we can only lose every
18 time the market price is higher than has been included on
19 our stranded cost calculation. That is a wholly asymmetric
20 and unfair plan and we would not allow is to collect
21 outstanding --

22 Q Did you answer my question yes or no. Your
23 question is in a particular year under a certain
24 circumstance. For a month. It's offset the other months.
25 It has to be directly related to a program our complaints

1 are, and this is one of our great frustrations. We believe
2 customers should, for example, have the choice of a fixed
3 YPC.

4 They should have that opportunity proposed by the
5 Commission. We said what isn't fair that we take the all
6 the risks of the fixed CTC and then, customers can still
7 come back to us if the market prices implicit in that turn
8 out to be different.

9 That's actually unfair after the total asymmetrical
10 proposal and the customers shop, you would have the choice
11 to waive that choice to coming back for that service.
12 That's a much fairer proposal.

13 Q I want to make sure I am clear. Is that one of
14 the reasons you originally proposed not to divest your
15 generation assets until 2003? That that inherent
16 unfairness --

17 A That's a real problem with divestiture. Again,
18 the legislation has a lot of intents. They have a lot of
19 objectives. They are trying to balance on the one hand
20 they say we want to go to competitive marketing. We want
21 to guarantee no matter what happens during the next seven,
22 eight years there's never any problem with the capped
23 plan.

24 Q It is highlighted in your rejoinder testimony
25 pages 9 where you state the concern that if Duquesne were

1 to auction its generation assets, it would still be faced
2 with this continuing obligation to serve. Is that not
3 correct?

4 A If it is -- yes. That's in the legislation.
5 We need to design a proposal that is fair to Duquesne
6 that allows us a reasonable opportunity to collect our
7 costs.

8 Q So it would be fair, then, to say that your
9 concerns that Duquesne would be unable to purchase if it
10 were to divest of its generation assets now, that with this
11 continuing obligation to serve, that it would be unable to
12 go out -- it might be unable to go out into the market and
13 buy energy capacity at prices that will allow it to provide
14 service at less than the capped rate.

15 A Sure. We can only lose. We can't win.

16 Q And I want to ask, does Duquesne now believe that
17 an auction of its generation is the best way to measure the
18 value of those assets in the competitive market?

19 A I think Duquesne believes that the best process
20 is to, for determining stranded costs is to delay it until
21 markets are more fully developed. We think the year 2003
22 is a reasonable time period to do that. We don't believe
23 that you have to absolutely decide today what the best
24 method is.

25 A lot's going to depend on what kind of data's out

1 there. Is a lot of serviceable data where maybe you don't
2 -- there's enough other data that you don't have to do an
3 auction.

4 what we are saying is other parties have made the
5 claim that our market ideas in Pennsylvania, bad idea and
6 the only way they'd accept it would be if there was an
7 option.

8 so we have given that option to the company but we
9 do not recommend that that is the best way. It is a way
10 and it's a reasonable way. It is not our preferred
11 approach.

12 Q Is it Duquesne's position that the book value of
13 its assets, its generation assets in particular, is higher
14 than the price a purchaser would be willing to pay in a
15 competitive market?

16 A Is our book value here.

17 Q Yes. Is the book value other than what you might
18 be able to sell those as far as in a competitive market?

19 A For a particular plant or in general?

20 Q In general?

21 A I don't think I can answer it in general.
22 Some of our plants might be very, very old with major
23 reconstruction needs. With lousy heat rates. Others
24 may be brand new with nice heat rates, low -- I don't
25 know.

1 Q So in other words you would say that probably the
2 book value of generation assets in general has no bearing
3 upon the market value of those assets is in the --

4 A I think the real issue is what the book value. I
5 think what the real issue is what's the market value.

6 Q Would you agree in an auction of generation
7 assets the timing of that option is important?

8 A I think that time is important for all of the
9 reasons we have written.

10 Q Would you agree with the statement that a
11 potential purchaser of generation assets would consider as
12 one of the major factors the expectation of the price of
13 the output from a particular plant? In deciding what bid
14 to submit for a particular plant?

15 A I am sure they would make their own estimate;
16 depends on how they would sell -- how they want to use it.
17 When they want to use. I am sure they take all kinds of
18 things into account.

19 MR. STEWART: I have nothing further.

20 JUDGE CORBETT: Okay. Before we take our lunch
21 recess, let me make a couple comments. One, I'd like
22 everyone to check in with the Court Reporter and let Gene
23 Holbert know what your preference is for receiving a
24 transcript if you want to receive a transcript and when you
25 want it.

1 And secondly, there are snack bars in the building,
2 one on the twelfth floor, approximately halfway down the
3 hallway and then there's also a snack bar on the first
4 floor in the lobby. We'll take a one hour lunch recess and
5 we'll resume at 1:30. Thank you.

6 (Whereupon, at 12:34 p.m., the hearing recessed, to
7 reconvene at 1:30 p.m., the same day.)

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1 A F T E R N O O N S E S S I O N

2 (The hearing reconvened at 1:34 p.m.)

3 JUDGE CORBETT: We're back on the record.

4 Mr. Clearfield, I think ENRON is up next.

5 MR. CLEARFIELD: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. CLEARFIELD:

8 Q Good afternoon, Mr. Marshall.

9 A Good afternoon.

10 Q I just have a few questions. Mr. Marshall,
11 if I understand the proposal of Duquesne on a stand-
12 alone basis, it is to value its stranded costs by
13 having a market-based determination, either an
14 auction or some other process, in the year 2003, and
15 at that point a final determination will be made. Is
16 that correct?

17 A Yes, sir.

18 Q And that in the interim you would set the
19 customer generation credit using market prices
20 derived through the RFP that was issued to elicit
21 bids to purchase power at wholesale starting in, I
22 guess, 1999. Is that also --?

23 A We would do one each year going forward,
24 but of a similar nature to the one we had done for
25 the pilot program.

1 Q Now, with respect to your rebuttal
2 testimony and the testimony that was submitted by
3 others, has Duquesne proposed a change in the overall
4 CGC, the system average CGC for any reason? I ask
5 that to make sure I understand the various
6 testimonies?

7 A I do not believe so.

8 Q Do you recall what that system average
9 generation credit that you're proposing is for 1999?

10 A I don't have the individual numbers. In
11 fact, I don't even think we -- In other words, we
12 don't know what it is until we do the auction.

13 Q So you're not proposing that you use the
14 bids that were elicited through that wholesale
15 generation process in the pilots?

16 A We're going to do an auction each year
17 because the market changes so much each year.

18 Q But it will be basically -- You would
19 propose that it would follow along the RFP that was
20 issued --

21 A The amended rebuttal testimony -- Based on
22 some of the parties' concerns about the way it was
23 structured, we would submit our process to the
24 Commission, and people would have a chance to comment
25 if they think they could modify it in a constructive

1 way.

2 Q Let's assume hypothetically that the
3 generation credit that's elicited through this
4 wholesale process in 1999 is the 1.8 cents. To
5 determine the CTC in 1999, again, just for
6 simplicity, on a system average basis, do I
7 understand Duquesne's proposal to be that one would
8 first subtract the determined or approved
9 transmission and distribution rates on a system
10 average basis and then subtract the customer
11 generation credit derived as we've discussed and the
12 residual would be your CTC?

13 A Yes, sir.

14 Q Now, is there another method that could be
15 used to determine, through market bases or otherwise,
16 what the level of stranded costs for Duquesne are in
17 1999 and subtract those from the overall rates less
18 the T & D and the residual would be the customer
19 generation credit?

20 A Do I support that proposal?

21 Q No. Is that another potential method of
22 calculating a CTC?

23 A I don't think that's an appropriate method.

24 Q Is it a potential method?

25 A It's not my proposal. I think

1 mathematically what you're describing is you could
2 mathematically calculate it, but it's not a proposal
3 we support.

4 Q Why not?

5 A Well, I think we go into some detail as to
6 why we believe the CGC should be based on what the
7 actual market price is in a given year, and we give
8 lots of reasons why that's the right way to set the
9 credit.

10 We also go into great detail in our case as to
11 why we believe the legislation allows us to charge
12 rates at our cap level under Section 2804 as long as
13 we're mitigating costs with the ROE spillover.

14 So we have very substantive reasons why our
15 proposal, we think, meets the act.

16 Q Granting that you've explained those
17 reasons, establishing the CGC and then establishing
18 the stranded cost recovery level, the CTC, as the
19 residual, creates a greater potential, doesn't it,
20 that Duquesne will recover more of its ultimately
21 determined stranded costs? Could you agree with that
22 or disagree?

23 MR. MOOT: Could I ask for clarification?
24 More than what?

25 MR. CLEARFIELD: More than a method by which

1 an administratively or otherwise determined method of
2 calculating stranded costs in 1998 produces a CTC
3 level.

4 A I would argue our method guarantees that we
5 will never earn a penny more than our stranded costs.
6 I don't know what you mean that we could collect
7 more. Our method guarantees that we'll never collect
8 more, because we'll end the CTC period as soon as
9 we've collected.

10 BY MR. CLEARFIELD:

11 Q There is a potential I think you testified
12 earlier that at that point, at the point of an
13 auction or a point of some other final market
14 valuation, Duquesne may have already recovered more
15 than a determined level of stranded costs. Is that
16 right?

17 A I think what we testified is we've designed
18 an early trigger mechanism, so that would be very
19 unlikely. But in the event it happened, we said we
20 would return any excess with interest so that we
21 would never at the end of a day have collected a
22 penny more than our stranded costs.

23 Q With interest?

24 A Yes. That is part of our proposal in
25 writing, I believe.

1 Q Let me ask you, based on what we've
2 discussed, how would Duquesne's proposal to value its
3 stranded costs be different if, in fact, its merger,
4 proposed merger with APS is approved? How would the
5 proposal be different?

6 A Maybe I could just ask clarification,
7 because I'm not clear what the rules are. I would --
8 We've put testimony in that case. In cross-
9 examination in that case, we would describe what our
10 joint proposal is under the merger case.

11 Q I understand that. Mr. Marshall, I would
12 like to know today, right now, how the proposal would
13 be different.

14 MR. MOOT: Your Honor, based on your prior
15 rulings, I will not belabor this point. I will not
16 object to the witness offering to the best of his
17 knowledge his understanding of what has currently
18 been said in the merger docket.

19 But if we're going to get down the road into
20 new commitments about the merger and if we're going
21 to get into a bunch of details in that case about
22 matters that are covered by other witnesses, I will
23 object.

24 This strikes me as in the category of a new
25 commitment that he wants made right here about the

1 merger. I guess I would object to it on that basis.

2 JUDGE CORBETT: With that clarification, we'll
3 allow the question.

4 A The market valuation methodology that has
5 been proposed in the merger case is that, first, both
6 companies support and have filed testimony supporting
7 the notion of this second-phase valuation, the year
8 2003, supported the early trigger mechanism, the use
9 of market data in that later period for a final
10 residual cost calculation.

11 I believe both companies have committed that
12 to the extent that any of this excess occurs that
13 that would be refunded with interest.

14 Let me continue. A difference in the merger
15 case is that the combined companies are only offering
16 to the Commission that they would do some additional
17 divestiture, and I believe the proposal in the case
18 is five percent of the combined Pennsylvania assets
19 if, again, the Commission deems that they think that
20 is a better methodology for market purposes.

21 Those additional sales would be made as an
22 auction. The companies have said in that case that
23 they would like to submit a bid in that auction, a
24 competing bid, arm's length basis, non-discriminatory
25 procedures, because they would plan on remaining in

1 the generation business as a combined entity.

2 Just bear with me as I'm thinking through if
3 there are any other elements of the combined case.

4 That is all that has been offered in the
5 combined case.

6 Q So, to confirm that I understand, it
7 appears that a principal difference would be that
8 Duquesne is proposing in its rebuttal testimony, in
9 your rebuttal testimony and rejoinder that in 2003 or
10 1999, depending on what the Commission would direct,
11 it would submit all of its assets at an auction.

12 A Yes.

13 Q And in the merger case, that voluntary
14 proposal would be withdrawn in place of a potential
15 auction for five percent of the combined assets?

16 A Of the combined assets, to be used as
17 additional data points in the market valuation
18 process.

19 Q The rest of the market valuation process
20 would be this panel of experts, if you will?

21 A It would be an arbitration panel. It would
22 be relying on published forward prices, future
23 prices, additional RFPs going forward from that
24 point, market-related information.

25 Q Again, your preferred period would be 2003

1 for that to occur?

2 A Yes.

3 Q I think today you said that Duquesne
4 believed that it would be appropriate to wait until
5 the year 2003 to engage in this market valuation
6 process because that would allow for time for a
7 market to develop. Is that correct?

8 A Yes, on a broad, regional basis.

9 Q And that market is a market for retail
10 generation as well as wholesale generation?

11 A Well, for purposes of evaluating
12 generation, we should look to the generation market,
13 and the generation market is a wholesale market, is a
14 bulk power market. It is people taking the output of
15 plants on large scale. So that is -- Again, this
16 goes back to the whole notion of unbundling the
17 pieces.

18 Q Would you agree or disagree that as a
19 competitive market develops that will, in turn,
20 effect positively the development of a wholesale
21 market for generation?

22 A Yes.

23 Q So, to the extent that a vigorous
24 competitive market develops in Duquesne's service
25 territory, that will have the potential of enhancing

1 the value of Duquesne's generation assets. Would
2 that be right?

3 A I'm not sure that's true.

4 Q Well, is there any -- I'm sorry. Is there
5 any retail competitive market today in Duquesne's
6 service territory?

7 A No.

8 Q And I think we agreed that to the extent
9 that a competitive market does develop that will
10 produce greater competitive market forces on the
11 wholesale side. Is that right?

12 A I think we said that. I think we said
13 there would be much more visible information. But
14 the question you asked me was, Would it result in the
15 assets being worth more? And I don't think that
16 necessarily is the same thing. It might turn out
17 that the assets are worth less.

18 For example, I mean as we look to transmission
19 issues and the elimination of rate pancake on a broad
20 regional basis, that's going to make power available
21 from a lot of different places in the west pouring
22 into this area. That's going to make cheaper prices
23 available. That's a robust, competitive market.
24 That will tend to depress prices. That will tend to
25 reduce the value of the plant.

1 I don't follow that the one follows from the
2 other.

3 Q For serving what now is Duquesne's retail
4 load, all other things being equal, isn't it going to
5 be less costly for an alternative supplier to serve
6 that load via power purchased from Duquesne and
7 transmitted to that customer than from other sources,
8 if you can answer that question?

9 A I think not. I mean the whole point of
10 competition is to get more people to come in, to have
11 more power plants available. And hopefully the
12 reason you're doing that is because there'll be
13 cheaper prices. There's going to be downward
14 pressure. That's the whole point of competition.

15 Q That development of a competitive market
16 will, again, make your plant less valuable then?

17 A I didn't say that either.

18 You said, Will it make them more worth more?
19 Will it make them worth less?

20 I don't know. I'm just saying it could make
21 them worth more. It could make them worth less.
22 There are a lot of factors that play into this.

23 Therein is the problem with forecasting what's
24 going to happen for the next 30 years. There are all
25 kinds of exogenous variables that enter into that

1 process.

2 Q Are any of those variables incorporated
3 into the models, the market models that are produced
4 by -- that have been produced by any of the witnesses
5 either for Duquesne or other parties, if you know?

6 A Well, I mean we -- This is why we're
7 saying that our method of using market information is
8 better. We believe that when we contacted -- I
9 think we sent out 300 notices to marketers across the
10 nation to participate in the auction, the eight-year
11 auction process that we laid forward, firm power over
12 the next eight-year period.

13 I believe we had something like 1,600
14 megawatts of response bid. We argue that the bids
15 that came in and the winning bid that came in is
16 quite meaningful in a competitive market because
17 people didn't come in and estimate what they thought
18 it was worth.

19 They came in and said, Here's my money,
20 Duquesne. Here's my money. This is what we're
21 willing to pay for it.

22 That's what creates a market. We gave it to
23 the highest bidder. You know, interestingly --
24 Again, this was a competitive market, and people have
25 asked us to keep confidential who the bidders were

1 and their prices were, so we respect that process.

2 But there were many marketers that came into
3 the process and said, We don't think this stuff is
4 worth 1.8 cents a kilowatt hour. We think that's way
5 too high. We're not going to bid that price.

6 Yet, other marketers when they get involved in
7 our pilot case or our restructuring case say, Boy,
8 this number is low. We'd like it to be really high.

9 But that's the way markets work. It's not
10 really what you're forecasting. It's really what
11 you're willing to pay for it.

12 Q With that being said, would I be correct in
13 inferring -- Would it be a reasonable inference from
14 your statement that from Duquesne's standpoint the
15 appropriate way to value all of Duquesne's assets
16 would be to subject them to market forces via an
17 auction, not five percent but all of them?

18 A No. I think what we have said is certainly
19 that is one method you can use. We're not saying
20 that that has to be the best way to do it. If
21 there's a lot of data available in the market,
22 comparable sales in the same time period, in the same
23 region, same kind of assets, and there's a lot of
24 information, published futures prices, similar to
25 what's happened in the gas business --

1 Your own client, when they started there was
2 not a lot of information on what gas futures are
3 worth. Look what's happened over the last 10 years.
4 Now there's this myriad of data that we can all look
5 to. We can look in the newspapers. We can get
6 published reports. It's that kind of development of
7 market and market data that will be available to the
8 Commission and these experts when they make these
9 kinds of decisions.

10 That's why we say let the market develop and
11 let this information come forward.

12 Q All other things being equal, don't you
13 believe, based on your testimony, that direct
14 evidence of market prices via a bid or a proposal for
15 sale is more indicative of actual market prices than
16 any secondary information, or do you?

17 MR. MOOT: Could I ask for a clarification by
18 what the questioner means by secondary information?

19 MR. CLEARFIELD: Well, let's ask Mr. Marshall
20 if he understands.

21 BY MR. CLEARFIELD:

22 Q Do you understand what I mean?

23 A Not particularly.

24 Q When you receive a report from an expert
25 about what market prices or transaction prices are in

1 the market, as opposed to receiving a bid to buy some
2 of your assets, wouldn't it be fair to characterize
3 the first as secondary information about what market
4 prices are and the latter as direct evidence of the
5 market price for your assets?

6 A It depends on the information. Let me give
7 you an example. If we take a plant where we know
8 what the average life is and we put the output of
9 that plant out for bid and people are willing to pay
10 for it, that's pretty good market information.

11 We could also offer to sell the plant. That
12 would also be good information. But I think they're
13 both valid types of market information, and that's
14 what our testimony is. We've testified to what our
15 proposal is, but I would concede that is a method of
16 doing it, and it's a valid method of doing it.

17 Q Wouldn't an appraisal by an expert be a
18 secondary method or an indirect method of determining
19 what the market price would be? Do you agree with
20 that?

21 A An appraisal based on market data would be
22 of the nature that I'm describing that our market
23 panel would use.

24 Q It would be a secondary type of
25 determination of market price; is that correct or

1 not?

2 A I don't know what you mean by secondary.

3 Q Well, is it better or worse than actually
4 receiving a bid? Does it provide better information
5 or less accurate information than an actual bid from
6 someone who is willing to buy the power?

7 A I would concede that it's a very good
8 method, and maybe it's of a secondary nature, the way
9 you've characterized it. Depending on the
10 circumstances, yes.

11 Q You testified that your primary concern--
12 correct me if I'm mischaracterizing --

13 A Let me, if I could, give you an example of
14 what I mean by depending on the circumstances.

15 Q I have a feeling you're going to anyway.

16 A Because I've been trying to respond to your
17 characterization of it. There may be a situation
18 where a particular asset -- there isn't a big enough
19 market. There isn't a big enough interest. There
20 aren't enough players who understand it, that it
21 isn't a robust market. So maybe some of these other
22 methods of trying to impute what the value is.

23 Q So the market hasn't fully developed that
24 there is significant sufficient?

25 A Yes.

1 Q All of those things could affect the bid?

2 A Yes.

3 Q Like it did in the RFP for the pilot; is
4 that correct?

5 A I would argue the RFP in the pilot is the
6 best marketing information that's out there, bar
7 none.

8 Q You would concede that it had those
9 infirmities, that is, the lack of --

10 A No, I would not concede that it had those
11 infirmities.

12 Q Let's go back to 2003 and your
13 determination that it would be best -- that the
14 concern about having the bid -- Strike that.

15 Let's talk about your concern about having an
16 auction for your assets now or in 1999, which seems
17 like it's going to be now, very shortly, versus 2003.
18 Your primary concern in that respect is the rate cap;
19 would that be correct?

20 A That's a major concern.

21 Q Your concern there is that Duquesne may be
22 put in a position of having to continue to act as the
23 provider of last resort even after it has divested
24 itself of all assets, and therefore it would have to
25 go to the market and purchase power to serve the

1 default customers, its provider of last resort
2 customers? Is that an accurate characterization?

3 A Yes.

4 Q Have you considered whether Duquesne could
5 also transfer its provider of last resort obligations
6 with its assets?

7 A The testimony says something to that
8 effect. You can design an auction--they're complex--
9 to try to transfer these obligations to people that
10 buy the assets, and it's difficult to do.

11 Part of the reason is nobody knows exactly
12 what risk you're transferring. Nobody knows what
13 real risk there is with this obligation to serve.
14 Nobody knows exactly how bare the company is going,
15 how many people are going to want to return, what's
16 going to happen to market prices. So it's hard to
17 kind of lay that out.

18 The other issue is it's not like the plants
19 would necessarily go to one person. They may go to
20 all kinds of people. Who has what obligation in this
21 kind of uncertainty in the market?

22 When you put these things up for bid, you may
23 end up getting a price that reflects great
24 uncertainty as to what residual obligations you're
25 taking on.

1 There's also the question of, again, concerns
2 about what exactly is going to happen to the
3 transmission markets. How is this going to work in
4 Ohio? When is it going to go to customer choice?

5 Uncertainty, in my mind, tends to depress what
6 people are willing to pay for things. But I've said
7 to the Commission--and I would offer this--if the
8 Commission wants to go forward in the short run and
9 do this, we'd be willing to do it. But there is a
10 risk that maybe now isn't the best time to do it, and
11 you've suggested the reasons why.

12 Q Has Duquesne considered offering the
13 provider of last resort obligation independent of
14 generation and subjecting that to a bid process?

15 A Not at this time. We have not.

16 Q Is there a specific policy reason why or
17 you just haven't studied it?

18 A Well, I think it goes, again, to the
19 objectives of the legislation. You were here earlier
20 when I said that initially we had argued that we
21 didn't believe we should set up a process so that
22 people can return anytime during the transition
23 period under rate cap legislation. That tends to
24 stifle the development of a market. We argued very
25 strongly against that, and we lost it.

1 It seems to us that the state is very, very
2 concerned about having this protection in place, this
3 obligation to serve in place, this rate cap
4 protection in place, the certainty of the plants that
5 are there, and they know that they've got the power
6 available to the extent that it's needed.

7 So we're trying to comply with the legislative
8 intent, and we feel that our proposal is the best
9 plan that does that.

10 Q One of your proposals or one process that
11 you suggested would be reasonable would be that an
12 auction would occur in the year 2003 and potentially
13 all of your generating assets could be sold to other
14 entities; is that right?

15 A Yes.

16 Q What happens to the provider of last resort
17 obligation at that point?

18 A It goes away. The legislation clearly
19 states that when the CTC period is over the EDC no
20 longer has the obligation to provide under rate cap
21 service.

22 Q Do you think there still would be a need
23 for or customers would benefit from a provider of
24 last resort at that point?

25 A I think you need to describe. Is it a

1 question of at price cap levels or at any price?

2 Q Well, let's put price cap levels aside
3 because they, obviously, wouldn't apply to another
4 entity.

5 A That's the point I'm trying to address when
6 we deal with the auction issue. It's default service
7 at capped rates that's causing this problem.

8 Now, I do believe that issue will go away. I
9 also believe in the year 2003 hopefully there'll be
10 more of a market. People will be more comfortable
11 with the operation of the market. So I think people
12 in general, including the state, will be more
13 comfortable that this process will work.

14 Q In answer to a question I think that
15 Mr. Berger posed--I could be wrong about the
16 interrogator--you said that in your view it would be
17 appropriate to continue to operate a unit as long as
18 that unit's short-term incremental costs were not
19 greater than its short-term incremental revenue. Do
20 you recall that question, or that answer?

21 A Yes, vaguely. Then I think we got into
22 this whole notion. What you would look at would be
23 the "to go" costs versus the co-revenues over a
24 reasonable period of time. You wouldn't be looking
25 at embedded costs.

1 Q For that analysis to have merit, the
2 company must have some ability in the long term to
3 recover all of its costs, including its embedded
4 costs; isn't that right?

5 A Say that again.

6 Q For that analysis to work, it presumes that
7 the company would have some ability or have to either
8 recover in the future its fixed or common costs or
9 has recovered them, has already recovered them
10 through some other method; isn't that right?

11 MR. MOOT: Could I ask for a clarification?
12 When he's referring to fixed costs, he's referring to
13 fixed costs that would be incurred in the future or
14 fixed costs that were incurred in the past?

15 MR. CLEARFIELD: Let me just rephrase it.

16 BY MR. CLEARFIELD:

17 Q Mr. Marshall, when you talk about short-
18 term costs, short-term incremental costs, would that
19 include the common overhead costs of the firm?

20 A Again, I don't -- You've just said to me
21 when I talk about short-term costs. I'm not sure
22 exactly what you're referring to. When I refer to it
23 as what, under what circumstance, in what purpose?

24 Q If you were trying to make a determination
25 as to whether you should continue to operate a power

1 plant --

2 A And I'm anybody, Mr. XYZ?

3 Q Right.

4 A Okay. I own a power plant.

5 Q And it's already been it's built, and it's
6 there?

7 A Okay. Here I am today.

8 Q Now, when you analyzed that determination
9 as to whether you should continue to operate that
10 plant, you would consider short-term incremental
11 costs of operating the plant as one input; is that
12 right?

13 A Yes.

14 Q Would you consider any other costs of
15 operating the plant in that context?

16 A What I said I would consider, as we have
17 considered in our case, are what I call avoidable to-
18 go costs. So any capital that I could avoid going
19 forward, I would consider. Any overhead I could
20 avoid, I would consider. Any fuel or non-fuel O & M
21 that I could avoid, I would consider.

22 I would do that not looking too far out into
23 the future. And I would make a determination, Is it
24 worthwhile spending the money?

25 Q To continue to operate the plant?

1 A Yes.

2 Q And the determination would be if the
3 revenues that you produced from that plant would
4 exceed those "to go" incremental costs?

5 A Yes, sir.

6 Q Now let's assume you're making a
7 determination as to whether to construct a plant. In
8 that context, you would have to be satisfied that the
9 revenues produced by that plant would cover all of
10 your costs?

11 A And the methodology doesn't change one bit.
12 All that has changed is my "to go" capital includes
13 all of my to-go capital, which means I don't have any
14 capital at all. All of my "to go" capital is the
15 cost of building the plant. The methodology doesn't
16 change one iota.

17 Q But that includes the cost of capital to
18 build the plant?

19 A Yes.

20 Q It includes the common costs or overhead
21 costs?

22 A For "to go" capital, yes.

23 MR. CLEARFIELD: That's it. Thank you very
24 much.

25 JUDGE CORBETT: Mr. Rubin.

1 MR. RUBIN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. RUBIN:

4 Q Good afternoon, Mr. Marshall.

5 A Good afternoon.

6 Q It's a pleasure to see you again. It's

7 been a long time.

8 A Yes, it has.

9 Q We've both changed roles since then.

10 A Harking back to the last rate cases a dozen
11 years ago.

12 Q Before we get started, I think it would be
13 helpful -- If you don't have it in front of you,
14 I'll be referring to a portion of the filing
15 requirements in this case that you sponsored, and
16 particularly it's Items N-1 through 4. If you don't
17 have that, if you could be provided with it, or we
18 can share a copy.

19 MR. MOOT: I think we might have to share a
20 copy. Those filing requirements have been uniformly
21 ignored in this case. I'm not sure we even brought
22 them with us.

23 MR. RUBIN: I'm sorry to hear that. I like
24 them.

25 Why don't I give you my copy, and if I run

1 into trouble, I might peek over your shoulder.

2 JUDGE CORBETT: If you need an additional
3 copy, I think I have it here.

4 MR. RUBIN: Thank you, Your Honor.

5 BY MR. RUBIN:

6 Q Do you have that now, Mr. Marshall?

7 A Yes.

8 Q I'm sorry. Would you like to take a minute
9 to refresh yourself on those?

10 A Yes, I would, please. Thank you.

11 (Pause)

12 A Okay.

13 Q Mr. Marshall, after your rebuttal testimony
14 was filed, the company indicated in response to an
15 IBEW interrogatory that you believe that the
16 information provided on these four portions of the
17 filing requirements remain accurate. Do you still
18 believe that's true in light of your rejoinder
19 testimony that was submitted today?

20 A If I -- Maybe you could correct me if I'm
21 wrong. But, basically, as I'm looking at these, what
22 we're saying is that we do not have plans to shut
23 down any particular units at this time. I don't
24 think that changes based on any of the rebuttal
25 testimony we have made.

1 Q Now -- I'm sorry. Go ahead.

2 A You've heard our proposal today as to what
3 our preferred market base plan is with the
4 Commission. We do say to the Commission, if they
5 feel the only reasonable way to determine market
6 values is to have the divestiture, we would submit to
7 that process.

8 Even under that, it's unclear to me how these
9 answers might change. But if you had a specific area
10 to these questions that you want me to think about,
11 I'll be glad to do that.

12 Q We'll be getting there. In Item N-1, you
13 state--and here I'll quote very briefly--The company
14 has agreed to provide job security for employees as
15 of December 31, 1996 through October 1, 2001. That's
16 the end of the quote.

17 You then indicate that this will mean that the
18 company's overall level of staffing will remain
19 fairly constant through 2001.

20 When you say in here that the company is
21 providing job security, does that mean that you
22 cannot lay off a person who was an employee as of the
23 end of 1996?

24 A I don't have it in front of me, but I
25 believe what the contract says is there are certain

1 exceptions for that, including either -- I guess in
2 this case plant sales.

3 Q Now, you don't refer to that anywhere in
4 this portion of the filing requirements, do you?

5 A No.

6 Q Is there also a provision in the contract
7 that requires the company to stop contracting out
8 certain services if its employees are laid off due to
9 these extraordinary circumstances?

10 A To be quite honest with you, the contracts
11 are fairly detailed. I don't know exactly what
12 provision you're talking about. There are certain
13 kinds of contracting out that the company is
14 permitted to do, and there are some that they are not
15 permitted to do.

16 Q If, hypothetically, you were to close a
17 generating plant between now and October 1st, 2001,
18 would Duquesne be obligated to keep the employees of
19 that plant on its payroll?

20 A Well, I think the question is there are
21 many kinds of obligations. One is a question of, you
22 know, under the current contract, the job security
23 provision of the contract, would we have to keep
24 people on. As I said, I believe under that
25 obligation there is a -- there are exceptions. If a

1 plant is shut down, for example.

2 Q Well --

3 A Again, I don't have the contract in front
4 of me. I'm just doing this from memory.

5 Q I'm trying to understand what you stated in
6 response to these Commission filing requirements
7 where you're supposed to describe the impact of your
8 restructuring plan on your employees. You say, Well,
9 there's not going to be much of an impact because
10 they have job security through 2001.

11 A No, no, no. Let me start over again. We
12 are not recommending to the Commission that we should
13 sell all of our plants today, nor are we recommending
14 we should shut down any plants today. That is not
15 what you've heard us testify to today.

16 That is one option that the Commission has,
17 but that is not our recommendation to the Commission,
18 Number 1.

19 Number 2, I started to answer your other
20 question about, obviously, we will honor the
21 contract. I don't have the contract in front of me,
22 but I don't believe that the contract says under all
23 circumstances that there will never be any reduction
24 in people.

25 But I think there are other obligations to

1 make sure that we treat people fairly. I think we
2 take that very seriously.

3 I would also note that, again, I don't know
4 what particular plan the Commission may ultimately
5 come up with. There have, in fact, been many
6 auctions that have been done. You would expect most
7 of the employees that work for the plant would
8 continue to work for the plant.

9 I mean one of the valuable assets of the
10 company and the plant are the people that understand
11 how those plants work. It would be inconceivable to
12 me that our folks would not have great value to
13 anybody that might buy a plant.

14 So it's a complicated question. At the end of
15 the day, I think the act requires and I think the
16 company policy requires that we treat people fairly.

17 Q Mr. Marshall --

18 A In fact --

19 Q I'm sorry. Were you finished?

20 A I was just going to say, you know, this
21 notion that somehow El Rama should be shut down, I
22 think we provided testimony as to why we don't think
23 that makes sense.

24 One of the complicated issues to think about
25 there is, What does that mean? What would it mean,

1 and what cost would we incur, and how would we deal
2 with the employees? I think that's a meaningful part
3 of any study that we'd have to submit to the
4 Commission.

5 Q Mr. Marshall, sitting here today -- And we
6 saw this morning for the first time that you're
7 willing to allow the Commission to order you to sell
8 your plants in 1999.

9 A Yes.

10 Q Sitting here today, can you tell us what
11 the impact of that type of sale would be on the
12 company's employees?

13 A No, I can't.

14 Q And can you tell us what the impact of the
15 Commission ordering a sale of your plants in 1999
16 would be on the communities where those plants are
17 located and where the employees reside?

18 A I can't. Partly it depends on how the
19 auction works and what's auctioned off and how -- I
20 know, for example, some auctions have been done that
21 they've been put out for bid with the obligation
22 going to the new owner, that they must employ a
23 certain number of people or that they must pick up
24 certain severance liabilities.

25 A lot of this value associated with the plant

1 is net of whatever other obligations go along with
2 operating the plant.

3 Q It sounds like you agree with me that these
4 are important questions that we need to know the
5 answer to. Is that right?

6 A Yes, sir.

7 Q We need to know or we ought to know the
8 answer before anyone makes a decision about whether
9 these plants should be sold and under what terms and
10 conditions?

11 A Yes.

12 Q Again, just to be clear, right now today we
13 don't have those answers, do we?

14 A No. I think what we say in here is that,
15 if the Commission chose a particular path, if they
16 wanted us to auction an asset, for example, we would
17 submit to them a process. We would submit to them
18 for their approval a procedure, and these would be
19 some of the issues that we would include when we
20 submit that to the Commission, and they would tell us
21 whether or not they thought that was the right way to
22 do it.

23 Q Can we turn to your rebuttal testimony for
24 a minute. I'm looking on Page 2, a statement that
25 you have on Lines 3 and 4 where you indicate that

1 Duquesne would be willing to sell its power plants in
2 the year 2003 if the Commission ordered it to do so.
3 Then further down on the page you say that that sale
4 could be moved up earlier if the market price for
5 power is higher than the Consumer Advocate's
6 projection. Is that right?

7 A That's the trigger mechanism, the early
8 window trigger mechanism.

9 Q Okay. Under the proposal that was in your
10 rebuttal testimony, if the market price for power
11 rose sufficiently, then you might be required to sell
12 the plants as early as 2001; is that right?

13 A I don't recall what the exact numbers
14 showed. I think my main point in here is, if we use
15 the Consumer Advocate's own case, for example, it
16 would suggest that we not have to trigger it before
17 the year 2003. We may have run some other scenarios,
18 but I'm not familiar with what they are.

19 Q So you really don't know how early a plant
20 sale might be triggered? It will depend on the
21 market price.

22 A It will depend on a number of items.

23 Q To the best of your knowledge, has any
24 witness for Duquesne addressed the impact on the
25 company's employees of a sale of Duquesne's

1 generating plants as early as 2001?

2 A No, not that I'm aware of.

3 Q If I understand your rejoinder testimony--I
4 think you've indicated this several times today--
5 you're now willing to submit to a sale of those
6 plants as early as 1999. Is that right?

7 A Yes.

8 Q And, again, just so we're clear, to the
9 best of your knowledge, has any witness for Duquesne
10 addressed the impact on the company's employees of a
11 sale of those generating plants as early as 1999?

12 A No.

13 Q And would the same be true of the impact of
14 a plant sale on the communities where those plants
15 and employees are located?

16 A No.

17 Q Wait. I'm sorry. I said, Would the same
18 be true? And you answered no. Let's try that again.

19 A No, we did not. We have not specifically
20 submitted testimony on the impact it would have on
21 the communities as well.

22 As I said, part of this is how the auction
23 would be structured. So you're not doing it in
24 isolation of what the specific process would be.

25 Q I also believe that you stated probably a

1 couple of times already today that your proposal to
2 sell all of your power plants is only being made in
3 the event that the proposed merger with Allegheny
4 Power is not consummated. Is that right?

5 A That is correct.

6 Q Now, I think you also said that if the
7 merger is consummated then there would be -- or let's
8 say the combined company, Allegheny and Duquesne, are
9 willing to sell about 330 megawatts of generation but
10 allow other mechanisms to determine the valuation of
11 your plants. Is that right?

12 A At the Commission's discretion, yes.

13 Q What is it about the merger that doesn't
14 make it necessary to sell off all your power plants
15 in order to determine the value of those plants?

16 A I think we have argued in both cases that
17 it isn't necessary to do it. I think the fundamental
18 difference is that in our stand-alone case we have
19 said for many years, long before we announced the
20 merger, long before the restructuring act itself was
21 passed, that we're too small to be in this business
22 on a stand-alone basis.

23 Q If that's the case, if you've known for
24 some time that Duquesne Light Company as a stand-
25 alone company is too small to remain in the

1 generation business, why was this case filed on the
2 assumption that you would remain in the generation
3 business?

4 A I don't think it was filed on the
5 assumption that we would be. It just said that we
6 didn't need to make a decision on that today. We
7 didn't --

8 Just as I said to you earlier, we don't need
9 to sell these assets in order to rely on good market
10 data. It is a way to do it. We never said -- In
11 fact, I mean we know this. We were in the process of
12 selling Fort Martin. That was sometime in the past.

13 You know from our disclosure statements that
14 up to the point that we were meeting with -- that we
15 made an announcement with Allegheny about the merger
16 we were exploring other plant sales.

17 Q But when you filed this case in August of
18 this year after the merger was announced, you did not
19 state in this case that you would be selling off your
20 generation or that you would be closing any plants.
21 In fact, you provide very specific projections of how
22 long plants will remain in operation and what it will
23 cost Duquesne to continue operating them. We've seen
24 all of the data that was provided.

25 A Right.

1 Q Why was the case filed based on the
2 assumption that Duquesne would continue operating
3 these plants as a stand-alone company when, in fact,
4 you said that for many years you have had the
5 expectation that you would not do that?

6 A I think the case was filed on the basis
7 that we had no specific plans. I think our testimony
8 said that we would be constantly looking at ways to
9 mitigate our costs, including, you know, if it made
10 sense, to sell the plant.

11 The mechanism that we set up in our direct
12 testimony is quite clear on how this would work. In
13 fact, I think we even talk about in the direct case,
14 if we were to sell a plant, how that would reduce the
15 CTC.

16 So it's just that we didn't have a specific
17 proposal. We don't have a specific proposal on this.
18 And we continue, quite frankly, to believe that
19 selling them early may not make the most sense, that
20 there's so much uncertainty in the market right now
21 that there's great risk. So that's why we didn't do
22 it. But I think we've referred to it as a
23 possibility all along.

24 Q What happened between August of 1997 when
25 the case was filed and December of 1997 when your

1 rebuttal and now today your rejoinder testimony were
2 filed to lead you to change your mind?

3 A Well, I think what's happened is the other
4 parties in the case have somehow suggested that our
5 idea of having a market mechanism to value stranded
6 costs isn't valid without at least an auction option.

7 We're saying, Well, we disagree with that. We
8 don't want the Commission to decide, We don't like
9 your market method because you don't offer this
10 option.

11 So we're saying, if the Commission insists
12 that that really is what is necessary to make it a
13 valid option, we will waive our right. We're not
14 suggesting that they have to do it. We're not
15 suggesting that they have to do it for 100 percent
16 either.

17 But we just feel that we're trying to be
18 responsive to testimony where people are somehow
19 saying that our market methods aren't good.

20 It's particularly -- And I think I talk about
21 this in my rebuttal testimony. Everybody agrees;
22 market methods, in general, are better than
23 forecasts. We're trying to find a way to make that
24 process work.

25 Q You used the phrase in the answer you just

1 gave "waive our right." Waive your right to what?

2 A Under the legislation, the Commission is
3 not authorized to order people to divest plants, and
4 we don't want that to be held up that somehow we're
5 not trying to provide a meaningful market valuation
6 methodology.

7 So that's why we -- It's in response to the
8 other parties that we're trying to at least offer
9 this option as an additional option to the
10 Commission.

11 Q Please understand I'm not asking you for
12 any kind of a legal conclusion. I just want to
13 understand your proposal.

14 I think you just said that your belief is that
15 under the statute the Commission does not have the
16 authority to order a utility to divest its
17 generation, but you're willing to waive that
18 protection and somehow give the Commission the
19 authority to do that?

20 A That is what our testimony says.

21 Q Now, another part of your rebuttal
22 testimony proposes that you would prepare a study by
23 the end of 1998 that examines whether any of your
24 power plant should be retired before the end of their
25 currently anticipated retirement dates; is that

1 right?

2 A Yes, again, in response to some of the
3 rebuttal testimony we've had from the intervenors.

4 Q Thank you. That was really my next
5 question. What is it that has caused you to believe
6 that a new study is necessary within the next year?

7 A Again, it's just -- And I think we talked
8 at some length about parties' assertions that somehow
9 these plants should be shut down. I think we go to
10 some length in our rebuttal testimony to say that
11 their methods are flawed, that they're not looking at
12 this properly, and that based on what we know today
13 we don't see that to be the case.

14 Now, one issue and one of the plants that's a
15 close call is this question of El Rama. You know,
16 quite frankly, one of the benefits of the merger is
17 that it allows us to really substantially reduce a
18 lot of the overhead costs that we have to incur when
19 we do this on a stand-alone basis. We only operate
20 two coal plants. So you have to have all the systems
21 in place to operate those two plants.

22 One of the benefits of the merger is you can
23 spread these overhead costs of running the plants to
24 a large number. That's what's driving these mergers
25 to get these numbers down.

1 Interestingly, I think the --' If you look at
2 the synergy benefits--we talked about the synergy
3 benefits this morning--the generation synergy
4 benefits basically go to Cheswick and El Rama to
5 reduce our overhead. They make substantial
6 reductions in overhead.

7 Now, if the merger doesn't get approved, it
8 might be a closer call. So, you know, we're just
9 saying that these are -- The transmission issue is
10 particularly difficult with El Rama.

11 Q I'm sorry, Mr. Marshall. I think we've
12 gone away from my question a little bit.

13 When this case was filed on a stand-alone
14 basis, from the information that was provided, it
15 looked like Duquesne would continue to operate all of
16 its plants at least through the year 2005. That was
17 the earliest plant retirement date; is that right?

18 A Yes.

19 Q Has anything changed --

20 A Excuse me. I think, again, our direct case
21 also says we would constantly look at what's going on
22 with market prices, what's going on with
23 environmental issues. And if it made sense to us as
24 we looked forward and we said we can mitigate costs,
25 we might -- And we laid out a process as to how

1 plant closures would reduce our stranded cost claim
2 if it were economic.

3 But based on the information we had at the
4 time of the filing and based on what we still have,
5 we don't think that makes sense. But parties have
6 raised this. In fact, they've talked about
7 disallowances because we should shut down El Rama.

8 We want the Commission to have a very detailed
9 analysis if they're going to make such a
10 recommendation so they understand the consequences of
11 shutting down El Rama.

12 Q Mr. Marshall, has anything changed since
13 August when the company filed this case to make
14 Duquesne believe, and based on the best information
15 you have today, that El Rama should not continue to
16 operate through the year 2005 and that the other
17 plants should not continue to operate through the
18 anticipated retirement dates that are shown in the
19 filing?

20 A No. Our rebuttal testimony is we do not
21 believe El Rama should be shut down; but since other
22 companies have raised issues that are complex to
23 address, we are willing, if the Commission wants, to
24 submit this additional proposal.

25 Q And when you say additional proposal,

1 you're talking about a study?

2 A A study, that's correct.

3 Q Again, just so we're all clear on this, if
4 the proposed merger with Allegheny Power is
5 consummated, would you still plan to prepare this
6 study by the end of 1998?

7 A I would leave that to the Commission's
8 discretion. But I think it would just be very, very
9 obvious under the merger, because of the reduction of
10 all these overheads and other operating costs, that
11 it really, really makes no sense to do that study.
12 But I'd leave that up to the Commission.

13 Q Mr. Marshall, is there any difference in
14 the way in which you would determine whether a plant
15 should be shut down between Duquesne as a stand-alone
16 company or Duquesne as part of the Allegheny Power
17 System?

18 A As a methodology?

19 Q Yes.

20 A I don't think so.

21 Q So it's really -- The difference that the
22 merger makes, if you will, is that it reduces the
23 overhead and the cost of operating the plants?

24 A Yes, sir.

25 MR. RUBIN: Thank you. That's all I have,

1 Your Honor. "

2 JUDGE CORBETT: All right. The IBEW was the
3 last scheduled interrogator of this witness. Is
4 there any other party that has cross-examination for
5 this witness?

6 (No audible response.)

7 JUDGE CORBETT: Mr. Moot, do you plan any
8 redirect?

9 MR. MOOT: No, I do not, Your Honor.

10 JUDGE CORBETT: Thank you very much,
11 Mr. Marshall. You're excused, sir.

12 Why don't we go a little while with the next
13 witness, and then we'll take a recess.

14 Call your next witness.

15 MR. MOOT: The next witness is Don Clayton.

16 DONALD J. CLAYTON, called as a witness, being
17 duly sworn, testified as follows:

18 JUDGE CORBETT: Please have a seat, sir.
19 Would you begin, please, by giving us your full name.

20 A Donald J. Clayton.

21 JUDGE CORBETT: Mr. Moot.

22 DIRECT EXAMINATION

23 BY MR. MOOT:

24 Q Good afternoon, Mr. Clayton.

25 A Good afternoon.

1 Q Did you file direct and rebuttal testimony
2 and exhibits in this case?

3 A Yes, I did.

4 Q Do you have any corrections to those pieces
5 of testimony?

6 A No, I do not.

7 Q Are those testimonies and exhibits true and
8 correct to the best of your knowledge, information,
9 and belief?

10 A Yes, they are. I might indicate that I did
11 correct my direct testimony on October 16th as part
12 of response to interrogatories.

13 Q Would those corrections have been supplied
14 in your rebuttal testimony?

15 A Yes, they are.

16 MR. MOOT: Your Honor, at this time I am
17 handing to the court reporter two copies of the
18 direct and rebuttal testimonies of Mr. Clayton and
19 the included exhibits. Subject to motions, I would
20 move the testimony and exhibits into evidence.

21 JUDGE CORBETT: All right. These documents,
22 for the record, were previously marked as Duquesne
23 Statement Number 2 and Duquesne Statement 2-R. The
24 exhibits are marked as Exhibits DJC-1 through DJC-25.
25 They will be so admitted subject to proper motion.

1 (Duquesne Statement Numbers 2 and 2-R were
2 marked and admitted.)

3 (Duquesne Exhibit Numbers DJC-1 through
4 DJC-25, inclusive, were marked and admitted.)

5 MR. MOOT: Your Honor, if I may, I probably
6 have a sum total of three or four minutes of
7 rejoinder, oral.

8 JUDGE CORBETT: All right.

9 BY MR. MOOT:

10 Q Mr. Clayton, have you reviewed the
11 surrebuttal testimony of Lane Kollen?

12 A Yes, I have.

13 Q Are you familiar with Mr. Kollen's
14 discussion of the deferred coal costs?

15 A Yes, I am.

16 Q Is it a correct statement, in your view,
17 that in order to recover those costs as a regulatory
18 asset Duquesne needs to show that it can purchase
19 coal at below market levels in the future?

20 A No, I don't think that's an exactly correct
21 characterization. I think what the company needs to
22 show is that it can -- that its costs are below a cap
23 which was derived based on the cost of others who
24 produce coal in Pennsylvania.

25 There's not really a market cap. It is a cost
cap that was derived by the Commission.

1 Q Is it your testimony that --

2 MR. DOUGHERTY: Your Honor, excuse me. I'm
3 having trouble hearing the witness. If you could ask
4 the witness to speak up, please.

5 JUDGE CORBETT: Sure.

6 If you could speak up, Mr. Clayton.

7 A Yes.

8 JUDGE CORBETT: Thank you for bringing that to
9 my attention.

10 MR. MOOT: Would you like the last answer read
11 back?

12 MR. DOUGHERTY: Please.

13 (Indicated answer read by court reporter.)

14 BY MR. MOOT:

15 Q And is it your testimony in the documents
16 you filed in this case that it is Duquesne's
17 expectation that its cost of coal will fall below the
18 cap that you mentioned?

19 A Yes, in the year 2000.

20 Q Mr. Clayton, are you also familiar and have
21 you read Mr. Kollen's surrebuttal testimony regarding
22 securitization?

23 A Yes, I have.

24 Q Do you recall Mr. Kollen stating--and I
25 quote--the company failed to provide any factual

1 support for its conclusion that securitization would
2 be uneconomic, end quote?

3 A I do recall that testimony.

4 Q Were you ever asked to provide such support
5 in discovery?

6 A Yes, I was. Hospital Shared Services Set
7 1, Number 36, asked me to discuss securitization, and
8 we supplied a response to that interrogatory, which
9 was circulated to all parties in the case.

10 MR. MOOT: Your Honor, at this time I would
11 like to have marked for identification--and I am
12 handing two copies to the reporter and one to Your
13 Honor--the response to which Mr. Clayton is
14 referring. It is two pages. The first is a
15 narrative. The second includes some numerical
16 calculations.

17 JUDGE CORBETT: All right. This will be
18 marked as Duquesne Exhibit DJC-26.

19 (Duquesne Exhibit Number DJC-26 was produced
20 and marked.)

21 BY MR. MOOT:

22 Q Have you had a chance to review this,
23 Mr. Clayton?

24 A Yes, I have.

25 Q Is the answer you provide here responsive

1 to Mr. Kollen's statement that I just quoted to you?

2 A Yes, it is. It shows that Duquesne's
3 current costs for its debt maturing over the next 10
4 years is 6.2 percent, and that would be below what
5 the company could issue, either first mortgage bonds
6 or securitized debt, even given a triple A rating.

7 MR. MOOT: Your Honor, at this time I would
8 move into evidence this exhibit.

9 JUDGE CORBETT: All right. It will be
10 admitted subject to proper motion.

11 MR. MOOT: The witness is now available for
12 cross-examination.

13 JUDGE CORBETT: The first party up would be
14 the OTS, Ms. Melillo.

15 MR. DOUGHERTY: Your Honor, excuse me. Will
16 we be breaking, based on the rejoinder, for a few
17 minutes?

18 JUDGE CORBETT: Do you want to take a break
19 now?

20 MR. DOUGHERTY: I would like to review the
21 rejoinder.

22 JUDGE CORBETT: Let's take a 10-minute recess.
23 We'll be back at a quarter to three.

24 (Recess taken.)

25 JUDGE CORBETT: Ms. Melillo.

CROSS-EXAMINATION

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BY MS. MELILLO:

Q Good afternoon, Mr. Clayton.

A Good afternoon.

Q I have a few questions for you this afternoon.

Regarding the company's removal of Phillips and a portion of Brunot Island from rate base, am I correct that the Commission approved those actions in 1986?

A Yes, I believe that's when they approved that.

Q I'll be referencing a response which Mr. Herskovitz gave to questions from the Hospital Shared Services. The Hospital Shared Services had requested that the Commission orders and, I guess, the petition of Duquesne regarding removal of those units be provided.

Would you accept that the Commission order approving the removal of a portion of Brunot Island from rate base was entered on May 2nd, 1986 and that the Commission order approving the removal of Phillips from rate base was entered on July 30th, 1986.

A Yes, I would accept that that was the date

1 of the orders. I would say that that is not the
2 point that they were exactly removed from rate base.
3 I would say that was the date that they were placed
4 in cold reserve.

5 Q Subsequent to that they were removed from
6 rate base?

7 A In our next base rate proceeding, they were
8 removed from rate base.

9 Q Do you know when that would have been, the
10 subsequent base rate proceeding?

11 A We had orders in two different years, March
12 of '87 and March of '88. I believe in March of '87,
13 the order, was the first time they would have been
14 removed from rate base. We called that the Perry
15 case and the Beaver Valley 2 case.

16 Q I'm having a little trouble hearing you.

17 A Beaver Valley 2 case.

18 JUDGE CORBETT: If you could keep your voice
19 up.

20 BY MS. MELILLO:

21 Q If you could keep your voice up, I would
22 appreciate it.

23 At the time that the Phillips and Brunot
24 Island units were removed from rate base by the
25 company, am I correct that there was no competitive

1 electric generation market for Duquesne's end use
2 customers?

3 A That's correct.

4 Q And at the present time, we're entering
5 that market; is that correct?

6 A We are moving in that direction, yes.

7 Q From the time the Phillips and Brunot
8 Island units were removed from rate base until the
9 present, were these units ever placed back into
10 service?

11 A A portion of the Brunot Island facility was
12 placed into service in December of last year, but the
13 remaining portions that were placed into cold reserve
14 have not been returned to service to date.

15 Q The portion of the Brunot Island units that
16 were placed back into service, was that on a very
17 short-time basis, or can you tell me a little bit
18 about that?

19 A No. They are currently in service. Units
20 2A and 2B were returned to service in December of
21 1996.

22 Q And the reason for that was what?

23 A Because of the Fort Martin sale.

24 Q And that transaction, I believe, was
25 referenced on Page 11 of your direct testimony, if

1 you'd refer to that just so we have a reference
2 point. Is that the transaction you're referring to
3 about the placement of Brunot Island back into
4 service?

5 A Yes. In general, that would cover it.

6 Q Have you provided any quantification of
7 what the stranded cost claim associated with the
8 portion of the Brunot Island plant that was not
9 placed back into service, what that would be?

10 A Could you repeat that question?

11 Q I doubt it. Basically, what's the net
12 amount of the claim -- I take it that the cold
13 reserve units from Brunot Island are being requested.
14 Entire Brunot Island units are being requested to be
15 placed back into rate base for this case and included
16 now as part of the company's stranded cost claim
17 because you're alleging that they're going to be
18 stranded.

19 So what I'm asking is whether the company has
20 quantified that piece of Brunot Island which is not
21 presently in service as a result of the Fort Martin
22 agreement in this case.

23 A Yes, we have. In Exhibit DJC-3, we break
24 down each plant and would show the portion for Brunot
25 Island which was in cold reserve--that would be on

1 Page 17 of 67--and the portion that was in service or
2 not in cold reserve. That's on Page 15.

3 Q Page 15?

4 A Yes. That would show the rate base amount
5 of the portions that are both in and out of service.
6 I don't know if you're following that.

7 Q Could you show me which number you're
8 referring to, which column?

9 A If I look at Page 15 of 67, at the top of
10 the page, it says Brunot Island in the gray shaded
11 box. At the bottom of the page, it would say the
12 rate base at the end of 1997 was \$17.6 million.

13 Q I see that.

14 A Now, there's further detail supporting that
15 throughout Exhibit DJC-3. We could go through each
16 page, if you'd like. But that's the simplest place
17 to find the numbers that I think you are looking for.

18 Q All right. So the \$17.6 million that you
19 show in that exhibit, just so I understand, is that
20 the portion of Brunot Island that is not currently in
21 service or is that the portion that was placed back
22 in service?

23 A That is the portion that's in service. The
24 cold reserve portion is shown on 17, and that's
25 labeled at the top in the gray shaded box, B.I. Cold

1 Reserve. The rate base associated with that is 17.5
2 million.

3 Q Perhaps you just answered this. I'm sorry
4 if I didn't follow that. Where in this exhibit or is
5 it shown, the piece that comprises the claim that is
6 not currently in service with Brunot Island?

7 A Page 17 of 67 in Exhibit DJC-3. The rate
8 base for year ended '97 is 17.5 million.

9 Q So they're both the same?

10 A Roughly. One is 17.6. One is 17.5.

11 Q Almost the same. So, if we add those two
12 numbers together, that's the total stranded cost
13 claim with respect to Brunot Island that is stranded
14 in this --

15 A Let me clarify this. That would not be our
16 stranded cost claim. That's the rate base, if you
17 will, or the book basis for these facilities. So
18 there's a difference between that and what our
19 stranded cost claim would be.

20 We then would compute the margin for the
21 plants and compare the margin against the book value,
22 which would actually exist out at the end of 2005
23 under the company's methodology for determining
24 stranded costs.

25 Q Has that been quantified?

1 A Yes, it has.

2 Q Where is that?

3 A In Exhibit DJC-3 again, we would show the
4 margin analysis for each plant in the detail. In the
5 margin analysis, the only thing that that would
6 relate to is the portion of the plant that is in
7 service. Obviously, if something is not in service,
8 there would be no margin associated with that.

9 So this would relate to the portion that is in
10 service, and the margin on Brunot Island would then
11 be netted against the book value that the company has
12 determined at the end of 2005.

13 Q Where is that number shown?

14 MR. MOOT: If I may --

15 A At the bottom of the page, the net present
16 value of the margin -- This is on Page 64 of 67.

17 BY MS. MELILLO:

18 Q That's what I'm asking, the page.

19 A It would show the net present value of the
20 margin of the plant is 35.5 million. The net present
21 value of the decommissioning estimate as of the end
22 of 2005 is 13.9 million, and the net present value of
23 the net margin is 21.6 million.

24 Those numbers are carried forward. This would
25 be in the company's low market price scenario.

1 There's a similar sheet for the company's higher
2 market price scenario.

3 But if we follow through on the low market
4 price scenario, that would be carried forward to Page
5 56 of 67. You would see the \$35.5 million plant
6 margin number and the negative \$13.9 million
7 decommissioning number, for a net market value of our
8 plant, of the Brunot Island plant, at 12/31/05 of
9 \$21.6 million.

10 That would be the market value, which would be
11 then compared to the book value from earlier in the
12 Exhibit DJC-3.

13 Q Does Duquesne have any plans to place
14 Phillips and the other portion of Brunot Island that
15 was placed in cold reserve back into service?

16 A At this time we do not.

17 Q Perhaps you've answered this. But just to
18 try to put this all together, is there some place
19 that you have shown what the company's claim is,
20 including margin for all those portions that are in
21 service? And then the net would be the ones related
22 to cold reserve. Is there a net number shown?

23 Let me put it this way. If the Commission
24 were to say that we're not going to allow you to
25 include those portions of your plant that are

1 currently in cold reserve and have been since 1986 in
2 your stranded cost claim, what then would be the
3 amount that you would be able to claim as stranded
4 with respect to Brunot Island and Phillips?

5 A I don't think we've quantified that number
6 exactly. I think you could get at it quite easily
7 from Exhibit DJC-10 by comparing my stranded cost
8 quantification with the OTS's stranded cost
9 quantification on the same basis. The difference in
10 the plant value is the cold reserve, the book value
11 of our cold reserve units.

12 Q But I think that the OTS took out the
13 entire Brunot Island piece and didn't allow at this
14 point for the part that's been placed back in
15 service. That's my understanding. So I don't know
16 whether we could get at it through DJC-10. I would
17 ask that as an on-the-record data request.

18 A We'll be happy to provide that.

19 Q Okay. Thank you.

20 On Page 35 of your rebuttal testimony at Lines
21 13 and 14, you refer to a mitigation strategy with
22 respect to Phillips and Brunot Island of which the
23 Commission was well aware.

24 When you referenced mitigation strategy at
25 that part of your testimony, are you talking about

1 the efforts to enter into power sales which would
2 have involved placing those units back into service,
3 such as a GPU power sale that did not come into
4 being?

5 A Yes. I'm talking about a number of
6 strategies that the company had to try to maximize
7 the value of these units along the lines of the GPU
8 sale. There were other power sales that were
9 considered as well as outright sales of the units
10 which were pursued for a number of years.

11 Q What's the basis for your statement of the
12 Commission's awareness in your rebuttal testimony?
13 What's that based on?

14 A That is based on several facts, but one
15 that comes to mind is we went pretty far down the
16 litigation path of the GPU transaction. We actually
17 had an approved settlement that would have returned a
18 significant benefit to our customers had that
19 transaction been consummated and would have returned
20 the Phillips power station to service.

21 So I'm sure that the Commission was well aware
22 of that since they gave us an order which approved
23 the settlement in that transaction.

24 Q What about the other mitigation strategies
25 of which you spoke in your testimony other than the

1 GPU power sale? What's your basis for saying the
2 Commission was aware of those?

3 A In cold reserve units?

4 Q With respect to the cold reserve units,
5 yes.

6 A I think the Commission has been aware for
7 some time that we have made significant off-system
8 sales and that we were pursuing other long-term
9 system sales.

10 Q With respect to activating Phillips and
11 Brunot Island?

12 A I think just in general that we were making
13 those sales it would have been supported by either
14 Phillips or Brunot Island.

15 Q Was this awareness based on discussions
16 with Commission personnel, other than the GPU power
17 sale, which is a matter of record, obviously?

18 A I'm not sure how the communication might
19 have taken place.

20 Q Was your knowledge of these communications
21 communicated to you by someone, or were you involved
22 in the discussions with the Commission, or how did
23 this awareness -- How did this Commission awareness
24 of which you speak come about?

25 A It came about through my general knowledge

1 of the company and their dealings with the
2 Commission.

3 Q I'm sorry.

4 A And their dealings with the Commission on
5 an ongoing basis.

6 Q So you weren't involved in those
7 conversations directly with the Commission; is that
8 correct?

9 A On the GPU sale, I was specifically
10 involved.

11 Q Other than the GPU, which is a matter of
12 record, were you involved in any other conversations
13 directly with the Commission?

14 A I can't recall any specific conversations.

15 Q On Page 36 of your direct testimony, with
16 respect to decommissioning, you state that Duquesne's
17 final valuation of assets in the year 2003 would
18 consider factors that would tend to offset or reduce
19 the present value of future decommissioning costs.
20 Do you see that? I think that's --

21 A Do you have a line reference?

22 Q -- in your rebuttal. I'm sorry.

23 A Do you have a line? I'm on Page 36.

24 Q I'm sorry. It's in your rebuttal
25 testimony, not your direct.

1 A Okay. That was on Page 36?

2 Q Thirty-six.

3 A Did you have a line number?

4 Q Yes. Lines 9 through 11.

5 A Okay.

6 Q Do you see that reference?

7 A Yes. Yes, I do.

8 Q Do you know whether Duquesne could come
9 back to the Commission if decommissioning turns out
10 to be underfunded and request more money for
11 decommissioning from ratepayers?

12 A Are we talking about nuclear
13 decommissioning or fossil decommissioning?

14 Q Either one.

15 A It is my understanding that for fossil
16 decommissioning we would not have an opportunity to
17 go back and adjust once the transition period is
18 over.

19 Q How about nuclear decommissioning?

20 A Nuclear may be another issue.

21 Q Do you mean you would have the opportunity
22 to come back to the Commission and request more money
23 if nuclear decommissioning turned out to be
24 underfunded?

25 A I think there are certain circumstances --

1 JUDGE CORBETT: Try not to talk over one
2 another. It's kind of difficult for the court
3 reporter.

4 A Yes, I think there would be circumstances
5 for nuclear decommissioning where the company could
6 go back and ask for funding.

7 BY MS. MELILLO:

8 Q If funding turned out to be overfunding,
9 what recourse would the ratepayer have?

10 A The company has agreed to refund that
11 money.

12 Q And how would that be done?

13 A I don't have a specific proposal for you
14 right at the moment.

15 Q Do you know who it would be refunded to?
16 Distribution customers, or who would get that money?

17 A I don't know. I don't have a proposal.
18 But it would not go to the benefit of shareholders.

19 Q We had some discussion earlier today about
20 market prices. I know that Mr. Schnitzer deals with
21 that category, but you do as well. If you would
22 prefer to defer this question, let me know.

23 Would you expect that market prices for
24 utilities in the same area, either contiguous to each
25 other or in close proximity, would be the same?

1 company would use the mechanisms that are already in
2 place to determine its ROE level during the
3 transition period.

4 By that I'm referring to the quarterly reports
5 that are filed with the PUC, which are in some
6 detail, and certainly on an annual basis are in great
7 detail, which would explain the company's earnings
8 levels and would have an appropriate forum for
9 determining whether or not the company was over-
10 earning.

11 Q Now, those reports are the quarterly
12 financial reports under Chapter 71 of the
13 Commission's regulations?

14 A Yes.

15 Q And as I understand it, those reports are
16 submitted quarterly.

17 A Yes, they are.

18 Q And how do you propose -- Would there be a
19 procedure for review of those reports?

20 A The company has a number of procedures for
21 review right now. Those reports are reviewed
22 quarterly right now.

23 Q You're saying the Commission has procedures
24 for review of those reports?

25 A I believe they do. I've had several people

1 call me with questions on the reports, so I assume
2 that they are reviewing them at this point.

3 Q But you haven't proposed any procedures in
4 this proceeding for the Commission's review of those
5 reports or for the opportunity of other parties to
6 consider and evaluate those reports and make
7 appropriate filing, have you?

8 A I think that there are enough review
9 procedures in place that could easily determine --

10 Q Could you please answer my question yes or
11 no.

12 MR. MOOT: I would appreciate Mr. Berger not
13 interrupting the witness. If you would like to ask
14 the judge to cut the witness off, please do that,
15 rather than interrupting.

16 MR. BERGER: That's what I'm doing.

17 MR. MOOT: Well, why don't you ask the judge.

18 MR. BERGER: I think I asked the witness if he
19 would please answer my question yes or no. I think
20 that's the procedure that the judge has indicated he
21 prefers.

22 THE WITNESS: May I have the question.

23 (Indicated question read by court reporter.)

24 THE WITNESS: No, I have not proposed any
25 specific procedures. However, it is my opinion that

1 there are significant procedures already in place and
2 mechanisms which can be easily modified which would
3 give all parties ample opportunity to review the
4 company's filings.

5 BY MR. BERGER:

6 Q What significant procedures are you
7 referring to that would provide due process to other
8 parties?

9 A I would suggest that the quarterly reports
10 be used as the forum for determining whether the
11 company is over-earning, and those quarterly reports
12 are public information that could also be reviewed by
13 all other interested parties, and the Commission
14 could easily accept comments on that.

15 Q So you would propose that the Commission
16 review comments on a quarterly basis with respect to
17 those reports?

18 A Actually, I would propose a once-a-year
19 true-up.

20 Q A once-a-year adjust.

21 A But the progress could be monitored on a
22 quarterly basis if there was a significant issue that
23 would be identified each quarter, even though a true-
24 up might occur annually.

25 Q Mr. Clayton, would you agree with me that

1 the validity of your ROE spillover mechanism is
2 critical to your case because without it the company
3 could realize excess earnings?

4 A We believe that the ROE spillover is an
5 important element of our case, yes.

6 Q Do you agree that the company could realize
7 excess earnings if it wasn't in place and if it
8 wasn't appropriately applied?

9 A No, I don't agree with that. I think that
10 under our proposals it will be very difficult for us
11 to achieve the ROE target that we have set in this
12 case of 11.5 percent.

13 We are making a minimum depreciation and
14 amortization commitment, and we are committing to
15 improve performance at our plants. A lot of other
16 factors would contribute to making it very difficult
17 to achieve that level.

18 So I don't think it's a given that without the
19 ROE spillover we would over-earn. I do believe that
20 the ROE spillover gives the ratepayer the absolute
21 protection that we won't over-earn.

22 Q Would you agree with me that the ROE
23 spillover mechanism requires a regulatory
24 determination as to the returns earned on all utility
25 plants, including plants subject to the competitive

1 market?

2 A I'm not sure I understand your question. I
3 think the answer is that the Commission -- that the
4 ROE would apply to all of Duquesne Light's assets
5 that it currently applies to. So some of those would
6 be subject to competition in the future.

7 Q Yes. Generating plant would be subject to
8 competition, would you agree, beginning in 1999?

9 A Yes.

10 Q At least for a third of the company's
11 market?

12 A Yes.

13 Q Would you agree with me that any
14 improvements of the company in the operation of its
15 generating assets after the effective date of the act
16 could impact on the ROE spillover mechanism? In
17 other words, if the company imprudently operated a
18 plant or continued to operate a plant when it was not
19 economic to do so, would you agree with me that that
20 would impact on the company's earnings such that the
21 ROE spillover mechanism may or may not be implicated?

22 A Yes, I would agree. But I would also say
23 that the company would have absolutely no incentive
24 to want to do that, and it would be very unlikely
25 that the company would want to proceed to imprudently

1 run a plant, as you described. There's no incentive
2 to do that.

3 mathematically, if they did that, yes. But it
4 would not be a realistic possibility for the company.

5 Q Would the parties, in your view, have an
6 opportunity, however, to challenge any imprudence, if
7 there was any in their viewpoint, in the context of
8 those annual reviews that you earlier suggested?

9 A Yes, I believe they would. And we would
10 submit to that.

11 Q To address another area, which is the
12 merger savings -- And I think in your rebuttal
13 testimony you identify some of the merger savings and
14 the impact on the company's stranded cost estimate.
15 Is that correct?

16 A Yes, I do.

17 Q Would you agree with me that the company
18 does expect to have some transmission-related merger
19 savings in the context of the merger?

20 A Yes.

21 Q Transmission-related savings in the context
22 of the merger.

23 Have you quantified those transmission
24 savings?

25 A I have not. A witness in the merger case

1 has. Frankly, I don't know what they are, but I know
2 that there are some merger savings that are allocated
3 to transmission and that relate to transmission.

4 Q How does the company plan to flow-through
5 those savings to customers?

6 A Again, I'm not a witness in the merger
7 proceeding. I can explain my understanding of how
8 that would occur, if that would be helpful.

9 Q Well, let me ask you this. In this case,
10 the only savings that the company has indicated and
11 the savings you've indicated in your rebuttal
12 testimony, in particular, are the savings related to
13 generation assets; is that correct?

14 A That is correct.

15 MR. MOOT: At this point I have to intervene
16 for the benefit of the record, Your Honor. Just let
17 me speak a couple of sentences.

18 We've had a number of questions on this exact
19 same topic with Mr. Marshall, several minutes, and
20 we've got them again. It appears to me that the
21 answers are provided on Page 6 of Mr. Marshall's
22 direct testimony and that perhaps the OCA is just not
23 familiar with that page in his testimony.

24 It just seems to me it would benefit the
25 record to note that there are identified on that page

1 \$9 million in transmission costs, and Mr. Marshall
2 says we will flow-through these costs to ratepayers.
3 He's sitting there and --

4 MR. BERGER: I'm asking Mr. Clayton, pursuant
5 to Mr. Marshall's suggestion, how they're being
6 flowed through to ratepayers.

7 MR. MOOT: You asked whether, not how.

8 MR. BERGER: No. I think the second question
9 I asked was how.

10 JUDGE CORBETT: Okay. Let's direct any
11 objections to me and not between counsel.

12 BY MR. BERGER:

13 Q The question is how those savings will be
14 flowed through to ratepayers. I think you were
15 answering that that was addressed by a witness in the
16 merger proceeding. Do you know how they're proposed
17 to be flowed through? I think you indicated that you
18 do know.

19 A The proposal, as I understand it -- Again,
20 it's not a subject of this proceeding, and it is not
21 identified in my testimony or exhibits. But the way
22 that transmission and distribution savings would be
23 flowed through to ratepayers is through a rate
24 reduction that would be proposed to begin in 2001.

25 Q Well, subject to check, would you accept

1 that it's only distribution savings that are proposed
2 to be flowed through beginning 2001 in the merger
3 docket?

4 A It is my understanding that all of the
5 merger savings would be passed through as a rate
6 reduction of Duquesne Light.

7 Q Are you aware that the company would have
8 to change its FERC transmission tariff in order to
9 flow through transmission cost savings?

10 A Again, I think we're getting into an area
11 that's not a subject of my testimony.

12 Q Aren't you quantifying stranded costs,
13 Mr. Clayton?

14 A Yes, I am.

15 Q Isn't it necessary to determine what the
16 cost of service will be, including transmission and
17 distribution, in order to quantify stranded costs?

18 MR. MOOT: Objection, Your Honor.

19 A No.

20 MR. MOOT: I withdraw the objection.

21 A The answer is no.

22 BY MR. BERGER:

23 Q So, in order to quantify stranded costs,
24 it's not necessary to determine a CTC? You don't
25 think it's necessary to determine the transmission

1 and distribution rate levels, revenue?

2 MR. MOOT: May I ask for a clarification,
3 whether the questioner is inquiring into a total
4 level of stranded costs or a CTC in a given year.

5 MR. BERGER: I'm asking him to -- Let me
6 rephrase my question.

7 BY MR. BERGER:

8 Q In order to determine a competitive
9 transmission charge, is it necessary to determine the
10 level of revenue requirement associated with
11 transmission cost of service?

12 A That's an entirely different question, but
13 yes. That is true, yes.

14 Q Are you aware of any adjustments that have
15 been made in this case to remove savings associated
16 with transmission cost of service associated with the
17 merger in order to quantify the competitive
18 transmission charge?

19 A In this proceeding, there's been no
20 adjustment for merger savings.

21 Q And am I correct the company has reflected
22 approximately \$160 million of generation-related
23 merger savings and that you've shown those savings in
24 your rebuttal testimony?

25 A I think I've actually shown \$200 million

1 present value generation savings in my testimony.

2 The difference between the 200 million and the
3 160 that you're referring to I believe is the minimum
4 amortization commitment that the company is willing
5 to increase its commitment by through 2005.

6 (The transcript continues on Page 220.)

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1 Q Now, in your direct testimony, you estimated
2 Duquesne's stranded costs at December 31, 2005. Is that
3 correct?

4 A Yes.

5 Q And your study developed a range of possible
6 results; correct?

7 A That's correct.

8 Q And the range is based on two different market
9 price scenarios. Is that right?

10 A That's correct.

11 Q Are there any other factors contributing to the
12 range, that is the high versus the low or the flat price
13 scenario the only factor accounting for the difference?

14 A The market price was the only factor that was
15 different between the high and the low market price
16 scenario.

17 Q You submitted an update in mid October that you
18 earlier referenced. In that update, did you use the same
19 methodology as in your originally filed study?

20 A Yes.

21 Q Do your December 31, 2005 stranded costs result
22 reflect minimum commitment to accelerated depreciation and
23 amortization during the transition period?

24 A Yes.

25 Q And do these stranded costs at December 31, 2005

1 reflect any ROE spillover effect during the transition
2 period?

3 A No. They do not.

4 Q Do they reflect -- I think we determined that
5 they did not reflect any merger savings. Is that correct?

6 A That's correct.

7 Q In your proposal, the first complete accelerated
8 depreciation during the transition should be increased by
9 \$160 million?

10 A Yes.

11 Q Does your testimony show how that additional
12 depreciation would change the stranded cost range?

13 A It does not show that.

14 Q Okay. Thank you.

15 A What I do show is how the stranded costs at
16 12/31/98 would be changed in my rebuttal testimony.

17 Q Now, the company also projected that there would
18 be generation merger related savings after 2005. Is that
19 correct?

20 A Yes.

21 Q But you didn't factor those savings into your
22 estimate, did you?

23 A No, I did not.

24 Q Does your stranded cost study in your testimony
25 assume units will be continuing to operate over their

1 remaining lives?

2 A Yes.

3 Q Is it also true that your study does not test
4 whether continued operation of all Duquesne generating
5 units through their scheduled remaining lives is most
6 economic?

7 A In my rebuttal testimony, we have done an updated
8 study that would show costs independent of operations, so
9 in that context I do have those costs included in --

10 Q But you haven't done a study to determine whether
11 it would be economic to continue to operate those plants
12 for the their remaining lives?

13 A No, I have not done that study.

14 Q Okay. And this, I think it's been indicated that
15 there would be a study probably conducted sometime in
16 1998. You were asked a number of questions about that
17 study. Let's go to another subject. Now, can you explain
18 to me briefly how you calculated the amount of the minimum
19 commitment to depreciation and amortization?

20 A Yes. I can tell you exactly how I did that.

21 Q Would you please do so?

22 A Sure. If you refer to exhibit DJC-3 in this case
23 revised would probably be the one to use since we updated
24 our corrections or updated our calculations. If you take
25 the depreciation, decommissioning an amortization lines on

1 this would be page 3 of 67.

2 Q Uh-huh?

3 A And you add those together, that would be our
4 minimum depreciation commitment for each year.

5 MR. HUGHES: DJC 21?

6 THE WITNESS: Yes. It's actually labeled page 12 of
7 141 also at the top.

8 BY MR. BERGER:

9 Q Page 12, did you say?

10 A Page 12 of 141.

11 Q Okay. That's indicated at the top the page
12 rather than at the side there?

13 A Yes.

14 Q Okay. And I take it you were saying the
15 depreciation?

16 A Decommissioning and amortization.

17 Q Uh-huh?

18 A And add those three together you would get our
19 minimum commitment.

20 Q And these are calibrated to return on equity of
21 11 and a half percent. Is that correct?

22 A Yes. You would also adjust for the deferred
23 revenue account in years '99, 2000 and 2001 from page 11 of
24 141.

25 Q Okay. Now, if the Commission decided that your

1 fair return on equity is not 11 and a half percent but is
2 10 percent, just for example, how would that impact the
3 minimum accelerated depreciation and amortization
4 commitment you have made?

5 A I think at this point we should look at the
6 company's entire package. If the company's package or
7 proposals are basically not adopted, then we wouldn't make
8 a minimum depreciation or amortization commitment.

9 So depending on you know, what adjustment was made,
10 then the company would have to decide whether or not it was
11 willing to make that commitment. And again, ROE would be
12 an important element of that entire proposal the company is
13 making.

14 Q So it doesn't go without saying that you would
15 automatically adjust the minimum commitment?

16 A I didn't think that that would automatically
17 adjust it. Assuming that we got a very low ROE, it would
18 not make sense for us to adjust the depreciation
19 commitment. It would automatically take care of itself, I
20 guess, in that case.

21 Q But as I understand it, your theory of the case
22 is that you have to use any depreciation or amortization to
23 bring down your stranded costs to an amount that meets the
24 allowed earnings level. Otherwise, there would be
25 considered to be excess earnings and that would violate the

1 provisions of Section 2804, four Roman five or something
2 like that that you reference in your direct testimony. Is
3 that your viewpoint?

4 A Yes, it is. But again, I think the company's
5 whole proposals have to be taken in totality.

6 Q Would you agree with me that if it was determined
7 that the company might have excess earnings, based upon the
8 Commission's return allowance, that the company would not
9 meet the requirements of that section?

10 A The company is required to mitigate.

11 Q Is that a yes?

12 A Yes.

13 Q Thank you. Now, in fact, your accelerated
14 depreciation amounts are affected by the power plant
15 operating expenses is built into your financial forecasts.
16 Is that correct?

17 A Yes.

18 Q Would you agree with me that your stranded cost
19 market analysis shows that Duquesne will have negative net
20 margins during the transition period?

21 A I don't think it shows that for all plants.

22 Q No, but on a total basis, would you agree with me
23 that that's the case? Do you want to refer to Exhibit DJC

24 10 --

25 A Yes.

1 Q -- if you would?

2 A -- yes, I would.

3 Q If you look when you got there, you have
4 indicated net book value of one billion 236 million 96 --
5 960 thousand dollars?

6 A Yes.

7 Q On line, about the sixth line down?

8 A Yes.

9 Q At December 31, 1998.

10 A Yes.

11 Q Okay. And your stranded generating plant, as you
12 can see, several more lines down is one billion 541
13 million?

14 A Yes.

15 Q Do you see that?

16 A Yes.

17 Q According to your estimate, market value stranded
18 generating plan excess -- I am sorry. Your market values
19 are far below your net book value. Is that correct?

20 A That is correct, but it did not show a negative
21 margin. Those actually show negative volume of 27.4
22 million.

23 Q Would you agree with me, then that -- would you
24 agree with me that it would be economic though for the
25 company to sell its plants for \$1.00 assuming that its

1 obligations for decommissioning, et cetera, were taken over
2 by the purchaser?

3 A No, I would not.

4 Q If stranded generating plant is 1.5 billion
5 dollars and net book value is 1.2 billion?

6 A Yes.

7 Q Am I correct that rate payers are going to have
8 to pay, in your viewpoint, for 1.5 billion in costs?

9 A Yes.

10 Q Wouldn't it be economic for them to pay only
11 1.236 billion plus \$1.00?

12 A I don't know on what basis they would pay that
13 but obviously 1.236 would be cheaper for them than 1.541.
14 But that would not be the company's stranded costs.

15 Q Would you agree that it would be economic for
16 them to sell it at 27.4 million?

17 MR. MOOT: I'd ask for clarification. Is it them
18 the rate payers selling it or is them the Duquesne Light
19 company.

20 MR. BERGER: Yes.

21 BY MR. BERGER:

22 Q Would it be economic -- I guess the yesterday
23 here is to mitigate stranded costs as much as possible?

24 A Yes.

25 Q And that would mean that the company would have

1 an obligation to reduce its stranded costs by selling its
2 assets, if that was the best mitigation measure. Would you
3 agree with me that according to this, if it could sell its
4 assets for 27.4 million dollars, 27.4 million plus \$1.00
5 that that would be the best thing for rate payers?

6 A What this analysis shows is that we think the
7 market value would be 27.4 million. If the market value
8 comes to 27.4 million plus a dollar, then we were off by a
9 dollar in our estimates. If that's all that it shows.

10 Q Okay.

11 A And if, indeed, we collected all costs we would
12 refund a dollar to our rate payers at that point. If that
13 was the final determination, that we had collected \$1.00
14 more than we thought, we would give one dollar back to our
15 rate payers.

16 Q Since Mr. Clayton, since stranded costs -- strike
17 that. So you are saying that in your viewpoint, there is a
18 net positive margin for market value to your plants of 27.4
19 million? Is that what I understand you to say there?

20 A There is a positive present value of the margin
21 difference in our plants as the way and under the company's
22 methodology in making its margin calculations, yes.

23 Q What you are saying there, from that estimated
24 market value line is that your plants have a value of 27.4
25 million and they have a cost, am I correct, of 1.5 billion

1 minus 27.4 million?

2 A They actually have a cost of 1.54 billion plus
3 27.4 million.

4 Q So let's set aside unfunded nuclear
5 decommissioning which I you place at 57 million, you
6 included in this audit statement costs exceed these values
7 by 1.50 million?

8 A Yes.

9 Q Would one intrinsic provision of that rule be if
10 Duquesne retains decommissioning responsibility a fair
11 market value of portfolio is negative 250 million dollars?

12 A No.

13 Q Okay. Would you -- just one minute, Your Honor.
14 Going back to your estimated market value that indicates
15 negative market value of \$27.4 million. Is that correct?

16 A It's actually a positive number.

17 Q It's actually a positive number.

18 A It's a benefit.

19 Q It looks like a negative?

20 A Because I am reducing stranded costs.

21 Q Because you are reducing stranded costs?

22 A Yes.

23 Q Okay. So now, on that exhibit you show a line
24 item of PV of cost independent of operations?

25 A Yes.

1 Q Your estimate is the 8,023,000? Or 230,000?

2 A Yes.

3 Q You didn't originally include an estimate of that
4 item in your direct testimony, do you?

5 A No, I did not also because it was not appropriate
6 to do so in my direct case which estimated stranded costs
7 at the ends of 2005.

8 Q Now, in your 2005 study, however, none of the
9 plants showed negative net present value margins. Is that
10 correct? At the end of 2005?

11 A In, at the end of 2005, there was under different
12 price scenarios, yes, there were some plants showed
13 negative margins.

14 Q But you zeroed all of those out; correct?

15 A I assume that the stranded cost portion would be
16 subject to zero. If a plants shows a negative, yes.

17 Q And you have changed that theory?

18 A For different purpose.

19 Q This is totally different calculation than what
20 was done at the end of 2000 -- your present value on here
21 total 1999, whereas, there your present value was to 2005.
22 Is that correct? Otherwise the analysis is basically the
23 same, isn't it?

24 A No. What I am doing now is I am trying to arrive
25 at what our estimate, if we were forced to make one, of

1 stranded costs would be 1.1.90 billion. What I did in the
2 prior study and in the company's originally submitted was
3 to estimate a range of stranded costs at the end of 2005.
4 It was likely to be there, given the company's proposal,
5 continuing its rate cap and making a minimum amortization
6 commitment.

7 Those are two totally different analyses. The
8 company's proposal in its direct case was also that the
9 market should determine the value of the company's plant
10 and that there would be a final valuation deducted in 2003
11 and the purpose of my original direct testimony was merely
12 to show that there is a wide range of possibilities,
13 depending upon what the market price might be.

14 So this purpose is totally different. Now we are
15 being asked or what we have submitted is an estimate of our
16 stranded costs as of 12/31/08 would be under the best for
17 that we have here.

18 Q Wouldn't you agree with me that your original
19 testimony used this range of costs to support the company's
20 viewpoint that at December 31, 2005, there would still be
21 stranded costs and the company would not have excess
22 earnings as a result?

23 A I'd like to clarify that. I think what the
24 company showed was a range of stranded costs likely to
25 occur at 2005. We corrected that in October. That

1 actually showed that there could be a benefit in 2005. So
2 we are not necessarily going for stranded costs of 2005.
3 It was the range that we were looking to experience under
4 that field.

5 Q But you were still attempting to determine
6 stranded costs at 2005 in order to make that judgment about
7 what minimum amortization and depreciation commitment had
8 to be. Isn't that correct?

9 A No. What I was again, as I said before, I what I
10 was showing was the likely range of stranded costs that the
11 company would have. The company's position is and always
12 has been that stranded costs determination should be made
13 mid 2003 under a final valuation which would consider
14 market information.

15 Q Do you have a schedule in your rebuttal
16 testimony, Mr. Clayton, show in the development of the
17 \$208.23 million of PV of cost independent of operation?

18 A Yes, I do.

19 Q And where is that?

20 A That schedule is set forth in Exhibit DJC 13.

21 Q And can you tell me what is shown on each of
22 these items PV of margin using avoidable and unavoidable
23 costs. What does that represent?

24 A That represents the "to go" costs of the plant as
25 originally identified by the company trying to make no

1 distinction of which costs could be avoided and which
2 couldn't, simply a matter of taking the revenues less the
3 cash expenses and computing margins.

4 Q Now, under PV of unavoidable costs, the largest
5 item there, would you agree with me, is overhead
6 allocation?

7 A Yes. Actually, yes.

8 Q Can you explain what that is and why it's
9 unavoidable?

10 MR. MOOT: Your Honor, I'd object to this. I
11 believe it's a fair statement and a correct statement that
12 Mr. O'Brien is the witness on this topic and Mr. Clayton
13 used his testimony and the output as an input to the
14 schedule. I guess with that qualification, he can ask.
15 But --

16 JUDGE CORBETT: The witness can clarify that. If
17 he's using another witness' figures he can state that.

18 THE WITNESS: Yes.

19 BY MR. BERGER:

20 Q Can you answer that?

21 A Yes I am using numbers supplied by Mr. O'Brien.
22 Generally, they represent overheads of the company that
23 would not go away, whether or not a plant would continue to
24 operate.

25 Q Okay. Where on this schedule is the \$208.23

1 million you have described? You referenced there.

2 A That number is not explicitly on here. I would
3 have to get back to you with exactly where that came from.

4 Q Would you agree with me the 208.23 is not
5 specifically developed on this schedule?

6 A The 208 is supported by this schedule.

7 Q Okay.

8 A And I would have to show you the reconciliation.

9 Q Okay. Could you provide that?

10 A Yes, I can.

11 Q Within the next day, hopefully we'll have
12 available for cross examination if I have anything further
13 on that point?

14 A Yes.

15 Q Getting back to our earlier subject, if the
16 company has net book value of \$1.259 billion, and it has a
17 stranded generating plant of 1.5 hundred billion dollars,
18 rate payers have to pay the 1.5 billion; correct?

19 A Yes.

20 Q Now, if the company is able to sell the plant for
21 one dollar, then the company only has generating stranded
22 costs, would you agree with me, of \$1.259 million plus
23 \$1.00?

24 A No, I would not.

25 Q Why is that?

1 A There are costs that they could not avoid. Costs
2 independent of operations. Even if the company sold those
3 plants, unless it were able to get reimbursed for all those
4 costs or relieve itself from those obligations, those costs
5 will not go away.

6 Q And that's the \$208 million?

7 A Yes.

8 Q Now, I calculate on that schedule, overhead
9 allocation on DJC for the plant of \$159 million. Would you
10 accept that subject to check?

11 A Yes.

12 Q Now, let's assume for the moment that Duquesne
13 die seed to shut down all four plants. Is it your position
14 and that of the company that the overhead allocation would
15 simply remain with the plant and would not be reallocated
16 to other functions such as distribution or transmission or
17 should I direct that to Mr. O'Brien?

18 A The question would be better directed to Mr.
19 O'Brien. The company's position as a least cost would be
20 unavoidable. They would not go away.

21 Q Is it your point that would be unavoidable only
22 when whether the company sold this plant. All of these
23 costs would be unavoidable regardless of whether the
24 company sold the plant?

25 A What would happen is if the company could include

1 relieving itself of these obligations within the same
2 plant, then it would be reflected in value of the plant,
3 the company would receive, but by and large these costs are
4 unavoidable, either they would have to be included in the
5 value when they sold the plant or it would simply be an
6 obligation that the company did not relieve its --

7 Q These are labor costs, for example, computer
8 system costs? Legal expenses, things of that sort? That
9 you are saying couldn't be -- would have to be reallocated?

10 A Would have to be reallocated.

11 Q Would have to be reallocated in your view to
12 other figures so if the company sold all of the generation
13 plant and adjusted and left, you are saying the company
14 would, to the extent that it was eligible to reduce those
15 costs that flow into T&D rates? Is that what you are
16 saying?

17 A What I am saying the company overhead would not
18 be reduced proportionally by the sale of generating --

19 Q That's what I am getting at. Not
20 proportionally. But would you agree with me it would be
21 reasonable to expect some reduction in the company's
22 overhead if it were to sell off all of these plants?

23 A And then those costs would be considered
24 avoidable and are not included. These are only the
25 unavoidable costs as I understand it and I think if you

1 wanted the details, Mr. O'Brien could tell you how much A&G
2 reduction there was but I believe that he would indicate
3 what I have, that the costs that you are referring to would
4 be in the avoidable category. Not the unavoidable
5 category.

6 Q If the company could sell its plant for more than
7 \$27.4 million?

8 A Yes.

9 Q Would you agree with me that that would reduce
10 stranded costs to customers?

11 A Any amount the company could sell its plant for
12 is positive, would reduce stranded costs.

13 Q Well, would it reduce the amount from what the
14 company has claimed in this case?

15 A Yes. You sell the plant for more than 27.4
16 million, assuming the company did not give up any further
17 obligations with respect to decommissioning or its
18 unavoidable costs, yes. That would lower the number from
19 1.916 to whatever the differential between 27.4 was and
20 your estimated sales price.

21 But again, that would include all of the company's
22 generation including all nuclear plant, fossil fuel plant
23 and cold reserve units.

24 Q Now, Mr. Clayton, let's assume for a minute that
25 Duquesne could achieve substantial net savings from plant

1 shutdown as compared to continued operation which your
2 study assumes. Is that correct? Let's assume for a
3 minute. Okay? All else being equal, does this imply that
4 your seller aided commitment to depreciation would be
5 understated?

6 A Again, let me see if I understand. I need to
7 understand your question. If I could say it you are
8 suggesting that if the company's if a shutdown analysis
9 those that it was beneficial to the company would the
10 company then be able to commit to more depreciation and
11 amortization under its theory?

12 Q Uh-huh.

13 A Yes. But the difference, but the fact would be
14 we have not shown any of that here. We don't show that any
15 shutdown analysis is beneficial. In fact, that's where our
16 98 study would show and determine once and for all whether
17 or not it was, you know, beneficial to shut down a unit.
18 Only close call right now that we have indicated is El
19 Rama.

20 Q Okay. Let me change the hypothetical. Assume
21 there were net salvage available to Duquesne during the
22 transition period from the plant standpoint so but assume
23 that Duquesne chooses to continue operation and incurs
24 unnecessary operating losses?

25 A We would not.

1 Q Assuming your financial forecast is exactly
2 correct and you earned 11 percent return, does that mean
3 there will be no ROE spillover?

4 A It's not a valid hypothetical.

5 Q Well, you have up to this point, assumed whether
6 the plant shutdown is appropriate or not. Is that correct?

7 A You have made the assumption that I am going to
8 operate a plant inefficiently.

9 Q That's correct?

10 A That's not plain.

11 Q That's part of the hypothetical?

12 A It won't work. That's not a hypothetical that I
13 could respond to because it's not realistic. It's just
14 something you can't do, and other parties would have the
15 ability to, as I mentioned in my previous answer, they
16 would have a chance to look at those numbers and we would
17 not get to include that in our calculation of the hourly
18 spillover if it was shown that we were operating
19 imprudently.

20 MR. BERGER: Thank you, Mr. Clayton. That's all I
21 have.

22 JUDGE CORBETT: All right. Before calling the next
23 party, let's take a ten minute recess till five after four.

24 (Whereupon, a brief recess was taken.)

25 JUDGE CORBETT: Okay. We are back on the record and

1 the OSBA has indicated they have no questions for Mr.
2 Clayton and the city has likewise indicated they have no
3 questions of Mr. Clayton. That brings us to DII, Mr.
4 Dougherty.

5 MR. DOUGHERTY: Thank you. Good afternoon, Mr.
6 Clayton.

7 THE WITNESS: Good afternoon.

8 BY MR. DOUGHERTY:

9 Q I have just a few questions for you this
10 afternoon. First area is on deferred call regulatory
11 aspects?

12 A Yes.

13 Q Excuse me. If you are having trouble hearing me,
14 let me know. Could you tell what the components -- the
15 requirements for recovery of coal costs are, please?

16 A I am generally familiar with the requirements
17 through our two caps in place, one relates to the contracts
18 at Mansfield and there's a different cap in place for
19 recovery of your investment in the Warwick Mine.

20 Q Am I correct that your rejoinder testimony
21 distinguishes a market cap from the cost cap?

22 A Yes.

23 Q Could you indulge me and make that distinction,
24 please?

25 A The difference would be obviously the market is

1 the market. So it would be very difficult for the company
2 to say that it could produce below the spot market in coal,
3 for example. And that is not the test that's been imposed
4 by the Commission in determining what a referral should
5 be. Is it is a cap that is derived based on the
6 performance of other similar coal mine operators throughout
7 Pennsylvania.

8 Q Am I correct that your testimony notes that the
9 company's coal costs are projected to decline in the year
10 2000?

11 A That's correct.

12 Q Does the company provide any documentation that
13 its coal costs are or will be below market?

14 A Again, that's not the test. They would be below
15 the cost cap because these higher costs contracts would go
16 away in the year 2000, particularly the Mansfield coal
17 contracts and the Warwick Mine would be fully recovered in
18 the year 2000.

19 Q Is it the your testimony that market data is not
20 required to support the company's deferred coal claim?

21 A It is a system cap data that is required.

22 Q And that's all?

23 A That is the type of data that is required, yes.
24 Again, I am generally familiar with it. I am not
25 specifically familiar with all the ins and outs of the

1 company's caps.

2 Q Thank you. Again, in your rejoinder, sir, am I
3 correct that you take issue with the industrial intervenor
4 Witness Colon, testimony who suggests that support exists
5 for the proposition that securitization is uneconomic?

6 A Yes. I take issue with that.

7 Q Is it true that in support of your opposition to
8 Mr. Colon's statements you have offered Exhibit 26, DJC 26
9 for the record?

10 A Yes. That's correct.

11 Q Am I correct that this is a response that you
12 sponsored to HSS?

13 A Yes.

14 Q Do you have it in front of you?

15 A Yes, I do.

16 Q Can you read the second line of your response,
17 please?

18 A Statement Number 2, and has not made a request to
19 securitize any of its stranded costs at best.

20 Q I am sorry. Second sentence, please.

21 A I am sorry. As such, there are no detailed
22 analyses related to the securitization of Duquesne's
23 stranded costs.

24 Q Is that a correct statement, Mr. Clayton?

25 A Yes, it is.

1 MR. DOUGHERTY: Thank you. Thank you, Your Honor.

2 JUDGE CORBETT: Okay. Wiseman?

3 MR. WISEMAN: Thank you, Your Honor. Good
4 afternoon, Mr. Clayton.

5 THE WITNESS: Good afternoon.

6 BY MR. WISEMAN:

7 Q I want to start off with some questions about the
8 ROE spillover mechanism?

9 A Yes.

10 Q Am I correct that part of that, as part of that
11 mechanism, there would be a deferred revenue account?

12 A That's correct.

13 Q And if I understand your testimony, the way the
14 deferred revenue account would be established would be once
15 Duquesne records excess earnings, in other words, earnings
16 above 11 and a half percent, those would then record those
17 excess earnings would be recorded to this account. Is that
18 correct?

19 A That is correct.

20 Q Now, if the -- for if there is such an account
21 and there are excess earnings, I understand that your
22 proposal is that you would then take the excess earnings to
23 mitigate any stranded costs. Is that right?

24 A Yes.

25 Q Now, let's look at the other side of the

1 equation. Let's say that there is a deferred account so
2 there have been excess earnings at some point. But for
3 whatever reason Duquesne's earnings fall below 11 and a
4 half percent. Do I understand that then, there would
5 essentially be a debit to the account to take, to account
6 for whatever under earnings that occurred, in order to
7 boost the earning back up the 11 and a half percent. Is
8 that correct?

9 A Yes. That's correct. Company's proposal was on
10 a cumulative basis that over the transition period it could
11 never earn more than 11 and a half percent. However, it
12 could earn significantly below 11 and a half percent, but
13 if there were amounts in the deferred revenue credit
14 account the company would use those up first before it
15 would let earnings fall below 11 and a half percent.
16 That's correct.

17 Q Now. At page 45 of your rebuttal testimony, you
18 said that adoption of various proposals by intervenors in
19 this case would cause Duquesne to take a writeoff? Do you
20 do you recall that testimony?

21 A Give me the page again.

22 Q Page 45 of your rebuttal testimony.

23 A Yes.

24 Q Okay. And that is your testimony, is that
25 correct?

1 A Yes, it is.

2 Q Now, assume that the Commission rejects a
3 particular claim. Let's just say hypothetically it rejects
4 Duquesne's claim for deferred coal costs and as a result,
5 it said Duquesne's claim that of 13 and a half million
6 dollars for deferred coal costs does not qualify as a
7 regulatory asset.

8 Would that cause Duquesne to take a 13 and a half
9 million dollar writeoff?

10 A Yes, it would. Net of any deferred taxes
11 associated with that fact. I assume that's the net
12 amount.

13 Q Fair enough.

14 A Yes.

15 Q Okay. Now, assume that there is a balance in the
16 account in the deferred revenue account. Of a loot at
17 least 13 and a half million dollars and that your earnings,
18 Duquesne's earnings fall below 11 and a half percent by at
19 least 13 and a half million dollars. Would you then take
20 13 and a half million dollars out of the differed revenue
21 account to boost up earnings to the 11 and a half percent
22 level?

23 A Again. I think we are looking at, you know,
24 getting into a situation where you must look at the
25 company's entire proposal. Again, if the Commission

1 disallows a significant portion of its stranded costs or
2 its regulatory assets, there's no need for the company to
3 put in place a spillover or a minimum amortization
4 commitment or any of the other elements of our proposal.
5 So again, you are trying to pick away at one little piece of
6 our proposal and say huh to that fact. I don't think it's
7 fair to say. I think we are that it seems our price study
8 was adopted in its totality and then I could tell you how
9 it would work but if we lose any particular regulatory
10 asset it would be very difficult to suggest what the impact
11 on the company would be.

12 Q Well, if Duquesne was successful, would Duquesne
13 go ahead and implement the ROE spillover and its other
14 proposal in this case?

15 A I think we would have to evaluate our position at
16 that time when we are in that situation. What I would say
17 is this. That once the determination of stranded costs is
18 made, it is not the company's intent to look retroactively
19 at its earnings.

20 If this is a going forward proposal, so that in '99
21 and 2000 and 2001 it's going to look to what its earning
22 level is and that the ROE spillover would be calculated,
23 you know, at that time. So it's not like we would reach
24 back into '97 or '98 or the conclusion of this proceeding,
25 and start out in the haul so to speak and say if we ever

1 get positive we are going to go try to collect those
2 dollars.

3 That's not the intent of the company's proposal.
4 However, under the company's proposal, the situation you
5 described would not occur. So because we would have
6 recovered deferred coal costs.

7 Q Well, just in general, then, on an annual basis
8 if I heard you earlier, I think you said you would propose
9 a one-year true-up? Is that right?

10 A Yes.

11 Q So on an annual basis, then, any time Duquesne's
12 earnings fall below 11 and a half percent?

13 A Yes. Assuming that there are earnings that have
14 been recorded to the deferred revenue account, yes.

15 Q You would then take these -- debit the account to
16 boost the balance to one and a half percent?

17 A Yes. That's correct.

18 Q Now, at page 36 of your rebuttal testimony, and I
19 would refer you specifically to lines 20 to 21. You state
20 that there's currently a great deal of uncertainty as to
21 the future price -- future market price of electricity. Is
22 that a fair characterization of that testimony?

23 A Yes.

24 Q Can you explain what some of those uncertainties
25 are?

1 A I think today there's not a lot of activity.
2 There's not a futures market that's well established.
3 There is not a -- you know, there have not been a lot of
4 plant sales. There's not a lot of long term or short term
5 sales. There's not a well developed market. I think
6 that's what we mean. There's just not a well developed
7 market.

8 Q Would you agree with the proposition that there
9 are a lot of variables that will affect the future market
10 price of electricity?

11 A Yep.

12 Q Were some of those variables natural gas prices?

13 A I think there would be some inference.

14 Q Is another one oh, -- another variable inflation?

15 A Yes.

16 Q How about the heat rates on new generation? Is
17 that another variable?

18 MR. MOOT: Your Honor, at this point, I'd interpose
19 an objection. Going a little way in this area and that's
20 fair, but Mr. Clayton is not the company's witness on
21 estimating market prices or critiquing other witness'
22 magnetic prices in their long term case.

23 MR. WISEMAN: Your Honor, actually that was going to
24 be my last question on that particular item.

25 MR. MOOT: Fine. Objection is withdrawn.

1 JUDGE CORBETT: All right.

2 BY MR. WISEMAN:

3 Q Will the heat rates through generation meet the
4 future market price of electricity?

5 A It could.

6 Q Do you agree with this I believe this is
7 Duquesne's position, that forecasts of market prices cannot
8 be used to establish future prices that are consistent with
9 the known and -- known and measurable standards? Is that
10 correct?

11 A We believe that market information is preferable
12 to administratively determined market prices.

13 Q Well, that was, I understand that that's your
14 position. My question was, do you agree that forecasts of
15 future market prices are not consistent with the known and
16 measurable standards? And I'd ask you to give a yes or no
17 question and -- answer and then you can explain.

18 A I don't know whether to answer yes or no. I
19 would say yes, that it is the company's position that
20 forecasts of future market prices do not meet eat known an
21 measurable standard.

22 Q Now, I'd like to refer to pages 45 of your
23 rebuttal testimony, again, where you talk about potential
24 briefs that Duquesne would take?

25 A Yes.

1 Q I want to see if we can do this without an
2 exhibit. Do you recall that HSS asked schedule you an
3 interrogatory that asked how much of a writeoff Duquesne
4 would take with respect to generation assets if HSS'
5 proposal were adopted by the Commission? Do you recall
6 that interrogatory?

7 A Yes, vaguely.

8 Q Do you recall that your answer was that Duquesne
9 would take a 1.542 billion dollar writeoff associated with
10 generation assets. If HSS' proposal were adopted?

11 A That sounds right and that would be consistent
12 with Exhibit 10.

13 Q And am I correct that the 1.542 billion would be
14 the net present value of the difference between Duquesne's
15 revenue requirement and the forecast, the revenues that
16 Duquesne would anticipate receiving based upon Mr.
17 Schnitzer's price forecasts?

18 A The 1.542 billion dollar number was set forth on
19 Exhibit DJC-10.

20 Q I am asking you what the basis for that
21 calculation was?

22 A The basis of the calculation is a series of
23 events. It's a value of the company's plant. It's the
24 present value of our estimate of decommissioning. It's the
25 present value of costs of independent operations. It is an

1 estimate of a marked value of those plants and it is the
2 assets value of the regulatory Assets on the company's
3 books.

4 Q Does that --

5 A Some one 1.42 would not include the regulatory
6 assets.

7 Q Is some portion of the 1.542 billion dollar
8 calculation based upon Mr. Schnitzer's price forecasts?

9 A Yes.

10 Q All right. Now --

11 A However, I would say that this would not be what
12 the company -- this is not the basis for the company's
13 stranded cost claim. The company's preferred net gain is a
14 market study in the middle of 2003 and that's what we
15 believe that that is highly preferable to the number that
16 we have here.

17 If the Commission, however, did make a one time
18 determination that the company has no standard it drops
19 the, no generating relationship to that stranded cost, it's
20 as HSS suggests. Then at that point, given the information
21 if therefore, we have taken a 1.542 million --

22 Q I want to clear that up, that the 1.542 billion
23 dollar writeoff would in part be based upon Mr. Schnitzer's
24 forecasts of future prices. Is that correct?

25 A I would say that it is very, very small parts of

1 that, but yes, that is our best estimate and Mr.
2 Schnitzer's price is based upon market data, significant
3 amount of market data which is our RFP.

4 Q Is your exhibit DJC set forth the derivation or
5 the basis of your calculation of standard costs of --

6 A The company does not make a stranded cost claim
7 in this proceeding. The company has put forth a
8 determination of what its stranded costs would be if all of
9 its market proposals are rejected.

10 Q And are those -- is the calculation of stranded
11 costs in Exhibit DJC 20? Is the calculation of stranded
12 costs in Exhibit DJC 20?

13 A That's in --

14 Q That's in your rebuttal testimony?

15 A Yes.

16 Q Could you turn to Exhibit DJC 20 and I would
17 refer you to page 3, 3 of 49.

18 A Yes. I have it.

19 Q Do you see the -- this is a pages for chest
20 become wick, it that correct?

21 A Yes.

22 Q And at the very top of the page, in middle it
23 says \$33.8 per megawatt hour in 2006 with escalations of
24 two and a half percent. Do you see that?

25 A Yes, I do.

1 Q Why does that number come from?

2 A That number comes from Mr. Schnitzer.

3 Q And then there's a line under Cheswick. It says
4 kilowatt-hour market price increase and then there are a
5 series of numbers from 1999 through the year 2014.

6 A Yes.

7 Q And are those Mr. Schnitzer's forecasts of future
8 prices?

9 A No, they are no.

10 Q Where do those prices come from?

11 A Are they come from -- the information for through
12 \$2000 those numbers come from Duquesne's RFP as recast by
13 Mr. Schnitzer to be appropriate for this analysis. The
14 numbers beyond 2006 are his market forecasts.

15 Q Okay. And so when you determine that there's a
16 1.542 billion dollars there's would be a cause for a 1.542
17 build writeoff, if I wants to define the details that
18 support that 1.542 billion dollars. Calculation, isn't
19 exactly -- DJC 20 that I refer to?

20 A Again. I think we have to put the 1.542 billion
21 in context. We were asked if the Commission made this
22 determination as of that point, given the best information
23 that we have, what would be our writeoff. It would be
24 1.542 billion and obviously DJC 20 is one small piece of
25 that, \$27 million out of that 1.54 million.

1 Q Would you agree that your forecasts of revenues
2 that you are going to receive is based upon as set forth
3 DJC-?

4 A Yes.

5 Q Is there any other exhibits showing forecasts of
6 revenues that you expect to receive?

7 A I think there's some. Right on DJC 20 we have
8 another set of revenue that would say our plants,
9 statements might be 278 million. I don't know. It say it
10 might be 159 million under a delayed entry case provided by
11 Mr. Schnitzer. There's a range of stranded costs here as
12 well.

13 A So again, you know, you pick one time. It's a
14 little bit of both. And give our best information that we
15 have the RFP that we recently conducted and where we think
16 that will hook in on to Mr. Schnitzer's forecast, we end
17 with the 1.542 million number.

18 Q However, is that not a preferred approval from a
19 stranded cost appropriate?

20 A And we don't necessarily, that's the number I
21 think right there that should be developed by the market in
22 mid 2003.

23 Q Can I ask that the witness limit to the questions
24 that I have asked and not discuss matters that are not part
25 of the question. I don't need a clarification, an

1 explanation. But of his answer but he continually goes
2 back though discussing what Duquesne's proposal is and I am
3 not asking him that.

4 JUDGE CORBETT: Well, all right. Let's see what the
5 next question brings. I hesitate to issue a blanket
6 direction on that simply because the witness does have the
7 right and the opportunity to explain his answers. So we'll
8 see where we go with this.

9 BY MR. WISEMAN:

10 Q Would you agree, Mr. Clayton, that all of the
11 price forecasts in this case, that Duquesne relies upon,
12 the various range of those forecasts are based on Mr.
13 Schnitzer's price forecasts?

14 A Beyond 2005.

15 Q Beyond the year 2006?

16 A Yes. I would --

17 Q All right. Now, do you recall what that HSS
18 asked you an interrogatory what the -- financial reporting
19 basis, what would be the basis for taking a writeoff? Do
20 you recall that interrogatory?

21 A Yes, generally.

22 MR. MOOT: Your Honor, if we are going to proceed
23 further with this witness, I would request that he be given
24 an opportunity to look the interrogatories, the answers,
25 the questions, questions. We have answered almost 2000 of

1 these and I think it would be fair to have it in front of
2 him. We could try to help get that if it would be helpful
3 to Mr. Wiseman.

4 MR. WISEMAN: I thought this would be a more
5 expeditious way to do it. I would be happy to. I'd like
6 to have marked as the next exhibit in order, HSS Duquesne's
7 response to HSS interrogatory 5-06 and I will hand two to
8 the Court Reporter.

9 JUDGE CORBETT: All right. So that we can mark this
10 appropriately. Do you know off hand why don't we mark this
11 as HSS Cross Examination Exhibit 1

12 **(HSS Cross Examination Exhibit No. 1 was produced
13 and marked for identification.)**

14 MR. MOOT: I wasn't saying that Mr. Wiseman needed
15 to have it marked into evidence. I was just asking that he
16 show the witness a copy.

17 THE WITNESS: Yes. I have reviewed that.

18 BY MR. WISEMAN:

19 Q All right. And am I correct that in this
20 response you said that the basis -- that the rule that you
21 would rely upon would be Standard Financial Accounting
22 Standard 121?

23 A Yes.

24 MR. WISEMAN: Your Honor, if I can now have marked
25 as the next exhibit in order, this is an excerpt from

1 Financial Accounting Standard 131 and if there is any need,
2 I have the --

3 JUDGE CORBETT: Original for comparison.

4 MR. WISEMAN: The original. Yes.

5 JUDGE CORBETT: Yes. We'll have this marked as HSS
6 Cross Examination 2.

7 (HSS Cross Examination Exhibit No. 2 was produced
8 and marked for identification.)

9 BY MR. WISEMAN:

10 Q Mr. Clayton, have you had an opportunity to
11 review the document?

12 A Yes, I scanned.

13 Q Does this appear to you to be the Statement of
14 Financial Accounting 121 that you relied upon?

15 A Yes, it does.

16 Q Am I correct that in your interrogatory response
17 you also referred to Mr. O'Brien's direct testimony at page
18 21?

19 A Yes.

20 Q Would I be correct in saying that in Mr.
21 O'Brien's testimony you were referring to a discussion
22 that he had on the improvement of cash flow? Is that
23 right?

24 A I would need to refresh my memory on Mr.
25 O'Brien's testimony.

1 Q Do you have a copy of Mr. O'Brien's testimony
2 here?

3 A I don't have it with me.

4 MS. MELILLO: I only have his rebuttal, though.

5 MR. WISEMAN: This is his direct testimony.

6 BY MR. WISEMAN:

7 Q If you turn actually over to page 22 of --

8 A I believe -- no, I am sorry.

9 Q I am sorry. It's on page 21, lines 10 through
10 14, do you see that there there's a discussion there about
11 improvement of cash flow?

12 A Yes.

13 Q And is that the specific portion of Mr. O'Brien's
14 testimony that you were referring to, your interrogatory
15 answer?

16 A Actually, I was referring to the next few lines
17 down, 15, probably over to the top of page 22 in that
18 section of the testimony.

19 Q Well, that portion or --

20 A As well.

21 Q As well. All right. That's fine. Thank you.

22 Now, could you take a look at the document these been
23 marked for identification as HSS Cross Number 2 and I would
24 refer you to the fourth page of that document, about a
25 third of the way down it says recognition and measured

1 impairment. Do you see that?

2 A Is it under item 7?

3 Q No. I am not referring to a specific paragraph.

4 I am referring to a title, now. It's on the fourth pages
5 of the document I have handed you and actually that page is
6 designated as page number 2 at the bottom?

7 A Oh, I see. Recognition and measurement of
8 impairment,. Yes. I see that.

9 Q Okay. And then if you go over to the next page,
10 to paragraph 9.

11 A Yes.

12 Q I am going to go through this, we have got about
13 three sentences. Could you first take a look and read
14 paragraph 9 first.

15 A I have done that.

16 Q You have read that? Okay. Now, am I correct
17 that in the first sentence of that paragraph 9, it says
18 that there should be, that your estimate impairment should
19 be based upon reasonable and supportable assumptions. Is
20 that correct?

21 A Yes, it says that. That's estimated reasonable
22 affordable assumptions.

23 Q Then in the next sentence it says all available
24 evidence should be considered in developing estimates of
25 expected future cash flows. Do you see that?

1 A Yes, I do.

2 Q And then the third sentence, it says, the weight
3 to be given to the evidence should be commensurate with the
4 extent to which the evidence can be verified objectively.

5 A Yes.

6 Q Did you verify objectively Mr. Schnitzer's price
7 projections?

8 A Me personally?

9 Q Duquesne?

10 A I think so, yes.

11 Q What objective basis would verify Mr. Schnitzer's
12 projections?

13 A Well, I think we have a long standing experience
14 in the electric business. We have reviewed his studies
15 that show what the basis for his, what the forecasts were
16 on the price of a future goals, cash flow and I believe
17 that we could eventually verify that objectively to see
18 whether or not they are something that we believe could be
19 something that was likely the --

20 Q Could you go back to DJC 20?

21 A Yes.

22 Q I refer you to page 3. That's as good as any of
23 the other ones.

24 A Okay.

25 Q Let's just pick a number. Let's use the year

1 2010.

2 A Okay.

3 Q If I read this correctly, Mr. Schnitzer is saying
4 that in the year 2010 the price of electricity is going to
5 the be 3.73 cents per kilowatt hour is that correct?

6 A Yes.

7 Q Is it your testimony that in the year 2010 Mr.
8 Schnitzer stated objectively the price of electricity is
9 going to be 3.17 cents per kilowatt hour? Yes or no and
10 then you can explain.

11 A Yes. Within the limits of our estimates for the
12 next --

13 Q You heard Mr. -- you were here when Mr. Marshall
14 was cross examined by me, this morning?

15 A Yes, I was.

16 Q Am I correct that Mr. Marshall said that he would
17 not permit the company to sell power at the price forecast
18 by Mr. Schnitzer?

19 A I heard Mr. Marshall say the same thing.

20 Q So in other words, Mr. Marshall's not willing to
21 bet on this price being right but you are saying
22 objectively you can verify this price?

23 MR. MOOT: Objection, Your Honor.

24 THE WITNESS: That's two different questions.

25 MR. WISEMAN: I am not sure what the objection is.

1 MR. MOOT: The objection is the question and answer
2 this morning was will you commit to sell your power at
3 these prices and his answer was no and there was no reason
4 given for the question of why he would be committing and
5 there was no reason given for the answer. On that about
6 sills the your question goes broadly beyond what happened
7 this morning.

8 JUDGE CORBETT: I actually think it's a matter of
9 argument, interpretation of what the testimony was. The
10 objection is overruled. The question was answered so we'll
11 move on.

12 MR. WISEMAN: Has the witness answered this?

13 JUDGE CORBETT: I believe he has.

14 MR. WISEMAN: I am sorry.

15 BY MR. WISEMAN:

16 Q Now, also, let's stay in Exhibit DJC 20 for a
17 moment. Again, let's just stay on page 3. Would you agree
18 that there are a lots of assumptions that are built into
19 the data that are set forth in this statement?

20 A Absolutely.

21 Q For instance, fuel costs, those are all assumed.
22 Is that correct?

23 A They are forecasts of our fuel costs, yes.

24 Q The Nox emissions, those are assumed, as well.
25 Is that correct?

1 A They are based on assumptions about, yes, cost of
2 meeting environmental standards, yes.

3 Q Let's go down to the -- you see the title that
4 says non-fuel on the expense?

5 A Yes, I do.

6 Q Those projections are based upon assumptions. Is
7 that right?

8 A Yes. Every number on this page is a forecasted
9 number.

10 Q So it's based upon someone's assumptions?

11 A Yes. But that would not make them any less
12 objective. They are very objective.

13 Q You would agree that the conclusions could
14 sometimes be different as to the same assumptions;
15 correct?

16 A Yes. But that won't make them again any more or
17 less objective.

18 Q Let's talk about your assumptions on fuel costs.
19 What level of confidence do you have in your assumptions
20 that are set forth in this table?

21 A I did not make the fuel forecasts, again. If you
22 wanted to discuss that in detail you should ask Mr. Karl.

23 Q Are there any assumptions in this particular
24 table that you are responsible for? I am sorry. Any of
25 these projections that you are individually responsible

1 for?

2 A The details of almost all the things appearing on
3 these pages are supported by other company witnesses.

4 Primarily Mr. Karl, Mr. Duckworth and Mr. Nelson.
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1 Q Which specific lines in this table are
2 supported by Mr. Karl?

3 A I don't know, right offhand.

4 Q The same would be true with respect to Mr.
5 Nelson and Mr. Duckworth?

6 A Mr. Nelson and Mr. Duckworth are generally
7 responsible for the O&M and capital forecasts of each
8 of those stations.

9 Mr. Duckworth would be responsible for
10 nuclear forecasts, Mr. Nelson being responsible for
11 the fossil fuel stations.

12 Mr. Karl is responsible generally for the
13 PROMOD output, which takes the variable cost of the
14 company's power plants and dispatches it against --
15 the power company's fuel cost and dispatches that
16 against the load that's expected for the company.

17 Q All right. Now and then, you took -- you
18 compiled those data from the various witnesses and
19 performed the calculations that are in DJC-20? Is
20 that correct?

21 A That's correct.

22 Q All right. Would I be correct, then, that
23 hypothetically, it turns out -- let's use 2000 as an
24 example -- if it turns out that the price forecast is
25 too low in the year 2010, then the stranded costs

1 that are calculated in Exhibit DJC-20 have been over
2 stated? Is that right?

3 A Is that the only number that has changed?

4 Q That's it, the only number that has
5 changed.

6 A Yes.

7 Q Okay. And would I also be correct, then,
8 that assuming all other things are equal, including
9 in this instance the price forecast, if you have
10 understated -- I'm sorry -- overstated, as an
11 example, the fuel costs, then again, the stranded
12 cost calculation is overstated?

13 Is that correct?

14 A That is correct. However, this is not the
15 basis of the company's stranded cost claim.

16 Again, we feel that market data and 2000 is
17 the way to go on this one, so --

18 Q Going back to the ROE spillover mechanism,
19 if there is an administrative determination of
20 stranded costs, and Duquesne is entitled to recover
21 whatever level of stranded costs there are -- let's
22 say its claims prove in its entirety, 1.9 billion
23 dollars, and you are entitled to recover that amount
24 through the year 2005, would I be correct that the
25 ROE spillover mechanism would not protect rate payers

1 from misforecasts, misprojections that are made in
2 the out years, meaning 2006 through the end of the
3 forecast period?

4 A I don't really understand your question.

5 Q All right. If Duquesne's -- its market
6 based proposals are rejected, and the Commission
7 decides that it is going to make a one-time
8 determination of the stranded costs, and it approves
9 stranded costs based upon Duquesne's case here and
10 Mr. Schnitzer's price forecasts, it says, "Duquesne,
11 you said you have 1.9 billion dollars for stranded
12 costs; you are entitled to attempt to recover those
13 amounts through the year 2005" -- are you with me so
14 far?

15 A Yes.

16 Q All right. Now we are out in the year
17 2010, and it turns out that Mr. Schnitzer's price
18 forecast was too low.

19 The price of electricity is higher.

20 It was stated earlier that if that were the
21 case, then Duquesne's stranded cost calculation, the
22 DJC-20, would be overstated.

23 Is that correct?

24 A That is correct.

25 Q Okay. And my question is: In that

1 circumstance, would the ROE spillover mechanism
2 protect rate payers?

3 A No.

4 MR. MOOT: I --

5 A It is not even an issue here. What we are
6 saying is that the company's proposals have to be
7 taken in their entirety, and if there is a one-time
8 administratively determined stranded cost, the
9 company is not necessarily offering an ROE spillover
10 proposal, because there is no need for that at that
11 point, so again, if you look at our whole package,
12 either -- you have to look at the whole company's
13 proposal in its entirety.

14 You can't pick away a piece of it and say,
15 "What would happen if this or that or the other
16 thing," so there would be no ROE spillover
17 necessarily if there is a one-time administrative
18 determination of stranded costs.

19 If there is a one-time administrative
20 determination of stranded cost, and things turn out
21 to be wrong, there is no -- it can go either way, for
22 rate payers or shareholders.

23 It is not something where you are -- that
24 is the whole problem with a one-time determination of
25 stranded costs, that it can go either way, and there

1 can be winners and losers.

2 Under our proposal, the only possibility is
3 that the rate payers pay absolutely no more than our
4 stranded cost recovery level.

5 The fact is, the company shareholders could
6 be hurt by under recovery during that period through
7 the amortization.

8 Q All right. Let's go to a different
9 subject.

10 Can you refer to Page 32, lines eight
11 through nine of your rebuttal testimony?

12 A Okay. I have it.

13 Q Now, you say there that Section 2803
14 specifically provides for the inclusion of customer
15 education expenses as transition costs.

16 Do you see that testimony?

17 A Yes.

18 Q Is that still your testimony?

19 A Yes.

20 Q Do you have a copy of Section 2803 there?
21 And if you don't, I will be happy to provide you --

22 A I don't have it.

23 MR. MOOT: If you have got an extra one, that
24 would be great.

25 MR. WISEMAN: Yes. Your Honor, do you need

1 it?

2 JUDGE CORBETT: No.

3 MR. WISEMAN: We don't need to obviously make
4 this as an exhibit.

5 BY MR. WISEMAN:

6 Q I wonder if you can point me to the
7 specific language in 2803 that says the customer
8 education expenses are includable as transition
9 costs?

10 A I am having trouble reading this copy of
11 this. Would it be possible to get a clearer copy?

12 Thank you.

13 I would say that it is written under
14 Section 2803, three, little five, other transition
15 costs, including cost of employee severance,
16 retraining, early retirement, outplacement related
17 expenses, and I would just put in the other
18 transition costs category.

19 Q Your testimony, when I go back to it, Page
20 32, again lines eight through nine, says Section 2803
21 specifically provides for the inclusion of customer
22 education expenses in its transition costs.

23 Do you see the words "customer education
24 expenses" in Section 2803?

25 A I do not.

1 Q All right. Now, I would like you to refer
2 you to Page 55, lines twenty-three through twenty-six
3 of your rebuttal testimony.

4 A Yes.

5 Q You say there, "Moreover," referring to Dr.
6 Weisenmiller, "Moreover, his contention regarding the
7 indicative value of Fort Martin is undermined by his
8 own admission and testimony that the price paid by
9 APS was based upon market price projections that
10 bears no resemblance to current market conditions."

11 Do you see that sentence?

12 A We are on page 55 now?

13 Q Yes.

14 A Okay.

15 Q Lines twenty-three through twenty-six.

16 A Yes.

17 Q Do you see that?

18 A Yes.

19 Q And you say, "See Weisenmiller's testimony
20 at 23"? Is that correct?

21 A Yes.

22 Q Do you have a copy of Dr. Weisenmiller's
23 testimony there?

24 A I do not.

25 (Discussion off the record.)

1 JUDGE CORBETT: Okay. We are back on the
2 record.

3 BY MR. WISEMAN:

4 Q Mr. Clayton, while we were off the record,
5 I handed you a copy of Dr. Weisenmiller's testimony.

6 Have you had an opportunity to review Page
7 23? And I would suggest possibly over onto 24 as
8 well.

9 A Yes. I have it.

10 Q Now, is it your understanding that Dr.
11 Weisenmiller has said that Duquesne's RFP does not
12 serve as a valid basis to establish market price? Is
13 that correct?

14 A Would you restate that again?

15 Q Is it your understanding that Dr.
16 Weisenmiller has testified that Duquesne's RFP was
17 not a valid basis to establish market price?

18 A Yes.

19 Q All right. With that, and you also agree
20 that Dr. Weisenmiller has said that Mr. Schnitzer's
21 price forecasts are on arrival? Is that correct?

22 A Yes.

23 Q All right. With that understanding, can
24 you show me where on Page 23, or, for that matter on,
25 24, Dr. Weisenmiller made the admission that you say

1 he has made?

2 A I think again what we are saying is that
3 the price that was paid he lays out on Page 23 on
4 lines seventeen to eighteen, which starts at \$34.50
5 per megawatt hour, and ends at \$54.34 in the year
6 2005, and that bears no resemblance to the current
7 market conditions, which are on the second page,
8 where the company has recently added RFP, and, you
9 know, sold power considerably below those numbers,
10 and is certainly unable to sell power at 34.50 right
11 now.

12 Q But that is Duquesne's estimation of market
13 value? That is not Dr. Weisenmiller's acceptance of
14 that claim, is it?

15 A What I am stating here is that the
16 indicative value of Fort Martin, it was based on
17 projections, and he is putting out the projection
18 that Fort Martin was based on, okay, and that is not
19 anywhere near the current market.

20 Q Let's go back to your Page 55 --

21 A Yes.

22 Q -- again, lines twenty-three through
23 twenty-six.

24 Would it be more accurate if that testimony
25 read, "Moreover, his contention regarding the

1 indicative value of Fort Martin is undermined by
2 Duquesne's market price projections to which -- to
3 which the Fort Martin numbers bear no resemblance?

4 Would that be more accurate?

5 A I didn't follow all that.

6 Q That's all right.

7 A It may not be.

8 Q We can go on. That's all right. Referring
9 to Page 54 of your rebuttal testimony, is it a fair
10 characterization of your testimony on that page in
11 general that you criticize Dr. Weisenmiller for
12 relying upon certain valuation studies that are
13 either performed by or for Duquesne?

14 A I think what I was discussing here is that
15 he seems to selectively pick out pieces of
16 information that were included with those studies, or
17 gives an incomplete analysis of what the basis for
18 those studies was, so I think it is just an improper
19 characterization by Dr. Weisenmiller that these would
20 be indicative of the values, and that the company has
21 now somehow changed its mind on market values.

22 Q You don't deny, do you, that those studies
23 were performed either for or by Duquesne? Is that
24 correct?

25 A I would say that some of the studies that

1 he relied upon that were performed by Duquesne's
2 financial consultants were not performed at the
3 request of Duquesne.

4 They were performed as part of marketing
5 efforts by those entities --

6 Q Am I correct --

7 A -- but some of the studies -- for instance,
8 the Metzler study and the internal study, those two
9 studies were performed by Duquesne.

10 Q Am I correct that one of those studies was
11 performed by C. S. First Boston?

12 A Yes.

13 Q And that study was presented on November
14 21, 1996? Is that correct?

15 A Yes.

16 Q And am I correct that C. S. First Boston is
17 Duquesne's advisor in connection with the merger?

18 A That is correct, but they did not do that
19 study at our request.

20 That was done as part of the marketing
21 effort on their part, as investment bankers often
22 come up with marketing proposals.

23 Q Can we go -- well, and you retained, am I
24 correct, "you" being Duquesne, C. S. First Boston in
25 connection with the merger sometime after November

1 21st, 1996? Is that correct?

2 A Yes, but that is irrelevant to this
3 particular study that they did for us, yes, at their
4 -- as a part of a marketing effort on their part.

5 Q All right. One last area of questions. At
6 pages forty-five through fifty-two of your rebuttal
7 testimony, you claim that certain dire results would
8 occur if Duquesne's position is rejected.

9 Is that a fair characterization of the
10 testimony? And I am not asking you to accept the
11 term "dire." I just thought --

12 A At pages forty-five to fifty-two, I discuss
13 the impacts of the various intervener proposals on
14 the financial help.

15 Q And you say that the adoption of those
16 proposals would have, certainly, very significant
17 derogatory impacts upon the company? Is that
18 correct?

19 A Yes. The adoption of the HSS proposals
20 particularly would have a very dire effect on
21 company's financial health.

22 Q If Commission decides that Duquesne's
23 claim, or any portion of Duquesne's claim is invalid,
24 is it your testimony that the Commission should
25 disregard the law and award Duquesne stranded costs,

1 based upon your testimony at pages forty-five to
2 fifty-two that reflect the consequences you claim for
3 the company?

4 MR. MOOT: Objection. It contains a request
5 for an opinion on a legal matter.

6 It requests the opinion -- that the witness
7 offer an opinion on whether the Commission should
8 disregard the law.

9 MR. WISEMAN: Your Honor, I am not asking for
10 a legal conclusion.

11 I am asking for Duquesne's positions.

12 JUDGE CORBETT: I overrule the objection. You
13 can answer it, Mr. Clayton.

14 A I don't think the Commission should
15 disregard the law.

16 I think the Commission should follow the
17 law, and I think we should all follow the law.

18 Q I knew he would say that eventually. Thank
19 you, Mr. Clayton.

20 MR. WISEMAN: I have nothing further, Your
21 Honor, and I would move the admission of -- I believe
22 it is exhibits HSS Cross 1 and 2.

23 JUDGE CORBETT: Hearing no objection, they
24 will be so admitted.

25 (Thereupon, HSS Cross Exhibits 1 and 2

1 and six, you talk about mitigation, prior mitigation
2 efforts on the part of the company?

3 A Yes.

4 Q And let me just make sure a second. And
5 you talk about -- I just want to be clear. Is it
6 your position, or Duquesne's position that the
7 decision to cancel all those plants in 1980, those
8 nuclear plants in 1980, Erie 1 and 2, Davis 3 and 4,
9 is included in your mitigation calculation?

10 A There is no cost effect included in the
11 numbers that I have set forth in my mitigation
12 quantification.

13 Our mitigation numbers would be much higher
14 if you included avoided rate increases due to
15 capitalization of the four nuclear units.

16 Q Okay. Now, I am having trouble with this,
17 because my understanding of mitigation is an attempt
18 to moderate or lower rates or avoid costs.

19 A Yes.

20 Q Would that be your --

21 A Sure.

22 Q How can the company say that they changed
23 their plans, cancelled their capacity additions, and
24 that that somehow was mitigating the stranded costs
25 of the company?

1 A What it was doing was moderating rate
2 levels of the company.

3 If we had plowed forward with nuclear
4 programs that ultimately were not needed, we would
5 have had even higher costs today than we have
6 currently.

7 Q But the current stranded costs that you
8 sort of were talking about estimating in here do not
9 include Erie and --

10 A No, they do not.

11 Q Yes.

12 A But what we were talking about was
13 mitigation on pages three to six, and in our
14 mitigation activities, we have a long history of
15 doing things to keep our costs down and in line, and
16 that was the point of this testimony, that it is not
17 something that we just started doing a year or two
18 ago.

19 We have been faced with very unique
20 circumstances for any kind of company, any electric
21 utility in the country, and we have been challenged
22 to reduce our costs for a number of years, and this
23 was just really, to put all that in historical
24 context, that it is important for people to
25 understand, who want to understand Duquesne Light's

1 position.

2 Q But isn't the act talking about mitigating
3 stranded costs, costs that will potentially result
4 from the transition to competition?

5 A Right.

6 Q So the cancellation of these plants in
7 1980, these investments, or these capacity, planned
8 capacity additions were never actually acted on, and
9 therefore, they were cancelled in 1980, they can't
10 really be considered costs in the transition to
11 competition?

12 They can't really be considered stranded
13 costs under the definition of the act?

14 A I believe I have said before that this was
15 to put the company in a historical perspective to
16 show you that it has a long history --

17 Q Right.

18 A -- of mitigating its situation.

19 Q But you are attempting to say that the
20 value of that mitigation in 1980, as you call it, is
21 part of your mitigation of your current stranded
22 costs?

23 A No. It is not in the numbers. I have
24 said, no, it specifically is not in the numbers.

25 Q Oh.

1 A That was provided -- it was provided for
2 historical context.

3 Q It was not? I'm sorry. I thought you
4 said --

5 A It is not in the numbers.

6 Q On Page 18 of your direct testimony, you
7 were asked the question of how -- on line six -- how
8 your rates compared to other utilities, and you
9 proceeded to say that they -- "Our rates are over to
10 our resident customers are often mischaracterized as
11 being high, because they are expressed in terms of
12 cents per kilowatt hour.

13 "This ignores the fact that Duquesne has
14 one of the lowest average usage levels for
15 residential customers of any company in the country."

16 Are you saying then that your rates are not
17 high?

18 A I am saying, when compared on a monthly
19 bill basis, customer to customer, utility to utility,
20 we end up in the middle of the pack, yes, that's
21 correct.

22 Our average monthly bill is about \$63.

23 Q All right. But the rates on cost per
24 kilowatt hour in comparison to other companies, you
25 would be high, low, in the middle?

1 A On a cost per kilowatt hour basis, we are
2 high.

3 On a usage basis, we are extremely low, and
4 on a monthly bill basis, we are in the middle of the
5 pack.

6 Q And how do you account for that low usage?

7 A I think that the Pittsburgh area has a
8 number of older homes. You know, it is a dense urban
9 service territory. We have a number of senior
10 citizens, who typically would use less electricity in
11 a smaller home context.

12 I think there's a lot of reasons for it,
13 but I think that's by in large. I think also the
14 heating penetration in Pittsburgh is rather low,
15 since we have, you know, several gas companies, or we
16 are in the heart of gas country, so to speak, so we
17 have very little heating penetration, so I think all
18 these factors contribute to low usage for Duquesne
19 Light's residential customers.

20 Q Do you think low usage might be the result
21 of high rates?

22 A Not -- not too much. I think there is some
23 elasticity of demand, but I don't think that that is
24 the major contributing factor.

25 I would say that two things contribute to

1 our high rates.

2 One is the fact that we lost a significant
3 portion of our load in the early '80s, and I think
4 the other thing that contributes to our high rates is
5 the fact that we do not have a large heating
6 penetration.

7 Q Does the cost, regardless of the prudent
8 question in terms of the construction cost of your
9 two -- of Perry 1 and Beaver Valley 2, does the high
10 cost to construct those units contribute to your high
11 rates?

12 A I think what contributes more is the loss
13 of the steel load that those plants were built to
14 serve originally.

15 That was in the original planning.

16 Q On page twenty-one, you say that Duquesne's
17 rates are in line with other companies.

18 You mentioned there PECO, BOSTED,
19 Consolidated Ed, Southern California, PG&E, and you
20 give their cost per kilowatt hours.

21 Isn't it true that all those companies have
22 nuclear units?

23 A I believe they all do, yes.

24 Q Would it be fair to say that maybe the high
25 rates of all these companies, including Duquesne, has

1 to do with the nuclear option that Duquesne chose?

2 A When you ask me if that is a contributing
3 factor, I would say yes, but is it the main factor?

4 I would say no.

5 I would say in our case, it is the fossil
6 load. These other companies, I am not prepared to
7 comment.

8 Q Also, on Page 21, you say that the company
9 shareholders have borne the cost of mitigation, and
10 you talk about -- you say on line fifteen that they
11 have borne a significant portion of the burden of
12 Duquesne's mitigation strategies?

13 A This is true.

14 Q Despite that, isn't it true that Duquesne
15 shareholders, compared to other utilities in the
16 country, have been pretty well taken care of by the
17 company?

18 A I don't know what you mean by that.
19 Duquesne has one shareholder, DQE. That's Duquesne's
20 only shareholder, and it has received below allowed
21 levels of return since the last base rate case.

22 Q What do you mean on line fifteen and line
23 sixteen by the "company's shareholders"?

24 A Since the last rate case -- the company did
25 have shareholders up until 1989, and in 1989, they

1 went to one shareholder with DQE.

2 Q And what do you mean by these
3 "shareholders" here?

4 Which shareholders are you talking about,
5 because it is plural?

6 A Well, that's all of them.

7 Q All?

8 A The shareholders before '89 never received
9 it, which was many, many thousands of shareholders,
10 and the shareholder, the shareholder after, which
11 would be part of that plural, never achieved it
12 either, since 1989.

13 Q They never achieved the --

14 A Allowed rate of return.

15 Q 12.87?

16 A 12.87.

17 Q So you are not aware of how Duquesne's
18 shareholders, the return compares, say, to other --

19 A Duquesne has not achieved its allotted
20 rates of return.

21 Q Yes. I know that. I understand that.
22 That wasn't my question. I know they haven't.

23 A How have Duquesne Light's Company's returns
24 compared to other utility returns?

25 A I don't know, off the top of my head.

1 Q All right. Mr. Marshall, there has been a
2 lot of talk here previously about the study that you
3 are going to do next year that would be available by
4 January 1, '99, and when I asked Mr. Marshall about
5 that, I believe you might have heard him say, "We
6 constantly do analyses."

7 I don't know if he used the word "studies,"
8 as to whether or not, you know, plants should be kept
9 on line, so considering that, I assume that you have
10 been part of that process --

11 A Yes.

12 Q -- of taking a look at it, at units,
13 analyzing?

14 A Yes, and I think what Mr. Marshall, to
15 further explain, that he does that on an avoidable
16 "to go" basis.

17 Q So is it fair to say that you would try to
18 determine, if you are looking at whether or not to go
19 with the unit --

20 A Yes.

21 Q -- whether or not it is economical or not,
22 whether it provides an economic benefit to
23 shareholders and rate payers?

24 A Sure.

25 Q In terms of -- and given that he said, "We

1 are constantly doing that," would you characterize
2 individually Perry 1, for example, and Beaver Valley
3 2 as economical investments or uneconomical
4 investments?

5 A I don't think that goes hand in hand.
6 Those two questions don't go hand in hand.

7 We do believe that there's stranded costs
8 associated with both Perry and Beaver Valley.
9 However, on a "to go" basis, we do believe that it
10 makes more sense to continue to operate the plants
11 than it would to shut those plants down, so that is
12 the difference.

13 I mean, the economic decision is an ongoing
14 decision that says, "Does it cost you more or less to
15 continue to operate this plant," and if it is a
16 benefit, net benefit, a net more positive margin,
17 then you would keep the plant going when you consider
18 all the avoidable and unavoidable costs.

19 Q In the past, if you have done these kind of
20 analyses, would you say that these plants are, I
21 mean, economical? Are they worth anything?

22 Are they uneconomical?

23 How would you characterize them, not from
24 here on, but over the last ten years?

25 A Well, what we have done in the past is

1 looked forward and said, "Does the cost from this day
2 forward produce an economic benefit," and the answer
3 has been yes.

4 Q So --

5 A Now, that is a changing environment.

6 Q But looking over the time since they went
7 into rate base until now, you are saying these are
8 essentially economical investments?

9 A Well, again, I think you are trying to
10 suggest that -- you know, if you are saying, do we
11 look back today with perfect hindsight and say,
12 "Would" --

13 Q No, no.

14 A -- "we have done the investment" --

15 Q No, no.

16 A -- but what I am suggesting is that every
17 year, or, you know, whenever we look at these things,
18 that going forward, from that point forward, yes,
19 they appear to be economical, as compared to shutting
20 down the units.

21 Q I am not asking you to look back in
22 hindsight.

23 My understanding from Mr. Marshall is that
24 you make these studies constantly, so I am assuming
25 you have made them during the past ten years while

1 these plants have been in operation?

2 A Yes. They are done routinely.

3 Q During those ten years --

4 A Yes.

5 Q -- you are saying essentially that your
6 determination has been not looking back, but at the
7 time you made it --

8 A Yes.

9 Q -- those plants are economical?

10 A Yes.

11 Q Can you just explain to me, on Page 41 -- I
12 just have a couple more questions. You say -- I
13 believe that's page -- let me make sure I have the
14 right one.

15 I'm sorry. In your rebuttal, all right --
16 I was in your direct testimony.

17 On Page 41, starting at the last line,
18 twenty-four, you say that to argue that an economic
19 excessive capacity penalty should be applied in a
20 situation where, by definition, the company's
21 stranded costs are not economic is circular
22 reasoning.

23 A Yes.

24 Q Can you explain that?

25 A What I am suggesting here is that stranded

1 cost, by definition, is the cost that would normally
2 be recovered in a regulatory environment that isn't
3 possible to be recovered through the market price.

4 If you take the two differences in these
5 numbers, you take the present value of that revenue
6 difference, and that becomes the stranded cost of the
7 company, so by definition, that's an uneconomic thing
8 if the market is below what you would have received
9 under traditional regulation, and that is what gives
10 rise to stranded costs.

11 That can't be an economic event.

12 It is just not economic, but that is the
13 definition of stranded costs, so it doesn't seem to
14 me to say that if you have stranded costs, that, you
15 know, then you are automatically entitled to an
16 economic excess return penalty, because by
17 definition, that is what stranded cost is.

18 Q Isn't it true that -- I mean, is another
19 way to look at it that stranded costs are -- I mean,
20 you just said it really are assets that are
21 uneconomical, in the sense that under regulatory --

22 A Stranded costs, by definition, are
23 uneconomic assets --

24 Q Right.

25 A -- absolutely.

1 Q Uneconomic assets?

2 A Absolutely.

3 Q And under regulation, if the Commission so
4 chose --

5 A Under --

6 Q -- they could disallow?

7 A Yes. They would not be uneconomic under
8 regulation. That is the whole point.

9 Q They would be uneconomic, but you would
10 still get a return on them.

11 A No. They wouldn't be uneconomic, because
12 we would be entitled to a rate of return of revenue
13 requirement --

14 Q Right.

15 A -- on those assets, and that was the world
16 that we were in --

17 Q Right, but --

18 A -- so that they weren't uneconomic.

19 Q But --

20 A There is a big difference.

21 Q If the Commission investigated, let's say,
22 in my case in 1994, as I was asking, all right, and
23 made a determination in that case that the plants
24 were economic excess capacity, the Commission could
25 make a disallowance based on that, could it not?

1 A The Commission can, you know, has wide
2 latitude to do a lot of things, yes.

3 Q So -- that is right. Thank you. That's
4 all.

5 JUDGE CORBETT: Okay. Then instead of taking
6 Mr. Barak next, I think we will recess for the day,
7 instead of breaking up your cross, Mr. Barak, and we
8 will reconvene tomorrow morning at 9:00 o'clock
9 promptly.

10 I should say, before we adjourn for the day,
11 that if you wish to leave briefcases, boxes, whatever
12 in the hearing room, you may do so.

13 However, while the room will be locked, I
14 cannot guarantee the security of anything left in the
15 hearing room, so with that proviso, you are welcome
16 to leave whatever you wish here, and at this point,
17 we are in recess until tomorrow morning at 9:00
18 o'clock.

19

- - - - -

20 (Thereupon, at 5:22 o'clock PM, the hearing
21 was adjourned until December 16, 1997.)

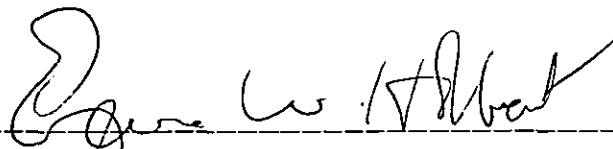
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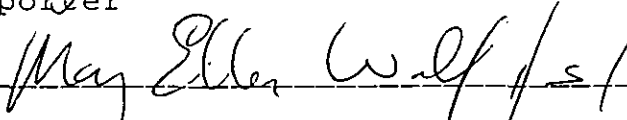
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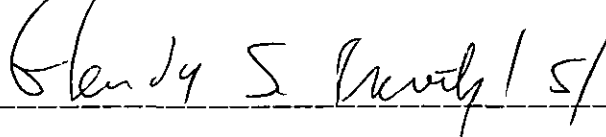
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