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DEMOCRATIC COMMITTEE ON APPROPRIATIONS

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PROTHONOTARY'S OFFICE

November 7, 1997

James J. McNulty, Acting Prothonotary
Pennsylvania Public Utility Commission
Room 206, North Office Building
Harrisburg, Pennsylvania 17105-3265

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DOCUMENT
FOLDER

Re: In re the Matter or the Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Pennsylvania Public Utility Code - PUC Docket No. R-00973953.

Dear Mr. McNulty:

2
Enclosed for filing is an original and ~~three (3)~~ copies of the Responsive Testimony of Richard H. Silkman to the Enron "Choice" Proposal. The testimony is submitted on behalf of Senator Vincent J. Fumo, CEPA, TAG, ACORN and John W. Long, Jr.

Copies of the forgoing are being served each of the parties of record.

Sincerely,

Christopher B. Craig
Counsel

cc: All counsel of record.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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RECEIVED
PROTHONOTARY'S OFFICE

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

DOCKET NO. R - 00973953

DOCKETED

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DOCUMENT
FOLDER

RESPONSIVE TESTIMONY

OF

RICHARD H. SILKMAN

TO THE ENRON CHOICE PROPOSAL

ON BEHALF OF SENATOR VINCENT J. FUMO,
CEPA, TAG, ACORN, AND JOHN W. LONG JR.

NOVEMBER 7, 1997

1 Choice Plan. In addition, I will comment on certain criticisms of the Partial Settlement Agreement
2 and comparisons between the Settlement Agreement and the Choice Plan made by Enron witnesses.
3 Finally, I will reiterate my support for the Partial Settlement Agreement and my recommendation
4 that the Commission approve the Partial Settlement Agreement as presented.

5

6 **Q. WOULD YOU PLEASE SUMMARIZE YOUR CONCLUSIONS?**

7 **A.** Yes. I have reached the following conclusions:

8 The Choice Plan is incomplete and cannot be implemented as submitted by Enron. Because of
9 its incompleteness and because Enron has reserved for itself the right to cancel the Choice
10 Plan at its sole discretion, there are no guarantees for ratepayers that any of the savings
11 identified in the Choice Plan will be realized.

12 Implementation of the Choice Plan is explicitly conditioned on the ability to securitize at least
13 \$5.4 billion of stranded costs. If the issuance of transition bonds is prevented for whatever
14 reason, the Choice Plan will not be implemented and PECO's ratepayers will not realize any
15 savings or other benefits such as the non-rate benefits in the Partial Settlement Agreement.

16 The savings to ratepayers alleged by Enron under the Choice Plan are vastly overstated, as they
17 derive from inappropriate comparisons between the Partial Settlement Agreement and the
18 Choice Plan. When these two options are compared on equal bases, a majority of the
19 alleged savings disappear and under certain circumstances, the Choice Plan actually results
20 in higher rates for ratepayers than the Partial Settlement Agreement.

21 Using Enron's own witness's estimates of market prices for capacity and energy, the Choice
22 Plan is likely to result in establishing Enron as an unregulated monopolist in the electric
23 supply market in the PECO service territory at the end of the transition period.

24 The Partial Settlement Agreement remains the best option for ratepayers and should be
25 approved by the Commission.

26

27 *The Choice Plan is incomplete and cannot be implemented as submitted by Enron. Because of its*
28 *incompleteness and because Enron has reserved for itself the right to cancel the Choice Plan at*
29 *its sole discretion, there are no guarantees for ratepayers that any of the savings identified in*
30 *the Choice Plan will be realized.*

31

32 **Q. PLEASE EXPLAIN WHY YOU BELIEVE THE CHOICE PLAN AS SUBMITTED BY ENRON IS**
33 **INCOMPLETE.**

34 **A.** There are three major reasons why the Choice Plan is incomplete. First, Enron has reserved for

1 itself the right to cancel implementation of the Choice Plan, but has not specified fully under what
2 conditions it would exercise that right. Accordingly, the Commission and the parties have no way
3 of knowing at the present time whether the Choice Plan will be implemented. This raises very
4 interesting questions regarding the authority of the Commission to find that a plan, whose
5 consequences are at the discretion of a private party and thus indeterminate, is in the public interest.

6 This is especially troublesome in light of Enron's assertion that (1) it may withdraw its Petition and
7 the Choice Plan at any time for reasons that are unknown at this time; (2) that it reserves the right to
8 withdraw its Petition and the Choice Plan at any time following Commission approval; (3) that, if it
9 withdraws its Petition and the Choice Plan, all of the potential rate reductions for ratepayers could
10 be eliminated; and (4) that, if it withdraws its Petition and the Choice Plan, the remaining provisions
11 of the Partial Settlement Agreement that are contained therein could be eliminated. (See Enron
12 response to FUMO-II-6, submitted by Mr. Kean which is attached to this testimony.)

13 Second, Mr. Kean's testimony indicates that Enron will be filing an amendment to the Petition
14 and the Choice Plan to address problems related to the universal service provisions of the Choice
15 Plan, including the portability of CAP rate protections. I do not believe that such an amendment
16 has been filed.

17 Third, a critical component of the Choice Plan has not been submitted to the Commission. The
18 Choice Plan does not contain a copy of the "ITC Shortfall Agreement" referenced by a number of
19 Enron's witnesses in their testimonies.

20

21 **Q. IS THE ITC SHORTFALL AGREEMENT AN IMPORTANT COMPONENT OF THE CHOICE PLAN?**

22 **A.** Yes, it would appear to be a very important component. According to Ms. Voorhees, the "Choice
23 Plan will require a highly creditworthy party to enter into an agreement known as the ITC Shortfall
24 Agreement with PECO, to virtually eliminate the risk to ratepayers of increased payments due to
25 load decline." (Voorhees testimony, at page 8, lines 10-13) Unless and until the Commission can
26 review the proposed form of the ITC Shortfall Agreement, there is no way to determine the extent of
27 ratepayer protections provided under the Choice Plan. Further, as I discuss below, Enron has
28 explicitly conditioned implementation of the Choice Plan on the ability to securitize \$5.461 billion
29 of stranded costs through the issuance of transition bonds. If these bonds cannot be sold on terms
30 that are acceptable to Enron because, for example, an acceptable ITC Shortfall Agreement cannot
31 be executed, ratepayers will realize no savings under Enron's Choice Plan.

32

1 Q. ARE THERE ANY OTHER OMISSIONS OR INCONSISTENCIES IN THE ENRON CHOICE PLAN?

2 A. Yes, there are a number of them. For example, the Choice Plan appears to make no accommodation
3 for issuance and related costs associated with the \$5.461 billion of transition bonds. This is not a
4 trivial matter, especially given the complex nature of the transition bond component of the Choice
5 Plan, including the ITC Shortfall Agreement, the SPE reserve account (See Mr. Fastow, page 4,
6 lines 1-4) and servicing fees payable to PECO or other parties (See Mr. Fastow, page 5, lines 6-15).
7 Since these costs have not been included in the Choice Plan, they will likely result in commensurate
8 increases in the CTC/ITC rates and therefore an erosion of the savings to consumers.

9 The Choice Plan is inconsistent with respect to the responsibility of ratepayers to make up
10 shortfalls in the CTC/ITC collections that may result. On the one hand, the Choice Plan appears to
11 be perfectly clear on this matter. As stated in Paragraph 23 (o) of the Choice Plan, "As required by
12 the Act, there will be an annual review of ITC charges. The transition bonds, however, will be
13 issued on terms that will not require the ITC to be increased." On the other hand, the Choice Plan
14 itself (in the fine print of one of its exhibits) and the testimonies of Enron's witnesses appear to
15 contradict this very clear statement:

16 Paragraph 6 of the Qualified Rate Order contained in Exhibit 5 of the Choice Plan states,
17 "Pursuant to 66 Pa.C.S. Section 2812(b)(4), this Commission authorizes the Company to
18 make annual adjustments ('Annual Adjustments') to the Intangible Transition Charges if
19 collections of such Intangible Transition Charges fall below the amount necessary to ensure
20 the receipt by the Transition Bond trustee of revenues sufficient to recover the Qualified
21 Transition Expenses."
22

23 Mr. Kean indicates on page 17 of his testimony that there "is a theoretical risk" that the
24 CTC/ITC charges contained in the Choice Plan may be increased and customers adversely
25 affected.
26

27 Mr. Fastow indicates on page 4 of his testimony that the Special Purpose Entity will make
28 deposits in reserve accounts to "mitigate possible fluctuations in PECO's customer load
29 levels over the life of the Transition Bonds."
30

31 Mr. Fastow indicates on page 20 of his testimony that, if an energy sales decline results in an
32 ITC increase, the Guarantor (under the ITC Shortfall Agreement) will pay any shortfall and
33 there will be no impact on ratepayer bills, "unless there is a catastrophic decline in energy
34 usage from the Base Load Level."
35

36 Ms. Voorhees indicates on page 8 of her testimony that the ITC Shortfall Agreement will
37 "virtually eliminate the risk to ratepayers of increased payments due to load decline."
38

39 The qualifications in each of the above statements are characteristic of the Enron Choice Plan and
40 are a source of considerable concern for consumers. I believe that they should be a concern for the

1 Commission as well, especially since Enron has not provided a copy of the proposed ITC Shortfall
2 Agreement or any indication that the transition bonds will be issuable under the terms and
3 conditions contained in the Choice Plan (see further discussion of this issue below).

4 The Choice Plan is explicitly conditioned on a Power Purchase Agreement between Enron and
5 PECO at prices equal to the generation credits contained in the Choice Plan. This would appear to
6 suggest that such an agreement would be difficult to obtain in the marketplace. Yet, Mr. Kean and
7 Mr. Slater both refute PECO's assertion that no prudent utility manager would enter into such a
8 contract, and Mr. Slater further asserts that the terms of the Power Purchase Agreement are more
9 than generous to PECO. If, in fact, this is the case and there is no extraordinary risk for PECO
10 associated with entering into the proposed Power Purchase Agreement, I cannot help but wonder
11 why Enron will not accept the risk implicit in the generation credits and by doing so avoid
12 conditioning the Choice Plan on an acceptable Power Purchase Agreement.

13
14

15 *Implementation of the Choice Plan is explicitly conditioned on the ability to securitize at least*
16 *\$5.461 billion of stranded costs. If the issuance of transition bonds is prevented for whatever*
17 *reason, the Choice Plan will not be implemented and PECO's ratepayers will not realize any*
18 *savings or other benefits such as the non-rate benefits in the Partial Settlement Agreement.*
19

20 **Q. HAS ENRON MADE SECURITIZATION A CONDITION OF IMPLEMENTING ITS CHOICE PLAN?**

21 **A.** Yes. This is explicitly stated in Paragraph 35 (b) and (g) of the Choice Plan. Under subsection (b),
22 the Commission must approve the issuance of an irrevocable QRO permitting PECO to issue
23 transition bonds and permitting such bonds to be purchased no later than September 1, 1998 by
24 Enron or its designee. Under subsection (g), there must arise no legal impediment to the issuance of
25 transition bonds pursuant to section 2812 of the Act.

26

27 **Q. WHAT HAPPENS UNDER THE ENRON CHOICE PLAN IF TRANSITION BONDS ARE NOT**
28 **ISSUABLE?**

29 **A.** Enron has indicated that it reserves for itself the right to withdraw its proposal at its sole discretion
30 if this or other conditions are not satisfied. If this occurs, ratepayers will be back at square one,
31 having been deprived of the opportunity to realize significant savings from the Partial Settlement
32 Agreement, savings that are not conditioned on securitization or any other variable or event not
33 envisaged by the Act itself. In contrast, under the Partial Settlement Agreement all of the benefits
34 are achieved even without securitization, except for a portion (30%) of the rate reductions.

1

2 **Q. HAS ENRON PROVIDED THE COMMISSION AND RATEPAYERS WITH EVIDENCE THAT THE**
3 **TRANSITION BONDS WILL BE ISSUABLE?**

4 **A.** No. In fact, Enron has rejected requests by my clients to provide evidence that the transition bonds
5 will be issuable under the terms and conditions contained in its Choice Plan. Specifically, Enron's
6 capital market witness, Ms. Voorhees, has characterized lawsuits and appeals by the Utility
7 Workers Union of America and by Indianapolis Power & Light Company as being "without merit"
8 (see Page 10, lines 11 and 23). Ms. Voorhees has also indicated that she believes the transition
9 bonds will receive "a favorable reception by the investor community" (see Page 9, line 24) and will
10 receive "a favorable reception by the rating agencies" (see Page 9, line 10). Enron has filed
11 objections to all interrogatories requesting specific evidence to support these statements. Enron is
12 asking this Commission and ratepayers to forego the certain savings contained in the Partial
13 Settlement Agreement, yet appears unable or unwilling to provide any comfort that what it has
14 proposed will actually occur.

15 Further, Mr. Fastow has stated very clearly that there may be other uncertainties that could
16 jeopardize the ability to securitize stranded costs through the issuance of transition bonds. While he
17 also "... believes that those uncertainties will be resolved in a manner that does not require changes
18 to our proposal", he states very clearly that "if those uncertainties are resolved with an unexpected
19 outcome, certain modifications to the proposal may be required." (See Mr. Fastow, page 12, lines
20 6-9) The Commission should be very concerned that 100% of the potential savings to ratepayers
21 under the Enron Choice Plan are dependent on the resolution of uncertainties, some of which are
22 apparently unknown at the present time, and that Enron will not assume the risk that these will be
23 resolved favorably.

24

25

26 *The savings to ratepayers alleged by Enron under the Choice Plan are vastly overstated, as they*
27 *derive from inappropriate comparisons between the Partial Settlement Agreement and the*
28 *Choice Plan. When these two options are compared on equal bases, a majority of the alleged*
29 *savings disappear and under certain circumstances, the Choice Plan actually results in higher*
30 *rates for ratepayers than the Partial Settlement Agreement.*

31

32 **Q. HAVE YOU REVIEWED THE TESTIMONY PRESENTED BY MR. BRUCE R. OLIVER THAT**
33 **COMPARES THE RELATIVE SAVINGS TO CUSTOMERS OF THE PARTIAL SETTLEMENT**

1 **AGREEMENT AND THE ENRON CHOICE PLAN?**

2 **A.** Yes, I have reviewed the testimony and the comparisons.

3

4 **Q. DO YOU AGREE WITH MR. OLIVER?**

5 **A.** No. Mr. Oliver has constructed artificial comparisons that are designed to create the desired result
6 that the Choice Plan is better for consumers than the Partial Settlement Agreement. Specifically, he
7 assumed that total ratepayer savings do not include generation savings that result from ratepayers
8 having the ability to purchase electricity in competitive generation markets. Rather, he has assumed
9 that generation savings are measured by difference between the generation credits under the Partial
10 Settlement Agreement and Choice Plan. (See Mr. Oliver, Exhibit A, page 1 of 6, Notes 2 and 3.)

11

12 **Q. WHY DO YOU BELIEVE THESE ASSUMPTIONS WERE MADE?**

13 **A.** I do not know; however, it is interesting to observe what happens when they are relaxed. The
14 elimination of these assumptions leaves Enron between the proverbial "rock and the hard place" in
15 its defense of its Choice Plan. The problem for Enron is as follows: If there are generation savings
16 associated with the Choice Plan, then the generation credits in the Choice Plan must be set below
17 market prices and the Choice Plan is anti-competitive. Alternatively, if the Choice Plan is not anti-
18 competitive because the generation credits are above market prices, then there are no generation
19 related savings associated with the Choice Plan. In either case, there is less in the Choice Plan than
20 Enron would have us believe.

21

22 **Q. PLEASE EXPLAIN.**

23 **A.** There are three possibilities regarding the relationship between the market price for electricity and
24 the generation credits contained in the Choice Plan – the market price can be less than, equal to or
25 greater than the generation credits. Consider the consequences of each possibility separately,
26 beginning with the situation in which the market price is equal to the generation credits contained in
27 the Choice Plan. In this case, under the Partial Settlement Agreement, consumers will purchase
28 electricity at the generation credit rates contained in that Agreement for the early years, when these
29 credits are below the market rate (recall that the generation credits function as caps under the
30 Partial Settlement Agreement), and at the generation credit rates contained in the Choice Plan in the
31 later years when these credits are equal to the market price. This situation is illustrated in Exhibit
32 SILKMAN-2, page 1 of 3. Note that the generation savings under the Choice Plan are negative and
33 more than offset the value of the CTC savings. (On a net present value basis, the CTC savings are

1 larger.)

2

3 **Q. PLEASE GO THROUGH THE SECOND POSSIBILITY – WHERE THE MARKET PRICE IS LESS THAN**
4 **THE GENERATION CREDITS CONTAINED IN THE CHOICE PLAN.**

5 **A.** This is the easiest of the possibilities to illustrate. For simplicity, I will assume that the market price
6 is less than the generation credits contained in both the Partial Settlement Agreement and the Choice
7 Plan. Under this condition, consumers pay exactly the same amount for electricity under each
8 option – the market price, and thus there are no savings associated with generation, assuming that
9 default consumers switch to market offerings under the Enron Choice Plan. This case is illustrated
10 in Exhibit SILKMAN-2, page 2 of 3, and shows very clearly how the early rate reductions that
11 derive from lower CTC/ITC charges are paid for by ratepayers through higher CTC/ITC charges in
12 the later years.

13

14 **Q. PLEASE DISCUSS THE THIRD POSSIBILITY – WHERE THE MARKET PRICE IS GREATER THAN**
15 **THE GENERATION CREDITS CONTAINED IN THE CHOICE PLAN.**

16 **A.** To illustrate the consequences of this possibility, I have used the estimated market prices presented
17 by Mr. Mitnick on behalf of the Pennsylvania Electric Competition Coalition (PECC), of which
18 Enron is a member. (It is instructive to make this comparison using Mr. Mitnick's market price
19 estimates for two reasons. First, these estimates were provided by parties opposing the Partial
20 Settlement Agreement before Enron developed and submitted its Choice Plan. Second, Enron has
21 acknowledged that it relied upon the testimony of Mr. Mitnick regarding a projection of market
22 prices in preparing its Choice Plan and Petition. (See Enron response to PECO-XI-17, which is
23 attached to my testimony.)) These prices begin to exceed the generation credits contained in the
24 Choice Plan in 2001, and remain in excess of the credits through the balance of the transition
25 period. In this situation consumers will pay more for energy and capacity under the Partial
26 Settlement Agreement than under the Choice Plan, as shown in Exhibit SILKMAN-2, page 3 of 3.
27 This exhibit also shows the total amount of generation savings that consumers will realize under the
28 Choice Plan, assuming that the terms and conditions of the Power Purchase Agreement between
29 Enron and PECO will be honored through 2008.

30 The generation savings in this case derive from the difference between market price and the
31 generation credits. Because the generation credits are below the market price, consumers will pay
32 less for electricity under the Choice Plan than under the Partial Settlement Agreement. Of course,
33 the fact that Enron can afford to offer electricity at a lower price because of the generation credits

1 will provide Enron a cost advantage in the market that is anti-competitive. Further, this cost
2 advantage will increase over time so that by the end of the transition period it will be so large that it
3 is highly likely that Enron will become a monopoly supplier of electricity.

4

5 **Q. ARE THE RESULTS SIMILAR UNDER THE PARTIAL SETTLEMENT AGREEMENT?**

6 **A.** No. Under the Partial Settlement Agreement, the generation credits increase more rapidly and thus
7 the threat that they will be below market prices in the latter years of the transition period is minimal.

8 This fact is acknowledged by virtually all of Enron's witnesses including Mr. Mitnick, who
9 indicates that the generation caps (credits) in the Partial Settlement Agreement will exceed estimated
10 market prices and thus allow competitive entry into the electricity supply market in the year 2007.
11 The Partial Settlement Agreement also provides real benefits to large industrial and commercial
12 customers which cannot benefit from the lower rates in the early years. This will have a beneficial
13 impact on economic development in the Philadelphia region.

14

15

16 *Using Enron's own witness's estimates of market prices for capacity and energy, the Choice Plan is*
17 *likely to result in establishing Enron as an unregulated monopolist in the electric supply*
18 *market in the PECO service territory at the end of the transition period.*

19

20

21 **Q. PLEASE EXPLAIN HOW ANY RESTRUCTURING PLAN CAN CREATE AN EFFECTIVE MONOPOLY**
22 **IN THE ELECTRIC SUPPLY MARKET.**

23 **A.** There are many ways in which a restructuring plan can result in a de facto monopoly in the electric
24 supply market. Perhaps the most important of these is the establishment of generation credits that
25 are set below market prices for electricity. Indeed, this has been Enron's primary complaint with
26 respect to the Partial Settlement Agreement. According to Enron's policy witness, Mr. Kean, the
27 Partial Settlement Agreement is anti-competitive, since it will thwart competition in the generation
28 of electricity for several years until the generation credits exceed the market price for electricity.
29 (See Direct Testimony of Steven J. Kean, page 4, line 18 through page 5, line 17.)

30

31 **Q. DOES THE ENRON CHOICE PLAN SATISFY THE CONDITION THAT THE GENERATION CREDITS**
32 **MUST EXCEED THE MARKET PRICE FOR ELECTRICITY?**

33 **A.** The many projections of market price filed in this case demonstrate that there is a wide range of

1 possibilities concerning future prices. Notwithstanding this observation, it is instructive to compare
2 the Enron generation credits to the market prices provided by Mr. Mitnick, a witness sponsored by
3 the Pennsylvania Electric Competition Coalition (PECC), of which Enron is a member.
4

5 **Q. WHAT DO THESE COMPARISONS SHOW?**

6 **A.** These comparisons show that the generation credits contained in the Enron Choice Plan are below
7 the estimated retail market price of electricity beginning as early as 2001 and by the year 2008, at
8 the end of the transition period, the generation credits are \$.01 per kwh or more below retail market
9 prices. In contrast, the generation credits contained in the Partial Settlement Agreement may be
10 below market in the early years, but are above market in the later years.
11

12 **Q. PLEASE DISCUSS THIS COMPARISON FURTHER.**

13 **A.** The most detailed estimates of the retail market price for electricity are provided in the testimony
14 filed on behalf of the PECC by Mr. Mitnick. Using the PHB Projections submitted by PECO in
15 this case, Mr. Mitnick derives an adjusted market price for energy and capacity by including line
16 losses, reserve margins and gross receipts taxes. (See Mitnick, Exhibit SAM-2) These prices are
17 shown in Exhibit SILKMAN-3, along with the generation credits contained in both the Partial
18 Settlement Agreement and the proposed Choice Plan.

19 This comparison is very instructive. It shows that the generation credits in the Partial
20 Settlement Agreement may be below market prices in the early years of the transition period, but are
21 above market prices in the later years. In contrast, the generation credits in the Enron Choice Plan
22 behave in the opposite fashion. They are above market prices in the first two years, but well below
23 market prices in the later years.
24
25

26 **Q. WHAT DOES THIS COMPARISON SAY ABOUT THE IMPACTS OF THE TWO OPTIONS ON THE**
27 **COMPETITIVE NATURE OF THE ELECTRIC SUPPLY MARKET IN THE PECO SERVICE**
28 **TERRITORY?**

29 **A.** Assuming that the estimated retail market prices submitted by Mr. Mitnick on behalf of the PECC
30 and Enron are correct, the two options present an interesting tradeoff for the Commission. Focusing
31 only on this one dimension of the two proposals, the Partial Settlement Agreement may result in a
32 delay of competition in the PECO service territory, but potential marketers that do decide to
33 compete can be reasonably certain that the market will become increasingly competitive over the

1 transition period and fully competitive by the end of the transition period.

2 The opposite will be true for the Choice Plan. Under this option, there may be opportunities for
3 competitors prior to 2001, but these opportunities will begin to disappear beginning January 1,
4 2001 as the market becomes increasingly anti-competitive over the balance of the transition period.
5 Further, by the end of the transition period, the differences between the generation credits contained
6 in the Choice Plan and the estimated market prices for capacity and energy will be substantially
7 larger than at any time under the Partial Settlement Agreement.

8

9 **Q. DOES THE STRUCTURE OF THE GENERATION CREDITS CONTAINED IN THE ENRON CHOICE**
10 **PLAN PROVIDE ENRON WITH ANY BENEFITS?**

11 **A.** Yes. Under reasonable forecasts of market prices for capacity and energy in the PJM Pool including
12 those provided by Enron's witness in this proceeding, the Choice Plan will result in Enron's
13 becoming a monopoly supplier of electricity in the PECO service territory.

14

15 **Q. PLEASE EXPLAIN.**

16 **A.** Under the Enron Choice Plan, the generation credits will be above estimated market prices for only
17 two years - 1999 and 2000. During the first of these two years, access to the competitive market is
18 restricted by the Choice Plan to at most 2/3rds of PECO's current retail customers. In addition,
19 experience in the telecommunications area has shown that it takes time for competitive suppliers to
20 develop market shares. Finally, because potential competitors will be faced with a cost
21 disadvantage they will not be able to overcome, it is unlikely that many will make the initial
22 investments necessary to establish a presence in this market for such a brief time and for such
23 limited opportunities. Accordingly, I believe that Enron will retain the vast majority of PECO's
24 total retail customer base during the 1999-2000 period as the competitive market begins to develop.

25 An even more important factor that will contribute to Enron's ability to maintain a dominant
26 presence in the retail market is the fact that it alone, through the Power Purchase Agreement with
27 PECO, will be able to meet the generation credit limitations after the year 2000. All other
28 competitors will be forced to purchase and sell electricity at market prices, and will not be able to
29 compete against Enron. Using the same arguments presented by Mr. Mitnick in his criticism of the
30 Partial Settlement Agreement and paraphrasing his conclusion, the result of the Enron Choice Plan's
31 generation credits will be to effectively eliminate competition in this market beginning in the year
32 2001. (See Mr. Mitnick, page 27, lines 7-8.) Beginning in the year 2001, Enron will have a price

1 differential against all other suppliers that must acquire generation supply at market prices. As
2 shown in Exhibit-SILKMAN-3, this price differential will grow significantly over the transition
3 period. Assuming that the T&D and CTC/ITC components of retail rates remain relatively constant
4 during the transition period, this differential will increase for the average consumer over time and
5 will represent an approximate 10% differential in the total price for electricity by the end of the
6 transition period, making it effectively impossible for any other supplier to offer the "minimum of
7 five to ten percent savings" Ms. Hull has indicated, based on her own experiences as a consumer
8 and observing the behavior of others, that consumers need before they will change suppliers. (See
9 Ms. Hull, page 8, lines 18-21.)
10

11 **Q. WHY IS IT IMPORTANT TO HAVE A COMPETITIVE RETAIL MARKET FOR ELECTRICITY AT THE**
12 **END OF THE TRANSITION PERIOD?**

13 **A.** The Electricity Generation Customer Choice and Competition Act recognizes that it is not possible
14 to flash-cut the existing regulatory system and monopoly industrial structure to a competitive
15 market. Accordingly, the General Assembly established in a number of findings and declarations in
16 the Act that the restructuring of the electric utility industry would be accomplished through a
17 transition process that would result in the creation of a competitive market for the generation of
18 electricity:
19

20 Section 2802 (7) – "This Commonwealth must *begin the transition* from regulation to greater
21 competition in the electricity generation market ..."

22 Section 2802 (8) – "In *moving toward greater competition* in the electricity generation market,
23 the commonwealth must resolve certain transitional issues in a manner that is fair to
24 customers, electric utilities ..."

25 Section 2802 (13) – "... The procedures established under this chapter provide for *a fair and*
26 *orderly transition* from the current regulated structure to a structure under which retail
27 customers will have direct access to a competitive market for the generation and sale or
28 purchase of electricity."

29 Section 2802 (15) – "In establishing the *standards for the transition to* and creation of a
30 competitive electric market, ..."

31 Section 2802 (21) – " ... The Commission will consult with the Department of Environmental
32 Protection regarding this issue *during the transition to retail competition.*"

33 (Italics added)
34

35 The expectation is that a certain amount of time is needed to accommodate all of the changes
36 necessary to create competitive electric markets, and that during this time, existing interests (e.g.,
37 utility shareholders, municipalities, utility employees and customers) and desirable characteristics of

1 the electric system (e.g., reliability, safety) should be protected or preserved. At the same time,
2 however, the expectation is that the transition period will give way to a competitive generation
3 supply market which will no longer be subject to economic regulation. If this does not happen, and
4 in fact the electricity supply market is a monopoly at the end of the transition period, the entire
5 purpose of the Act would be thwarted and consumers will be worse off than they are currently. The
6 effect of the restructuring process will be that consumers traded a regulated monopolist – PECO –
7 for an unregulated monopolist – Enron.

8

9 **Q. PLEASE EXPLAIN WHY YOU BELIEVE CONSUMERS WOULD BE WORSE OFF.**

10 **A.** The current monopoly position of PECO is tempered at the present time by the regulatory process.
11 To the extent that this monopoly position continues during the transition period, it remains tempered
12 by the rate caps provided for in the Act. Finally, after the transition period is complete and a
13 competitive electric supply market is established, neither PECO nor any other company will be able
14 to exercise monopoly power in the electric supply market.

15 Under the Enron Choice Plan, the first two protections will remain. However, at the end of the
16 transition period, Enron will enjoy a monopoly position in the market and consumers will no longer
17 be protected by regulation or by statutory rate caps. Assuming that Mr. Mitnick's estimated market
18 prices for electricity are correct, it is highly likely that on January 1, 2009, Enron will be supplying
19 virtually all retail consumers in PECO's service territory and will be free from any statutory,
20 regulatory or settlement constraints. Enron will be an unfettered monopolist and, again to
21 paraphrase Mr. Mitnick, when its market price advantage is combined with the incumbency
22 advantage Enron would be able to achieve over the last few years of the transition period, there
23 simply will be no chance for competition in PECO's service territory and what will remain is Enron
24 as a deregulated monopoly. (See Mr. Mitnick, page 36, lines 12-15.)

25
26

27 ***Additional Issues Related to the Enron Choice Plan***

28

29 **Q. ARE THERE ADDITIONAL POINTS RELATED TO THE ENRON CHOICE PLAN OR TO THE**
30 **TESTIMONIES OF ENRON'S WITNESSES THAT YOU WOULD LIKE MAKE?**

31 **A.** Yes. The first point I would like to make is that the long-run marginal costs of energy and capacity
32 presented by Mr. Slater are incomplete and inconsistent with those presented by Enron's previous

1 witness Mr. Mitnick. When Mr. Slater's estimates are adjusted to be consistent with those
2 presented by Mr. Mitnick, they increase considerably and are well above the generation credits
3 contained in the Choice Plan.

4

5 **Q. PLEASE INDICATE WHY YOU BELIEVE MR. SLATER'S GENERATION COST ESTIMATES ARE**
6 **INCONSISTENT WITH PREVIOUS ESTIMATES PROVIDED BY ENRON IN THIS CASE.**

7 **A.** There are two glaring inconsistencies between the methodologies used by Mr. Mitnick and by Mr.
8 Slater, both of which tend to reduce Mr. Slater's estimates. Mr. Mitnick makes two adjustments to
9 the base level energy and capacity costs that are not made by Mr. Slater - he adjusts both energy
10 and capacity costs to account for line losses, and he adjusts capacity costs to account for load
11 factor.

12

13 **Q. HAVE YOU MADE THESE ADJUSTMENTS IN MR. SLATER'S ESTIMATES?**

14 **A.** Yes. When Mr. Slater's 1999 LRMC is adjusted to reflect line losses and load factor, the estimate
15 increases from \$.03197/kwh to \$.04132/kwh or by almost 30%. This adjustment is shown in
16 Exhibit SILKMAN-4.

17

18 **Q. DO YOU BELIEVE OTHER ADJUSTMENTS SHOULD BE MADE TO MR. SLATER'S ESTIMATES?**

19 **A.** Yes. I believe that one additional adjustment should be made. I know of no study or economic
20 forecast that projects that construction costs of gas turbines, O&M costs or fuel costs will increase
21 by only an average of 1.3% a year between 1999 and 2008. A much more reasonable projection of
22 cost escalation is 3% per year, which when combined with the adjustments made previously, will
23 result in a market price in 2008 of \$.05392 per kwh, as shown in Exhibit SILKMAN-4. This price
24 is slightly above Mr. Mitnick's estimated price of \$.05210 per kwh, and about \$.0123 per kwh
25 above the generation credit in 2008 contained in the Enron Choice Plan. In fact, when these
26 adjustments are made to Mr. Slater's market price estimates, they are above the generation credits
27 contained in the Choice Plan each and every year.

28

29 **Q. IS THERE A SECOND ISSUE YOU WOULD LIKE TO ADDRESS?**

30 **A.** Yes. Enron has argued that the Partial Settlement Agreement fails to provide for full reconciliation
31 of CTC or ITC charges and therefore is not in the best interests of ratepayers.

32

1 Q. DO YOU AGREE WITH ENRON'S ASSERTION THAT THE ABSENCE OF RECONCILIATION OF THE
2 TOTAL AMOUNT OF CTC CHARGES COLLECTED BY PECO IS NOT IN THE PUBLIC INTEREST?

3 A. No, I do not. The original consumer parties to the negotiations that resulted in the Partial Settlement
4 Agreement established as an important objective the creation of near-term certain rate reductions for
5 ratepayers. These parties sought guarantees from PECO that retail rates would be fixed at levels
6 below current rates. This certainty could only be accomplished by allocating the risk of
7 reconciliation adjustments to PECO, that is, by holding ratepayers harmless to changes in revenue
8 requirements resulting from changes in either the total or relative mix of billing units. By shifting
9 sales risks to PECO, the consumer parties acknowledged that PECO could receive a larger or a
10 smaller amount of total transition costs than the amount identified as "expected" in the actual Partial
11 Settlement Agreement. This was a conscious decision that made rate reduction levels certain, and at
12 the same time eliminated ratepayer exposure to higher rates that would otherwise result from sales
13 declines. The consumer parties deliberately sought to avoid both of these consequences and were
14 successful in their negotiation of such an agreement. (In my rebuttal testimony in this proceeding, I
15 have described a variety of reasons why such declines might be expected over the next decade.) As
16 such, the original consumer parties believe that this decision constitutes "good reason" under
17 1307(e) of 66 Pa.C.S.A., as that section is referenced in Section 2808(f) of the Act.

18
19

20 *Summary*

21

22 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

23 A. The two proposals put before the Commission in this case – the Partial Settlement Agreement and
24 Enron's Choice Plan – present the Commission with stark contrasts in how to proceed with the
25 restructuring of the electric utility industry. The Partial Settlement Agreement, which is supported
26 by a broad spectrum of interested parties, offers ratepayers known and certain reductions in retail
27 electricity rates as well as additional protections and benefits that they could not otherwise obtain
28 through litigation. These include a longer stayout provision with respect to T&D rates, an
29 extension of the generation rate cap through 2008, increases in the scope of coverage of existing
30 universal service programs and an acceleration of ratepayer access to the competitive marketplace.
31 The Partial Settlement Agreement is a complete agreement, in so far as the issues it covers and the
32 terms and conditions it contains are concerned. When the Commission votes to accept this
33 Agreement, it will know with certainty that the Agreement will be implemented, and that ratepayers

1 will enjoy the benefits and protections provided under the Agreement.

2 In contrast, the Enron Choice Plan has no broad base of support. It is incomplete and
3 inconsistent. It offers ratepayers at best uncertain discounts and at worst no rate reductions and
4 delays in the ability to access competitive generation markets. Further, assuming that the Choice
5 Plan could be implemented as structured, it is likely to result in enthroning Enron itself as an
6 unregulated monopoly provider of electricity as the transition period comes to an end and all
7 existing statutory and regulatory ratepayer protections expire.

8 Stripped of all of its rhetoric and complex contingencies, the Enron Choice Plan and Enron's
9 defense of that plan are long on promises but remarkably short on results. As the Commission
10 reviews the Choice Plan and the Partial Settlement Agreement, it should understand that Enron is
11 asking ratepayers to gaze into a pool and drop the bone they have in their mouth for the illusion of a
12 larger and more tasty one in the reflection.

13

14 **Q. ARE THERE ANY OTHER COMMENTS YOU WOULD LIKE TO MAKE?**

15 **A.** Yes, there is one. I have prepared this testimony without the benefit of responses to three sets of
16 interrogatories containing over 70 separate interrogatories submitted to Enron. Accordingly, I
17 reserve the right to file supplemental responsive testimony based on the responses to these
18 interrogatories. Further, to the extent that the Enron witnesses file additional testimony in this case,
19 as they have reserved the right to do, I would expect to have the opportunity to respond as
20 appropriate.

21

22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

23 **A.** Yes.

24

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33

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**In re the Application of PECO Energy
Company for Approval of its Restructuring
Plan Under Section 2806 of the Pennsylvania
Public Utility Code**

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Docket No. R-00973953

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I Christopher B. Craig, attorney for Senator Vincent J. Fumo, hereby certify that a copy of the foregoing document has been served in person or by first class mail at the addresses indicated below. I further certify that the manner of service satisfied the requirements of 52 PA. Code §§ 5.75 and 1.54.

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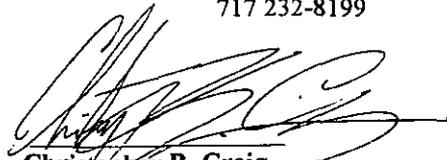
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KJR

Re: Application Of PECO Energy Company For Approval Of Its Restructuring Plan
Under Section 2806 Of The Public Utility Code,
Docket No. R-00973953;
Petition of Enron Energy Service Power, Inc., Docket No. P-00971265.

Dear Judge Chestnut and Judge Rainey:

Attached is PECO Energy's Testimony Regarding the Enron Choice Plan:

Thomas P. Hill, Jr.	PECO St. No. 1-E
William H. Hieronymus	PECO St. No. 6-E
J. Gregory Sidak	PECO St. No. 10-E
William F. Sundermeir	PECO St. No. 13-E
J. Barry Mitchell	PECO St. No. 20-E
David J. Pratzon	PECO St. No. 21-E
James W. Sharpe	PECO St. No. 23-E
Michael S. Freeman	PECO St. No. 26-E
Howard Hiller	PECO St. No. 27-E
George Rayzis	PECO St. No. 28-E
Brian D. Crowe	PECO St. No. 29-E

Sincerely,

Paul Bonney

PRB/mbo

DOCUMENT FOLDER

Attachments

cc: Certificate of Service
Jim McNulty, Acting Secretary (cover ltr and Certificate of Service only)

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
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R-973953

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY

DOCKETED
NOV 12 1997

OF

THOMAS P. HILL, JR.
REGARDING THE ENRON PLAN

DOCUMENT
FOLDER

Regarding Reasons Why The Enron Plan
Should Be Rejected And Responding To
Miscellaneous Criticisms Of The Partial Settlement

November 7, 1997

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**TESTIMONY OF THOMAS P. HILL, JR.
REGARDING THE ENRON PLAN**

I. INTRODUCTION AND PURPOSE OF TESTIMONY

1 Q. **Please state your name and business address.**

2 A. Thomas P. Hill, Jr., 2301 Market Street, Philadelphia, PA 19103.

3 Q. **By whom are you employed and in what capacity?**

4 A. I am employed by PECO Energy Company ("PECO" or the "Company") as Vice
5 President and Controller.

6 Q. **Have you previously participated in this proceeding?**

7 A. Yes. I submitted direct testimony (PECO St. 1) and various supporting exhibits (Exhibits
8 TPH-1 through TPH-14) with PECO's April 1, 1997 restructuring filing. A statement of
9 my qualifications is contained in my direct testimony. I later submitted supplemental
10 direct testimony (PECO St. 1-S) and an accompanying exhibit (TPH-15) in which I
11 responded to certain questions posed by Commissioner Hanger. On July 18, 1997, I
12 submitted rebuttal testimony (PECO St. 1-R) and accompanying exhibits (Exhibits
13 TPH-16 through TPH-25) in which I updated PECO's stranded cost claim and responded
14 to various proposals advanced by other parties to this proceeding. On September 17,
15 1997, I submitted supplemental rebuttal testimony (PECO St. 1-SR) and accompanying
16 exhibits (Exhibits TPH-26 through TPH-28) in which I explained why, in PECO's view,
17 approval of the August 27, 1997 Joint Petition For Partial Settlement Of PECO Energy

1 Company's Proposed Restructuring Plan And Application For A Qualified Rate Order
2 (the "Partial Settlement ") is in the public interest. Finally, on October 8 and 13, 1997,
3 respectively, I submitted rejoinder and supplemental rejoinder testimony (PECO
4 Sts. 1-RJ and 1-SRJ) and accompanying exhibits (Exhibits TPH-29 through TPH-31) in
5 which I responded to various objections to the Partial Settlement.

6 **Q. What is the purpose of your testimony?**

7 **A.** The purpose of this testimony is to respond to the Petition filed by Enron Energy Services
8 Power, Inc. ("Enron") on October 7, 1997 in which Enron requests that the Commission
9 (1) approve an alternative restructuring proposal (the "Enron Plan") in lieu of the Partial
10 Settlement; (2) designate Enron the provider of last resort ("PLR") in PECO's service
11 territory; and (3) direct PECO to issue transition bonds totaling \$5.461 billion at above-
12 market interest rates (the "Enron Petition"). I will first provide an overview of PECO's
13 principal objections to the Enron Plan. I will then explain why the Enron Plan cannot and
14 will not work and why the Partial Settlement should be approved to provide for customer
15 choice and significant rate relief. Finally, I will address miscellaneous criticisms of the
16 Partial Settlement offered by various Enron witnesses.

17 **II. OVERVIEW OF PRINCIPAL OBJECTIONS**
18 **TO THE ENRON PLAN**

19 **Q. Have you had an opportunity to review the Enron Plan and the testimony which**
20 **was submitted in support of it on October 24, 1997?**

21 **A.** Yes, I have.

1 Q. **Please summarize PECO's reaction to the various proposals that Enron has**
2 **advanced.**

3 A. On October 20, 1997, PECO formally responded to the Enron Plan. In its Answer (pp. 6,
4 12), PECO noted as follows:

5 Enron's latest salvo is nothing more than a public relations stunt designed
6 to confuse and mislead customers.

7 * * *

8 Enron has no interest in serving citizens of Southeastern Pennsylvania or
9 providing them any tangible benefits. Instead, the Enron Plan is a thinly-
10 veiled attempt to advance Enron's own corporate self-interest by scuttling
11 a well-conceived settlement package that has the unanimous support of the
12 consumer groups who will be most affected by electric utility restructuring
13 and by eliminating PECO as a competitor.

14 In the two and a half weeks which have elapsed since PECO filed its Answer, I
15 have become even more convinced that the Enron Plan cannot and will not work.

16 Q. **Why will the Enron Plan not work?**

17 A. Because it was dead on arrival. As I will summarize and other PECO witnesses will
18 explain, Enron's securitization scheme, which would allow it to pocket approximately
19 \$1.0 billion in present value benefits **without having to put up a dime**, is severely
20 flawed and totally unachievable. Because the proposed securitization fails, Enron will
21 have no money to "pay" PECO for its stranded costs and will be unable to deliver on its
22 offer to reduce rates by 20% -- the promised savings are simply illusory. More
23 fundamentally, however, the Enron Plan will not work because it is not in the best

1 interests of customers and employees, would stifle competition in the long-term and
2 would require the Commission to violate key provisions of the Competition Act.

3 Q. **How does Enron fare under the “Enron Plan”?**

4 A. Under Enron’s “Choice Plan”, an electric generation supplier (“EGS”), such as Enron,
5 could “choose” to terminate service without cause and leave customers high and dry with
6 only five days to find a new EGS. Or, Enron could “choose” to terminate its proposed
7 MBC (metering, billing and collections) Services Agreement with PECO, and thereby
8 potentially put hundreds of Pennsylvanians out of work, if it believed Commission action
9 had materially adversely affected its rights. Or, Enron could “choose” to engage in anti-
10 competitive behavior because its proposed Code of Conduct would allow it to share
11 customer-specific, insider information with its marketing affiliates.

12 Q. **How does the Enron Plan treat PECO and its customers?**

13 A. Not surprisingly, PECO and its customers do not fare nearly as well. Thus, PECO could
14 not “choose” to enter into short or long-term sales of energy and capacity because Enron
15 would have a “call” on its generation. PECO also could not “choose” how much of its
16 stranded costs to securitize, even though that right is expressly provided to PECO by the
17 Competition Act. Nor could customers “choose” to continue to receive generation
18 service from PECO because PECO would be barred from selling to them in its own
19 name. Similarly, low income customers would effectively be precluded from “choosing”
20 an EGS because the Enron Plan does not provide for the portability of all universal
21 service benefits. In short, under Enron’s vision of the future, prudent investment would

1 not be the only victim of electric utility restructuring -- vital consumer protections would
2 be "stranded" as well.

3 **Q. Are there any other reasons why the Enron Plan should be rejected?**

4 **A.** Yes, and they will be described in the next section of my testimony. At this point, it is
5 sufficient to state that Enron's goal is to cripple PECO financially without exposing itself
6 to any risk and without assuming any obligations whatsoever. Beyond that, however, the
7 Enron Plan is really no "plan" at all. Perhaps the best evidence of this may be found in
8 (1) Enron's insistence that the Commission declare that it is not a "public utility" and
9 (2) Enron's attempt to reserve unto itself the "choice" to unilaterally withdraw its "plan"
10 **at any time** -- i.e., even following Commission approval (see Exhibit TPH-33). In other
11 words, Enron wants to be able to step away should the deal it strikes in Pennsylvania not
12 meet its expectations.

13 **III. SPECIFIC REASONS WHY THE ENRON**
14 **PLAN SHOULD BE REJECTED**

15 **A. The Enron Plan Is Anti-Consumer**

16 **Q. Why is the Enron Plan contrary to consumers' best interests?**

17 **A.** The principal reason that the Enron Plan is anti-consumer is that it will not work -- the
18 promised 20% rate savings will never be delivered. Consequently, its consideration will
19 simply delay -- in fact, has already delayed -- the realization of the benefits that the
20 Partial Settlement offers customers.

1 Q. **You stated previously that Enron's securitization scheme is unachievable. Please**
2 **elaborate.**

3 A. Enron's proposal is fatally flawed in several key respects. First, and as explained by
4 Messrs. Mitchell and Hiller, in order for the transition bond financing to proceed, the
5 mortgage trustee of PECO's bonds -- in this instance, First Union National Bank -- would
6 have to release its lien on the Intangible Transition Property ("ITP") created by Enron's
7 proposed Qualified Rate Order ("QRO"). This cannot happen, however, because the
8 securitization outlined Enron witnesses Fastow and Voorhees would not provide PECO,
9 or its special purpose entity, the full fair value of its ITP. As noted previously, the Enron
10 Plan falls apart once the proposed securitization goes away.

11 Q. **Why would PECO not receive full fair value?**

12 A. Because a significant portion of that value -- approximately \$1.0 billion -- would be
13 siphoned off to Enron through the issuance of the Class B securities. As a result, I am
14 advised that the mortgage trustee could not release its lien without violating the Trust
15 Indenture Act of 1939. Significantly, Mr. Rayzis confirms in his testimony that First
16 Union could not proceed with the transaction in the absence of a statement from PECO --
17 which PECO could not give -- that it would receive full fair value for its ITP.

18 Q. **Are there other problems with Enron's securitization scheme?**

19 A. Yes. As Mr. Hiller points out, Enron's proposed Intangible Transition Charges ("ITCs")
20 will not generate sufficient revenues for PECO or its special purpose entity to service

1 (i.e. pay the interest on) the transition bonds in the first several years following their
2 issuance.

3 Q. **How do you reconcile Mr. Hiller's testimony with Mr. Kean's assertion to the**
4 **contrary?**

5 A. Mr. Kean ignores two important factors. First, the Competition Act limits the term of
6 transition bonds to ten years (i.e. 120 months) -- the Enron Plan assumes a 124-month
7 life. Second, Mr. Kean apparently fails to recognize that the ITC revenue stream will be
8 subject to Gross Receipts Tax. As such, Enron's proposed ITCs are understated by an
9 additional 4.4%.

10 Q. **What are the consequences of these shortfalls?**

11 A. Because the ITC revenue flows would not be sufficient to pay the interest on the Class A
12 and Class B securities, including related tax obligations, the specific purpose entity would
13 immediately be in default. Perhaps more importantly, as explained by Mr. Sharpe, the
14 Internal Revenue Service would likely view the transaction as a taxable sale from PECO
15 to Enron's grantor trust, rather than a non-taxable financing, and thereby expose PECO to
16 an immediate \$2.25 billion tax liability. Such tax treatment would completely wipe out
17 the benefits of securitization and would kill any possibility that PECO could proceed with
18 the deal even if all of the other flaws in the Enron Plan could be corrected.

19 Q. **Why is the proposed securitization so important to Enron?**

1 A. The proposed securitization is critical to Enron for two reasons: (1) it provides Enron the
2 cash to “pay” PECO for its stranded costs; and (2) it enables Enron to skim off the
3 approximate \$1.0 billion windfall calculated by Mr. Hiller. In contrast, under the Partial
4 Settlement, customers are guaranteed significant rate relief even if there proves to be a
5 legal impediment to securitization. Additionally, customers will receive the full rate
6 relief and will not bear any of the market risk which PECO retains under the Partial
7 Settlement.

8 Q. **Putting aside the issue of securitization, are there additional reasons why the Enron**
9 **Plan is anti-consumer?**

10 A. Yes. The Enron Plan is adverse to customers for **at least** five other reasons.

11 **Lack of Rate Certainty.** The Enron Plan exposes customers to the risk that the market
12 price of energy and capacity will exceed projected levels. Unlike the Partial Settlement,
13 the Enron Plan contains no absolute protections for customers, but rather permits Enron
14 to pass through to default customers its actual costs in the event they are greater than the
15 “generation credits” set forth in Enron’s Petition. Consequently, any savings customers
16 might experience in the first few years under the *Enron Plan* could easily erode or
17 disappear entirely.

18 **Upward Trending Stranded Cost Recovery.** Enron witness Bohi observes that a CTC
19 (or ITC) could be designed to increase, rather than decrease, and yet generate the same
20 level of stranded cost recovery. Under the Enron Plan, the recovery of stranded costs

1 trends upward. This backloading of the recovery of stranded costs is not in customers'
2 best interests. Indeed, the consumer groups that executed the Joint Petition insisted that
3 past investments be paid off earlier rather than later to reflect the transition to
4 competition, which explains why the CTCs set forth in the Partial Settlement decline over
5 time.

6 **Loss of System Reliability.** Under the Enron Plan, virtually all of the work required to
7 ensure that customers receive high quality electric service would continue to be
8 performed by PECO.^{1/} The net effect of Enron's proposals, however, would be to
9 paralyze PECO's generation function for the reasons discussed by Mr. Pratzon and, as
10 described by Mr. Mitchell, to cripple the Company financially. As such, PECO's ability
11 to maintain system reliability and to provide customers the high quality of service they
12 have come to expect -- i.e., the core values of the Competition Act -- would be severely
13 compromised.

14 **Lack of Consumer Protections.** Even though Enron claims that it only wants to "step
15 into PECO's shoes", the tariff it has proposed would completely redefine the
16 customer/utility relationship, "stranding" the Commission's role in the process. More
17 specifically, an EGS, like Enron, would become PECO's customer for all practical

^{1/} I say "virtually" because Enron attempts to insert itself into the emergency response process by requiring that end-users first contact an EGS-designated agent (e.g., in Enron's case, a telephone number in the Houston control room). Needless to say, a utility's emergency response capability is a vitally important customer service function and one can only imagine how an arrangement of the nature envisioned by Enron would have worked out during the ice storms and rolling brownouts of January 1994.

1 purposes and the EGS' dealings with end-users would be largely deregulated. Even if
2 Enron could be held generally accountable in its interactions with customers, as to which
3 there is considerable doubt, important consumer protections would be lost. Mr.
4 Sundermeir inventories the damage in his testimony.

5 **Loss of Extra-Statutory Concessions.** As PECO has pointed out throughout this
6 proceeding, there are several important benefits of the Partial Settlement which cannot be
7 realized absent PECO's consent. They include: (1) the 10% rate reduction on September
8 1, 1998; (2) the acceleration of customer choice; and (3) the extension of the transmission
9 and distribution and generation rate caps. Those benefits, as well as PECO's
10 commitment to expand significantly its existing universal service programs and the
11 agreement by other Joint Petitioners to withdraw certain pending appeals, would be lost if
12 the Partial Settlement is not approved without modification.

13 **B. The Enron Plan Is Anti-Competitive**

14 **Q. You previously stated that the Enron Plan would stifle competition in the long-term.**
15 **Please explain.**

16 **A.** The Enron Plan is anti-competitive in a number of significant respects. First, it is
17 designed to eliminate PECO as a competitive supplier in the Southeastern Pennsylvania
18 region. This is accomplished by (1) barring PECO from competing through a divisional
19 EGS; (2) precluding PECO from using its name or logo; and (3) requiring PECO to
20 commit a substantial portion of its generation output for sale without imposing on Enron

1 any obligation to buy. The anti-competitive effects of the first two restrictions are
2 discussed by Mr. Sidak; the wholly one-sided and non-compensatory nature of Enron's
3 proposed Power Sales Agreement is explored at length by Mr. Pratzon.

4 Q. **Please continue.**

5 A. A potentially more serious problem with the Enron Plan is that it would be virtually
6 impossible for **any** EGS to compete with Enron after the first few years of the transition
7 period. This is because the proposed generation credits in the latter years are set well
8 below the levels which every other market price witness, including Enron's own expert,
9 Mr. Mitnick,^{2/} has projected. Consequently, customers would have a tremendous
10 incentive to eventually return to their "default" provider and Enron, having locked up
11 PECO's generation at below-market prices, would be in a position to welcome them
12 back. Dr. Hieronymus describes this phenomenon in his testimony.

13 Q. **How does Enron justify its proposed generation credits?**

14 A. It doesn't. No witness explains how the figures set forth on page 13 or Exhibit 1 to the
15 Enron Petition were derived or why they depart so dramatically from the corresponding
16 figures which Mr. Mitnick, testifying on behalf of Enron, sought to defend in hearings
17 held one week **after** the Enron Petition was filed. Nor, for that matter, does any witness
18 explain why the generation credits set forth in Enron's proposed tariff vary from the

^{2/} A graphic presentation of the generation credits proposed by Mr. Mitnick when he appeared in mid-October and the generation credits under the Enron Plan is provided in Exhibit TPH-34.

1 figures listed in the Joint Petition. However, Enron's silence on this point is not
2 surprising -- as made clear by Dr. Hieronymus and Mr. Freeman, Enron's generation
3 credits have no evidentiary basis.

4 **Q. In what other respects is the Enron Plan anti-competitive?**

5 A. The Enron Plan would allow Enron to leverage its position as PLR to the detriment of
6 potential competitors. For example, Enron's MBC Services Agreement would require
7 PECO to furnish Enron with valuable information regarding the consumption and
8 payment patterns of customers. However, Enron's proposed Code of Conduct, which
9 prohibits the sharing of such information with affiliates, applies only to PECO **and not to**
10 **Enron**. Consequently, as Messrs. Crowe and Sidak point out, Enron could provide **its**
11 affiliated EGS with sensitive customer information to the exclusion of other competitors.

12 **C. The Enron Plan Is Contrary To The Letter And Spirit**
13 **Of The Competition Act**

14 **Q. Mr. Hill, you previously stated that the Enron Plan was contrary to the Competition**
15 **Act. Please explain.**

16 A. I believe the Enron Plan, if implemented, would violate certain provisions of the
17 Competition Act and contravene the General Assembly's intent in a number of areas,
18 including: (1) the role of the PLR; (2) the proposed unbundling of "non-wires" services;
19 (3) securitization; and (4) the treatment of employees.

1 Q. **Why is the Enron Plan at odds with the Competition Act's provisions regarding the**
2 **PLR or default service provider?**

3 A. As PECO noted in its Answer to the Enron Petition, Section 2807(e)(i) of the
4 Competition Act expressly provides that an electric distribution company, such as PECO,
5 shall have the full obligation to serve as long as it collects either a CTC or an ITC. I am
6 advised that the Commission therefore is powerless to entertain Enron's request at this
7 time. Moreover, I seriously doubt that the General Assembly intended to authorize the
8 Commission to hand over PLR responsibilities to an out-of-state marketer with no
9 facilities in the Commonwealth and, by all appearances, no assets whatsoever and which,
10 as Mr. Mitchell points out, would not be subject to the financial safeguards imposed on
11 "public utilities".

12 Q. **In his testimony, Mr. Kean implies that the necessary financial support could be**
13 **provided by Enron's "multi-billion dollar publicly-traded parent company". Would**
14 **not this be sufficient to allay any concerns which the Commission might have?**

15 A. There is no way of knowing because Enron has not identified any of the terms and
16 conditions under which that support would be provided. In fact, when asked in discovery
17 to describe in detail the appropriate financial support that Enron believes is needed to
18 demonstrate its financial wherewithal to serve as the PLR, Enron replied that "the precise
19 nature of the financial support would be left to the Commission to request in the first
20 instance. Enron would respond appropriately at that time." Thus, besides failing to
21 propose any financial assurance, Enron has not even committed to accept the financial

1 support that the Commission might deem appropriate. It is worth recalling that, under the
2 Enron Plan, the Commission has no jurisdiction over Enron or its parent, so the
3 Commission would be powerless to require any financial support. I would also note in
4 this regard that neither Enron's "multi-billion dollar publicly-traded parent company" nor
5 its other affiliates have any assets in Pennsylvania.

6 **Q. In what respects is Enron's proposed unbundling of "non-wires" services**
7 **inconsistent with the Competition Act?**

8 .A. Section 2807(d) of the Competition Act clearly anticipates that the local electric
9 distribution company shall continue to provide customer service functions, such as meter
10 reading, complaint resolution and collections, and further requires that such services "be
11 maintained at the same level of quality under retail competition". In addition, as
12 explained by Mr. Crowe, the guidelines adopted by the Commission to ensure
13 compliance with this provision ("Folder 11 Guidelines") enumerate specific activities
14 which must continue to be performed by the EDC. Enron's proposal to unbundle and
15 deregulate these critical customer service functions therefore is contrary to the Act, the
16 Commission's guidelines and the public interest.

17 **Q. What concerns do you have regarding Enron's proposed securitization scheme?**

18 A. As I mentioned previously, the biggest problem with Enron's proposed securitization is
19 that it will not work for the reasons spelled out by Messrs. Mitchell, Hiller, Rayzis and
20 Sharpe. This is important because, as I previously indicated, securitization is the lynch-
21 pin of the Enron Plan. I would only add that Section 2812(b)(5) of the Competition Act

1 appears to provide that the EDC shall impose and collect ITCs and remit such recoveries
2 to or for the account of the financing party. Under Enron's proposal, these
3 responsibilities are turned over to all EGSs thereby raising credit and collection concerns
4 not envisioned by the Act.

5 Q. **You also alluded to the Enron Plan's treatment of employees. What concerns are**
6 **raised in this regard?**

7 A. In my direct testimony, I noted that PECO did not anticipate the need to lay off
8 employees as the result of the move to a competitive generation market. Even though the
9 Partial Settlement would require it to take a \$2.0 billion write-off, PECO continues to
10 believe that restructuring will not have a material effect on its workforce and that any
11 changes in staffing levels could be accomplished through attrition and transfers within the
12 Company. The same cannot be said of the Enron Plan.

13 Q. **Why?**

14 A. Principally for two reasons. First, as Mr. Mitchell explains, implementation of the Enron
15 Plan would leave PECO in a severely weakened financial condition. Under such
16 circumstances, PECO might have no other choice but to let employees go. Second,
17 Enron's proposed MBC Services Agreement runs for only five years and, as Mr. Crowe
18 points out, could arguably be terminated by Enron at its sole discretion before that date.

19 Q. **But Mr. Kean claims that the MBC Services Agreement is designed to avoid**
20 **employee "disruptions".**

1 A. Yes, he does. However, Enron's concern for employees is, at best, problematic in light of
2 the following comments reportedly offered by Enron President, Jeffrey Skilling, this past
3 Spring: "You must cut costs by 50 or 60 percent. Depopulate. Get rid of people. They
4 gum up the works." As such, I must question whether Enron takes seriously the General
5 Assembly's directive that the transition to competition be fair to all stakeholders,
6 including the employees of incumbent utilities (Section 2802(8)).

7 **IV. RESPONSE TO MISCELLANEOUS ENRON**
8 **CRITICISMS OF THE PARTIAL SETTLEMENT**

9 **Q. Messrs. Kean and Oliver contend that the Partial Settlement would allow PECO to**
10 **"overrecover" its stranded costs and that there is therefore "hidden value" which**
11 **can be released through securitization to provide even greater rate reductions. Are**
12 **they correct?**

13 A. No, they are not. The Partial Settlement is an integrated package of rights and
14 responsibilities, of which the recovery of a certain level of stranded costs is only one
15 element. Messrs. Kean and Oliver focus exclusively on the alleged benefits to PECO,
16 including securitization, while conveniently ignoring the costs of the obligations which
17 the Partial Settlement imposes upon it (i.e. the other "transition costs" embedded in the
18 Partial Settlement).

19 **Q. Please elaborate.**

20 A. Enron's claim of "overrecovery" assumes erroneously that the CTCs set forth in the
21 Partial Settlement were designed solely to provide PECO recovery of the present value

1 equivalent of \$5.461 billion of stranded costs. However, that was not how the Partial
2 Settlement was constructed. Rather, the other Joint Petitioners, particularly the consumer
3 representatives, recognized that there was value in rate certainty and rate stability, as well
4 as in other concessions made by PECO, and, on that basis, accepted higher CTCs to
5 obtain those benefits. In other words, the Partial Settlement's CTCs are intended to
6 recover not only the stipulated amount of stranded costs, but to fund other initiatives as
7 well.

8 Q. **Have you prepared an exhibit which quantifies the cost of these other undertakings?**

9 A. Yes. Exhibit TPH-35 first notes that the revenue requirement (i.e. return of and on)
10 associated with the recovery of \$5.461 billion equals \$6.024 billion excluding gross
11 receipts tax ("GRT") and \$6.301 billion inclusive of GRT. As indicated by the figures at
12 the bottom of the two columns, the projected CTC revenue streams under the Partial
13 Settlement, both exclusive and inclusive of GRT, fall short of the revenue requirements
14 on the \$5.461 billion of stranded costs. Taking the analysis one step further, in order to
15 fund its other obligations under the Partial Settlement (i.e., industrial rate concessions,
16 universal service expansion, early rate reduction and transmission and distribution rate
17 cap extension), PECO would have to recover an additional \$448 - \$632 million in present
18 value. Even after reflecting the projected benefit to PECO of securitization, PECO would
19 still need to recover between \$5.87 billion and \$6.66 billion on a present value basis
20 (exclusive of GRT). Under the Partial Settlement, PECO projects it will recover
21 approximately \$5.89 billion through the CTC revenues, the lower end of the range.

1 Hence, even after unlocking the “hidden value” of securitization, PECO will not
2 “overrecover” the costs of the integrated settlement package.

3 Q. **Mr. Oliver further implies that PECO may “overrecover” its costs due to so-called**
4 **price elasticities. Please comment.**

5 A. Mr. Oliver’s thesis is that the reduction in the cost of electricity, as provided for in the
6 Partial Settlement, will stimulate a rise in demand as customers increase their
7 consumption in response to lower prices. I can state from a practical review there is no
8 reason to believe that PECO’s customers will respond to lower prices as Mr. Oliver
9 postulates. Specifically, as indicated in Exhibit TPH-36, the real (i.e. inflation-adjusted)
10 price of electricity in PECO’s service territory has, in fact, declined over the past ten
11 years. Over that same period, retail sales have been flat. As such, I see no real evidence
12 of the theory espoused by Mr. Oliver.

13 Q. **Have you reviewed Mr. Oliver’s analysis of the relative benefits to customers of the**
14 **Partial Settlement and the Enron Plan?**

15 A. Yes. Mr. Oliver’s analysis suffers from the same deficiencies that I previously discussed.
16 More specifically, Mr. Oliver ignores the costs to PECO of all of the obligations it has
17 accepted under the Partial Settlement. Those costs are real and yet Enron presumes that
18 PECO’s shareholders will willingly absorb them **in addition to the \$2.0 billion write-off**
19 even if other terms of the Partial Settlement are not accepted.

1 Moreover, Mr. Oliver assumes that PECO will price all sales to default customers at the
2 "capped" rate levels. Although that apparently is Enron's intent should its proposal be
3 accepted, PECO is obligated to offer default customers market-based prices, as required
4 under Section 2807 of the Competition Act. Thus, under the Enron Plan, default
5 customers will be required to pay above-market rates in the early years, while under the
6 Partial Settlement default customers will always enjoy the benefits of market rates
7 without having to shop for supply.

8 **Q. Mr. Kean insists that the Enron Plan permits PECO "the full and complete**
9 **stranded cost recovery of the \$5.461 billion amount contained in the Partial**
10 **Settlement". Do you agree?**

11 **A.** No. As I previously explained, Messrs. Kean and Oliver ignore the other "transition
12 costs" embedded in the Partial Settlement which, as noted in Exhibit TPH-35, are
13 expected to range from \$450 million to \$660 million in net present value. Further, if
14 Enron's various assumptions/proposals are accepted, PECO has substantially understated
15 its stranded costs and is being forced to forego recovery of an amount much larger than
16 the \$2.0 billion that it has agreed to write off as part of the Partial Settlement.

17 **Q. Why does the Enron Plan suggest that PECO has understated its stranded costs?**

18 **A.** Four reasons stand out. First, if Mr. Slater's price projections are to be believed (and
19 PECO submits they should not), then PECO has overstated the market value of its
20 production plant and, correspondingly, understated its stranded generation-related costs.
21 Indeed, Dr. Hieronymus estimates that the use of Mr. Slater's market price escalation rate

1 would increase PECO's stranded costs by a minimum of \$1.0 billion. Second, as
2 Messrs. Crowe and Sundermeir explain, Mr. Reisling's proposed non-wires credit is
3 grossly overstated and, if adopted, would result in additional stranded costs which would
4 have to be recovered through some other mechanism. Third, the Enron Plan fails to
5 provide for the recovery by PECO of issuance and redemption costs associated with
6 securitization, which Mr. Mitchell indicates could exceed \$500 million. Finally, the
7 Enron Plan initiates competition on September 1, 1998 and effectively would require
8 PECO to absorb approximately \$160 million of costs which would be stranded at that
9 date but would otherwise have been recovered during the last four months of 1998.

10 Q. **Enron criticizes the Partial Settlement because it makes no explicit provision for the**
11 **reconciliation of stranded cost recovery. Please comment.**

12 A. As PECO has indicated in response to discovery, it does not believe that the Competition
13 Act requires annual reconciliation in the form of actually recouping undercollections or
14 refunding overcollections. Rather, the statute invokes the provisions of Section 1307(e)
15 of the Code which, by its terms, gives the Commission broad discretion not to direct
16 additional recoveries or refunds for "good cause being shown".

17 "Good cause" is present here because the parties, in negotiating the Partial Settlement,
18 effectively pre-reconciled stranded cost recovery and, in doing so, incorporated a number
19 of other features (e.g., industrial rate concessions, expansion of universal service) which
20 provide value to customers. Indeed, the mechanical reconciliation envisioned by Enron
21 was specifically rejected by the consumer parties who favored rate certainty and stability

1 and wanted to shift sales risk to PECO. Specifically, Paragraph No. 11 of the Partial
2 Settlement states: "The Joint Petitioners expressly acknowledge that these countervailing
3 risks and potential benefits were taken into account and have been fully reflected in the
4 rates described in Paragraphs 8-10 above." It was also recognized that sales have
5 declined over the past several years and that the impact of weather variations on rates
6 would be eliminated if the reconciliation were embedded in the prices established in
7 Paragraph 9 of the Partial Settlement.

8 **Q. Are there any other factors which the Commission should consider in evaluating the**
9 **question of reconciliation?**

10 A. As I mentioned earlier, the Partial Settlement is an integrated package of rights and
11 obligations, all of which were taken into account and reflected in the proposed CTCs.
12 Consequently, any "true-up" would need to reconcile each and every element set forth in
13 Exhibit TPH-35. This would be a virtually impossible process, as the parties to the
14 Partial Settlement recognized.

15 **Q. Are there any other issues that you would care to address?**

16 A. Yes. At page 28 of his testimony, Mr. Kean indicates that Enron intends to amend its
17 Petition and Plan to clarify its position with respect to universal service. To the best of
18 my knowledge, no such filing has yet been made. PECO obviously reserves the right to
19 supplement its responsive testimony once Enron's position on this issue is known.

1 Q. **Mr. Hill, are you sponsoring PECO's responses to the Commission's**
2 **Interrogatories?**

3 A. Yes. The responses were previously submitted to the Commission and all parties on
4 October 31, 1997.

5 Q. **Does that conclude your testimony?**

6 A. Yes, it does.

Enron Energy Services Power, Inc.

Docket No. R-00973953

Docket No. P-00971265

SENATOR VINCENT J. FUMO

Interrogatories, Set II

Witness: Steven J. Kean

FUMO-II-6:

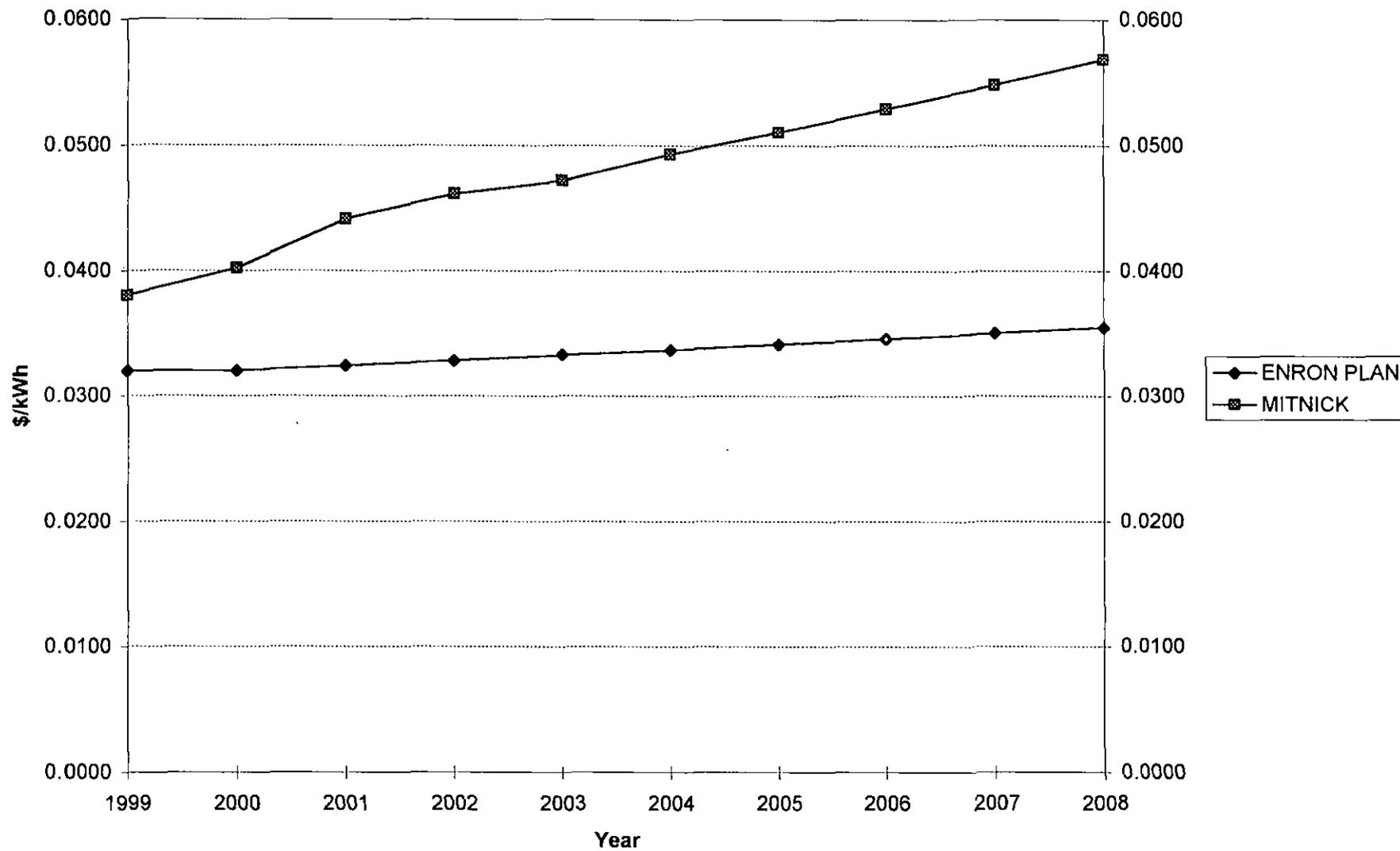
Please provide a detailed explanation of the meaning and consequence of paragraph 35(e) on page 29 of the Enron Petition. Please include a response to the following:

- a) What limitations, if any, are associated with the phrase "withdraw its Petition and the Choice Plan at any time" as used in paragraph 35(g)?
- b) Does Enron reserve the right to "withdraw its Petition and the Choice Plan at any time" following Commission approval? If so, would said withdrawal effect the professed 20% customer rate reduction? Would said withdrawal effect the remaining provisions of the Partial Settlement that are incorporated as part of the Enron Petition?

Response:

- a) Known limitations are identified in Section VI of Enron's Petition. There may be other limitations not known at this time.
- b) Yes; Yes; Yes.

Enron Plan vs Mitnick



PECO Energy Company
 Components Included in
CTC Revenue Recovery

	<u>Excluding GRT</u>	<u>With GRT</u>
Revenue Requirement on \$5.461 B	\$6,024 M (a)	\$6,301 M
Plus:		
Cost of LILR/EER Modifications	\$33 M - \$117 M (b)	\$35 M - \$122 M
Universal Service Program Improvements	108 M (b)	113 M
10% Reduction in Rates Effective 9/1/98	107 M (b)	112 M
T&D Rate Cap extension - i.e. to 1/1/2004	<u>200 M - 300 M (c)</u>	<u>209 M - \$314 M</u>
Total Additional Revenue Requirement	\$448 M - \$632 M	\$469 M - \$661 M
Total Revenue Requirement	\$6,472 M - \$6,656 M	\$6,770 M - \$6,962 M
Less:		
Value of Securitization (\$0-\$4 B)	(\$0 - \$600 M) (d)	(\$0 M - \$628 M)
Required CTC Recovery (PV @ 9/1/98)	<u>\$5,872 M (e) - \$6,656 M (f)</u>	<u>\$6,142 M - \$6,962 M</u>
Estimated CTC Revenue (PV @ 9/1/98)	\$5,893 M (g)	\$6,164 M

(a) Per PECO Statement 3RJ, Exhibit ABC-13

(b) Per PECO Response to PECC-R-9(a)

(c) Per PECO Response to PECC-R-9(a)

Note: The response calculates a specific amount, the above represents a range around that amount

(d) $(\$3/\text{MWH} \times 33,569,000 \text{ MWH}) \times (\text{P/A}, 8.71\%, 10 \text{ Yrs.}) \times (\text{P/F}, 8.71\%, 0.33 \text{ yrs.}) \times .956$

(e) \$6,472 M - \$600 M

(f) \$6,656 M - \$0

(g) Exhibit ABC-13

Actual Unit Revenue versus 1988 Basis Unit Revenue
cents/kwh

	Actual Unit Revenue <u>cents/kwh</u>	1988 Basis Unit Revenue <u>cents/kwh</u>	Deflator <u>1988 base</u>
1988	8.66	8.66	100.00
1989	9.08	8.71	104.20
1990	9.76	8.98	108.71
1991	10.25	9.07	113.03
1992	10.29	8.86	116.14
1993	9.89	8.30	119.21
1994	9.84	8.06	122.06
1995	9.92	7.93	125.16
1996	9.95	7.77	128.00

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PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

R-973953

TESTIMONY

OF

WILLIAM H. HIERONYMUS

REGARDING THE ENRON PROPOSAL

DOCKETED
NOV 12 1997

Regarding Energy & Capacity Caps
and Competition

DOCUMENT
FOLDER

November 7, 1997

1 **REBUTTAL TESTIMONY OF WILLIAM H. HIERONYMUS**

2

3 **Q. Please state your name and business address.**

4 A. My name is William H. Hieronymus. My business address is Putnam, Hayes & Bartlett,
5 Inc., One Memorial Drive, Cambridge, MA 02142.

6 **Q. Have you submitted testimony previously in this proceeding?**

7 A. Yes. I submitted PECO Statement No. 6 and accompanying Exhibits No. WHH-1
8 through WHH-5, PECO Statement No. 6-R and accompanying Exhibits No. WHH-6
9 through WHH-8, and PECO Statement No. 6-RJ and accompanying Exhibit No. WHH-9.

10 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

11 A. I am responding to assertions made by Enron witnesses Douglas Bohi and Kenneth Slater
12 regarding the Partial Settlement. The primary focus of my testimony addresses the alleged
13 superiority of the Energy and Capacity Cap proposed by Enron relative to that contained
14 in the Partial Settlement.

15 **Q. Please summarize the portions of Enron's testimony that you are addressing.**

16 A. Dr. Bohi suggests that the Energy and Capacity Caps contained in the Partial Settlement
17 will create a barrier to retail competition that will effectively leave PECO as a monopoly
18 supplier (Enron Statement No. 3, p. 5). He bases his conclusion on the premise that the
19 Energy and Capacity Cap is below the competitive market price of electricity, which he
20 assumes is equal to the long-run marginal cost derived by Mr. Slater. Dr. Bohi goes on to

1 argue that this will frustrate what is his view of the Competition Act's intent to establish a
2 competitive generation market. Finally, Dr. Bohi opines concerning PECO's and Enron's
3 relative ability and incentive to frustrate competition if they are the Provider of Last
4 Resort (PLR).

5 **Q. Please summarize the main conclusion of your testimony.**

6 A. These witnesses have confused the entry of new generation into PJM and Pennsylvania
7 with competition in generation and have further confused competition in generation with
8 competition in providing retail services. This probably accounts for the fact that they have
9 erroneously used the long-run marginal cost of generation based on the cost of a new
10 combined cycle unit as the benchmark for gauging the adequacy of the Energy and
11 Capacity Cap. As a result, they have substantially overstated the market price in a
12 competitive generation market in the near term and hence the bulk power costs that would
13 have to be paid by a retail competitor. Conversely, they have understated the market price
14 of generation in the longer term.

15 Enron's proposed Energy and Capacity Cap will, unquestionably, provide Enron Power
16 Marketing, Inc. (EPMI) and other entrants with an easy target to beat in attracting
17 customers away from the PLR during the first few years. For reasons I will discuss below,
18 this may translate into supra-competitive profits for successful entrants, which EPMI
19 would be uniquely well-positioned to become, particularly if another Enron subsidiary is
20 the PLR. However, it also is likely that the Cap will come to be below the market price of
21 generation during the later years of the period covered by the cap. In short, adopting the

1 Enron Cap proposal is very likely to result in squeezing out competition a few short years
2 after it is established.

3 **Q. Why is Enron's estimate of market price excessive in the near term?**

4 A. Enron's estimate, sponsored by Mr. Slater and relied upon by Dr. Bohi, is based on the
5 long-run marginal cost of generation. That is, it is calculated as the total cost, including a
6 return on capital, of an efficient new generating unit. I agree that, in the long run, prices
7 will approximate long-run marginal costs. However, Enron's witnesses mistakenly assume
8 that prices will have to be high enough to cover the cost of an entrant by 1999. The
9 theory that price must approximate long-run marginal cost is based on the simple notion
10 that new capacity will not be built unless it is economic to do so. Hence, once new
11 capacity is needed, prices in a competitive market will have to rise to a level high enough
12 that new suppliers will reasonably anticipate market revenues that are high enough to
13 justify building the needed capacity.

14 However, this logic also means that when new capacity is not needed, market prices need
15 not be high enough to justify building new capacity. Indeed, if they were, unneeded new
16 capacity would be built, causing competition in energy and capacity markets to drive down
17 prices. As I testified previously, PJM currently has excess capacity. This is reflected in
18 actual transaction prices, as is discussed in Mr. Freeman's testimony, that are well below
19 the long-run marginal costs sponsored by Mr. Slater. This is also reflected in the historic
20 energy prices, as shown in Mr. Bustard's Exhibit JFB-18, taken in concert with the low
21 historic prices for capacity in PJM.

1 In my analyses, I have projected that prices in PJM will rise to long-run marginal cost by
2 2001, the first year in which PJM is projected to need new capacity. This same
3 assumption was made by the other market price witnesses, including witnesses for
4 PAIEUG and OCA. In years prior to 2001, projected prices ramp up from current levels
5 to long-run marginal cost and thus are appropriately below long-run marginal cost.

6 **Q. Do Enron's witnesses dispute that there is excess capacity in PJM and surrounding**
7 **areas that will hold prices below long-run marginal cost for the next several years?**

8 A. No, they do not. The generation supply and demand balance is not addressed at all in their
9 testimony, despite Dr. Bohi's agreement that "the market price for energy and capacity
10 may be above or below long-run marginal cost because of temporary shortages or
11 surpluses of capacity."

12 **Q. What basis do these witnesses give for using long-run marginal cost as a benchmark**
13 **for the retail Energy and Capacity Cap?**

14 A. Mr. Slater explains his calculation as follows: "By comparing the long-run marginal
15 generation cost with the equivalent 100 percent load factor generation credits from the
16 Partial Settlement and the Enron Plan, one should be able to see whether either of the
17 proposals would allow a new generation competitor to enter the market. That is, if the
18 generation credit for a given class is below the long-run marginal cost, one could
19 reasonably assume that new generation would not enter the market."

20 **Q. Do you agree with this rationale?**

21 A. No. Generators will, or will not, enter the market on the basis of the market price of
22 generation. This will be set in the wholesale bulk-power market, consisting of the PJM

1 Exchange and bilateral contracts. This is wholly unrelated to the retail Energy and
2 Capacity Cap. All loads must be supplied reliably by some retailer, including the PLR. All
3 retail suppliers must meet the PJM capacity requirement. Thus, the wholesale demand for
4 energy does not depend on whether the Energy and Capacity Cap is at, above, or below
5 the retail market price of generation. Competitive wholesale prices will be at the level
6 necessary to meet this demand and will be determined by competition among suppliers
7 including, once it becomes relevant, the suppliers of new generation. Thus, the conditions
8 in the generation supply market are unrelated to the level of the Energy and Capacity Cap.
9 Hence, Mr. Slater's reliance on the relationship between the level of the Energy and
10 Capacity Cap and the cost of new generation is wholly incorrect.

11 **Q. Have you also reviewed Mr. Slater's estimate of the long-run marginal cost of**
12 **generation contained in his Exhibit KJS -4?**

13 A. Yes. I note, as a preliminary matter, that my ability to review it is limited by the complete
14 absence of any discussion of sources and underlying assumptions. However, even the
15 review that I have been able to make shows that the analysis contains errors and biases
16 that make it an unreliable estimate of long-run marginal cost.

17 **Q. What errors and biases does it contain?**

18 A. Let me first note that Mr. Slater simply assumes that the long-run marginal cost will be the
19 cost of a modern combined cycle unit. My analysis showed that in PJM, unlike the New
20 York and New England Power Pools, the existing surplus of baseload capacity means that
21 the most cost effective new capacity to build is not a combined cycle unit, but rather is a
22 combustion turbine (CT). Because new CTs set the capacity price beginning in 2001 and

1 energy is provided primarily from existing units and imports, the market price need not
2 rise to the level that justifies a new combined cycle unit through at least 2008.

3 Turning to the specific assumptions identified in Exhibit KJS-4, Mr. Slater's capital cost
4 appears reasonable for the type of facility that he models -- a combined cycle unit.
5 However, the annual fixed-charge rate that he uses is unreasonably high. I suspect that he
6 used a nominal fixed charge rate rather than the real fixed charge rate that would have
7 been appropriate. Further, in converting the capital cost to a dollars per kWh figure, Mr.
8 Slater made two additional errors. First, he assumed a 100 percent capacity factor. No
9 real-world unit is 100 percent available. Second, he grossed up the capacity-related cost
10 for an 18 percent reserve margin. Since his stated purpose is to determine the required
11 market revenues of a new entrant, this is improper, since the generation entrant does not
12 pay for reserves. Further, even if a reserve margin gross-up was appropriate, which it is
13 not, the correct amount would have been based on the cost of reserve capacity, which
14 cannot exceed the lower cost of a CT.

15 Base-year fuel cost appears to be overstated for two reasons. First, the heat rate used is
16 higher than the current state of the art. Second, the fuel price itself is higher than in any of
17 the 1999 forecasts available to me, such as DRI, EIA, and GRI. In addition, Mr. Slater
18 overstates the level of gross receipts tax (GRT) by applying 5 percent GRT, rather than
19 the correct level of 4.4 percent. Further, no allowance is made for fixed O&M. Taking all
20 of these elements together, Mr. Slater's 1999 forecast is higher than the combined cycle
21 costs that I used in my analysis (PECO Statement 6-R). This further exacerbates the

1 incorrect assumption that long-run marginal cost is even relevant to the early years of
2 retail competition.

3 Most importantly, he assumes a 1.3 percent per year escalation. This assumption is
4 unreasonably low and thus allows Enron to justify Energy and Capacity Caps in later years
5 that are unreasonably low.

6 **Q. Does Mr. Slater provide any basis for escalating long-run marginal cost at only 1.3**
7 **percent per year?**

8 A. No, none whatsoever. It is, to say the least, surprising to assume an escalation in the cost
9 of power from new facilities that is well below the rate of inflation without any
10 justification whatsoever.

11 **Q. Does any other Enron witness justify this low escalation rate?**

12 A. No. However, it should be recalled that, whatever may be Mr. Slater's logic for his
13 calculation, the actual use that Enron makes of it is to compare it to the Energy and
14 Capacity Caps in the Partial Settlement and the Enron Plan. In the context of discussing
15 the Enron Plan, Dr. Bohi defends the low rate of increase by saying that "This very
16 moderate increase, or even a moderate decrease in some years would be expected due to
17 the efficiencies as the competitive market takes hold and strengthens." However, the
18 competitive market he is referring to, which presumably is the electricity retailing market,
19 has nothing to do with Mr. Slater's calculation or, more generally, with the wholesale
20 price of electricity. Mr. Slater's long-run marginal cost is composed almost entirely of
21 two elements: the cost of natural gas and the cost of a new combined cycle unit. Both the
22 natural gas market and the power equipment market are highly competitive and have been

1 so for a number of years. Growth in competition in electricity retailing will not have any
2 appreciable effect on these already competitive markets.

3 **Q. What would be a more appropriate rate of escalation in Mr. Slater's long-run**
4 **marginal cost estimate?**

5 A. Approximately two-thirds of his cost is for natural gas fuel. The 1999-2008 escalation
6 rate in the DRI forecast that I (and OCA's witness) relied upon, and which is
7 representative of the forecasts I have seen, is 4.16 percent per year. It may be that some
8 increase in efficiency may somewhat erode the effect of fuel escalation. However, the new
9 generation of combined cycle plants is by now a relatively known technology with limited
10 potential for further efficiency gains. Moreover, more efficient units also are likely to cost
11 more; hence there is a tradeoff between gains that reduce capital costs and those that
12 increase the thermal efficiency of the unit. Overall, I believe that it is not reasonable to
13 assume an escalation rate that is less than the rate of inflation, particularly in view of the
14 expectation that fuels prices will increase at a rate above inflation.

15 **Q. What is the consequence of this underestimation of the rate of increase in long-run**
16 **marginal costs?**

17 A. Enron uses long-run marginal cost as its proxy for market prices. Dr. Bohi compares this
18 market price forecast to the Energy and Capacity Caps in the Partial Settlement and the
19 Enron Plan and concludes that the latter are more reasonable. Since Enron's escalation in
20 long-run marginal cost is understated, and in turn the escalation in the delivered cost of
21 power is understated, Dr. Bohi's conclusion is likely to be invalid.

1 I also should note that, if indeed Enron is correct that electricity prices will increase at
2 only 1.3 percent per year, PECO has significantly overstated the value of its generation
3 and consequently understated its stranded costs. Mr. Slater's estimate of market prices,
4 while much greater than likely market clearing prices during the near term period of
5 surplus capacity, is essentially identical to the forecast of PECO's revenues per kWh
6 generated that I sponsored in PECO Statement No. 6-R and Exhibit WHH-6. However,
7 the Enron forecast of price escalation thereafter is much lower. If market price escalation
8 actually were to be only 1.3 percent per year, then PECO's generating revenues over the
9 2001-2015 period would be reduced by amounts increasing to approximately \$800 million
10 per year. The effect on its stranded cost, computed on an after-tax basis as of September
11 1, 1998, would be an increase of approximately \$1 billion (as shown in Exhibit WHH-10).
12 Of course, a continuation of this low level of price escalation thereafter would increase
13 PECO's stranded cost by still larger amounts.

14 **Q. Have you tested whether his conclusion is valid based on a more reasonable estimate**
15 **of market prices?**

16 A. Yes. Exhibit WHH-11 compares the Energy and Capacity Caps of the Enron Plan to the
17 delivered cost of power based on the market price analysis I sponsored in PECO
18 Statement 6-R. The forecasts are taken from Exhibit WHH-9 and show the delivered
19 costs for 60, 70, 80 and 100 percent load factors based on the DRI fuels price forecast.

20 The Energy and Capacity Caps in the Enron Plan are well above the market price in early
21 years but below it in later years. Because Mr. Slater focuses on a 100 percent load factor,
22 I will begin with this result. In 1999, the Enron Cap is nearly 1¢ per kWh above the

1 market price forecast (Exhibit WHH-11). It then falls progressively, and is below the
2 market price forecast for the last three years. For lower load factors, Enron's Cap drops
3 below the market price forecast in successively earlier years. For the 60 percent load
4 factor aggregation, it is below the market price in every year beginning in 2001; for the 70
5 percent load factor aggregation it is below in every year beginning in 2002; and, for the 80
6 percent load factor aggregation it is below for all years beginning in 2004.

7 **Q. What is the consequence of a pattern of Energy and Capacity Caps that are well**
8 **above the market price in early years but below it in later years?**

9 A. In the early period, the Enron Plan would, no doubt, achieve Enron's desired objective of
10 making entry into electricity retailing profitable. Also, a substantial proportion of
11 customers would likely move to alternative suppliers. However, the problem with the
12 Enron Plan arises as a consequence of a too low cap in later years. If, as my forecast
13 indicates, the Energy and Capacity Cap falls below the cost of acquiring and delivering
14 power, then the competition that was established during the period of a very generous Cap
15 will fail. Competitive retailers will exit the market and most customers will return to the
16 default service of the PLR.

17 This scenario can be contrasted to the effect of the Partial Settlement Energy and Capacity
18 Cap. In the early years, with Caps that closely track expected market prices, customers
19 will be protected from paying above market prices. As I explained in my rejoinder
20 testimony, if prices are above the forecast, customers do not pay any more and stranded
21 cost is not over-recovered since the higher price received by PECO's generation is offset
22 by PECO's higher purchase cost as a PLR. If actual retail prices are lower, customers will

1 pay less and stranded costs will be under-recovered. I accept that these tight price caps
2 will make it harder to compete for customers than if Caps were higher. However, as Mr.
3 Freeman's testimony concerning experience with the pilots in Pennsylvania and elsewhere
4 demonstrates, competition should still occur. As the Partial Settlement Caps become
5 more generous, entry into retailing will become still more attractive.

6 In the last three years of the Partial Settlement Caps, the "headroom" between the market
7 price and cap becomes quite large. This can be thought of as providing insurance that
8 retail competition will remain viable even if wholesale prices prove significantly higher
9 than expected. Alternatively, if prices are at the forecast level, the size of the headroom
10 virtually assures that the competitive market will clear at prices below the cap. This will
11 mean that the present value of generation payments will be below the sum of the CTC/ITC
12 and the Energy and Capacity Cap. It also will mean that, by the end of the transition
13 period, the substantial majority of customers will have moved to retailers willing to sell at
14 a price lower than the Cap. It is particularly important that competition is vigorous at the
15 end of the transition period, since only vigorous competition will assure that the benefit of
16 terminating the CTC/ITC payment will go to customers rather than their suppliers.

17 **Q. In your summary, you stated that you would respond to Dr. Bohi's comments on the**
18 **relative consequences of having PECO versus Enron as the PLR. To what were you**
19 **referring?**

20 **A.** Dr. Bohi asserts that PECO will have an incumbency advantage that will make it difficult
21 for other suppliers to compete (p. 13). He further contends that PECO will have an
22 incentive to retain PLR customers whereas Enron will not (p. 16) and thereby concludes

1 that the Enron Plan's proposal that PECO not be allowed to market under its own name in
2 its service area is a pro-competitive advantage of the Enron Plan (p. 17).

3 **Q. Do you agree with these conclusions?**

4 A. No. Under the Enron Plan, Enron becomes the incumbent and the sole point of contact
5 with PLR customers. Any incumbency advantage that PECO might have will quickly pass
6 to Enron. Thus, if incumbency advantages are a competitive problem, they are equally
7 burdensome under the Enron Plan.

8 Second, Dr. Bohi asserts that Enron will desire to move customers away from PLR status
9 because of its undertaking to not mark up its cost to serve them, whereas PECO would
10 seek to retain them. Enron seeks to have the matter both ways. On the one hand, Enron
11 argues that the Partial Settlement's Energy and Capacity Cap is too low, such that serving
12 customers is unprofitable. On the other hand, Enron asserts (but without any evidence)
13 that PECO would seek to retain as much of this unprofitable load as possible. Clearly, if
14 the Cap price is in fact below the market price of generation, it would be in PECO's
15 interest to move customers off of the capped rate into the competitive sector.

16 Third, the suggestion that Enron's requirement that PECO be forbidden from selling to
17 competitive customers using its own name is pro-competitive is not consistent with
18 adoption of the Enron Plan. Under the Enron Plan, Enron Energy Services Power is the
19 incumbent. PECO no longer has a basis for any contact with what are now Enron's
20 customers. Yet, Enron would forbid PECO's use of its own name as a competitive
21 marketer. At the same time, EPMI would remain free to use the Enron name -- the name
22 of the incumbent supplier -- in marketing. If Enron wishes to be consistent in its position,

1 Enron's subsidiaries should similarly be barred from using the Enron name in any area in
2 which it is the incumbent.

3 **Q. Does this conclude your testimony?**

4 **A. Yes.**

Estimated Impact of Enron's Price Escalation on Generating Revenues

Year	Energy Output (MWh)	WHH-6		1.3% Escalation Rate		Decrease in Revenues	
		(¢/kWh)	(Nominal \$)	(¢/kWh)	(Nominal \$)	(Nominal \$)	(Sept. 98 \$)
2001	40,277,982	3.26	1,313,062,213	3.26	1,313,062,213	0	0
2002	40,561,660	3.39	1,375,040,274	3.30	1,339,500,148	(35,540,126)	(24,748,630)
2003	40,847,336	3.53	1,441,910,961	3.35	1,366,470,400	(75,440,561)	(48,324,525)
2004	41,135,023	3.69	1,517,882,349	3.39	1,393,983,652	(123,898,697)	(73,006,232)
2005	41,333,593	3.83	1,583,076,612	3.43	1,418,922,059	(164,154,553)	(88,976,769)
2006	41,533,121	3.98	1,653,018,216	3.48	1,444,306,595	(208,711,621)	(104,064,076)
2007	41,733,612	4.14	1,727,771,537	3.52	1,470,145,254	(257,626,283)	(118,161,195)
2008	41,935,071	4.31	1,807,401,560	3.57	1,496,446,174	(310,955,386)	(131,193,795)
2009	42,137,502	4.49	1,891,973,840	3.61	1,523,217,600	(368,756,240)	(143,114,980)
2010	42,340,911	4.67	1,977,320,544	3.66	1,550,467,996	(426,852,547)	(152,389,168)
2011	42,545,302	4.87	2,071,956,207	3.71	1,578,205,907	(493,750,301)	(162,148,934)
2012	42,750,679	5.08	2,171,734,493	3.76	1,606,440,024	(565,294,469)	(170,770,152)
2013	42,957,047	5.29	2,272,427,786	3.81	1,635,179,235	(637,248,552)	(177,082,885)
2014	43,164,412	5.51	2,378,359,101	3.86	1,664,432,621	(713,926,480)	(182,495,318)
2015	43,372,778	5.75	2,493,934,735	3.91	1,694,209,351	(799,725,384)	(188,048,391)
Discount Rate		0.0871					
NPV of Difference on September 1, 1998						(1,764,525,047)	
NPV of After Tax Difference on September 1, 1998						(1,058,715,028)	

**Comparison of Enron's Cap to Average Retail Price
Assuming Different Load Factors
Using DRI Fuel Forecasts**

Year	Enron's Cap (¢/kWh)	60% Load Factor		70% Load Factor		80% Load Factor		100% Load Factor	
		Average Retail Price (¢/kWh)	Difference (¢/kWh)						
1999	3.48	2.68	0.80	2.62	0.86	2.58	0.90	2.51	0.97
2000	3.48	3.08	0.40	2.98	0.50	2.91	0.57	2.80	0.68
2001	3.54	3.66	(0.12)	3.50	0.04	3.37	0.17	3.20	0.34
2002	3.63	3.83	(0.20)	3.66	(0.03)	3.53	0.10	3.35	0.28
2003	3.72	4.00	(0.28)	3.82	(0.10)	3.69	0.03	3.51	0.21
2004	3.81	4.17	(0.36)	3.99	(0.18)	3.86	(0.05)	3.66	0.15
2005	3.89	4.35	(0.46)	4.16	(0.27)	4.02	(0.13)	3.83	0.06
2006	3.98	4.53	(0.55)	4.34	(0.36)	4.19	(0.21)	3.99	(0.01)
2007	4.08	4.72	(0.64)	4.51	(0.43)	4.36	(0.28)	4.15	(0.07)
2008	4.16	4.91	(0.75)	4.70	(0.54)	4.55	(0.39)	4.33	(0.17)

BEFORE THE

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R-973953

KJR

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

DUCKETED
NOV 12 1997

TESTIMONY

OF

J. GREGORY SIDAK

DOCUMENT
FOLDER

REGARDING THE ENRON CHOICE PLAN

Regarding Enron's Proposed Competitive Safeguards

November 7, 1997

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TESTIMONY OF J. GREGORY SIDAK

REGARDING THE ENRON CHOICE PLAN

1

2 Q. What is your name?

3 A. My name is J. Gregory Sidak.

4

5 Q. Did you previously testify in this proceeding?

6 A. Yes. I provided prefiled direct testimony (PECO Statement No. 10) on April 1, 1997,
7 and prefiled rebuttal testimony (PECO Statement No. 10-R) on July 18, 1997.

8

9

PURPOSE AND SCOPE OF THE TESTIMONY

10 Q. What is the purpose of your testimony?

11 A. The purpose of my testimony is to address deficiencies in the code of conduct that Enron
12 has proposed that this Commission impose on PECO pursuant to Enron's "Choice
13 Plan."¹ Enron witness Harry J. Kingerski, in his testimony in support of the "Choice
14 Plan," states that the competitive safeguards proposed by Enron pursuant to its "Choice
15 Plan" are substantially identical to the competitive safeguards previously advocated by
16 Enron in this proceeding.² In defense of those previously advocated competitive
17 safeguards, Enron Power Marketing Inc. submitted on October 10, 1997, the surrebuttal

18 1. The code of conduct that Enron proposes appears as Rule 23, Competitive Safeguards, in the proposed
19 "PECO Energy Company Electric Service Tariff," submitted as Exhibit 1 of Enron's petition for approval of its
20 "Choice Plan."

21 2. Direct Testimony of Harry J. Kingerski on behalf of Enron Energy Services Power, Inc., October 24, 1997
22 (hereinafter "Kingerski Direct Testimony").

1 testimonies of Professor John W. Mayo and Mr. Michael D. Dirmeier.³ In those
2 testimonies, Professor Mayo and Mr. Dirmeier continue to argue that, at the outset of
3 restructuring, PECO will possess significant market power and that this Commission
4 therefore needs to take far-reaching steps to mitigate that alleged market power.⁴ In this
5 testimony, I explain why their approach, now embodied in Enron's "Choice Plan," is
6 extreme and unwarranted.

7
8 **CONCLUSION**

9 **Q. What are your major conclusions concerning the code of conduct proposed in the**
10 **Enron "Choice Plan," and the testimonies of Mr. Kingerski, Professor Mayo, and**
11 **Mr. Dirmeier?**

12 **A.** Actual and potential competition, the backstop of the antitrust laws, and the code of
13 conduct developed by the Pennsylvania Public Utility Commission's Competitive
14 Safeguards Working Group will protect consumers in Pennsylvania's newly unregulated
15 retail markets.

16 3. Surrebuttal Testimony of Dr. John W. Mayo on behalf of Enron Power Marketing, Inc., Docket No. R-
17 00973953 re: PECO Restructuring, October 10, 1997 (hereinafter "Mayo Surrebuttal Testimony"); Surrebuttal
18 Testimony of Michael D. Dirmeier on behalf of Enron Power Marketing, Inc., Docket No. R-00973953 re: PECO
19 Restructuring, October 10, 1997 (hereinafter "Dirmeier Surrebuttal Testimony").

20 4. Professor Mayo and Mr. Dirmeier originally set out their positions in their direct testimony on June 20, 1997.
21 Direct Testimony of Dr. John W. Mayo on behalf of Enron Power Marketing, Inc. (June 20, 1997); Direct
22 Testimony of Michael D. Dirmeier on behalf of Enron Power Marketing, Inc. (June 20, 1997). I rebutted that
23 testimony on July 18, 1997. Rebuttal Testimony of J. Gregory Sidak on behalf of PECO Energy Co. (July 18,
24 1997).

1 **I. ENRON'S PROPOSED CODE OF CONDUCT FOR TRANSACTIONS**
2 **BETWEEN PECO AND ITS AFFILIATES IS EXTREME AND**
3 **WOULD HARM CONSUMERS**
4
5

6 **Q. Would the competitive safeguards that Enron proposes in its "Choice Plan" protect**
7 **or harm consumer welfare?**

8 A. Rule 23 would harm consumer welfare. First, Rule 23 would remove valuable product
9 attributes from the marketplace, thus limiting customers' choices. Second, as I will
10 explain in greater detail in part II of this testimony, some provisions appear to be
11 designed solely to "game" the regulatory process so that Enron would achieve artificial
12 advantages over PECO.

13
14 **Q. Are the proposed restrictions in Rule 23 of Enron's proposed tariff consistent with**
15 **what Enron and its witnesses have previously advocated in this proceeding?**

16 A. Yes. In his direct testimony of October 24, 1997, Mr. Kingerski stated that the
17 competitive safeguards embodied in Rule 23 of Enron's proposed tariff "are substantially
18 identical to the competitive safeguards filed previously by Enron in this case and in other
19 jurisdictions."⁵

20
21 **Q. How do you understand that statement by Mr. Kingerski to relate to the direct**
22 **testimony and rebuttal testimony by Professor Mayo and Mr. Dirmeier?**

23 A. I understand Mr. Kingerski to be saying that Rule 23 of Enron's proposed tariff

24 5. Kingerski Direct Testimony at 10, lines 4-5.

1 embodies the principles advocated by Professor Mayo and Mr. Dirmeier in their direct
2 testimony and rebuttal testimony, previously filed in this proceeding.

3
4 **A. Enron Advocates an Extreme and Insupportable Position**
5 **Concerning PECO's Use of Its Brand Name**
6

7 **Q. How would Enron's proposed code of conduct harm consumer welfare?**

8 A. Rule 23.10, which Enron includes in its proposed code of conduct, would harm
9 consumers. Rule 23.10, in its entirety, reads:

10 **23.10 Corporate Identification.** The affiliate EGS [PECO's affiliated
11 electric generation supplier] shall not use the name, logo, service mark,
12 trademark, or trade name of the Company [PECO].

13 In other words, Enron would have the Commission impose a PECO tariff that would
14 forbid PECO from using its attributes such as its brand name to market its generation
15 services in what would otherwise be a competitive marketplace. A mandate of this type
16 would harm consumers because it would deprive them of the opportunity of availing
17 themselves of the attributes of PECO's service that they have considered valuable.

18
19 **Q. Does Enron also seek to apply this prohibition on use of the PECO name to**
20 **divisions as well as affiliates?**

21 A. Yes. Under the "Choice Plan," Enron would require that PECO participate in
22 competitive service offerings only through an affiliate separated from its distribution
23 company.⁶

24 6. Direct Testimony of Steven J. Kean on behalf of Enron Energy Services Power, Inc., Oct. 24, 1997, at 21,
25 lines 16-17.

1 Q. **What testimony have Enron's witnesses submitted in support of such a restriction?**

2 A. In his surrebuttal testimony, Mr. Dirmeier states that "the established reputation,
3 goodwill and brand loyalty of an incumbent electric utility is the direct result of its
4 providing regulated monopoly service under quality of service guidelines established, in
5 this jurisdiction, by the Pennsylvania Public Utility Commission; these assets were not
6 obtained by PECO in the competitive marketplace, but were financed virtually entirely
7 by ratepayers."⁷

8

9 Q. **Is Enron's assessment, as articulated by Mr. Dirmeier, within the mainstream of
10 economic and legal analysis on public utility regulation?**

11 A. No. Enron's hostility to, and proposal for the deprivation of, the private property of a
12 regulated utility is an extreme and insupportable position that would harm consumers.

13

14 Q. **On what basis do you reach that conclusion?**

15 A. Three reasons support my conclusion. First, the benefits that a brand name can create
16 for a firm flow from investment in reputation, not from a state-conferred monopoly. A
17 state-conferred monopoly is neither a necessary nor a sufficient condition for a regulated
18 firm to create a valuable brand name. A regulated firm that fails to invest in providing
19 reputable service to its customers will not have a valuable brand name and service mark,
20 even if the utility holds a statutory monopoly to serve its customers.

21 Second, it is not clear in either theory or practice that a particular utility's brand

22 ⁷. Dirmeier Surrebuttal Testimony at 15, lines 3-7.

1 name will necessarily be a net benefit. Consumers (and financial markets) can just as
2 easily impute bad quality to a firm's brand name.⁸ A number of electric utilities have
3 changed their names in recent years: Enova (San Diego Gas & Electric), SCEcorp
4 (Southern California Edison), Conectiv (Delmarva Power), and Entergy (Louisiana
5 Power & Light). Obviously, those companies concluded that their former brand names
6 would be less advantageous in marketing their services than entirely new brand names
7 would be. The practical effect of section 23.10 of Enron's proposed tariff and of Mr.
8 Dirmeier's proposed restrictions on PECO's continued use of its brand name would be
9 to raise PECO's own marketing costs *only if the PECO brand name were a valuable*
10 *signal of quality to consumers*. If there were any serious question among PECO's
11 management concerning the marketing value of PECO's brand name, the company would
12 have sufficient incentive on its own to market its services under a new and different
13 name.

14 Third, Enron, through the testimony of Mr. Dirmeier, seems to imply that an
15 electricity customer in PECO's service territory has acquired an ownership interest in
16 PECO's brand name by virtue of his or her having paid regulated rates for service from
17 that investor-owned electric utility. Such reasoning is fallacious, for it fundamentally
18 misapprehends the legal and economic significance, traceable to *Munn v. Illinois*⁹ and
19 to earlier English common law, of dedicating *private* property to a public purpose.
20 Surely, no reasonable person would argue that a customer could expect to have acquired

21 8. See Jonathan M. Karpoff & John R. Lott, Jr., *The Reputational Penalty Firms Bear from Committing*
22 *Criminal Fraud*, 36 J.L. & ECON. 757 (1993); Michael T. Maloney & Mark L. Mitchell, *Crisis in the Cockpit? The*
23 *Role of Market Forces in Promoting Air Travel Safety*, 32 J.L. & ECON. 329 (1989).

24 9. 94 U.S. 113, 125-26 (1877).

1 an ownership interest in Texaco's brand name by virtue of having purchased gasoline
 2 from that company over a period of years.¹⁰ To be sure, there are significant
 3 differences between a regulated utility and an unregulated enterprise, but the principle
 4 that investors rather than customers own the firm's intangible assets and intellectual
 5 capital is not one of them.¹¹

6
 7 **Q. Has Enron proposed that a competitive affiliate or division of PECO be required**
 8 **to compensate PECO for the use of PECO's name?**

9 **A. Yes. Through the testimony of Mr. Dirmeier, Enron has made such a proposal.**¹²

10
 11 _____
 12 10. In addition, courts have explicitly rejected such a proposition. In 1996, the Minnesota Supreme Court
 13 reasoned in *Minnegasco v. Minnesota Public Utility Commission*:

14 It is . . . clear that the value of a gas utility's name and reputation, as represented by good
 15 will, is generally not considered to be a "cost" of rendering utility service and that the costs
 16 associated with creating the good will have not been borne by the ratepayers. Certainly,
 17 ratepayers are involved in building a gas utility's good will when they purchase utility service.
 18 However, ratepayers are no different in that regard than any consumer who purchases a
 19 product from a business. The simple act of purchasing a product or service from a business
 20 does not mean that the consumer becomes an owner of any of the business' assets. Nor does
 21 it mean that the consumer bears the cost of creating good will. The relationship between the
 22 ratepayer, as a consumer, and the gas utility, as a business, does not change just because the
 23 gas utility provides regulated utility services. The ratepayer remains a consumer and the assets
 24 remain the property of the utility.

25
 26 549 N.W.2d 904, 909 (Minn. 1996). Similarly, Justice Thurgood Marshall observed in 1986 in his concurrence in
 27 *Pacific Gas & Electric Company v. Public Utilities Commission of California*:

28
 29 [A] consumer who purchases food in a grocery store is "paying" for the store's rent, heat,
 30 electricity, wages, etc., but no one would seriously argue that the consumer thereby acquires
 31 a property interest in the store. That the utility passes its overhead to ratepayers at a rate fixed
 32 by law rather than the market cannot affect the utility's ownership of its property

33
 34 475 U.S. 1, 22 n.1 (1986).

35 11. See J. GREGORY SIDAK & DANIEL F. SPULBER, DEREGULATORY TAKINGS AND THE REGULATORY
 36 CONTRACT: THE COMPETITIVE TRANSFORMATION OF NETWORK INDUSTRIES IN THE UNITED STATES 113-29
 37 (Cambridge University Press 1997).

38 12. Dirmeier Direct Testimony at 22, lines 11-17.

1 Q. **Should a PECO affiliate or division of PECO be required to compensate PECO for**
2 **the use of PECO's name?**

3 A. No. Such compensation would be simply an added cost that PECO's competitive affiliate
4 or division—but no other firm—would have to recover through the prices that it charges
5 to consumers. Such a rule, therefore, would artificially “raise a rival's costs” and reduce
6 competition.¹³

7
8 Q. **Have the federal antitrust authorities commented on the competitive effects of the**
9 **use of a parent utility's brand name and service mark by a competitive affiliate or**
10 **division?**

11 A. Yes. In a 1995 report that it jointly wrote with the U.S. Department of Energy, the
12 Federal Trade Commission (FTC) addressed this question as follows:

13 If economies of scope give the utility a competitive advantage in an
14 unregulated business, consumers of both the regulated and unregulated products
15 would be better off by allowing the utility to use those economies. To be sure,
16 allowing the utility to take advantage of economies of scope and enter
17 unregulated businesses will threaten competitors in those businesses. But
18 excluding the utility from those non-regulated businesses for the sake of
19 providing a “level playing field” for the remaining firms may lead to higher
20 prices to consumers.¹⁴

21
22 Later in the same report, the FTC directly applied that analysis to the utility's brand
23 name and reputation: “If there are economies of scale in developing reputation, taking
24 advantage of these economies is in consumers' interests.”¹⁵

25 13. See Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to*
26 *Achieve Power over Price*, 96 YALE L.J. 209 (1986).

27 14. U.S. DEPARTMENT OF ENERGY, REPORT TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES ON
28 THE CURRENT STATUS AND LIKELY IMPACTS OF INTEGRATED RESOURCE PLANNING 66 (Mar. 1995).

29 15. *Id.* at 69 n.35.

1 Q. Did the Competitive Safeguards Working Group consider prohibiting PECO's
2 affiliated electric generation supply unit from using PECO's name, logo, service
3 mark, trademark, or trade name?

4 A. Yes. The Competitive Safeguards Working Group explicitly considered and rejected such
5 a proposal made by Enron.¹⁶

6

7 **B. Enron Incorrectly Argues That the Code of Conduct**
8 **Should Consider PECO's Historic Position as the Sole**
9 **Provider of Electricity in Its Service Area**

10

11 Q. What is the essential difference between PECO and Enron as regards the proper
12 reach of a code of conduct?

13 A. Enron contends that, in the absence of the kind of code of conduct that it recommends
14 (such as Rule 23), PECO would have significant unconstrained market power simply due
15 to incumbency when open access commences.¹⁷ I do not agree.

16

17 Q. What does Enron contend would be PECO's sources of market power when open
18 access commences?

19 A. Enron asserts, through the testimony of Professor Mayo and Mr. Dirmeier, two reasons
20 to support its conclusion that PECO would have significant market power at the outset
21 of restructuring: (1) PECO's historic position as the sole provider of electricity in its
22 service territory and (2) PECO's continued ownership of distribution lines.¹⁸ I believe

23 16. PENNSYLVANIA PUBLIC UTILITY COMMISSION, FINAL REPORT TO THE COMMISSION OF THE COMPETITIVE
24 SAFEGUARDS WORKING GROUP 4 (Oct. 6, 1997).

25 17. See Dirmeier Surrebuttal Testimony at 4, lines 6-16; Mayo Surrebuttal Testimony at 5, lines 7-20.

26 18. See Dirmeier Surrebuttal Testimony at 3, lines 19-22; Mayo Surrebuttal Testimony at 16, lines 1-4.

1 that Enron is incorrect when it argues that the first of those factors would produce
2 market power for PECO in the future and should be addressed in the code of conduct.
3 With regard to the second factor, I believe that the Pennsylvania Commission's
4 Competitive Safeguards Working Group has crafted a code of conduct that answers all
5 of Enron's concerns about competitive abuses that might result from PECO's continued
6 ownership of distribution lines.

7

8 **Q. Does PECO propose a code of conduct based on the principles developed by the**
9 **Competitive Safeguards Working Group?**

10 A. Yes. PECO witness Brian D. Crowe sponsors a code of conduct that adopts the
11 principles developed by the Competitive Safeguards Working Group.¹⁹

12

13 **Q. Should a code of conduct limit PECO's ability to use attributes such as the**
14 **reputation and goodwill coming from its historic position as the sole provider of**
15 **electricity in its service territory?**

16 A. No. To the extent that attributes of that sort confer an initial competitive advantage on
17 PECO, the advantage would be sustainable only if it is procompetitive. By a
18 "procompetitive advantage" I mean an advantage that derives from PECO's product and
19 service attributes that have net positive value to consumers. Such a competitive
20 advantage is not a barrier to entry, for it can be replicated by an equally efficient
21 competitor. Moreover, if the advantage is due only to PECO's historic position as the

22 ¹⁹. Rebuttal Testimony of Brian D. Crowe on behalf of PECO Energy Company (Nov. 7, 1997).

1 sole provider of electricity and otherwise has no value to consumers, the advantage will
2 quickly dissipate in the face of new competition.

3

4 **Q. Do Enron witnesses Professor Mayo and Mr. Dirmeier disagree with you on this**
5 **point?**

6 A. Yes. Professor Mayo and Mr. Dirmeier would prohibit PECO's competitive division or
7 affiliate from using PECO's attributes such as name and reputation to which consumers
8 ascribe value.²⁰

9

10 **Q. Should Enron's power marketing affiliate or division be prohibited from using**
11 **Enron's name, logo, service mark, trademark, or trade name?**

12 A. No, for the same reasons that PECO's competitive affiliate or division should not be so
13 prohibited. Just as placing such restrictions on PECO would harm competition, so too
14 would placing such restrictions on Enron.

15

16 **C. Enron Ignores That Actual Competition**
17 **Will Protect Consumers in Unregulated Markets**

18

19 **Q. Would you rely solely on the antitrust laws to protect consumers in the newly**
20 **unregulated markets?**

21 A. No. The antitrust laws are a default safeguard against anticompetitive conduct by an
22 incumbent utility in the open-access environment. Once a code of conduct that addresses

23 ²⁰. See Dirmeier Surrebuttal Testimony at 14, line 23, to page 15, line 20; Professor Mayo's adoption of Mr.
24 Dirmeier's position at Mayo Surrebuttal Testimony at 16, lines 1-10.

1 PECO's continued ownership of distribution lines is in place, the first line of defense
2 against anticompetitive conduct in the newly unregulated markets, as in any unregulated
3 market, is the force of competition itself—from the many large, capable firms that have
4 applied to provide electric service in Pennsylvania, as indicated in Table One on page
5 11 of my rebuttal testimony. Those entrants, such as Enron, are not wallflowers. They
6 have significant resources and capabilities, including brand recognition and reputation.

7

8 **Q. Does Enron address the significance of competitive entry as a constraint on PECO's**
9 **ability to act anticompetitively?**

10 **A. No.** Nowhere in the testimonies of Mr. Kingerski, Professor Mayo, or Mr. Dirmeier
11 does Enron acknowledge that many qualified entrants are poised to become retail
12 suppliers of electricity in Pennsylvania. Enron simply ignores the competitive impact of
13 entrants and then urges this Commission to handicap PECO, much to the detriment of
14 consumers in Pennsylvania and to the benefit only of particular competitors.

15

16 **Q. Does Enron acknowledge that the Pennsylvania Public Utility Commission's**
17 **Competitive Safeguards Working Group has already produced a consensus code of**
18 **conduct that responds to the competitive concerns that it raises?**

19 **A. No,** it does not.

1 **II. ENRON'S PROPOSED CODE OF CONDUCT**
2 **WOULD IGNORE THE RELEVANT TRANSACTIONS**
3 **ENVISIONED BY ENRON'S "CHOICE PLAN"**
4

5 **Q. Are there other serious problems with the code of conduct, as set out in Rule 23,**
6 **that Enron proposes as part of its "Choice Plan"?**

7 A. Yes. Enron's proposed code of conduct would not apply to all of the relevant
8 relationships and transactions envisioned by Enron's "Choice Plan."
9

10 **Q. What is the relationship that Enron overlooks but should address in its proposed**
11 **code of conduct?**

12 A. The relevant relationship is the one between Enron (as default provider) and its own
13 power marketing unit.
14

15 **Q. Why does a code of conduct need to address that relationship?**

16 A. Under the "Choice Plan," Enron would step into PECO's shoes as the new default
17 provider. Enron would thus have access to the same information that PECO would have
18 had were it to remain as both the default provider and a retail supplier of electricity.

19 Section 2.6 of Enron's proposed MBC Services Agreement provides:

20 The Parties acknowledge and understand the EESP [Enron], as the default
21 service provider, will require access to metering, billing, collection and other
22 information relating to the Default Service Customers and the MBC Service.
23 PECO shall promptly furnish EESP [Enron] with complete and accurate
24 information in this respect during the Term.
25

26 Under those circumstances, it would be Enron—not PECO—that would have the
27 incentive and opportunity to commit anticompetitive abuses of customer information.

1 Earlier in this proceeding, Enron itself argued, through the testimony of Professor Mayo
2 and Mr. Dirmeier, that such anticompetitive abuse is a serious concern that needs to be
3 addressed in a code of conduct. It is therefore a self-serving non sequitur for Enron's
4 "Choice Plan" to propose limitations only on *PECO's* unregulated transfer of customer
5 information. Under Enron's "Choice Plan," PECO would be relegated to the role of a
6 subcontractor. The appropriate focus of competitive safeguards concerning information
7 transfer would be on *Enron's* discriminatory use of such information. In short, it would
8 be inconsistent and hypocritical for Enron not to offer, as a condition of its "Choice
9 Plan," to abide by all of the stringent competitive safeguards that it argued would be
10 necessary to impose on PECO.

11
12 **Q. What do you conclude about Enron's strategy in proposing Rule 23?**

13 **A.** Through Rule 23, Enron's "Choice Plan" seeks to "game" the regulatory process. That
14 objective becomes clear when one compares the current proceeding to what has
15 happened over the past year in the state PUC arbitrations concerning unbundled access
16 to the local telephone network. Enron's "Choice Plan" is a variation on "resale" of local
17 telephone services by a major entrant, such as AT&T. It is more aggressive than
18 anything observed in local telephony, however, because Enron proposes to be the
19 provider of last resort and to eliminate the incumbent utility (PECO) as a competitor and
20 eradicate its brand name.

21
22 **Q. Would other features of Enron's "Choice Plan" facilitate this strategic use of the**

1 **regulatory process by Enron?**

2 A. Yes. Section 2.6 of Enron's proposed MBC Services Agreement provides:

3 PECO's name, trademarks, tradenames, service marks or logos shall not appear
4 on the bills or envelopes, and Default Service Customers shall make their
5 payments to EESP [Enron] or such entity of Affiliate as EESP [Enron] may
6 designate.

7
8 This provision of Enron's "Choice Plan" combined with Rule 23.10 would produce a
9 result that would be analogous to the following in telecommunications: Imagine that
10 AT&T took over all of Bell Atlantic's retail services in Pennsylvania on a wholesale
11 basis, rebranded them as AT&T services, and convinced the Commission to prohibit Bell
12 Atlantic from marketing any competitive, unregulated services under the Bell Atlantic
13 name. Clearly, the substitution of one firm for another in that manner would not increase
14 competition.

15

16 **Q. The MBC Services Agreement also mentions "Competitive Safeguards" and states,**
17 **at Article 2.2, that "PECO and EESP shall comply with any and all applicable**
18 **Competitive Safeguards." Does that provision address the inadequate focus of**
19 **Enron's proposed code of conduct?**

20 A. No. As defined in the MBC Services Agreement, "Competitive Safeguards" would only
21 govern the relationship between PECO and Enron. That definition would fail to cover
22 the key relationship that I discussed above—namely, the relationship between Enron and
23 its competitive power marketing affiliate. Thus, my criticism, in this respect, of Rule
24 23 is also applicable to the so-called "Competitive Safeguards" contained in Enron's
25 proposed MBC Services Agreement.

1 Q. Does this conclude your testimony?

2 A. Yes.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NOV 7 1997
PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

R- 973953

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY
OF

DOCUMENT
FOLDER

WILLIAM F. SUNDERMEIR

REGARDING THE ENRON CHOICE PLAN

DOCKETED

NOV 12 1997

Regarding Enron's Proposed Electric Delivery Service Tariff,
Proof of Revenue, and Unbundling of Metering, Billing, and Customer Service

November 7, 1997

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TESTIMONY OF WILLIAM F. SUNDERMEIR

7
8
9

I. INTRODUCTION AND PURPOSE OF TESTIMONY

10 **Q. Please state your full name and address.**

11 A. William F. Sundermeir, 2821 Bayland Drive, Ocean City, NJ 08226.

12
13 **Q. Did you previously prepare testimony in this proceeding?**

14 A. Yes. I submitted PECO Statement Nos. 13 and 13-R.

15
16 **Q. Mr. Sundermeir, what is the purpose of your testimony?**

17 A. The purpose of my testimony is to respond to certain features of the Plan. Enron
18 has proposed ("Enron Plan") as an alternative to the Partial Settlement.

19 Specifically, I will:

- 20
- 21 • Present a critique of the "Electric Delivery Service Tariff" (the "Enron Tariff")
22 that Enron has proposed through the testimony of Harry J. Kingerski;
 - 23 • Respond to certain contentions of Enron witness Yolanda Lopez regarding the
24 proofs of revenue supporting the Partial Settlement; and
 - Present a critique of the proposed unbundling of so-called revenue cycle
services (metering, billing, collection, and customer service) by Enron witness
Paul D. Reising.

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**II. CRITIQUE OF ENRON'S PROPOSED
ELECTRIC DELIVERY SERVICE TARIFF**

Q. Please describe Enron's approach to developing the proposed Electric Delivery Service Tariff.

A. Enron witness Harry Kingerski explains Enron's approach in his testimony. Mr. Kingerski states that Enron has completely recast PECO's current Tariff so that competitive electric generation suppliers (EGSs) and not current PECO customers (whom Enron refers to as "end-users") are the recipient of services. That is, EGSs, and not the ultimate users of electricity, are PECO's customers under the Enron Tariff. EGSs would obtain regulated "wires" distribution services from PECO as agents for their energy supply customers, and would in turn provide functions directly to consumers on an unregulated basis including some - - but perhaps not all - - "revenue cycle" services such as metering, meter reading, billing, and customer service.

Q. Does PECO agree with this approach?

A. No. As explained by Mr. Brian D. Crowe in his testimony, PECO does not believe that it is in the public interest to structure the tariff to enable unbundling of so-called "revenue cycle services." PECO's position remains that these services should not be provided competitively but should be provided by the regulated distribution company. For purposes of my critique of the Enron Tariff, however, I have assumed Enron's proposed tariff structure.

1 Q. **What else does Mr. Kingerski say about Enron's approach to the**
2 **development of the Enron Tariff?**

3 A. Mr. Kingerski claims that his goal was to minimize changes to PECO's Tariff and
4 that most of the changes "serve only to introduce the concept of electric
5 generation suppliers ("EGSs") into PECO's System."
6

7 Q. **Do you agree that the changes Enron has proposed serve this limited purpose**
8 **and have no other impact?**

9 A. No. As I will demonstrate in detail in the following testimony, under the guise of
10 merely interjecting EGSs into the mix, Enron has made numerous proposals to
11 handicap PECO and advantage EGSs to the detriment of consumers. Under the
12 Enron Tariff, numerous protections and rights that customers currently enjoy, and
13 have enjoyed for many years, will no longer be available. As such, the Choice Plan
14 is anti-consumer and should be rejected by the Commission.

15
16 In fact, as many of Mr. Kingerski's proposed tariff changes contravene the
17 Competition Act or Chapter 56 consumer protections, undermine reliability, and
18 restrict or eliminate customer options, they are not, as he contends, "in line with
19 the objectives and purpose of the Act." For example:

20

- 21 • Enron would force customers to deal directly with EGSs instead of PECO
22 for virtually all matters, evading Commission regulation, raising public
23 safety concerns and limiting customer choice;

- 1 • EGSs would be able to rebundle PECO’s regulated non-generation related
2 charges and effectively charge “whatever the market will bear,” thus
3 subverting the Competition Act’s non-generation charge rate caps and
4 violating the Act’s intent;
- 5 • EGSs would not have to provide all the information on customer bills
6 required by Chapter 56;
- 7 • EGSs would be able to charge end-users more than the late payment
8 charges contained in our current tariff;
- 9 • EGSs would take away customers’ right to choose among available rate
10 schedules under which customers would take distribution service and the
11 corollary assistance PECO provides upon request to help customers select
12 the most favorable distribution rate classification;
- 13 • EGSs could discontinue service on five days notice and jettison the
14 customer to Default Service provided by the provider of last resort;
- 15 • Default Service options would be substantially limited for industrial
16 customers;
- 17 • Universal Service (i.e. CAP Rate) customers would lose their ability to
18 shop for energy if they wanted the benefits of lower universal service rates;
- 19 • Enron would remove important load management and conservation
20 provisions such as master metering, the Cooling Thermal Storage Service
21 Rider, and the Electric Vehicle Charging Rider;

- 1 • Enron would deny PENN DOT and the City of Philadelphia the current
2 benefits they receive through the “outage allowance” on their street lighting
3 bill;
- 4 • Enron would limit the application of the Employment and Economic
5 Recovery Rider, which encourages businesses to increase employment and
6 promote economic development;
- 7 • Enron would eliminate Rule 4.6, and the Economic Efficiency and the
8 Incremental Process Riders, all of which provide the flexibility to discount
9 rates so as to promote economic development;
- 10 • Enron would limit the residential Solar tariff option by eliminating the
11 Company’s ability to charge for a metering option;
- 12 • Enron would eliminate the Transformer Rental, Curtailment HT, and Off
13 Peak Riders, thus not only restricting customer choice, but also causing
14 significant increases in customers’ bills or investments.
- 15 • Enron would eliminate PECO’s ability to sell supplementary, back-up and
16 maintenance power to self-generators, thus not only limiting customer
17 choice but also violating provisions of federal law; and,
- 18 • Enron would remove benefits that PECO customers currently enjoy under
19 the Night Service Riders, the Temporary Service Rider, and Capacity
20 Reservation Rider.

21
22 I will describe these problems in greater detail later in my testimony.

1 **Q. Are consumers the only victims of the changes Enron has proposed in its**
2 **Tariff?**

3 A. No. Enron has also included some revisions that would unfairly benefit EGSs and
4 harm PECO. Although Enron has recast the tariff so that the EGS, and not PECO,
5 is the *provider* of certain services and the EGS, and not the customer, is the
6 *recipient* of certain services, Enron's revisions allow EGSs to avoid certain costs
7 and obligations to the disadvantage of both customers and PECO. The
8 Commission should reject Enron's attempt to unlevel the playing field in favor of
9 EGSs by rejecting the Choice Plan.

10

11 **I. Provisions In Enron's Tariff That Are Anti-Consumer**

12

13 **Q. Rule 17.2(b) of Enron's proposed Tariff provides that an EGS may either**
14 **separately state PECO charges for regulated distribution service or**
15 **incorporate them into the EGS billing. Is this acceptable?**

16 A. No. If an EGS does not separately state all charges, the EGS has essentially
17 rebundled the bill, this violates the spirit of the Competition Act because it makes
18 it impossible for consumers to determine who had charged what. This deprives
19 consumers of the information needed to choose an EGS through meaningful
20 comparison of EGS offerings. In marked contrast, the Partial Settlement would
21 assure unbundled billing, thus providing consumers the information they need to
22 make informed choices.

1 Q. **Does the Enron Tariff contain any provision requiring an EGS to comply**
2 **with the rate caps when the EGS' bill includes PECO's regulated services?**

3 A. I can find none. Enron Rule 17.2, which covers billing, contains no provision
4 requiring that the EGS' rebundled bill contain charges that comply with the rate
5 caps. My interpretation of the rule is that an EGS could charge consumers as
6 much as it wants through rebundling of the bill, effectively turning regulated
7 pricing for non-generation service into unregulated pricing. The Partial
8 Settlement, however, clearly requires PECO to observe the Competition Act's
9 mandated rate caps.

10

11 Q. **Rule 5 of PECO's current tariff contains consumer credit-protections such as**
12 **limits on customer deposits, return of deposits and interest rate limitations on**
13 **finance charges. Does the Enron Tariff include similar safeguards for**
14 **consumers?**

15 A. No. Enron's proposed Rule 24 is similar, but would only apply to consumers
16 receiving default service. Accordingly, other consumers would be subject to the
17 unregulated credit policies of their EGS. The Enron Tariff contains no provision
18 requiring EGSs to comply with PECO's current consumer credit protections and
19 fails to describe any credit protections for customers who choose an EGS. Enron,
20 therefore, is seeking to deprive consumers of the significant credit protections they
21 now have under the current PECO Tariff and would continue to have under the
22 Partial Settlement.

- 1 **Q.** **To focus on some specific examples, Enron’s proposed Rule 17.1(b) provides**
2 **that the EGS must pay a late payment charge of 1 ½% to PECO if not paid**
3 **by the due date. Does Enron limit late payment charges for consumers?**
- 4 **A.** Enron only specifies limitations on late payment charges for Default Service
5 customers. As no such protection exist for any other consumers, an EGS could
6 impose higher charges on such customer in contravention of their current rights
7 and their continued rights under the Partial Settlement.
- 8
- 9 **Q.** **Proposed Rule 17.2(d) gives each EGS the right to establish its own policies**
10 **with regard to returned check charges, interest on late payments, customer**
11 **deposits, payment terms, remittance termination policies and the like. As**
12 **these policies would apply to monies collected for PECO’s regulated services**
13 **is it appropriate to allow each EGS such options?**
- 14 **A.** No. The Commission’s Chapter 56 consumer protection regulations already cover
15 many matters listed in this rule. In general, the Enron Tariff is silent on whether an
16 EGS will have to comply with provisions in Chapter 56, or pay any fines for failure
17 to comply with those provisions. As such, Enron’s promise to comply with
18 Chapter 56 purportedly contained in its application to be a licensed EGS in
19 Pennsylvania is conspicuously absent in its proposed tariff provisions.
- 20

1 Q. **Enron's proposed Rule 17.2(e) sets forth a list of informational items that an**
2 **EGS must include on a consumer's bill. Is this list complete?**

3 A. No. Enron has omitted vital information for consumers required by Chapter 56,
4 including: (1) whether the meter reading is an estimate; (2) total amount of credits
5 to the bill; (3) statement with regard to procedure for registering a complaint or a
6 question; and (4) late charges.

7
8 Q. **Enron proposes to automatically shift bill payment responsibility to a**
9 **landlord when a tenant closes an account (Rule 17.2(f)). Is this allowed?**

10 A. No. PECO cannot initiate service unless specifically requested by an applicant. To
11 protect landlords' legitimate interests, such a shift in payment responsibility cannot
12 be made without the landlord's consent.

13

14 Q. **Rule 20.1 in PECO's current tariff requires that a customer who wishes to**
15 **discontinue service must give PECO seven days written notice. How does the**
16 **Enron Tariff address notice to discontinue service?**

17 A. Enron has completely reversed PECO's Rule 20.1. Enron's proposed Rule 20.1
18 requires that the EGS give PECO seven days notice whenever the EGS wishes to
19 discontinue service regardless of the wishes of the customer. Furthermore, under
20 Rule 18.1 of the Enron Tariff, an EGS *can* discontinue service to a consumer on
21 five days notice regardless of whether or not the consumer wants service
22 discontinued. This proposed rule, which gives the EGS the right to discontinue a
23 consumer's service whenever it is advantageous to the EGS, could have a serious

1 impact on consumers who, on very short notice, would be forced to seek another
2 EGS, quite possibly at a higher price. Five days notice would likely not be
3 sufficient time for the consumer, the former EGS, a potential new EGS (or EGSs)
4 and PECO to complete transfer of the consumer's service. As I will explain later,
5 the situation would be further complicated if another EGS (or EGSs) provides one
6 or more of the non-wire services Enron proposes to unbundle. Obviously the
7 Enron proposal would therefore pose difficulties for consumers not presented by
8 the Partial Settlement.

9
10 **Q. Enron's proposal contains a new rate - Rate DS Default Service. Do you**
11 **have any comments on this rate?**

12 A. Yes. Customers served under Enron's Rate DS, would be charged Enron's
13 proposed energy prices regardless of the actual prevailing market prices; the
14 default service provider may *not* charge less. In contrast, the Partial Settlement
15 contains caps for energy and capacity and allows default services customers to pay
16 *less* if the market is trading at a lower price. Accordingly, only under the Partial
17 Settlement would customers rejected by a competitive EGS still receive the
18 benefits of competition.

19
20 Moreover, the Standard Default Service ("SDS"), which is a month-to-month
21 service for customers who need service to bridge a gap between competitive
22 EGSs, would not even be available to industrial customers. Rather, such
23 consumers may *only* receive Transitional Default Service ("TDS"), with a

1 minimum term of twelve months. This seriously limits an industrial customer's
2 opportunity to shop for a better deal, especially when coupled with an EGS' right
3 under Rule 18.1 to terminate service on only five days notice. Notably, the Partial
4 Settlement contains no such unreasonable limitations on an industrial customer's
5 ability to participate in competition.

6
7 **Q. Mr. Sundermeir, has Enron adopted the Universal Service provisions**
8 **contained in the Partial Settlement?**

9 A. No. As the Enron Plan does not provide for the portability of all universal service
10 benefits, Enron has disregarded a key provision of the Partial Settlement that: "the
11 benefits of universal service programs shall not be affected by whom the customer
12 selects as its generation supplier."

13
14 **Q. Please explain how Enron has precluded such portability.**

15 A. Although the Enron Tariff provides for discounted distribution charges and
16 transition charges under the CAP rate schedules, it does not provide for generation
17 discounts unless the CAP customer takes service under Default Service. Under
18 Default Service, however, a customer does not have the ability to shop for
19 generation. Instead, CAP customers who wish to receive the intended rate
20 discount on the generation component of their bill must surrender their right to
21 shop for generation supply. In its response to PECO's interrogatory XIII-6, Enron
22 confirmed this, stating that a CAP customer who desires to shop for competing

1 generation supply “is no longer eligible for CAP rates and delivery occurs under
2 Schedule R.”

3
4 **Q. How does PECO propose to ensure portability of Universal Service benefits
5 when the CAP customer selects an EGS?**

6 A. As stated in our response to Enron’s interrogatory VIII-7, “CAP Rate customers
7 will be given the applicable credit for the generation component directly by PECO,
8 regardless of their energy supplier.”

9
10 **Q. Rule 11.1 in PECO’s current tariff allows the consumer to select a rate when
11 one or more rates are applicable to its service. Enron proposes shifting the
12 choice to the EGS. Is this in the customer’s best interest ?**

13 A. No, I do not believe so. Because a consumer is ultimately responsible for paying a
14 bill that would contain charges for PECO’s regulated services, the consumer
15 should have the right to be served under the most advantageous rate.

16
17 **Q. Doesn’t Mr. Kingerski in his testimony claim that PECO is wrong in its
18 conclusion that the consumer would not be entitled to select a rate under
19 Enron’s proposal?**

20 A. Yes, he does. Mr. Kingerski’s actual response, however, is that the EGS, and not
21 consumers, should make the selection. Restructuring should be about adding
22 choices, not taking them away. The consumer, and not the consumer’s EGS,
23 should therefore have the right to make choices about regulated rates. This

1 revised Rule 11.1 is an example, however, of how Enron, which often touts the
2 value of customer *choice*, would unfairly and needlessly deprive customers of a
3 very important choice.

4
5 **Q. Enron also proposes eliminating Rule 11.2, which obligates PECO to assist a**
6 **customer in selecting the most advantageous rate.**

7 A. This is another example of an Enron revision that is not in the consumer's best
8 interest. Mr. Kingerski claims this rule is unnecessary because "EGSs are
9 competing to satisfy the end-user." If Mr. Kingerski is suggesting that PECO
10 should not have both the right and obligation to satisfy consumers with respect to
11 services that will continue to be regulated, his suggestion is absurd on its face.

12
13 Mr. Kingerski also attempts to question the importance of the current rule by
14 stating that PECO may refuse to provide such assistance even when requested.
15 This is not true. The customer must request assistance because in many instances,
16 service circumstances may change without PECO's knowledge. Currently, and
17 under the Partial Settlement, however, PECO does not and cannot refuse to
18 provide assistance if a customer requests it.

19
20 **Q. Enron also proposes to eliminate PECO's Rule 11.3. Is this in the best**
21 **interest of the consumer?**

22 A. No. This rule provides customers the flexibility to change rates, to switch from an
23 interruptible rate to a firm rate, or to modify the terms of a contract in certain

1 circumstances. Again, it is difficult to understand why Enron would propose the
2 elimination of a tariff provision that gives customers important choices. Mr.
3 Kingerski offered no justification in his testimony for eliminating this rule, but it
4 seems to be yet another example of Enron's desire to have the EGS, rather than
5 the consumer, make virtually all of the decisions for the consumer.

6

7 **Q. In Enron's proposed Rule 13.1, Enron eliminates the existing provision that**
8 **allows PECO or a landlord the option to individually meter tenants. Should**
9 **this option be eliminated?**

10 A. No. When there is a requirement to individually meter tenants, the landlord should
11 have the flexibility to select the source of the metering service as PECO's tariff
12 allows.

13

14 **Q. But Mr. Kingerski states in his testimony that elimination of the provision**
15 **gives the landlord more options. Is this true?**

16 A. No. The current tariff provision gives the landlord the right to individually meter
17 the tenants. It does not restrict the landlord's options in selecting how this should
18 be done. Again, under the guise of supposedly doing nothing more than
19 introducing the EGS into the mix of relationships, Enron would actually eliminate
20 important options that consumers currently have available.

21

1 Q. **Enron has also eliminated the provision in Rule 13.1 that allows master**
2 **metering of heating and cooling systems when it is in the interest of energy**
3 **conservation. Does this seem reasonable?**

4 A. No. In many instances tenants are provided space heating, water heating and air
5 cooling from a central system. If it can be shown that a central system is more
6 efficient than such facilities in each tenant's area, it is appropriate to master meter
7 the central systems to promote energy conservation.

8
9 Q. **On this issue, Mr. Kingerski claims in his testimony that the master metering**
10 **of heating/cooling systems can be waived at the sole discretion of PECO. Is**
11 **he correct?**

12 A. No. Mr. Kingerski has mixed and therefore misunderstood two provisions in
13 current Rule 13.1. The provision that allows PECO to waive the requirement for
14 individual metering is only applicable to dwelling units when it can be shown that
15 such waiver will not significantly impact consumption. This provision has nothing
16 to do with master metering of heating/cooling systems.

17
18 Q. **In its proposed Rule 15.3(d), Enron has eliminated the phrase, "for each**
19 **hour billed based on the PJM billing rate." Could this result in a rate**
20 **increase to a customer on the Large Interruptible Load Rider (LLR)?**

21 A. Yes. The adjustment described in PECO's current Rule 15.3(d) is only applicable
22 to the kilowatt-hours associated with the customer's interruptible load. Enron's

1 proposal, however, expands this adjustment to include all on-peak kilowatt-hours,
2 which could substantially increase the customer's bills.

3
4 **Q. Rule 21.7 in PECO's current tariff allows PECO to charge for services**
5 **requested by consumers that are not included in the tariff. Enron has**
6 **changed this provision such that any request for service would have to come**
7 **from an EGS. Is this reasonable?**

8 A. No. For example, under the current rule, if a consumer's privately-owned poles
9 and wires are damaged in a storm, the consumer may request that the Company
10 restore service. Enron's structure would deprive consumers of the right to arrange
11 for this type of service on their own property without the involvement or approval
12 of an EGS. Again, Enron has proposed a revision that unjustifiably eliminates a
13 consumer's choice.

14
15 **Q. Are you familiar with Mr. Kingerski's testimony regarding Enron's**
16 **elimination of the outage allowance in Rate SL-P?**

17 A. Yes. Although Mr. Kingerski asserts that PECO is wrong in claiming that the
18 outage allowance in Rate SL-P would no longer be applicable under the proposed
19 Enron Tariff, it is Mr. Kingerski, not PECO, that is wrong. As long as PENN
20 DOT and the City of Philadelphia ("City") are PECO street lighting customers
21 under Rate SL-P, the outage allowance must remain in the tariff or their bills will
22 increase. Notably, under the City's current Rule 4.6 contract, the City will remain
23 a customer under Rate SL-P through at least June of the year 2000.

1 **Q. Mr. Kingerski claims that Enron's proposed tariff promotes competition and**
2 **economic development better than the Partial Settlement. Are Mr.**
3 **Kingerski's claims well-founded?**

4 A. No. It is Enron, not PECO, that has proposed to eliminate existing provisions that
5 promote competition and economic development. For example, Enron would
6 eliminate Rule 4.6 and the Economic Efficiency and Incremental Process Riders
7 meaning PECO would not be allowed to foster economic development by offering
8 eligible customers distribution service at mutually agreed upon rates. Similarly,
9 Enron would limit the applicability of the Employment and Economic Recovery
10 Rider, which was developed to encourage businesses to expand or move to
11 Pennsylvania, to PECO's regulated charges. It is PECO's position that the
12 discount provided in this rider should be prorated over all of the various charges
13 including energy, as growth and economic development are beneficial to all parties.
14 As Enron apparently is more interested in advancing the interests of EGSs and
15 restricting PECO even to the detriment of consumers, it is not surprising that their
16 proposed Tariff includes no such provision.

17
18 **Q. Are there other examples of this apparent Enron strategy?**

19 A. Yes. Mr. Kingerski's proposal to eliminate the Cooling Thermal Storage Rider,
20 the thermal storage provisions of Rate GS, and the Electric Vehicle Charging
21 Rider are other examples. The Cooling Thermal Storage Rider encourages the
22 development and use of thermal storage in summer months to lower demands on
23 electric systems and conserve energy. The thermal storage provisions of Rate GS

1 serve the same purposes for both heating and cooling. Similarly, the Electric
2 Vehicle Charging Rider was introduced to improve the environment by
3 encouraging the development and use of electric vehicles. Although these riders
4 may not promote the interests of EGSs, as they enable PECO to provide benefits
5 to customers that EGSs may not be able to provide, they do promote the general
6 welfare and therefore consumers' interests. The Enron Plan deprives society of
7 their benefits.

8
9 **Q. Mr. Kingerski also specifically supports the elimination of the Transformer**
10 **Rental Rider. Would this be beneficial to consumers?**

11 A. No. This rider has not been available to new customers since October 15, 1963.
12 Since then customers served under the rider have had the option to buy
13 transformers or rent them from another source, but many have chosen to continue
14 renting from PECO. Elimination of this rider would force these customers to
15 obtain transformers from another source, which could be quite costly.

16
17 **Q. In his testimony, Mr. Kingerski also challenges PECO's assertion that**
18 **Enron's proposed elimination of a monthly meter charge for a second meter**
19 **for Rate RS customers would eliminate the two meter option for these**
20 **customers. Is he correct?**

21 A. No. PECO might have to provide both meters, as an EGS does not have to do so
22 under the Enron Plan. Without the monthly meter charge for a second meter,
23 PECO would not be able to provide the second meter unless it did so for free.

1 Accordingly, Enron's proposal effectively eliminates the two meter option for
2 some customers.

3
4 **Q. Mr. Kingerski also continues to advance Enron's position that the Auxiliary**
5 **Service Rider should be limited to transmission and distribution service only.**
6 **Do you have any comment?**

7 A. Enron's proposal unambiguously violates the Public Utility Regulatory Policies
8 Act, a federal law requiring electric utilities to supply supplementary, back-up and
9 maintenance power to Qualifying Facilities. Furthermore, PECO's unbundling of
10 this rider under the Partial Settlement also allows consumers to secure energy from
11 an EGS for supplementary, back-up or maintenance purposes. Again, in this
12 instance the Partial Settlement preserves choice for consumers, but Enron's Plan
13 deprives customers of a federally-mandated choice.

14
15 **Q. Mr. Kingerski also questions PECO's claim that it would be a mistake to**
16 **require customers experiencing outages to call their EGS instead of calling**
17 **PECO directly. Would you comment on this criticism?**

18 A. Yes. Mr. Kingerski asserts that having a consumer call its EGS would eliminate
19 the confusion that purportedly would result from having the customer directly call
20 PECO. Yet, even under the Enron Tariff, PECO would continue to maintain a line
21 to directly receive calls regarding hazardous or life threatening situations and the
22 reliability and safety of the system. Under Enron's Plan, how will a customer
23 decide whether to call its EGS or the PECO-maintained phone line? Obviously,

1 therefore, the Enron Tariff does not eliminate confusion -- it creates confusion and
2 the potential for losing critical responsive time that does not exist under the
3 Partial Settlement.

4
5 **Q. Mr. Sundermeir, do you have comments regarding Enron's proposed**
6 **disposition of certain riders as set forth in Exhibit A to the Enron Tariff?**

7 A. Yes. I will comment on some of the riders that I have not already discussed:

- 8 • Alley Lighting Rider - this rider has already been unbundled as part of the
9 Partial Settlement.
- 10 • Curtailment HT Rider - this rider provides significant reductions to the
11 ratchet charges customers served under it would otherwise pay. Its
12 elimination would result in increased bills to specific customers in violation
13 of the statutory rate caps contained in the Competition Act .
- 14 • Night Service Riders - there is no generation portion in these riders;
15 therefore, the charges in them should not be, and cannot be unbundled.
- 16 • Off-Peak Rider - this rider has been frozen since 1972; however, its
17 elimination could result in rate increases to customers still served under it,
18 in violation of the statutory rate caps contained in the Competition Act.
- 19 • Temporary Service Rider - this rider provides for short-term, temporary
20 service to consumers. An example is Christmas tree sellers. Eliminating
21 this rider would harm these types of consumers, as they would have to
22 obtain and pay for permanent service under one of PECO's standard rates.

- 1 • Capacity Reservation Rider - this rider must be retained for existing LILR
2 customers.
- 3 • Concerning the Economic Efficiency and Incremental Process Riders
4 referenced earlier if, as claimed by Enron, these riders are unnecessary in a
5 fully competitive environment, they will eliminate themselves.

6

7 **Q. Mr. Sundermeir, what do you conclude regarding Enron’s Tariff as it would**
8 **apply to customers, or “end-users” as Enron calls them?**

9 A. Under the guise of merely interjecting EGS’s “into PECO’s system,” Enron has
10 restructured the tariff so that only EGSs, and not PECO, may offer benefits to
11 consumers. To accomplish this, the Enron Tariff deprives customers of many
12 protections, benefits and options they currently enjoy, and would continue to enjoy
13 under the Partial Settlement. Thus, the Enron Tariff seeks to unfairly benefit EGSs
14 and handicap PECO even at the expense of consumers. In contrast the Partial
15 Settlement *preserves* existing regulatory protections and benefits for consumers
16 *without* precluding EGSs from offering additional benefits.

1 **2. Provisions in Enron Tariff that Unfairly Advantage Supplier**

2

3 **Q. Rule 7.2 in PECO Energy’s current tariff provides for minimum revenue**
4 **guarantees under specified circumstances. Has Enron proposed any**
5 **significant changes to this rule?**

6 A. No. Unlike in most other provisions, in this rule Enron does not interpose the
7 EGS between PECO and the customer, meaning that a customer will still be
8 responsible for the revenue guarantee. This is another example of Enron’s primary
9 goal to unfairly advantage EGSs at the expense of both PECO and consumers.
10 For, when a minimum revenue guarantee must be paid, Enron proposes to let the
11 EGS step aside and allow a direct relationship between the consumer and PECO.

12

13 **Q. Enron’s proposed Rule 16.2(f) indicates that a competitive meter service**
14 **provider (“MSP”) may, upon request, make tests to supply special**
15 **information with regard to the consumer’s service. Is this consistent with**
16 **PECO’s requirement to provide such tests?**

17 A. No. The present tariff states that PECO will perform such tests when the
18 customer wants them. Apparently, Enron does not believe that customers metered
19 by EGSs should have the right to demand such meter tests.

20

1 **Q. Rule 18.6 in PECO's current tariff allows PECO to terminate service,**
2 **without notice, for abuse, fraud or tampering with PECO's equipment. Has**
3 **Enron proposed a significant change to this rule?**

4 A. Yes. Under Enron's proposed Rule 18.6 and Rule 24.7, PECO could not
5 terminate service if it does not own the meter. This limitation on the Company has
6 potential safety ramifications. People could be at risk of serious harm if an EGS
7 refuses to allow termination, or if termination is delayed.

8
9 **Q. Enron has proposed a new rate adjustment called the "Other Tax**
10 **Adjustment Clause." Would you comment on this proposal?**

11 A. Yes. I cannot see any justification to support an adjustment to PECO's rates to
12 recover taxes imposed on an EGS. PECO must recover its own tax liability from
13 its rates and the State Tax Adjustment Clause. To ask consumers purchasing
14 distribution service from PECO to pay a higher rate to recover the tax liability of a
15 third party is unreasonable and unfair.

16
17 **Q. In applicable rate schedules, Enron has eliminated a provision for "Term of**
18 **Contract." Is this acceptable?**

19 A. No. The "term of contract" provision imposes a legitimate obligation on the
20 customer so that PECO can be assured of at least partial recovery of its investment
21 to serve that customer. Because Enron, as an EGS, wants to be the "customer,"
22 Enron apparently does not want any such obligations.

1 In addition, elimination of these provisions would allow an EGS to switch between
2 rates on a seasonal basis. For example, an EGS could switch from Rate GS to
3 Rate HT in the summer for certain customers that are eligible for both rates, and
4 then switch back to Rate GS before the winter. This would allow the EGS to
5 avoid the higher Rate HT demand ratchet that would otherwise apply in the eight
6 winter billing months. In the short-run, this injures PECO by depriving the
7 Company of the ability to recover all of its prudently incurred costs and its allowed
8 recovery for stranded investment. In the long-run, all consumers suffer harm;
9 following expiration of the rate cap on distribution charges, PECO may have to
10 raise rates to ensure recovery of its prudently incurred costs.

11

12 **Q. Mr. Sundermeir, can you please summarize your analysis of those provisions**
13 **in the Enron Tariff that unfairly advantage EGSs?**

14 A. With respect to each provision I have analyzed, it is clear that Enron has attempted
15 to tip the balance such that PECO has all the obligation and the EGS has all the
16 benefit, often at the expense of customers. In addition to those I analyzed earlier,
17 these provisions are patently anti-consumer. They also reveal that Mr. Kingerski's
18 claim is simply incorrect. Enron has made many changes that injure consumers and
19 that unfairly advantage EGSs at PECO's expense.

1 Q. Mr. Sundermeir, have you identified any other problems with the Enron
2 Tariff?

3 A. Yes. I have identified several technical problems with the Enron Tariff. I have
4 listed these problems in the attached Exhibit WFS-13.

5

6 III. RESPONSE TO ENRON'S CRITICISMS
7 OF PECO'S PROOFS OF REVENUE

8

9

10 Q. Mr. Sundermeir, do you have any updates to the proofs of revenue?

11 A. Yes. Attached as Exhibit WFS-14 are revised HT proofs of revenue for the years
12 1999-2008 (the year 2000 is not included because those rates will remain identical
13 to those in 1999).

14

15 Q. Do these revised HT proofs of revenue have a material impact on the Partial
16 Settlement?

17 A. No, these revisions have no material effect of the Partial Settlement and do not
18 change any of the figures in the Derivation Summaries. The most significant
19 revision was to include approximately \$5 million in the Maximum Energy and
20 Capacity Charge revenue which was excluded in the HT proofs of revenue
21 originally submitted in Appendix C of the Partial Settlement.

22

1 Q. Have you reviewed the direct testimony and accompanying exhibits of
2 Yolanda H. Lopez concerning the Proofs of Revenue supporting the Partial
3 Settlement?

4 A. Yes, I have.
5
6

7 Q. Can you address the first of the “three areas of concern” raised by Ms.
8 Lopez, beginning on Page 4 of her testimony, which concerns the HT Proof of
9 Revenue for each year?

10 A. Yes. Ms. Lopez claims that PECO’s HT proofs of revenue do not tie to the
11 Derivation Summaries for any of the years for which rates were developed, causing
12 a alleged “\$20 to \$25 million” shortfall. Although the derivation of Ms. Lopez’s
13 figures is unclear, what *is* clear is that no “shortfall” exists. On the contrary, the
14 total of the values shown in column six of the HT proofs of revenue for each year
15 (with the exception of the \$5 million for 1999 mentioned above) will equal the
16 total values shown on the Derivation Summaries for the same year.
17

18 Q. Can you address the second of Ms. Lopez’s “areas of concern,” which
19 concern the mathematics used to derive the rates and revenues in the Proofs
20 of Revenue?

21 A. Yes. The rates shown in column five of the proofs of revenue were calculated to
22 greater than four decimal places. The electronic spreadsheet calculation in the
23 proof of revenue multiplies the displayed billing units in column four with the
24 calculated rate, thus producing the revenue shown in column six. The printed

1 version of the spreadsheet, however, shows only the first four decimal places of
2 each rate. Any rounding which would occur in the revenue figures because of
3 rounding the rate after four decimal places would create de minimus differences.

4
5 It is noteworthy that Ms. Lopez categorizes this method of rate development as an
6 “area of concern” yet she, or someone under her direct supervision, also used this
7 approach to derive Enron’s proposed alternate Generation Credit and CTC/ITC.
8 In the “end block” of every rate class containing a charge in more than a single
9 block, Ms. Lopez derives that block’s revenue by multiplying the sales by a rate
10 that requires more than the displayed four decimal places. That is to say, the sales
11 multiplied by her displayed rate will also *not* add to the displayed revenue.

12

13 **Q. Can you address the third of Ms. Lopez’s “areas of concern” regarding the**
14 **sales levels used in the proofs of revenue supporting the Partial Settlement**
15 **rates?**

16 A. Ms. Lopez indicates that sampling should only be used when accurate actual data
17 are not available. I could not agree more. However, actual billing determinants
18 are not available; thus, sampling is required. Ms. Lopez further indicates concern
19 that sampling may distort the resulting rates and revenue. Aside from the fact that
20 sampling data must be used, Ms. Lopez need not be concerned. The bundled rates
21 and unbundled rates were specifically designed to produce the same revenue from
22 individual customers; thus, there is no possibility that excess revenue can be
23 recovered because the sample does not expand exactly to the universe.

1 A simple way to prove the truth of this last assertion is to analyze the Partial
2 Settlement rates for the years 2003 through 2005. If Ms. Lopez's contention is
3 true that PECO intends to over-recover revenue through its rate design by using
4 "lower than actual" sales then in every year of the Partial Settlement, PECO should
5 be receiving more revenue than it claims in the proofs of revenue. Yet in the years
6 2003 through 2005, the sum of PECO's unbundled rates are designed to equal
7 PECO's bundled rates. This would cause exactly the same revenue with
8 unbundled rates as with bundled rates no matter what the level of sales is in the
9 two comparison periods.

10

11 **Q. Do the rates designed by Ms. Lopez cause intra-class cost shifting?**

12 A. Yes. In the years 2003 through 2005, Ms. Lopez's Default Service rates -- most
13 notably those for Rate HT, PD, and GS customers -- cause lower load factor
14 customers to pay more than they are currently paying on PECO's bundled rates.
15 Conversely, the higher load factor customers pay less than they currently are
16 paying. Although the proofs of revenue may indicate that the total revenues
17 collected from a particular customer class are exactly the same as in 1996, the
18 lower load factor customers will be paying higher rates than they did in 1996. Not
19 only does this violate the rate cap, it specifically disadvantages the type of lower
20 load factor customers that EGSs will be less likely to want to serve.

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1 IV. CRITIQUE OF ENRON'S PROPOSED UNBUNDLING OF
2 METERING, BILLING, COLLECTION, AND CUSTOMER SERVICES
3

4 **Q. Mr. Sundermeir, could you comment on Enron's proposed credit for what it**
5 **calls "non-wires service"?**

6 A. Yes. First, as I stated earlier in my testimony, PECO opposes the unbundling of
7 these services. Notwithstanding PECO's opposition, however, I believe it is
8 important to identify the many flaws in Enron's unbundling proposal, as presented
9 in the testimony of Paul D. Reising. I will also explain how to properly develop
10 such a credit using costs from PECO's recently submitted cost of service study,
11 and appropriate and applicable rate design principles.

12
13 **Q. Please continue with your critique of Mr. Reising's proposals regarding**
14 **unbundling of non-wires services.**

15 A. My first concern with Mr. Reising's proposal is that the basic design of providing
16 EGSs "credit for non-wires services" is fundamentally unfair. Mr. Reising
17 identifies seven different categories of cost associated with non-wires services: (1)
18 Metering, (2) Meter Reading, (3) Billing and Collection, (4) Customer Service and
19 Information, (5) Uncollectibles, (6) Sales, and, (7) Lighting-related services. Mr.
20 Reising then calculates credits by using costs in *all* seven categories. He asserts
21 that an EGS would get this credit from PECO because PECO supposedly would
22 no longer be providing the non-wires services. That is, he claims PECO would
23 avoid *all* of these costs if EGSs were able to provide non-wires services
24 competitively, and EGSs should therefore not have to pay PECO for *any* of these

1 costs if they provide the services instead of PECO.

2
3 Although designing a credit based on costs is in itself reasonable, under Enron's
4 Tariff, the EGS would receive *all* of this credit even if it chooses to provide only
5 *one* of the services, a blantly unfair result. For example, Enron's Rule 14.1
6 allows an EGS to "utilize" the Company's meters. This means that an EGS could
7 provide meter reading, but not install and maintain its own meter. Rule 14.1,
8 however, does not provide that the credit for non-wires services be reduced in
9 such circumstances, meaning that an EGS would get a credit for something it
10 would not be doing - - installing and maintaining the meter. PECO, on the other
11 hand, would continue to own and maintain the meter, but *not* be allowed to
12 recover its costs for doing so.

13
14 Nothing in Enron's Tariff precludes this completely unfair outcome with respect to
15 any of the non-wires services. An EGS would get the full credit, calculated using
16 costs of all of the services, yet provide merely a few, or even only one, of the
17 services.

18
19 **Q. Mr. Sundermeir, are there problems with Mr. Reising's proposed cost basis**
20 **for the credit?**

21 A. Yes, there are. Mr. Reising unbundles non-wires services costs on a total
22 Company cost basis without considering whether the Company would actually be
23 able to avoid the costs in question in proportion to the number of customers served

1 by EGSs. Under the Enron Plan, however, PECO could not shed the costs
2 associated with non-wires services on a proportional basis. For, as Enron's
3 contractor for these non-wires services under the proposed MBC Services
4 Agreement, PECO would have to stand ready to provide metering, billing, and
5 customer services for all Default Service Customers. Moreover, the Enron plan
6 provides that customers may return to Default Service at any time and also allows
7 EGSs to terminate customers on five days notice, forcing customers to return to
8 default service, at least temporarily, if they are unable to sign up with a new EGS
9 in that short time. Accordingly, PECO, which must stand ready to serve a large
10 number of customers at any time, and on as little as five days notice, would be far
11 more likely to continue to incur costs associated with non-wire services at near
12 current levels.

13
14 **Q. Mr. Sundermeir, with regard to metering and meter reading, can you explain**
15 **in more detail the primary reason PECO would continue to incur these costs**
16 **at levels far higher than Mr. Reising assumes would be required even if EGSs**
17 **were to provide the corresponding non-wires service?**

18 A. Yes. These costs include all of the costs PECO currently incurs to acquire, install,
19 maintain, and read all 1.5 million meters in use on its system. As PECO would
20 still have to stand ready to perform all of those functions for default service
21 customers, it would likely continue to incur the overwhelming majority of these
22 capital and operating and maintenance costs even if EGSs were allowed to perform
23 all or some of them on a competitive basis.

1 This is true for many reasons. First, under the Enron Plan, EGSs could terminate
2 customers on five days notice for any reason (including the EGS' belief that
3 serving the customer is no longer profitable), or customers could return to default
4 service on their own at any time. Furthermore, an EGS with many metering
5 customers could suddenly go out of business, requiring PECO to perform the
6 services, once again on very short notice.

7
8 Second, even if the number of customers for whom PECO must provide metering
9 and meter reading eventually settles at a stabilized, lower level, PECO would still
10 incur a cost per customer much higher than would currently be required. Most
11 notably, in the case of meter reading, installation, and maintenance, PECO would
12 still have to cover the same area, as default service customers could be scattered
13 throughout the entire service territory. And, not only would the customers'
14 identity and location change every month, the number of customers whose meters
15 PECO would have to install, maintain, and read in a particular area could suddenly
16 jump dramatically. Accordingly, to ensure timely and accurate meter reads and
17 provision of complete billing data, PECO would have to maintain a relatively large
18 group of meter technicians and readers in a number of locations dispersed around
19 its service territory.

20
21 Of course, PECO would also have to have a correspondingly higher number of
22 meters in inventory at any time, as it would have to replace an EGS' meter on very

1 short notice whenever an EGS' customer returns to default service for one of the
2 many reasons discussed above.

3
4 Therefore, as PECO would not avoid most metering and meter reading costs,
5 using *all* of them as the basis for the credit for non-wires services that EGSs would
6 receive under the Enron proposal is totally unjustified. Only a fraction of such
7 costs should be used to design any credit for non-wires services.

8
9 **Q. With regard to uncollectibles, please explain in more detail the reasons**
10 **PECO would continue to incur these costs even if EGSs were to provide non-**
11 **wires services.**

12 A. PECO incurs uncollectibles expense to: (1) fund long-term special payment
13 agreements required by Chapter 56; (2) fund the CAP, or Customer Assistance
14 Program (i.e., the write offs of the difference between what CAP customers pay
15 under the discounted CAP Rates and what they would otherwise have paid under
16 the base rates); and (3) cover the cost associated with non-payment by customers
17 without payment agreements, customers who violate the terms of payment
18 agreements, and all other non-CAP customers. The amounts included in this last
19 category are substantial because, due to the requirements of Chapter 56, it is very
20 difficult to terminate service to residential customers. Under the Enron Tariff
21 structure, PECO, *not* the EGSs, will *still* have these financial obligations. This is
22 because EGSs will be able to jettison non-paying customers on five days notice,
23 and are likely to avoid initially serving customers with poor credit histories.

1 In addition, regardless of the fact that Enron would be the purported provider-of-
2 last resort, the MBC Services Agreement imposes on PECO all of the financial
3 obligations associated with bad-paying default service customers, including those
4 default service customers previously jettisoned by EGSs. Finally, as I have noted
5 earlier in my testimony, Enron would require that all CAP Rate customers be
6 served under the default service provisions of the Enron Tariff, meaning that there
7 is no possibility that EGSs would incur any uncollectible accounts expense
8 associated with such customers -- PECO will incur all such expense.

9
10 Thus, because PECO will continue to incur these uncollectible accounts expenses,
11 they should not be used as a basis for a non-wires services credit.

12
13 **Q. With regard to billing and collection/customer service and information costs,**
14 **please explain in more detail the reasons PECO would continue to incur them**
15 **at levels far higher than Mr. Reising assumes would be required even if EGSs**
16 **were to provide non-wires services.**

17 With regard to billing, under the Enron Plan, PECO would have to prepare and
18 provide to EGSs bills containing the same level of detail as those PECO would
19 have provided directly to customers. These bills to EGSs not only would contain
20 this same level of detail, but also would cover the same number of customers.

21 Accordingly, there is no basis for the assumption that as EGSs gain customers,
22 PECO's billing costs would decrease proportionately. PECO's billing costs would
23 probably remain the same, or perhaps even increase, as PECO would have to

1 upgrade its billing and computer systems to replace direct customer billing with
2 EGS billing.

3

4 With respect to collection, it is also clearly incorrect to assume that under the
5 Enron Plan, as EGSs add customers, PECO would increasingly avoid the
6 collection expense it currently incurs. Under the Enron Plan, when a customer
7 fails to pay an EGS, the EGS may terminate the customer on five days notice with
8 the probable result the customer will return to default service. As PECO is
9 responsible under the MBC Services Agreement for collection expense associated
10 with default service customers, PECO will almost certainly continue to incur these
11 collection costs. Nor is there any guarantee that under the Enron Plan EGSs
12 would pose no collection risk or cost to PECO. Rather, PECO probably would
13 continue to incur substantial costs to pursue EGSs that do not pay their bills to
14 PECO.

15

16 With regard to customer service and information costs, as is true with metering
17 and meter reading, PECO would have to stand ready to provide these services, on
18 short notice, to a considerable number of additional customers it does not serve
19 regularly. PECO would have to have available a substantial workforce, and
20 technical capability – i.e., phone lines, computer systems, etc. – to ensure its ability
21 to handle a large volume of calls and service inquiries.

22

1 Notably, even under the Enron Plan, PECO would continue to maintain phone
2 lines for reporting emergencies and thus would also have to maintain the capability
3 to staff and operate those phone lines. No basis exists, therefore, for concluding
4 that as EGSs assume some customer service responsibility, PECO would avoid an
5 amount of cost in direct proportion to the number of customers obtaining such
6 service from EGSs.

7
8 **Q. With regard to the sales and lighting-related costs that Mr. Reising includes**
9 **in his credit, please explain in more detail the reasons PECO would continue**
10 **to incur them even if EGSs were to provide non-wires services.**

11 A. With regard to sales expense, the Company expects to maintain the activities that
12 cause these costs at current levels. These costs are not associated with the non-
13 wires services that PECO would avoid if EGSs were allowed to provide non-wires
14 services competitively. They include expenses associate with demand-side
15 management and energy efficiency and audit programs, and certain of the costs of
16 processing high bill complaints and otherwise complying with Chapter 56.
17 Accordingly, they should not be included at all in the basis for the credit for non-
18 wires services.

19
20 With regard to lighting-related services expense, why Mr. Reising includes these
21 costs in his credit calculation is a mystery, for they are totally unrelated to the non-
22 wires services that EGSs would provide under Enron's plan: metering, meter
23 reading, billing, collection, and customer and information services. The costs

1 PECO incurs in connection with street lights are appropriately included in its street
2 lighting rates, and would continue to be included in those rates under the Enron
3 Plan. PECO would not avoid them if an EGS were to provide non-wires services,
4 and therefore they should not be included in any credit for such services.

5
6 **Q. Mr. Sundermeir, you have explained how Mr. Reising has failed to recognize**
7 **that PECO would not avoid all of the costs that it currently incurs for non-**
8 **wires services if EGSs were to be allowed to perform them on a competitive**
9 **basis. Did Mr. Reising, however, use correct cost figures from PECO's**
10 **accounts as the starting point for his non-wires services credit?**

11 A. No, it appears he did not. With the assistance of persons under my supervision, I
12 have reviewed PECO's cost of service study to identify the costs associated with
13 the non-wires services EGSs would provide under the Enron Plan. In every
14 instance, Mr. Reising has not correctly identified those costs. In fact, Mr.
15 Reising's figure of more than \$240 million is more than three times higher than the
16 total cost to provide non-wires services.

17
18 **Q. What cost-of-service study did you review to identify the appropriate costs?**

19 A. I reviewed the cost-of-service study prepared by Mr. Robert A. Clemmer, which
20 he submitted with his rebuttal testimony (Exhibit RAC-10, PECO Statement No.
21 12-R).

22

1 **Q. Mr. Sundermeir, please explain how you identified the appropriate costs for**
2 **each category of costs that should form the basis for a non-wires services**
3 **credit, and present the results of your analysis.**

4 A. The results of my analysis are presented in the attached Exhibit WFS-15. All of
5 the data I report on that exhibit are taken from Exhibit RAC-10. For metering, I
6 include the annual carrying costs on the dollars associated with net plant for meters
7 (FERC account 370 for original cost plant less associated plant reserve). I have
8 determined the annual carrying costs on net plant by taking the average system rate
9 of return, which is 9.44% (after adjustment for other revenues), and increasing it
10 for income taxes, for a total of 13.33%. To this, I have added the direct meter
11 O&M costs (FERC accounts 586 and 597) and meter depreciation expense
12 (account 940). For meter reading I used FERC account 902.

13
14 *For billing and collections, I used FERC account 903 less costs that have been*
15 *determined to be related to Chapter 56 activities. I excluded any amounts for*
16 *Chapter 56 related activities for the same reason I believe that uncollectible*
17 *accounts expense should not be included as part of the basis for a non-wires*
18 *services credit. PECO will continue to be the only entity that incurs these costs, as*
19 *it will be solely responsible for undertaking them and assuming the financial*
20 *responsibilities associated with them. Analysis of the work centers whose*
21 *responsibility it is to perform the necessary Chapter 56-related activities reveals*
22 *that PECO incurred \$22,182,000 for these activities in 1996, which is the test year*
23 *used in PECO's cost allocation study.*

1 For customer services and information, I added the expenses in FERC accounts
2 905 through 910, and, as I did for billing and collection, I deducted expenses
3 associated with Chapter 56 related activities. Analysis reveals that PECO incurred
4 \$4,110,000 for these activities in 1996.

5
6 **Q. Mr. Sundermeir, based on the results of your analysis of the costs that could**
7 **form the basis of a credit for non-wires services, have you designed non-wires**
8 **services credits that would be appropriate were the Commission ever to**
9 **require unbundling of these non-wires services?**

10 A. Yes, I have. Included in Exhibit WFS-15 are spreadsheets showing the
11 development of a fixed credit for non-wires service for each rate class. These
12 credits are based on the costs I have identified above. If non-wires services are
13 unbundled, which I note again PECO does not believe is appropriate, any
14 Commission-approved credits should not exceed the credits I have designed, as
15 they are based on costs from PECO's cost-of-service study.

16
17 **Q. But won't use of these costs result in credits that are higher than they should**
18 **be for the reasons you explained earlier in your testimony?**

19 A. Yes. Because PECO would not actually avoid many of these costs for the reasons
20 I have described above, these credits are in fact higher than they really should be.
21 Use of these credits, therefore, would, in fact, "strand" some PECO investment in
22 equipment and under-recover ongoing non-wires expenses.

1 Q. **Why then does PECO suggest use of these credits, assuming unbundling does**
2 **occur, if the result would be additional stranded costs?**

3 A. Because, for some categories of non-wires costs, *at this time* it is impossible for
4 PECO to determine with precision the actual level of expense it would avoid if
5 non-wires services were unbundled. Although for the reasons I articulated earlier
6 it is clear that PECO would not avoid most of its current costs, and would not
7 avoid an amount in direct proportion to the number of customers obtaining non-
8 wires services from EGSs, I cannot precisely quantify these effects. Accordingly,
9 if the Commission requires unbundling of non-wires services, I suggest that PECO
10 be allowed to track these costs. Then, following expiration of the non-generation
11 charges rate cap, PECO should be allowed to seek recovery of the actual stranded
12 amount through an appropriate cost recovery mechanism.

13
14 Q. **Mr. Sundermeir, the credits you have designed are fixed credits rather than**
15 **energy based credits, which Mr. Reising proposes. Why do you propose**
16 **fixed credits rather than energy-based credits?**

17 A. The first reason is that an energy-based credit is inappropriate because the
18 components of non-wires services are principally customer-related expenses that
19 are not a function of demand or energy use. For Rate R, for example, the cost of a
20 meter and meter reading are usually the same regardless of the amount of usage - -
21 it costs the same amount to provide, maintain, and read a meter for a residential
22 customer who uses no energy as it does for a residential customer who uses

1 thousands of kilowatt-hours. Accordingly, these costs have been recovered
2 traditionally through a fixed monthly customer charge or distribution charge.

3
4 **Q. From a policy standpoint, why would it be a bad idea to provide a credit for
5 non-wires services that is based on energy use?**

6 A. It would be a bad idea because it would mean that EGSs providing non-wires
7 services to relatively higher use customers would receive a credit that is far
8 greater than it will actually cost them to provide the services. The greater the
9 customer's usage, the greater the credit an EGS would receive, even though
10 PECO will *avoid* no further cost and the EGS will *incur* no more cost as usage
11 increases. This means that an EGS serving higher use customers will receive a
12 windfall at PECO's expense.

13
14 **Q. What other problems would use of an energy-based credit cause?**

15 A. For the reasons I just described, it would cause EGSs that choose to provide non-
16 wires services to "cherry-pick" higher use customers, as they will incur no
17 additional cost to serve such customers but will receive a much greater credit.
18 This could have at least two serious consequences. The first consequence is that
19 EGSs will not offer non-wires services to lower use customers, and, in fact, will
20 have no interest in serving such customers whose usage levels will not provide the
21 EGSs with a credit that is at or above their cost to serve.

22

1 **Q. With regard to this first consequence, can you explain in more detail why**
2 **many residential customers would likely not have the opportunity to obtain**
3 **non-wires services if Enron’s proposed energy-based credit design were to be**
4 **adopted?**

5 A. Certainly. As shown in Exhibit WFS-15, it currently costs PECO to provide non-
6 wires services to a Rate R customer about \$3.59 per month per customer. An
7 energy-based credit that would be the equivalent of this charge would be 0.54¢ per
8 kWh ($\$57,108,000 / [7,699,431 \text{ kWh} + 2,816,467 \text{ kWh}]$). This means that an EGS
9 would receive a credit equal to PECO’s proposed fixed credit for a customer that
10 uses 617 kilowatt-hours. If we assume that it will cost an EGS about as much as it
11 will cost PECO to provide non-wires services, an EGS would receive a credit
12 greater than its cost for all residential customers who use more than this “break-
13 even” level. Many customers use less than 617 kilowatt-hours, and many of those
14 are low income customers. It is to these customers that EGSs would likely not
15 offer competitive non-wires services, meaning that Enron would deny to them
16 something it has so strenuously argued would be of benefit to all customers.

17
18 **Q. Would this problem be worse if Enron’s proposed cost basis were used?**

19 A. Yes. If Enron’s higher cost basis were used, the break-even cost would be higher,
20 meaning that far more customers would be considered by EGSs as lower use
21 customers not worthy of their attention as providers of non-wires services.

22

1 **Q. What is the second serious consequence that an energy-based credit pose?**

2 A. It almost guarantees that when the non-generation charges rate cap expires, PECO
3 would have to seek a rate increase even if the overall level of costs has not
4 increased by that time. This is because the inevitable cherry-picking by EGSs will
5 lead to PECO's under-recovery of costs it still incurred to provide non-wires
6 services and to stand ready to provide them for default customers. PECO would
7 have to provide to EGSs substantial credits far above PECO's avoided costs, as
8 EGSs will serve mostly higher use customers, yet PECO would be unable to
9 recoup this loss through giving lower credits to other customers -- EGSs will not
10 serve those customers because they would lose money if they did.

11

12 **Q. Mr. Sundermeir, do you have any final thoughts regarding the non-wires
13 service credit?**

14 A. Yes. If the Commission ever does require unbundling of these non-wires services,
15 it is the customer and not the EGS that should receive the credit. Customers
16 would then be able to comparison shop for non-wires services, just as they will be
17 able to for energy under the Partial Settlement.

18

19 **V. CONCLUSION**

20

21 **Q. Does that conclude your testimony?**

22 A. Yes, it does.

<u>Enron Tariff Provision</u>	<u>Problem/Error</u>
Omissions on first and second pages	Commission regulations require the "Notice" statement, and the "issued by" language, and also require a "change" page
Definition of "bad credit" (Page 8)	Enron eliminates application of this definition to all customers and restricts to only Default Service customers.
Definition of Electric Generation Supplier (EGS)	Permits "end-user" to function in role of EGS, yet fails to require that such end-user have PUC license
Definition of Meter Service Provider ("MSP")	Fails to state whether an MSP can perform meter reading, meter maintenance, billing, and other "non-wires" services
Definition of "Non-Wires Services" and Credit for "Non-Wires Services"	Enron provides no definition, and provides no basis for credit, yet these terms are crucial to Enron Tariff
Definition of "Open Access Tariff"	PECO no longer operates under this tariff; PECO operates under the PJM Open Access Tariff
Added Definition of "Service Extension"	This definition is internally inconsistent with that of service supply line; and in 6.3, apparently shifts to the customers the responsibility to provide, own & maintain the service extension
Definition of "summary billing account"	Enron deletes this provision, leaving uncertainty regarding the continued availability of summary billing. Would PECO have to send an EGS a separate bill for the T&D service provided to each of the EGS' customers
Rule 1.4	Enron deletes this rule, yet PECO will still read many meters, and will therefore need the right to prorate charges
Rule 6.4	Revision results in internal contradiction, as PECO would still own transformers that are integrally part of the meter that PECO might

	not own under the Enron Tariff
Rule 7.3	Enron modifies language as mandated by Pa. Code §§57.81-83, and which cannot be changed, absent a change or waiver of those regulations
Rule 9.7	Enron eliminates a rule regarding fees for switching or transferring service that in a prior base rate case the PaPUC ordered PECO to include
Rule 12.3	Enron modifies language as mandated by Pa. Code §§57.52. Moreover, the applicability of their new definition of an "emergency energy situation" as covering "energy generators overall" is unclear
Rules 18.3 through 18.5	Rules use term "service connection," but Enron includes no definition of this term
Rule 21.4	Precludes a consumer from requesting a billing investigation

PECO Energy Company-Electric Operations
 Rate HT
 Calculation of Revenue - Supp No. 10 Bundled and Unbundled
 12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Data	Bills and kwh (1)		Supplement No. 10 Bundled		Unbundled Components	Bills and kwh from unbundling (4)	Supplement No. 10 Unbundled	
			Pricing (2)	Revenue (3)=(1)x(2)			Pricing (5)	Revenue (6)=(4)x(5)
1. Customer Charge	27,762	bills	\$ 286.86	\$ 7,963,827	1.Fixed Distribution Charge	27,762	\$ 286.86	\$ 7,963,827
					2.Transmission Charge			
					Capacity Charge (kW)	24,911,867	\$ 0.8000	\$ 19,930,482
					First 150 hrs use	3,730,248,598	\$ 0.0043	\$ 16,212,769
					Next 150 hrs use	3,640,776,279	\$ 0.0026	\$ 9,455,074
					Additional use	<u>4,334,660,758</u>	\$ 0.0009	<u>\$ 3,755,986</u>
								\$ 49,354,312
					3.Variable Distribution Charge			
					Capacity Charge (kW)	24,911,867	\$ 1.7803	\$ 44,350,144
					First 150 hrs use	3,730,248,598	\$ 0.0097	\$ 36,077,332
					Next 150 hrs use	3,640,776,279	\$ 0.0058	\$ 21,039,827
					Additional use	<u>4,334,660,758</u>	\$ 0.0019	<u>\$ 8,357,978</u>
								\$ 109,825,282
2. All KW	24,911,867	kW	\$ 12.76	\$ 317,875,423				
3. Kwh-First 150 Hrs	3,730,248,598		\$ 0.0829	\$ 309,237,609				
4. Kwh-Next 150 Hrs	3,640,776,279		\$ 0.0550	\$ 200,242,695				
5. Kwh-Addl Use	<u>4,334,660,758</u>		\$ 0.0274	<u>\$ 118,769,705</u>				
	11,705,685,635	kWh						
6. Night Service Rider					5. Night Service Rider			
Customer Charge	3,840		\$ 11.21	\$ 43,046	Fixed Distribution Charge	3,840	\$ 11.21	\$ 43,046
Demand Charge	525,737		\$ 0.91	\$ 478,421	Demand Charge	525,737	\$ 0.91	\$ 478,421
					6. PECO Charges-Sample			\$ 511,832,096
					7. Electric Generation			
					Capacity Charge (kW)	24,911,867	\$ 3.0031	\$ 74,812,877
					First 150 hrs use	3,730,248,598	\$ 0.0299	\$ 111,514,504
					Next 150 hrs use	3,640,776,279	\$ 0.0233	\$ 84,933,171
					Additional use	<u>4,334,660,758</u>	\$ 0.0168	<u>\$ 72,963,506</u>
7. Total				\$ 954,610,726	8. Total Sample			\$ 856,056,154
					9. Total PECO Charges			\$ 511,832,096
					10. Total Electric Generation			\$ 344,224,058
Rate HT								
8. Proforma Base Revenue				\$ 954,089,259	11. Proforma Base Revenue			\$ 856,056,154
9. HVD >66kv				\$ (180)	12. HVD >66kv			\$ (180)
10. HVD 66kv				\$ (8,983)	13. HVD 66kv			\$ (8,983)
11. HVD 33kv				\$ (611,242)	14. HVD 33kv			\$ (611,242)
12. Aux Serv Rider					15. Aux Serv Rider			
Firm kW	314,340		\$ 3.00	\$ 943,020	Firm kW			
Firm kWh	46,820,419		\$ 0.0783	\$ 3,666,039	Transmission	314,340	\$ 0.18	\$ 56,581
Interr. kWh	35,721,342		\$ 0.0274	\$ 978,765	Distribution	314,340	\$ 0.45	\$ 141,453
					Competitive Transition Charge	314,340	\$ 1.35	\$ 424,191
					Electric Generation	314,340	\$ 0.72	\$ 226,493
					Firm kWh			
					Transmission	46,820,419	0.0039	\$ 180,259
					Distribution	46,820,419	0.0104	\$ 485,528
					Competitive Transition Charge	46,820,419	0.0294	\$ 1,376,601
					Electric Generation	46,820,419	0.0268	\$ 1,257,048
					Interr. kWh	35,721,342	0.0274	\$ 978,765
13. Curtailment Rider				\$ (286,778)	16. Curtailment Rider			\$ (286,778)
14. NSR-Supplemental Energy				\$ 26,168,110	17. NSR-Supplemental Energy			\$ 26,168,110
15. Adjusted Base Revenue				\$ 984,938,000	18. Adjusted Base Revenue			\$ 886,444,000

PECO Energy Company-Electric Operations
 Rate HT
 Calculation of Revenue - Supp No. 10 Bundled and Unbundled
 12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Data	Bills and kwh (1)		Supplement No. 10 Bundled		Unbundled Components	Bills and kwh from unbundling (4)	Supplement No. 10 Unbundled	
			Pricing (2)	Revenue (3)=(1)x(2)			Pricing (5)	Revenue (6)=(4)x(5)
1. Customer Charge	27,762	bills	\$ 286.86	\$ 7,963,827	1.Fixed Distribution Charge	27,762	\$ 286.86	\$ 7,963,827
					2.Transmission Charge			
					Capacity Charge (kW)	24,911,867	\$ 0.8000	\$ 19,930,482
					First 150 hrs use	3,730,248,598	\$ 0.0043	\$ 16,212,769
					Next 150 hrs use	3,640,776,279	\$ 0.0026	\$ 9,455,074
					Additional use	<u>4,334,660,758</u>	\$ 0.0009	<u>\$ 3,755,986</u>
								\$ 49,354,312
					3.Variable Distribution Charge			
					Capacity Charge (kW)	24,911,867	\$ 1.7803	\$ 44,350,144
					First 150 hrs use	3,730,248,598	\$ 0.0097	\$ 36,077,332
					Next 150 hrs use	3,640,776,279	\$ 0.0058	\$ 21,039,827
					Additional use	<u>4,334,660,758</u>	\$ 0.0019	<u>\$ 8,357,978</u>
2. All KW	24,911,867	KW	\$ 12.76	\$ 317,875,423				\$ 109,825,282
3. Kwh-First 150 Hrs	3,730,248,598		\$ 0.0829	\$ 309,237,609	4.Competitive Transition Charge			
4. Kwh-Next 150 Hrs	3,640,776,279		\$ 0.0550	\$ 200,242,695	Capacity Charge (kW)	24,911,867	\$ 5.5791	\$ 138,985,651
5. Kwh-Addl Use	<u>4,334,660,758</u>		\$ 0.0274	<u>\$ 118,769,705</u>	First 150 hrs use	3,730,248,598	\$ 0.0303	\$ 113,060,095
					Next 150 hrs use	3,640,776,279	\$ 0.0181	\$ 65,935,166
	11,705,685,635	kWh			Additional use	<u>4,334,660,758</u>	\$ 0.0060	<u>\$ 26,192,453</u>
								\$ 344,173,365
6. Night Service Rider					5. Night Service Rider			
Customer Charge	3,840		\$ 11.21	\$ 43,046	Fixed Distribution Charge	3,840	\$ 11.21	\$ 43,046
Demand Charge	525,737		\$ 0.91	\$ 478,421	Demand Charge	525,737	\$ 0.91	\$ 478,421
					6. PECO Charges-Sample			\$ 511,838,253
					7. Electric Generation			
					Capacity Charge (kW)	24,911,867	\$ 3.7976	\$ 94,604,475
					First 150 hrs use	3,730,248,598	\$ 0.0342	\$ 127,614,295
					Next 150 hrs use	3,640,776,279	\$ 0.0259	\$ 94,322,359
					Additional use	<u>4,334,660,758</u>	\$ 0.0177	<u>\$ 76,693,320</u>
7. Total				\$ 954,610,726	8. Total Sample			\$ 905,072,702
					9. Total PECO Charges			\$ 511,838,253
					10. Total Electric Generation			\$ 393,234,449
Rate HT					11. Proforma Base Revenue			\$ 905,072,702
8. Proforma Base Revenue				\$ 954,089,259	12. HVD >66kv			\$ (180)
9. HVD >66kv				\$ (180)	13. HVD 66kv			\$ (8,983)
10. HVD 66kv				\$ (8,983)	14. HVD 33kv			\$ (611,242)
11. HVD 33kv				\$ (611,242)	15. Aux Serv Rider			
12. Aux Serv Rider					Firm kW	314,340	\$ 3.00	\$ 943,020
Firm kW	314,340		\$ 3.00	\$ 943,020	Transmission	314,340	\$ 0.18	\$ 56,581
Firm kWh	46,820,419		\$ 0.0783	\$ 3,666,039	Distribution	314,340	\$ 0.45	\$ 141,453
Interr. kWh	35,721,342		\$ 0.0274	\$ 978,765	Competitive Transition Charge	314,340	\$ 1.33	\$ 418,010
					Electric Generation	314,340	\$ 0.89	\$ 279,825
					Firm kWh			
					Transmission	46,820,419	0.0039	\$ 180,259
					Distribution	46,820,419	0.0104	\$ 485,528
					Competitive Transition Charge	46,820,419	0.0294	\$ 1,376,625
					Electric Generation	46,820,419	0.0308	\$ 1,440,325
					Interr. kWh	35,721,342	0.0274	\$ 978,765
13. Curtailment Rider				\$ (286,778)	16. Curtailment Rider			\$ (286,778)
14. NSR-Supplemental Energy				\$ 26,168,110	17. NSR-Supplemental Energy			\$ 26,168,110
15. Adjusted Base Revenue				\$ 984,938,000	18. Adjusted Base Revenue			\$ 935,691,000

PECO Energy Company-Electric Operations
Rate HT
Calculation of Revenue - Supp No. 10 Bundled and Unbundled
12 months ended 12/31/96 - Unverse Billing Determinants and Revenues

12 Month Data	Bills and kwh (1)	Supplement No. 10 Bundled		Unbundled Components	Bills and kwh from unbundling (4)	Supplement No. 10 Unbundled	
		Pricing (2)	Revenue (3)=(1)x(2)			Pricing (5)	Revenue (6)=(4)x(5)
1. Customer Charge	27,762 bills	\$ 286.86	\$ 7,963,827	1.Fixed Distribution Charge	27,762	\$ 286.86	\$ 7,963,827
				2.Transmission Charge			
				Capacity Charge (kW)	24,911,867	\$ 0.8000	\$ 19,930,482
				First 150 hrs use	3,730,248,598	\$ 0.0043	\$ 16,212,769
				Next 150 hrs use	3,640,776,279	\$ 0.0026	\$ 9,455,074
				Additional use	<u>4,334,660,758</u>	\$ 0.0009	<u>\$ 3,755,986</u>
							\$ 49,354,312
				3.Variable Distribution Charge			
				Capacity Charge (kW)	24,911,867	\$ 1.7803	\$ 44,350,144
				First 150 hrs use	3,730,248,598	\$ 0.0097	\$ 36,077,332
				Next 150 hrs use	3,640,776,279	\$ 0.0058	\$ 21,039,827
				Additional use	<u>4,334,660,758</u>	\$ 0.0019	<u>\$ 8,357,978</u>
							\$ 109,825,282
2. All KW	24,911,867 kW	\$ 12.76	\$ 317,875,423	4.Competitive Transition Charge			
3. Kwh-First 150 Hrs	3,730,248,598	\$ 0.0829	\$ 309,237,609	Capacity Charge (kW)	24,911,867	\$ 5.4680	\$ 136,217,037
4. Kwh-Next 150 Hrs	3,640,776,279	\$ 0.0550	\$ 200,242,695	First 150 hrs use	3,730,248,598	\$ 0.0297	\$ 110,807,921
5. Kwh-Addl Use	<u>4,334,660,758</u>	\$ 0.0274	<u>\$ 118,769,705</u>	Next 150 hrs use	3,640,776,279	\$ 0.0177	\$ 64,621,728
				Additional use	<u>4,334,660,758</u>	\$ 0.0059	<u>\$ 25,670,695</u>
	11,705,685,635 kWh						\$ 337,317,381
6. Night Service Rider				5. Night Service Rider			
Customer Charge	3,840	\$ 11.21	\$ 43,046	Fixed Distribution Charge	3,840	\$ 11.21	\$ 43,046
Demand Charge	525,737	\$ 0.91	\$ 478,421	Demand Charge	525,737	\$ 0.91	\$ 478,421
				6. PECO Charges-Sample			\$ 504,982,269
				7. Electric Generation			
				Capacity Charge (kW)	24,911,867	\$ 4.3854	\$ 109,249,460
				First 150 hrs use	3,730,248,598	\$ 0.0374	\$ 139,527,492
				Next 150 hrs use	3,640,776,279	\$ 0.0278	\$ 101,269,979
				Additional use	<u>4,334,660,758</u>	\$ 0.0183	<u>\$ 79,453,231</u>
7. Total			\$ 954,610,726	8. Total Sample			\$ 934,482,430
				9. Total PECO Charges			\$ 504,982,269
				10. Total Electric Generation			\$ 429,500,161
<u>Rate HT</u>				11. Proforma Base Revenue			\$ 934,482,430
8. Proforma Base Revenue			\$ 954,089,259	12. HVD >66kv			\$ (180)
9. HVD >66kv			\$ (180)	13. HVD 66kv			\$ (8,983)
10. HVD 66kv			\$ (8,983)	14. HVD 33kv			\$ (611,242)
11. HVD 33kv			\$ (611,242)	15. Aux Serv Rider			
12. Aux Serv Rider				Firm kW	314,340	\$ 0.18	\$ 56,581
Firm kW	314,340	\$ 3.00	\$ 943,020	Transmission	314,340	\$ 0.45	\$ 141,453
Firm kWh	46,820,419	\$ 0.0783	\$ 3,666,039	Distribution	314,340	\$ 1.29	\$ 406,416
Interr. kWh	35,721,342	\$ 0.0274	\$ 978,765	Competitive Transition Charge	314,340	\$ 1.02	\$ 319,709
				Electric Generation	314,340		
				Firm kWh			
				Transmission	46,820,419	0.0039	\$ 180,259
				Distribution	46,820,419	0.0104	\$ 485,528
				Competitive Transition Charge	46,820,419	0.0288	\$ 1,349,203
				Electric Generation	46,820,419	0.0337	\$ 1,577,729
				Interr. kWh	35,721,342	0.0274	\$ 978,765
13. Curtailment Rider			\$ (286,778)	16. Curtailment Rider			\$ (286,778)
14. NSR-Supplemental Energy			\$ 26,168,110	17. NSR-Supplemental Energy			\$ 26,168,110
15. Adjusted Base Revenue			\$ 984,938,000	18. Adjusted Base Revenue			\$ 965,239,000

PECO Energy Company-Electric Operations
Rate HT
Calculation of Revenue - Supp No. 10 Bundled and Unbundled
12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Data	Bills and kwh		Supplement No. 10 Bundled		Unbundled Components	Bills and kwh from unbundling		Supplement No. 10 Unbundled	
	(1)	(2)	Pricing	Revenue (3)=(1)x(2)		(4)	(5)	Pricing	Revenue (6)=(4)x(5)
1. Customer Charge	27,762	bills	\$ 286.86	\$ 7,963,827	1.Fixed Distribution Charge	27,762	\$	286.86	\$ 7,963,827
					2.Transmission Charge				
					Capacity Charge (kW)	24,911,867	\$	0.8000	\$ 19,930,482
					First 150 hrs use	3,730,248,598	\$	0.0043	\$ 16,212,769
					Next 150 hrs use	3,640,776,279	\$	0.0026	\$ 9,455,074
					Additional use	<u>4,334,660,758</u>	\$	0.0009	\$ 3,755,986
									\$ 49,354,312
					3.Variable Distribution Charge				
					Capacity Charge (kW)	24,911,867	\$	1.7803	\$ 44,350,144
					First 150 hrs use	3,730,248,598	\$	0.0097	\$ 36,077,332
					Next 150 hrs use	3,640,776,279	\$	0.0058	\$ 21,039,827
					Additional use	<u>4,334,660,758</u>	\$	0.0019	\$ 8,357,978
									\$ 109,825,282
2. All KW	24,911,867	kW	\$ 12.76	\$ 317,875,423	4.Competitive Transition Charge				
3. Kwh-First 150 Hrs	3,730,248,598		\$ 0.0829	\$ 309,237,609	Capacity Charge (kW)	24,911,867	\$	5.3092	\$ 132,261,159
4. Kwh-Next 150 Hrs	3,640,776,279		\$ 0.0550	\$ 200,242,695	First 150 hrs use	3,730,248,598	\$	0.0288	\$ 107,589,949
5. Kwh-Addl Use	<u>4,334,660,758</u>		\$ 0.0274	\$ 118,769,705	Next 150 hrs use	3,640,776,279	\$	0.0172	\$ 62,745,048
					Additional use	<u>4,334,660,758</u>	\$	0.0058	\$ 24,925,193
	11,705,685,635	kWh				653,844,365			\$ 327,521,349
6. Night Service Rider					5. Night Service Rider				
Customer Charge	3,840		\$ 11.21	\$ 43,046	Fixed Distribution Charge	3,840	\$	11.21	\$ 43,046
Demand Charge	525,737		\$ 0.91	\$ 478,421	Demand Charge	525,737	\$	0.91	\$ 478,421
					6. PECO Charges-Sample				\$ 495,186,237
					7. Electric Generation				
					Capacity Charge (kW)	24,911,867	\$	4.8621	\$ 121,123,053
					First 150 hrs use	3,730,248,598	\$	0.0400	\$ 149,186,255
					Next 150 hrs use	3,640,776,279	\$	0.0294	\$ 106,902,843
					Additional use	<u>4,334,660,758</u>	\$	0.0188	\$ 81,690,861
7. Total				\$ 954,610,726	8. Total Sample				\$ 954,089,249
					9. Total PECO Charges				\$ 495,186,237
					10. Total Electric Generation				\$ 458,903,012
Rate HT					11. Proforma Base Revenue				\$ 954,089,249
8. Proforma Base Revenue				\$ 954,089,259	12. HVD >66kv				\$ (180)
9. HVD >66kv				\$ (180)	13. HVD 66kv				\$ (8,983)
10. HVD 66kv				\$ (8,983)	14. HVD 33kv				\$ (611,242)
11. HVD 33kv				\$ (611,242)	15. Aux Serv Rider				
12. Aux Serv Rider					Firm kW	314,340	\$	0.18	\$ 56,581
Firm kW	314,340		\$ 3.00	\$ 943,020	Transmission	314,340	\$	0.45	\$ 141,453
Firm kWh	46,820,419		\$ 0.0783	\$ 3,666,039	Distribution	314,340	\$	1.25	\$ 392,631
Interr. kWh	35,721,342		\$ 0.0274	\$ 978,765	Competitive Transition Charge	314,340	\$	1.12	\$ 352,355
					Electric Generation	314,340	\$		
					Firm kWh				
					Transmission	46,820,419		0.0039	\$ 180,259
					Distribution	46,820,419		0.0104	\$ 485,528
					Competitive Transition Charge	46,820,419		0.0280	\$ 1,310,020
					Electric Generation	46,820,419		0.0361	\$ 1,690,232
					Interr. kWh	35,721,342		0.0274	\$ 978,765
13. Curtailment Rider				\$ (286,778)	16. Curtailment Rider				\$ (286,778)
14. NSR-Supplemental Energy				\$ 26,168,110	17. NSR-Supplemental Energy				\$ 26,168,110
15. Adjusted Base Revenue				\$ 984,938,000	18. Adjusted Base Revenue				\$ 984,938,000

PECO Energy Company-Electric Operations
Rate HT
Calculation of Revenue - Supp No. 10 Bundled and Unbundled
12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Data	Bills and kwh (1)	Supplement No. 10 Bundled		Unbundled Components	Bills and kwh from unbundling (4)	Supplement No. 10 Unbundled	
		Pricing (2)	Revenue (3)=(1)x(2)			Pricing (5)	Revenue (6)=(4)x(5)
1. Customer Charge	27,762 bills	\$ 286.86	\$ 7,963,827	1.Fixed Distribution Charge	27,762	\$ 286.86	\$ 7,963,827
				2.Transmission Charge			
				Capacity Charge (kW)	24,911,867	\$ 0.8000	\$ 19,930,482
				First 150 hrs use	3,730,248,598	\$ 0.0043	\$ 16,212,769
				Next 150 hrs use	3,640,776,279	\$ 0.0026	\$ 9,455,074
				Additional use	<u>4,334,660,758</u>	\$ 0.0009	\$ 3,755,986
							\$ 49,354,312
				3.Variable Distribution Charge			
				Capacity Charge (kW)	24,911,867	\$ 1.7803	\$ 44,350,144
				First 150 hrs use	3,730,248,598	\$ 0.0097	\$ 36,077,332
				Next 150 hrs use	3,640,776,279	\$ 0.0058	\$ 21,039,827
				Additional use	<u>4,334,660,758</u>	\$ 0.0019	\$ 8,357,978
							\$ 109,825,282
2. All KW	24,911,867 kW	\$ 12.76	\$ 317,875,423	4.Competitive Transition Charge			
3. Kwh-First 150 Hrs	3,730,248,598	\$ 0.0829	\$ 309,237,609	Capacity Charge (kW)	24,911,867	\$ 5.1497	\$ 128,288,250
4. Kwh-Next 150 Hrs	3,640,776,279	\$ 0.0550	\$ 200,242,695	First 150 hrs use	3,730,248,598	\$ 0.0280	\$ 104,358,123
5. Kwh-Addl Use	<u>4,334,660,758</u>	\$ 0.0274	\$ 118,769,705	Next 150 hrs use	3,640,776,279	\$ 0.0167	\$ 60,860,290
				Additional use	<u>4,334,660,758</u>	\$ 0.0056	\$ 24,176,481
	11,705,685,635 kWh				644,006,159		\$ 317,683,143
6. Night Service Rider				5. Night Service Rider			
Customer Charge	3,840	\$ 11.21	\$ 43,046	Fixed Distribution Charge	3,840	\$ 11.21	\$ 43,046
Demand Charge	525,737	\$ 0.91	\$ 478,421	Demand Charge	525,737	\$ 0.91	\$ 478,421
				6. PECO Charges-Sample			\$ 485,348,031
				7. Electric Generation			
				Capacity Charge (kW)	24,911,867	\$ 5.0215	\$ 125,095,962
				First 150 hrs use	3,730,248,598	\$ 0.0409	\$ 152,418,081
				Next 150 hrs use	3,640,776,279	\$ 0.0299	\$ 108,787,602
				Additional use	<u>4,334,660,758</u>	\$ 0.0190	\$ 82,439,573
7. Total			\$ 954,610,726	8. Total Sample			\$ 954,089,249
				9. Total PECO Charges			\$ 485,348,031
				10. Total Electric Generation			\$ 468,741,218
Rate HT				11. Proforma Base Revenue			\$ 954,089,249
8. Proforma Base Revenue			\$ 954,089,259	12. HVD >66kv			\$ (180)
9. HVD >66kv			\$ (180)	13. HVD 66kv			\$ (8,983)
10. HVD 66kv			\$ (8,983)	14. HVD 33kv			\$ (611,242)
11. HVD 33kv			\$ (611,242)	15. Aux Serv Rider			
12. Aux Serv Rider				Firm kW	314,340	\$ 0.18	\$ 56,581
Firm kW	314,340	\$ 3.00	\$ 943,020	Transmission	314,340	\$ 0.45	\$ 141,453
Firm kWh	46,820,419	\$ 0.0783	\$ 3,666,039	Distribution	314,340	\$ 1.21	\$ 380,837
Interr. kWh	35,721,342	\$ 0.0274	\$ 978,765	Competitive Transition Charge	314,340	\$ 1.16	\$ 364,149
				Electric Generation	314,340		
				Firm kWh			
				Transmission	46,820,419	0.0039	\$ 180,259
				Distribution	46,820,419	0.0104	\$ 485,528
				Competitive Transition Charge	46,820,419	0.0280	\$ 1,310,020
				Electric Generation	46,820,419	0.0361	\$ 1,690,232
				Interr. kWh	35,721,342	0.0274	\$ 978,765
13. Curtailment Rider			\$ (286,778)	16. Curtailment Rider			\$ (286,778)
14. NSR-Supplemental Energy			\$ 26,168,110	17. NSR-Supplemental Energy			\$ 26,168,110
15. Adjusted Base Revenue			\$ 984,938,000	18. Adjusted Base Revenue			\$ 984,938,000

PECO Energy Company-Electric Operations
Rate HT
Calculation of Revenue - Supp No. 10 Bundled and Unbundled
12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Data	Bills and kwh (1)	Supplement No. 10 Bundled		Unbundled Components	Bills and kwh from unbundling (4)	Supplement No. 10 Unbundled	
		Pricing (2)	Revenue (3)=(1)x(2)			Pricing (5)	Revenue (6)=(4)x(5)
1. Customer Charge	27,762 bills	\$ 286.86	\$ 7,963,827	1.Fixed Distribution Charge	27,762	\$ 286.86	\$ 7,963,827
				2.Transmission Charge			
				Capacity Charge (kW)	24,911,867	\$ 0.8000	\$ 19,930,482
				First 150 hrs use	3,730,248,598	\$ 0.0043	\$ 16,212,769
				Next 150 hrs use	3,640,776,279	\$ 0.0026	\$ 9,455,074
				Additional use	<u>4,334,660,758</u>	\$ 0.0009	\$ 3,755,986
							\$ 49,354,312
				3.Variable Distribution Charge			
				Capacity Charge (kW)	24,911,867	\$ 1.7803	\$ 44,350,144
				First 150 hrs use	3,730,248,598	\$ 0.0097	\$ 36,077,332
				Next 150 hrs use	3,640,776,279	\$ 0.0058	\$ 21,039,827
				Additional use	<u>4,334,660,758</u>	\$ 0.0019	\$ 8,357,978
							\$ 109,825,282
2. All KW	24,911,867 kW	\$ 12.76	\$ 317,875,423	4.Competitive Transition Charge			
3. Kwh-First 150 Hrs	3,730,248,598	\$ 0.0829	\$ 309,237,609	Capacity Charge (kW)	24,911,867	\$ 4.9902	\$ 124,315,744
4. Kwh-Next 150 Hrs	3,640,776,279	\$ 0.0550	\$ 200,242,695	First 150 hrs use	3,730,248,598	\$ 0.0271	\$ 101,126,625
5. Kwh-Addl Use	<u>4,334,660,758</u>	\$ 0.0274	\$ 118,769,705	Next 150 hrs use	3,640,776,279	\$ 0.0162	\$ 58,975,722
				Additional use	<u>4,334,660,758</u>	\$ 0.0054	\$ 23,427,845
	11,705,685,635 kWh				634,168,952		\$ 307,845,936
6. Night Service Rider				5. Night Service Rider			
Customer Charge	3,840	\$ 11.21	\$ 43,046	Fixed Distribution Charge	3,840	\$ 11.21	\$ 43,046
Demand Charge	525,737	\$ 0.91	\$ 478,421	Demand Charge	525,737	\$ 0.91	\$ 478,421
				6. PECO Charges-Sample			\$ 475,510,824
				7. Electric Generation			
				Capacity Charge (kW)	24,911,867	\$ 5.1810	\$ 129,068,467
				First 150 hrs use	3,730,248,598	\$ 0.0417	\$ 155,649,579
				Next 150 hrs use	3,640,776,279	\$ 0.0304	\$ 110,672,169
				Additional use	<u>4,334,660,758</u>	\$ 0.0192	\$ 83,188,209
7. Total			\$ 954,610,726	8. Total Sample			\$ 954,089,249
				9. Total PECO Charges			\$ 475,510,824
				10. Total Electric Generation			\$ 478,578,425
<u>Rate HT</u>							
8. Proforma Base Revenue			\$ 954,089,259	11. Proforma Base Revenue			\$ 954,089,249
9. HVD >66kv			\$ (180)	12. HVD >66kv			\$ (180)
10. HVD 66kv			\$ (8,983)	13. HVD 66kv			\$ (8,983)
11. HVD 33kv			\$ (611,242)	14. HVD 33kv			\$ (611,242)
12. Aux Serv Rider				15. Aux Serv Rider			
Firm kW	314,340	\$ 3.00	\$ 943,020	Firm kW			
Firm kWh	46,820,419	\$ 0.0783	\$ 3,666,039	Transmission	314,340	\$ 0.18	\$ 56,581
Interr. kWh	35,721,342	\$ 0.0274	\$ 978,765	Distribution	314,340	\$ 0.45	\$ 141,453
				Competitive Transition Charge	314,340	\$ 1.17	\$ 369,044
				Electric Generation	314,340	\$ 1.20	\$ 375,942
				Firm kWh			
				Transmission	46,820,419	0.0039	\$ 180,259
				Distribution	46,820,419	0.0104	\$ 485,528
				Competitive Transition Charge	46,820,419	0.0280	\$ 1,310,020
				Electric Generation	46,820,419	0.0361	\$ 1,690,232
				Interr. kWh	35,721,342	0.0274	\$ 978,765
13. Curtailment Rider			\$ (286,778)	16. Curtailment Rider			\$ (286,778)
14. NSR-Supplemental Energy			\$ 26,168,110	17. NSR-Supplemental Energy			\$ 26,168,110
15. Adjusted Base Revenue			\$ 984,938,000	18. Adjusted Base Revenue			\$ 984,938,000

PECO Energy Company-Electric Operations
 Rate HT
 Calculation of Revenue - Supp No. 10 Bundled and Unbundled
 12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Data	Bills and kwh (1)	Supplement No. 10 Bundled		Unbundled Components	Bills and kwh from unbundling (4)	Supplement No. 10 Unbundled	
		Pricing (2)	Revenue (3)=(1)x(2)			Pricing (5)	Revenue (6)=(4)x(5)
1. Customer Charge	27,762 bills	\$ 286.86	\$ 7,963,827	1.Fixed Distribution Charge	27,762	\$ 286.86	\$ 7,963,827
				2.Transmission Charge			
				Capacity Charge (kW)	24,911,867	\$ 0.8000	\$ 19,930,482
				First 150 hrs use	3,730,248,598	\$ 0.0043	\$ 16,212,769
				Next 150 hrs use	3,640,776,279	\$ 0.0026	\$ 9,455,074
				Additional use	4,334,660,758	\$ 0.0009	\$ 3,755,986
							\$ 49,354,312
				3.Variable Distribution Charge			
				Capacity Charge (kW)	24,911,867	\$ 1.7803	\$ 44,350,144
				First 150 hrs use	3,730,248,598	\$ 0.0097	\$ 36,077,332
				Next 150 hrs use	3,640,776,279	\$ 0.0058	\$ 21,039,827
				Additional use	4,334,660,758	\$ 0.0019	\$ 8,357,978
2. All KW	24,911,867 kW	\$ 12.76	\$ 317,875,423				\$ 109,825,282
3. Kwh-First 150 Hrs	3,730,248,598	\$ 0.0829	\$ 309,237,609				
4. Kwh-Next 150 Hrs	3,640,776,279	\$ 0.0550	\$ 200,242,695	4.Competitive Transition Charge			
5. Kwh-Addl Use	4,334,660,758	\$ 0.0274	\$ 118,769,705	Capacity Charge (kW)	24,911,867	\$ 4.6739	\$ 116,435,170
				First 150 hrs use	3,730,248,598	\$ 0.0254	\$ 94,716,046
				Next 150 hrs use	3,640,776,279	\$ 0.0152	\$ 55,237,157
				Additional use	4,334,660,758	\$ 0.0051	\$ 21,942,716
	11,705,685,635 kWh				614,654,105		\$ 288,331,089
6. Night Service Rider				5. Night Service Rider			
Customer Charge	3,840	\$ 11.21	\$ 43,046	Fixed Distribution Charge	3,840	\$ 11.21	\$ 43,046
Demand Charge	525,737	\$ 0.91	\$ 478,421	Demand Charge	525,737	\$ 0.91	\$ 478,421
				6. PECO Charges-Sample			\$ 455,995,977
				7. Electric Generation			
				Capacity Charge (kW)	24,911,867	\$ 6.2919	\$ 156,743,126
				First 150 hrs use	3,730,248,598	\$ 0.0478	\$ 178,161,972
				Next 150 hrs use	3,640,776,279	\$ 0.0340	\$ 123,801,101
				Additional use	4,334,660,758	\$ 0.0204	\$ 88,403,620
7. Total			\$ 954,610,726	8. Total Sample			\$ 1,003,105,796
				9. Total PECO Charges			\$ 455,995,977
				10. Total Electric Generation			\$ 547,109,819
<u>Rate HT</u>							
8. Proforma Base Revenue			\$ 954,089,259	11. Proforma Base Revenue			\$ 1,003,105,796
9. HVD >66kv			\$ (180)	12. HVD >66kv			\$ (180)
10. HVD 66kv			\$ (8,983)	13. HVD 66kv			\$ (8,983)
11. HVD 33kv			\$ (611,242)	14. HVD 33kv			\$ (611,242)
12. Aux Serv Rider				15. Aux Serv Rider			
Firm kW	314,340	\$ 3.00	\$ 943,020	Firm kW			
Firm kWh	46,820,419	\$ 0.0783	\$ 3,666,039	Transmission	314,340	\$ 0.18	\$ 56,581
Interr. kWh	35,721,342	\$ 0.0274	\$ 978,765	Distribution	314,340	\$ 0.45	\$ 141,453
				Competitive Transition Charge	314,340	\$ 1.09	\$ 341,644
				Electric Generation	314,340	\$ 1.43	\$ 450,493
				Firm kWh			
				Transmission	46,820,419	0.0039	\$ 180,259
				Distribution	46,820,419	0.0104	\$ 485,528
				Competitive Transition Charge	46,820,419	0.0246	\$ 1,153,267
				Electric Generation	46,820,419	0.0434	\$ 2,030,287
				Interr. kWh	35,721,342	0.0274	\$ 978,765
13. Curtailment Rider			\$ (286,778)	16. Curtailment Rider			\$ (286,778)
14. NSR-Supplemental Energy			\$ 26,168,110	17. NSR-Supplemental Energy			\$ 26,168,110
15. Adjusted Base Revenue			\$ 984,938,000	18. Adjusted Base Revenue			\$ 1,034,185,000

PECO Energy Company-Electric Operations
 Rate HT
 Calculation of Revenue - Supp No. 10 Bundled and Unbundled
 12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Data	Bills and kwh (1)		Supplement No. 10 Bundled		Unbundled Components	Bills and kwh from unbundling (4)	Supplement No. 10 Unbundled	
			Pricing (2)	Revenue (3)=(1)x(2)			Pricing (5)	Revenue (6)=(4)x(5)
1. Customer Charge	27,762	bills	\$ 286.86	\$ 7,963,827	1.Fixed Distribution Charge	27,762	\$ 286.86	\$ 7,963,827
					2.Transmission Charge			
					Capacity Charge (kW)	24,911,867	\$ 0.8000	\$ 19,930,482
					First 150 hrs use	3,730,248,598	\$ 0.0043	\$ 16,212,769
					Next 150 hrs use	3,640,776,279	\$ 0.0026	\$ 9,455,074
					Additional use	<u>4,334,660,758</u>	\$ 0.0009	<u>\$ 3,755,986</u>
								\$ 49,354,312
					3.Variable Distribution Charge			
					Capacity Charge (kW)	24,911,867	\$ 1.7803	\$ 44,350,144
					First 150 hrs use	3,730,248,598	\$ 0.0097	\$ 36,077,332
					Next 150 hrs use	3,640,776,279	\$ 0.0058	\$ 21,039,827
					Additional use	<u>4,334,660,758</u>	\$ 0.0019	<u>\$ 8,357,978</u>
2. All KW	24,911,867	kW	\$ 12.76	\$ 317,875,423				
3. Kwh-First 150 Hrs	3,730,248,598		\$ 0.0829	\$ 309,237,609				\$ 109,825,282
4. Kwh-Next 150 Hrs	3,640,776,279		\$ 0.0550	\$ 200,242,695	4.Competitive Transition Charge			
5. Kwh-Addl Use	<u>4,334,660,758</u>		\$ 0.0274	<u>\$ 118,769,705</u>	Capacity Charge (kW)	24,911,867	\$ 4.5151	\$ 112,479,799
					First 150 hrs use	3,730,248,598	\$ 0.0245	\$ 91,498,486
	11,705,685,635	kWh			Next 150 hrs use	3,640,776,279	\$ 0.0147	\$ 53,360,718
					Additional use	<u>4,334,660,758</u>	\$ 0.0049	<u>\$ 21,197,309</u>
						604,859,329		\$ 278,536,313
6. Night Service Rider					5. Night Service Rider			
Customer Charge	3,840		\$ 11.21	\$ 43,046	Fixed Distribution Charge	3,840	\$ 11.21	\$ 43,046
Demand Charge	525,737		\$ 0.91	<u>\$ 478,421</u>	Demand Charge	525,737	\$ 0.91	<u>\$ 478,421</u>
					6. PECO Charges-Sample			\$ 446,201,201
					7. Electric Generation			
					Capacity Charge (kW)	24,911,867	\$ 7.2452	\$ 180,492,582
					First 150 hrs use	3,730,248,598	\$ 0.0529	\$ 197,481,345
					Next 150 hrs use	3,640,776,279	\$ 0.0371	\$ 135,067,907
					Additional use	<u>4,334,660,758</u>	\$ 0.0214	<u>\$ 92,879,308</u>
7. Total				<u>\$ 954,610,726</u>	8. Total Sample			\$ 1,052,122,343
					9. Total PECO Charges			\$ 446,201,201
					10. Total Electric Generation			\$ 605,921,142
Rate HT					11. Proforma Base Revenue			\$ 1,052,122,343
8. Proforma Base Revenue				\$ 954,089,259	12. HVD >66kv			\$ (180)
9. HVD >66kv				\$ (180)	13. HVD 66kv			\$ (8,983)
10. HVD 66kv				\$ (8,983)	14. HVD 33kv			\$ (611,242)
11. HVD 33kv				\$ (611,242)	15. Aux Serv Rider			
12. Aux Serv Rider					Firm kW	314,340	\$ 3.00	\$ 943,020
Firm kW	314,340		\$ 3.00	\$ 943,020	Transmission	314,340	\$ 0.18	\$ 56,581
Firm kWh	46,820,419		\$ 0.0783	\$ 3,666,039	Distribution	314,340	\$ 0.45	\$ 141,453
Interr. kWh	35,721,342		\$ 0.0274	\$ 978,765	Competitive Transition Charge	314,340	\$ 1.04	\$ 326,597
					Electric Generation	314,340	\$ 1.63	\$ 512,691.
					Firm kWh			
					Transmission	46,820,419	0.0039	\$ 180,259
					Distribution	46,820,419	0.0104	\$ 485,528
					Competitive Transition Charge	46,820,419	0.0238	\$ 1,114,090
					Electric Generation	46,820,419	0.0481	\$ 2,252,766
					Interr. kWh	35,721,342	0.0274	\$ 978,765
13. Curtailment Rider				\$ (286,778)	16. Curtailment Rider			\$ (286,778)
14. NSR-Supplemental Energy				\$ 26,168,110	17. NSR-Supplemental Energy			\$ 26,168,110
15. Adjusted Base Revenue				<u>\$ 984,938,000</u>	18. Adjusted Base Revenue			<u>\$ 1,083,432,000</u>

PECO Energy Company-Electric Operations
 Rate HT
 Calculation of Revenue - Supp No. 10 Bundled and Unbundled
 12 months ended 12/31/96 - Universe Billing Determinants and Revenues

12 Month Data	Bills and kwh (1)	Supplement No. 10 Bundled		Unbundled Components	Bills and kwh from unbundling (4)	Supplement No. 10 Unbundled	
		Pricing (2)	Revenue (3)=(1)x(2)			Pricing (5)	Revenue (6)=(4)x(5)
1. Customer Charge	27,762 bills	\$ 286.86	\$ 7,963,827	1.Fixed Distribution Charge	27,762	\$ 286.86	\$ 7,963,827
				2.Transmission Charge			
				Capacity Charge (kW)	24,911,867	\$ 0.8000	\$ 19,930,482
				First 150 hrs use	3,730,248,598	\$ 0.0043	\$ 16,212,769
				Next 150 hrs use	3,640,776,279	\$ 0.0026	\$ 9,455,074
				Additional use	4,334,660,758	\$ 0.0009	\$ 3,755,986
							\$ 49,354,312
				3.Variable Distribution Charge			
				Capacity Charge (kW)	24,911,867	\$ 1.7803	\$ 44,350,144
				First 150 hrs use	3,730,248,598	\$ 0.0097	\$ 36,077,332
				Next 150 hrs use	3,640,776,279	\$ 0.0058	\$ 21,039,827
				Additional use	4,334,660,758	\$ 0.0019	\$ 8,357,978
2. All KW	24,911,867 kW	\$ 12.76	\$ 317,875,423				\$ 109,825,282
3. Kwh-First 150 Hrs	3,730,248,598	\$ 0.0829	\$ 309,237,609				
4. Kwh-Next 150 Hrs	3,640,776,279	\$ 0.0550	\$ 200,242,695	4.Competitive Transition Charge			
5. Kwh-Addl Use	4,334,660,758	\$ 0.0274	\$ 118,769,705	Capacity Charge (kW)	24,911,867	\$ 4.1974	\$ 104,565,793
				First 150 hrs use	3,730,248,598	\$ 0.0228	\$ 85,060,712
				Next 150 hrs use	3,640,776,279	\$ 0.0136	\$ 49,606,293
				Additional use	4,334,660,758	\$ 0.0045	\$ 19,705,880
	11,705,685,635 kWh				585,261,695		\$ 258,938,679
6. Night Service Rider				5. Night Service Rider			
Customer Charge	3,840	\$ 11.21	\$ 43,046	Fixed Distribution Charge	3,840	\$ 11.21	\$ 43,046
Demand Charge	525,737	\$ 0.91	\$ 478,421	Demand Charge	525,737	\$ 0.91	\$ 478,421
				6. PECO Charges-Sample			\$ 426,603,567
				7. Electric Generation			
				Capacity Charge (kW)	24,911,867	\$ 7.5629	\$ 188,406,587
				First 150 hrs use	3,730,248,598	\$ 0.0547	\$ 203,919,119
				Next 150 hrs use	3,640,776,279	\$ 0.0381	\$ 138,822,332
				Additional use	4,334,660,758	\$ 0.0218	\$ 94,370,737
7. Total			\$ 954,610,726	8. Total Sample			\$ 1,052,122,343
				9. Total PECO Charges			\$ 426,603,567
				10. Total Electric Generation			\$ 625,518,776
Rate HT							
8. Proforma Base Revenue			\$ 954,089,259	11. Proforma Base Revenue			\$ 1,052,122,343
9. HVD >66kv			\$ (180)	12. HVD >66kv			\$ (180)
10. HVD 66kv			\$ (8,983)	13. HVD 66kv			\$ (8,983)
11. HVD 33kv			\$ (611,242)	14. HVD 33kv			\$ (611,242)
12. Aux Serv Rider				15. Aux Serv Rider			
Firm kW	314,340	\$ 3.00	\$ 943,020	Firm kW			
Firm kWh	46,820,419	\$ 0.0783	\$ 3,666,039	Transmission	314,340	\$ 0.18	\$ 56,581
Interr. kWh	35,721,342	\$ 0.0274	\$ 978,765	Distribution	314,340	\$ 0.45	\$ 141,453
				Competitive Transition Charge	314,340	\$ 0.97	\$ 303,618
				Electric Generation	314,340	\$ 1.70	\$ 535,670
				Firm kWh			
				Transmission	46,820,419	0.0039	\$ 180,259
				Distribution	46,820,419	0.0104	\$ 485,528
				Competitive Transition Charge	46,820,419	0.0221	\$ 1,035,703
				Electric Generation	46,820,419	0.0498	\$ 2,331,153
				Interr. kWh	35,721,342	0.0274	\$ 978,765
13. Curtailment Rider			\$ (286,778)	16. Curtailment Rider			\$ (286,778)
14. NSR-Supplemental Energy			\$ 26,168,110	17. NSR-Supplemental Energy			\$ 26,168,110
15. Adjusted Base Revenue			\$ 984,938,000	18. Adjusted Base Revenue			\$ 1,083,432,000

PECO ENERGY COMPANY

DEVELOPMENT OF NON-WIRES SERVICES FIXED MONTHLY CREDIT

(All page references apply to PECO Exhibit RAC-10, All dollars in thousands except for line (42))

	TOTAL	HT	EP	PD	GS	RH	R	OP
Meters								
<u>Original Cost</u>								
1. 370 - Meters & Installations (Page 31 of 83)	\$ 192,889	\$ 3,645	\$ 125	\$ 10,525	\$ 26,907	\$ 15,126	\$ 114,522	\$ 22,019
2.								
3. <u>less: Accumulated Depreciation</u>								
4. 370 - Meters & Installations (Page 35 of 83)	\$ (48,927)	\$ (2,977)	\$ (83)	\$ (2,851)	\$ (2,460)	\$ (3,884)	\$ (28,377)	\$ (8,283)
5.								
6. Net Plant ([1] + [4])	\$ 143,962	\$ 668	\$ 42	\$ 7,674	\$ 24,447	\$ 11,242	\$ 86,146	\$ 13,736
7.								
8. Pre-tax Return ([6] x 13.33%) (See Note 1)	\$ 19,190	\$ 89	\$ 6	\$ 1,023	\$ 3,259	\$ 1,499	\$ 11,483	\$ 1,831
9.								
10.								
11. <u>Meters</u>								
12. 586 - Meter Expenses (Page 15 of 83)	\$ 112	\$ 2	\$ 0	\$ 6	\$ 16	\$ 10	\$ 72	\$ 6
13. 597 - Maintenance of Meters (Page 17 of 83)	\$ 90	\$ 2	\$ 0	\$ 5	\$ 13	\$ 7	\$ 53	\$ 10
14. 370 - Meters & Install.(Depreciation) (Page 23 of 83)	\$ 6,696	\$ 407	\$ 11	\$ 390	\$ 337	\$ 532	\$ 3,884	\$ 1,134
15. Pre-tax Return ([8])	\$ 19,190	\$ 89	\$ 6	\$ 1,023	\$ 3,259	\$ 1,499	\$ 11,483	\$ 1,831
16. Total - Meters ([12] + [13] + [14] + [15])	\$ 26,088	\$ 500	\$ 17	\$ 1,424	\$ 3,624	\$ 2,047	\$ 15,493	\$ 2,981
17.								
18. <u>Meter Reading</u>								
19. 902 - Meter Reading Expense (Page 19 of 83)	\$ 8,299	\$ 349	\$ 8	\$ 87	\$ 729	\$ 775	\$ 5,856	\$ 495
20.								
21. <u>Billing & Collection</u>								
22. 903 - Customer Records & Contracts (Page 19 of 83)	\$ 41,171	\$ 56	\$ 0	\$ 26	\$ 3,811	\$ 4,052	\$ 30,617	\$ 2,586
23. Credit for Chapter 56 Costs (See Note 2)	\$ (22,182)	\$ (30)	\$ (0)	\$ (14)	\$ (2,053)	\$ (2,183)	\$ (16,495)	\$ (1,393)
24. Total Billing & Collection ([22] + [23])	\$ 18,989	\$ 26	\$ 0	\$ 12	\$ 1,758	\$ 1,869	\$ 14,121	\$ 1,193
25.								
26. <u>Customer Services & Information</u>								
27. 905 - Misc. Customer Accounts Expense (Page 19 of 83)	\$ 972	\$ 8	\$ 0	\$ 2	\$ 89	\$ 95	\$ 717	\$ 61
28. 907 - Supervision (Page 19 of 83)	\$ 28	\$ 4	\$ 0	\$ 0	\$ 5	\$ 3	\$ 16	\$ 0
29. 908 - Customer Assistance Expense (Page 19 of 83)	\$ 7,221	\$ 1,056	\$ 51	\$ 115	\$ 1,183	\$ 692	\$ 4,053	\$ 28
30. 909 - Informational & Instruct. Advertising (Page 19 of 83)	\$ 1,917	\$ 280	\$ 14	\$ 31	\$ 314	\$ 184	\$ 1,076	\$ 7
31. 910 - Misc. Cust. Service & Information (Page 19 of 83)	\$ 15,678	\$ 2,293	\$ 111	\$ 250	\$ 2,568	\$ 1,502	\$ 8,800	\$ 61
32. Credit for Chapter 56 Costs (See Note 2)	\$ (4,110)	\$ (601)	\$ (29)	\$ (66)	\$ (673)	\$ (394)	\$ (2,307)	\$ (16)
33. Total - Cust. Serv. & Info. ([27]+[28]+[29]+[30]+[31]+[32])	\$ 21,706	\$ 3,040	\$ 147	\$ 333	\$ 3,486	\$ 2,082	\$ 12,354	\$ 141
34.								
35. Total Non-Wire Services Costs ([16]+[19]+[24]+[33])	\$ 75,082	\$ 3,914	\$ 172	\$ 1,856	\$ 9,597	\$ 6,772	\$ 47,823	\$ 4,809
36. Total Non-Wire Services Costs incl. PA GRT ([35] / 0.956)	\$ 78,538	\$ 4,095	\$ 180	\$ 1,942	\$ 10,038	\$ 7,084	\$ 50,024	\$ 5,031
37.								
38. <u>Customers</u>								
39. Allocation Schedules D8 & D15 (Page 45 of 83)		2,252	39	1,047	145,604	154,794	1,169,654	98,781
40.							1,324,448	
41.								
42. Monthly Charge ([36] / [39] / 12 * 1000)		\$151.51	\$385.50	\$154.54	See Note 3	\$3.59		\$4.24

NOTES:

(1) Pre-tax Return of 13.33% equals (Rate of Return After Other Revenue Adjustment) 9.44% from Page 5 of 83 of Exhibit RAC-10 less 1.64% for "Tax Savings on Long-Term Debt" (PECO Exhibit JFBR-1 - Schedule 1 - Updated) then divided by 1 minus the effective tax rate of 41.494%.

(2) Includes costs for terminations, 72 hour notice, 10 day notice, CAP administration, LIURP, etc.

(3) Rate GS Non-Wire Services Credits are: (1) \$3.19 for single-phase w/o demand measurement, (2) \$4.17 for single-phase w/ demand measurement and (3) \$11.29 for poly-phase customers.

PECO ENERGY COMPANY
DEVELOPMENT OF NON-WIRES SERVICES FIXED MONTHLY CREDIT
 (All page references apply to PECO Exhibit RAC-10, All dollars in thousands except for line [42])

	SLP	SLS	SLE	OTHER
<u>Meters</u>				
<u>Original Cost</u>				
1. 370 - Meters & Installations (Page 31 of 83)	\$ 0	\$ 0	\$ 0	\$ 0
<u>less: Accumulated Depreciation</u>				
4. 370 - Meters & Installations (Page 35 of 83)	\$ (0)	\$ (0)	\$ (0)	\$ (0)
5. Net Plant ([1] + [4])	\$ (0)	\$ (0)	\$ (0)	\$ (0)
8. Pre-tax Return ([6] x 13.33%) (See Note 1)	\$ (0)	\$ (0)	\$ (0)	\$ (0)
<u>Meters</u>				
12. 586 - Meter Expenses (Page 15 of 83)	\$ 0	\$ 0	\$ 0	\$ 0
13. 597 - Maintenance of Meters (Page 17 of 83)	\$ 0	\$ 0	\$ 0	\$ 0
14. 370 - Meters & Install.(Depreciation) (Page 23 of 83)	\$ 0	\$ 0	\$ 0	\$ 0
15. Pre-tax Return ([8])	\$ (0)	\$ (0)	\$ (0)	\$ (0)
16. Total - Meters ([12] + [13] + [14] + [15])	\$ 0	\$ 0	\$ 0	\$ 0
<u>Meter Reading</u>				
19. 902 - Meter Reading Expense (Page 19 of 83)	\$ -	\$ -	\$ -	\$ -
<u>Billing & Collection</u>				
22. 903 - Customer Records & Contracts (Page 19 of 83)	\$ 0	\$ 11	\$ 8	\$ 5
23. Credit for Chapter 56 Costs (See Note 2)	\$ (0)	\$ (6)	\$ (4)	\$ (3)
24. Total Billing & Collection ([22] + [23])	\$ 0	\$ 5	\$ 4	\$ 2
<u>Customer Services & Information</u>				
28. 905 - Misc. Customer Accounts Expense (Page 19 of 83)	\$ 0	\$ 0	\$ 0	\$ 0
29. 907 - Supervision (Page 19 of 83)	\$ 0	\$ 0	\$ 0	\$ 0
29. 908 - Customer Assistance Expense (Page 19 of 83)	\$ 15	\$ 6	\$ 10	\$ 5
30. 909 - Informational & Instruct. Advertising (Page 19 of 83)	\$ 4	\$ 1	\$ 3	\$ 1
31. 910 - Misc. Cust. Service & Information (Page 19 of 83)	\$ 32	\$ 12	\$ 22	\$ 12
32. Credit for Chapter 56 Costs (See Note 2)	\$ (8)	\$ (3)	\$ (6)	\$ (3)
33. Total - Cust. Serv. & Info. ([27]+[28]+[29]+[30]+[31]+[32])	\$ 43	\$ 16	\$ 30	\$ 16
35. Total Non-Wire Services Costs ([16]+[19]+[24]+[33])	\$ 43	\$ 21	\$ 33	\$ 18
36. Total Non-Wire Services Costs incl. PA GRT ([35] / 0.956)	\$ 45	\$ 22	\$ 35	\$ 19
<u>Customers</u>				
39. Allocation Schedules D8 & D15 (Page 45 of 83)	98,513	21,130	70,775	437
42. Monthly Charge ([36] / [39] / 12 * 1000)	\$0.04	\$0.09	\$0.04	\$3.62

NOTES:
 (1) Pre-tax Return of 13.33% equals "Rate of Return After Other Revenue Adjustment" 9.44% from Page 5 of 83 of Exhibit RAC-10 less 1.64% for "Tax Savings on Long-Term Debt" (PECO Exhibit JFBr-1 - Schedule 1 - Updated) then divided by 1 minus the effective tax rate of 41.494%.
 (2) Includes costs for terminations, 72 hour notice, 10 day notice, CAP administration, LIURP, etc.
 (3) Rate GS Non-Wire Services Credits are: (1) \$3.19 for single-phase w/o demand measurement, (2) \$4.17 for single-phase w/ demand measurement and (3) \$11.29 for poly-phase customers.

KJK

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NOV 7 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

R-973953

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY

OF

J. BARRY MITCHELL

DOCUMENT
FOLDER

REGARDING THE ENRON CHOICE PLAN

Regarding the Petition of
Enron Energy Service Power, Inc.
for Approval of Enron's "Choice Plan"

DOCKETED
NOV 12 1997

November 7, 1997

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1 **TESTIMONY OF J. BARRY MITCHELL**

2 **I. QUALIFICATIONS**

3
4 **Q. Please state your name and business address.**

5 A. J. Barry Mitchell, 2301 Market Street, Philadelphia, Pennsylvania.

6
7 **Q. By whom are you employed and in what capacity?**

8 A. I am the Vice President of Finance and Treasurer of PECO Energy Company ("PECO
9 Energy" or the "Company").

10
11 **Q. Have you testified before in this proceeding?**

12 A. Yes, I testified earlier this year in PECO Energy's securitization proceeding regarding
13 PECO Energy's proposal for issuance of Transition Bonds and use of proceeds before
14 the Pennsylvania Public Utility Commission (the "Commission"), Docket
15 R-00973877. I also submitted Rebuttal Testimony concerning PECO Energy's
16 financial integrity under the intervenors' disallowance proposals in this proceeding,
17 Docket R-00973953.

18
19 **II. PURPOSE OF TESTIMONY AND SUMMARY OF CONCLUSIONS**

20
21 **Q. What are the purposes of your testimony?**

1 A. The first purpose of my testimony is to describe the catastrophic effect of the Choice
2 Plan (the "Enron Plan") submitted by Enron Energy Services Power, Inc. ("Enron")
3 on the Company's financial integrity. The second purpose of my testimony is to
4 describe the fatal flaws in the securitization proposal described in the Enron Plan and
5 related testimony. Finally, I will testify as to the inappropriateness of the financial
6 structure of Enron as the proposed provider of last resort and the lack of financial
7 accountability of Enron under the Enron Plan.

8
9 **Q. Please summarize your conclusions.**

10 A. First, the Enron Plan is not in the best interest of consumers and will not promote
11 competition because it will destroy the financial integrity of PECO Energy. This will
12 seriously impair the Company's ability to provide safe, reliable service to customers
13 — who under the Enron Plan must rely on the Company, and only the Company, for
14 that service — and to be a healthy, viable competitor in the emerging electric
15 marketplace.

16
17 Second, the securitization proposal described in the Enron Plan and related testimony
18 is not achievable. Therefore, the Enron Plan, which is totally dependent on
19 securitization, will not provide the savings to consumers promised by Enron or,
20 indeed, any savings at all.

1 Finally, the "project finance" structure of Enron under the Enron Plan and the lack of
2 financial accountability of Enron, even to the Commission itself, is inappropriate and
3 inadequate to satisfy the obligation to serve consumers which is the essential role of
4 the provider of last resort.

5
6 **III. FINANCIAL INTEGRITY**

7
8 **Q. What is meant by the term "financial integrity"?**

9 **A.** Generally, financial integrity refers to the financial "health" of a company. A
10 company that has financial integrity is able to generate funds, both internally through
11 its own operations and externally by access to the debt and equity markets, to cover
12 all of the costs of its operations (including debt service), to fund needed investments
13 and to provide an adequate income return to shareholders. The ability to access
14 capital markets is an especially important indicator of financial health of capital-
15 intensive companies, such as electric utilities which have an obligation to serve
16 consumers.

17
18 In addition, financial integrity means that a company has sufficient flexibility in its
19 financial position to respond to unanticipated events. Put differently, a company that
20 can remain viable only if all unanticipated events are positive is not a company that
21 has financial integrity.

1 **Q. How do you determine a company's financial integrity?**

2 A. Primarily, a company's financial integrity is determined by analyzing its net cash flow
3 and assessing its ability to access the debt and equity markets for external capital.

4 Because I gave a comprehensive description of financial integrity in my earlier
5 Rebuttal Testimony before the Commission in the proceeding referred to on page 1, I
6 will provide a summary of that description.

7
8 A company's ability to internally generate funds is measured by its cash flow. A
9 company's access to the short-term debt market is determined by its creditworthiness,
10 which is reflected in the rating of its commercial paper. A company's ability to
11 access the long-term debt market is also determined by its creditworthiness, which is
12 reflected by its bond rating, which is in turn derived from criteria such as funds from
13 operations as a percentage of total debt, funds from operations interest coverage, the
14 ratio of total debt to total capital, pre-tax interest coverage, and net cash flow as a
15 percentage of capital expenditures. A company's ability to access the common stock
16 equity market is determined by its ability to provide an adequate total return to its
17 shareholders, commonly demonstrated by earnings and dividends per share and cash
18 flow per share. Taken together, these measures are generally accepted in the
19 financial community as key measures for determining a company's financial integrity.

20

1 **Q. Explain the relationship between a utility company's financial integrity and its**
2 **ability to provide safe and reliable service.**

3 A. A company's ability to provide safe and reliable service depends on its ability to
4 generate cash flows sufficient to maintain the assets needed to provide that service,
5 such as its distribution and transmission networks, as well as to finance future
6 improvements and upgrades necessitated by regulations and new technology. If a
7 company has inadequate cash flow and is unable to access external sources of capital
8 on reasonable terms, it will be unable to make the capital commitments necessary for
9 it to provide this safe and reliable service. Such a company could not compete
10 effectively in a competitive generation market.

11
12 **Q: Why is PECO Energy's financial integrity essential to consumers under the**
13 **Enron Plan if Enron is going to "step into the shoes of PECO"?**

14 A: Even though Enron wants the Commission to appoint Enron as the provider of last
15 resort for generation, Enron's obligation to serve is conditioned on PECO Energy
16 providing the necessary capacity and energy under the Power Purchase Agreement.
17 Likewise, Enron's ability to provide metering, billing and customer services will be
18 totally dependent on the Company's performance under the MBC Services
19 Agreement. Finally, PECO Energy, as the electric distribution company, must
20 continue to provide transmission and distribution services. The Company's inability
21 to maintain financial integrity would seriously jeopardize the Company's ability to
22 continue to provide all or any of these essential services. Additionally, impairment of

1 the Company's financial integrity would adversely affect competition by removing
2 PECO Energy as a local Pennsylvania competitor within the new competitive market.
3 In other words, Enron would effectively reduce competition despite its claims of
4 encouraging it. These results would be counter to the legislature's express statutory
5 policy of encouraging competition while "maintaining the safety and reliability of the
6 electric system for all parties," which, in the words of the Pennsylvania Assembly,
7 "is of the utmost importance to the health, safety and welfare of the citizens of the
8 Commonwealth."

9
10 **IV. EFFECT OF THE ENRON PLAN ON THE COMPANY'S**
11 **FINANCIAL INTEGRITY**

12
13 **Q. Have you calculated the effect of the Enron Plan on PECO Energy's financial**
14 **integrity?**

15 **A.** Yes. While the analysis considers various aspects of the Enron Plan, it focuses
16 principally on the financial impact on the Company of issuing \$5.461 billion of
17 Transition Bonds as required by the Enron Plan.

18
19 **Q. Please summarize those effects.**

20 **A.** • The Enron Plan would result in significant downgrading of the Company's
21 mortgage bond rating to junk bond status through 2005. With a junk bond
22 rating at the levels projected, the Company's access to the debt market would

1 be seriously constrained and that access, to the extent available, would come at
2 significantly increased cost.

- 3
- 4 • The Company would experience a negative net cash flow of \$709 million in
5 1999 and a cumulative negative net cash flow of \$2.9 billion through 2005.

6 The Company would have insufficient internally generated funds to make
7 capital expenditures, to maintain, improve or upgrade existing generation,
8 transmission and distribution facilities or to respond to technological or other
9 advances that might enhance the system for consumers.

- 10
- 11 • Earnings per share would show a loss in 1999 and recover only slightly during
12 the period 2000 to 2005.

- 13
- 14 • I expect that the price of the Company's common stock would drop
15 significantly.

- 16
- 17 • The Company would violate the financial covenant under its \$900 million
18 credit facility — its principal outside source of short-term liquidity.

19

1 **Q. In your previous testimony, you used the Standard & Poor's ("S&P") measures**
 2 **to project the Company's mortgage bond rating. Can you show the results of the**
 3 **Enron Plan on the S&P measures?**

4 **A. Table JBM-1 provides the pro forma results for the key S&P measures and a**
 5 **projected mortgage bond rating associated with those results. These are pro forma**
 6 **results showing our assessment of where the values of the S&P measures derived**
 7 **from the Enron Plan would place us with respect to the rating criteria.**

8 **TABLE JBM-1**

9 **Effects of Enron Plan Proposal on Key Financial Criteria**

10

11

	1999	2000	2001	2002	2003	2004	2005
Funds from Operations/ Average Total Debt	13.4%	14.9%	14.2%	10.9%	8.3%	7.3%	6.0%
Funds from Operations/ Interest Coverage	2.63x	2.59x	2.53x	2.21x	1.93x	1.80x	1.67x
Total Debt/Total Capital	57.2%	61.0%	63.5%	66.9%	70.8%	74.3%	78.0%
Pre-Tax Interest Coverage	0.38x	0.89x	1.46x	1.39x	1.28x	1.19x	1.06x
Net Cash Flow/Capital Expenditures	28.6%	49.5%	42.6%	25.2%	12.2%	10.2%	4.1%
Projected Bond Rating	B or below						

12

13

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23

24 **Q. What impact on the Company's bond rating would you expect from these changes**
 25 **to the key bond measures?**

26 **A. I would expect the Company's bond rating to be downgraded from its current**
 27 **investment grade rating of BBB+ to below investment grade, or junk bond status,**
 28 **where it would remain through 2005.**

29

1 **Q. How would this expected downgrading affect the Company's ability to access the**
2 **long-term debt market?**

3 A. Ratings of B or below would, at best, significantly impair the Company's ability to
4 access the long-term debt markets in amounts necessary to provide safe and reliable
5 service. Even if available, such debt would bear interest at rates significantly higher
6 than investment grade securities.

7
8 **Q. What effect would the Enron Plan have on the Company's commercial paper**
9 **rating and its access to short-term liquidity?**

10 A. Our current commercial paper rating is A2/P2. Based on the projected bond ratings
11 noted above, PECO Energy would have no access to the commercial paper market.

12
13 The ability to obtain bank financing would also be impaired because most banks use a
14 risk adjusted pricing model to determine credit availability and pricing spreads to
15 customers. A downgrading of long-term bond and commercial paper ratings would be
16 viewed by banks as an increased credit risk of PECO Energy. Based on the projected
17 bond ratings noted above, the banks would either withhold credit entirely or severely
18 limit their credit availability and demand significant additional compensation for this
19 increased risk. Taken together, these effects would cripple the Company's ability to
20 manage its operations with the assistance of commercial paper borrowing and other
21 short-term debt.

1 **Q. What effect would the Enron Plan have on PECO Energy's existing credit**
2 **facilities?**

3 A. The commitment fees and cost of borrowings payable by the Company under its \$900
4 million credit facility authorized by the Commission on September 12, 1997 are
5 directly related to the debt ratings of the Company's mortgage bonds. A decrease in
6 those ratings, particularly to junk bond levels, would substantially increase the cost to
7 the Company of those facilities, further exacerbating the devastation of its financial
8 integrity. Furthermore, the issuance of the Transition Bonds under the Enron Plan
9 would cause the Company to violate the debt to equity ratio covenant under the
10 Company's \$900 million credit facility. This would preclude the Company from
11 borrowing under that facility and, with respect to any outstanding borrowings, trigger
12 a default by the Company under that facility.

13
14 **Q. How would the Enron Plan affect the Company's access to the equity market?**

15 A. To the extent that the ability to access one market is impaired, the ability to access
16 the other is also impaired. For example, the downgrade to junk bond status would
17 adversely affect the Company's ability to access the equity market. Similarly, the
18 inability to access the equity market is considered a negative factor on credit ratings.

19
20 Specifically, the Company's ability to access the equity market would be severely
21 impaired because the Enron Plan would destroy not only PECO Energy's net cash
22 flow (as previously discussed), but also its earnings per share. Analysts' consensus

1 1997 earnings estimate for PECO Energy is approximately \$2.10 and the common
2 stock is currently trading at approximately \$23 per share. Through 2005, the
3 Company's earnings per share would be reduced dramatically, with a loss of \$.22 per
4 share in 1999 and earnings not exceeding \$.97 per share. This projected level of
5 earnings per share would cause a significant drop in the price of the Company's
6 common stock.

7
8 **Q. What would be the effect of the Enron Plan on the interest coverage test of**
9 **PECO Energy's mortgage indenture?**

10 A. PECO Energy would fail the interest coverage test and be unable to issue first
11 mortgage bonds against property additions through 2005.

12
13 **Q. Are there other adverse financial impacts of the Enron Plan on the Company?**

14 A. Yes. The Enron Plan does not reimburse the Company for the costs of issuing the
15 Transition Bonds, the Company's investment in the special purpose subsidiary entity
16 issuing the Transition Bonds ("SPE") or the costs of the Company's use of proceeds
17 in reducing its capitalization. The Company's current estimated costs are \$32 million
18 of issuance expenses, \$27.3 million of equity investment in the SPE and \$504 million
19 of use of proceeds costs. The total cost of \$563.3 million has not been recognized in
20 the Enron Plan and represents a significant additional expense for PECO.

21

1 **Q. Is securitization essential to the success of the Partial Settlement?**

2 A. No. The Partial Settlement provides that if no legal impediment to securitization
3 exists, consumers will receive all of the benefits of the Partial Settlement whether or
4 not PECO Energy ultimately securitizes any portion of its stranded assets. If there is
5 a legal impediment to securitization, the savings to consumers under the Partial
6 Settlement would be reduced by 3%. All of the other benefits to consumers,
7 including the extended rate caps and expansion of the customer assistance plan, would
8 be unaffected.

9

10 **Q. Does the Partial Settlement explain what would be a legal impediment to**
11 **securitization?**

12 A. Yes. The Partial Settlement provides as follows:

13 "For purposes of this settlement, legal impediments shall be
14 deemed to include only those events which would render PECO
15 unable to issue any transition bonds. Such legal impediments
16 shall include statutory changes and state or federal court actions
17 or decisions that preclude securitization. Such preclusion shall
18 be confirmed by an opinion from a qualified and reputable bond
19 counsel. Such legal impediments do not include approvals, if
20 any, required by the Securities and Exchange Commission
21 ("SEC") or the Internal Revenue Service ("IRS") in connection
22 with PECO's securitization. As such, PECO will bear the risk
23 of obtaining any required approvals from the SEC or IRS and
24 will bear the risk that market conditions permit it to securitize
25 its stranded assets and costs on reasonable terms."
26
27

1 Q. Does this definition differ from Enron's concept of "legal impediment" to the
2 issuance of Transition Bonds included by Enron as a condition of the Enron
3 Plan?

4 A. Yes. In Enron's response to Question 5 of Interrogatories, Set II submitted by
5 Senator Vincent J. Fumo, Witness Vorhees answers as follows:

6 "In general, a 'legal impediment' is anything that would impair
7 the marketing and/or issuance of the Transition Bonds."
8
9

10 Q. What would be the impact of a "legal impediment" on the Enron Plan?

11 A. As Witness Vorhees states in her answer to Senator Fumo's interrogatory
12 referenced above:

13 "The Choice Plan and the rate reductions provided for therein
14 would not go into effect unless or until the "legal impediment"
15 ceased to impair the marketing and/or issuance of the Transition
16 Bonds."
17

18 Q. Are you familiar with the lawsuit filed by the Indianapolis Power & Light
19 Company against the Pennsylvania Public Utility Commission challenging the
20 constitutionality of the Competition Act under the commerce clause of the U.S.
21 Constitution?

22 A. Yes.

23 Q. Is it your belief that this lawsuit is likely to adversely affect the marketing, or
24 constitute a legal impediment to the issuance, of Transition Bonds under the
25 Enron Plan?

26 A. An adverse determination in this lawsuit would preclude the marketing and issuance
27 of the Transition Bonds.

1 **Q. Could Transition Bonds be issued pending resolution of the lawsuit?**

2 A. If the issuer could obtain a "no merit" opinion of reputable, qualified counsel
3 acceptable to the underwriter, security issuance might be possible.

4 **Q. Has Enron provided such an opinion?**

5 A. No, not to my knowledge, and if they had one, I would think that they would be
6 forthcoming with it in order to provide the parties and the Commission comfort that
7 the bonds could actually be issued under their proposal. As I noted previously, the
8 entire Enron proposal is contingent on securitization, so any uncertainty such as the
9 ability to obtain the necessary legal opinions must be carefully scrutinized.

10
11 In contrast, the Partial Settlement is not contingent on the securitization. Rather,
12 under the Partial Settlement, all of the benefits, particularly the rate discounts, flow to
13 customers unless PECO comes forward and demonstrates through "an opinion from
14 qualified and reputable bond counsel" that a legal impediment to securitization exists.
15 And then, the only effect is a 3% reduction in savings to customers.

16
17 **A. SECURITIZATION UNDER THE ENRON PLAN CANNOT BE**
18 **ACCOMPLISHED UNDER THE PECO MORTGAGE**

19
20 **Q. What is the PECO Mortgage?**

21 A. Of the Company's long-term debt, \$3.8 billion, or approximately 90%, are first
22 mortgage bonds issued and secured under the Company's first mortgage indenture —

1 the PECO Mortgage. All of the Company's first mortgage bonds are secured by a
2 lien of the PECO Mortgage, which is a lien on substantially all of the Company's
3 property, except shares of stock, bonds and other securities not specifically pledged.
4

5 **Q. How does the PECO Mortgage relate to the Intangible Transition Property?**

6 A. The PECO Mortgage constitutes a first lien on, among other things, all contract rights
7 held by the Company. The Electricity Generation Customer Choice and Competition
8 Act (the "Competition Act") defines Intangible Transition Property as a "contract
9 right" prior to its sale or transfer. The issuance of Transition Bonds will require the
10 sale or transfer of the Intangible Transition Property. Upon the sale or transfer of the
11 Intangible Transition Property, the Competition Act gives the holders of Transition
12 Bonds a statutory lien superior to all other liens, including the lien of the PECO
13 Mortgage, thereby causing a release of the Intangible Transition Property from the
14 lien of the PECO Mortgage. The PECO Mortgage requires that in connection with
15 the release of property from the lien of the PECO Mortgage, the fair value of the
16 property being released must be deposited with First Union National Bank, the trustee
17 under the PECO Mortgage (the "Mortgage Trustee"). Therefore, in order for PECO
18 Energy to cause the issuance of Transition Bonds without being in violation of the
19 PECO Mortgage, the fair value of the Intangible Transition Property must be
20 deposited with the Mortgage Trustee.
21

1 **Q. If the PECO Mortgage attaches to the Intangible Transition Property, how can it**
2 **be used to secure the Transition Bonds?**

3 A. The PECO Mortgage allows the Company to sell mortgaged property free from the
4 lien of the PECO Mortgage on the property held by the Mortgage Trustee. In order
5 to protect the interest of the first mortgage bondholders, the sale of the mortgaged
6 property by the Company must comply with the specific provisions of the PECO
7 Mortgage and federal securities laws.

8
9 **Q. How will these provisions of the PECO Mortgage apply to the sale of the**
10 **Intangible Transition Property?**

11 A. In order to accomplish a successful securitization, the Company will have to sell the
12 Intangible Transition Property for cash of at least equal value to the Intangible
13 Transition Property and to deposit that cash with the Mortgage Trustee. Pursuant to
14 the express terms of the PECO Mortgage, the release of the lien of the PECO
15 Mortgage on the Intangible Transition Property may occur only if there is a deposit
16 with the Mortgage Trustee of cash of at least equal value to the Intangible Transition
17 Property.

18
19 **Q. Are there any other requirements of the PECO Mortgage which must be satisfied**
20 **in order to release the lien on the Intangible Transition Property?**

21 A. Yes. They are explained in Mr. Rayzis's testimony. These requirements include
22 both a sworn statement of the president or a vice president of the Company and an

1 opinion of an independent engineer, appraiser or other expert that \$5.461 billion, the
2 amount Enron "pays" PECO Energy, equals the value of the Intangible Transition
3 Property.

4
5 **Q. Under the Enron Plan, will the Company be able to meet the conditions of the**
6 **PECO Mortgage necessary to release the lien of the PECO Mortgage on the**
7 **Intangible Transition Property?**

8 A. No. The Company would not be able to meet the two conditions described in my
9 previous answer. Under these circumstances, I could not and would not submit the
10 required certificates for such a release to the Mortgage Trustee.

11
12 **Q. Please explain.**

13 A. As described below and as indicated in Mr. Hiller's testimony and in Mr. Fastow's
14 testimony (page 4-5), under the Enron proposal, the Company would not be selling
15 the Intangible Transition Property for cash of equal value to the Intangible Transition
16 Property because the value being received by PECO Energy is less than the value of
17 the Class A and the Class B Pass-Through Certificates. Because the Company is not
18 receiving equal value, it will not be able to deposit the requisite equal value of the
19 Intangible Transition Property with the Mortgage Trustee. Thus, the Company will
20 not under the terms of the PECO Mortgage be able to allow the release of the lien of
21 the PECO Mortgage on the Intangible Transition Property.

22

1 **Q. If the Intangible Transition Property remains subject to the lien of the PECO**
2 **Mortgage, will Enron be able to achieve the securitization proposed by the Enron**
3 **Plan?**

4 A. No. As Mr. Hiller explains, in order to accomplish any successful securitization, the
5 underlying property, in this case the Intangible Transition Property, must be released
6 from the lien of the PECO Mortgage.

7
8 **Q. Why doesn't securitization under the Partial Settlement encounter these same**
9 **problems?**

10 A. Only the portion of the Intangible Transition Property represented by the value of the
11 Transition Bonds sold to investors is being sold pursuant to the Partial Settlement.
12 Therefore, PECO Energy will be able to meet the requirements of the PECO
13 Mortgage and justify the necessary release.

14
15 **Q. Are the protections described above unique to the PECO Mortgage?**

16 A. The release provisions requiring the deposit with the Mortgage Trustee of the fair
17 value of the mortgaged property sold in order to release of the lien of the PECO
18 Mortgage are substantially the same as in all utility mortgages. The provisions
19 included in the PECO Mortgage are required by the Trust Indenture Act of 1939 to be
20 included in all secured indentures for public debt.

21

1 **Q. Are there other concerns with the Enron Plan under the PECO Mortgage?**

2 A. Yes. The PECO Mortgage also requires the Company to maintain, subject to certain
3 exceptions, its franchises. The Company is allowed to omit maintaining and
4 preserving a franchise right if, in the opinion of the Company, it is inadvisable to
5 maintain or preserve that right. The Company does not believe that failing to
6 preserve the right to be the provider of last resort would be advisable and any
7 Commission action or voluntary action by the Company forfeiting that right could
8 constitute a default under the PECO Mortgage. In order to avoid that default, the
9 Company would be compelled to contest any such forfeiture imposed by the
10 Commission on the Company. Further, during such a default, the Company would
11 not be allowed to release any property, including Intangible Transition Property, from
12 the lien of the PECO Mortgage, even if the fair value were deposited with the
13 Mortgage Trustee.

14
15 **B. SECURITIZATION UNDER THE ENRON PLAN UNLIKELY TO**
16 **RECEIVE A FAVORABLE IRS PRIVATE LETTER RULING**

17
18 **Q. Has PECO Energy requested a private letter ruling from the Internal Revenue**
19 **Service ("IRS") concerning its securitization plan?**

20 A. Yes, we expect to receive a favorable ruling by the end of November. Receipt of a
21 favorable ruling from the IRS will eliminate all of the material tax risks associated
22 with the transaction.

1 **Q. Is PECO Energy prepared to proceed with the securitization transaction if it does**
2 **not receive a favorable ruling from the IRS?**

3 A. Absolutely not. The risk to the Company would be much too great.
4

5 **Q. Do you think a favorable ruling from the IRS on the Enron securitization plan is**
6 **likely?**

7 A. No. As Mr. Sharpe of Coopers & Lybrand will more fully explain in his testimony,
8 there is a real and substantial likelihood that the IRS would view the transaction as a
9 taxable sale of the Intangible Transition Property and related Intangible Transition
10 Charges by PECO Energy to the grantor trust formed by Enron to hold the Transition
11 Bonds, in which event PECO Energy may be required to include the full \$5.461
12 billion proceeds from the sale of the Transition Bonds in its taxable income at the
13 time the Transition Bonds are sold.
14

15 Mr. Sharpe reviewed the Enron proposal and concluded that it would not receive a
16 favorable ruling from the IRS. As Mr. Sharpe explains, in conducting his tax
17 analysis, he relied upon the results of a cash flow analysis of the Enron securitization
18 proposal that the Company prepared and which is provided as Exhibit No. JBM-9.
19

20 **Q. How was the cash flow analysis prepared?**

21 A. The cash flow analysis compares the cash in-flows from Intangible Transition
22 Charges, at the level projected by Enron, to the cash out-flows necessary to pay

1 principal and interest on Transition Bonds in the aggregate principal amount of \$5.461
2 billion, having a 124 month term and bearing interest at the stated rate of 9.66%. In
3 preparing this analysis, we made the same assumptions that Enron purports to adopt
4 and did not take into consideration delinquencies and charge-offs because, according
5 to Enron, the Electric Generation Suppliers will assume liability for the payment of
6 Intangible Transition Charges on behalf of their generation customers.

7
8 **Q: What will the tax consequences to PECO Energy be if the IRS refuses to issue a**
9 **favorable tax ruling?**

10 A: As Mr. Sharpe will further testify, there is a real and substantial likelihood that the
11 IRS would view the implementation of the Enron Plan as a taxable transaction,
12 thereby exposing PECO Energy to a potential federal and Pennsylvania income tax
13 liability in excess of \$2.250 billion. In contrast, I am quite confident that PECO
14 Energy will receive a favorable ruling from the IRS on its securitization transaction.

15
16 **Q. What impact would the imposition of a tax liability of this magnitude have on**
17 **PECO Energy's credit rating for its indebtedness?**

18 A: We have not performed any financial analysis because the Company would not even
19 consider effecting a securitization transaction without obtaining a favorable tax ruling.
20 The risks of proceeding without a favorable tax ruling are just too great. I am
21 confident, however, that the use of a substantial portion of the proceeds of the

1 Transition Bonds to satisfy tax liabilities instead of reducing stranded costs would
2 only further degrade the Company's financial integrity.

3
4 **C. SECURITIZATION UNDER THE ENRON PLAN VIOLATES THE**
5 **COMPETITION ACT**
6

7 **Q. Does the securitization proposal set forth in the Enron Plan comply with the**
8 **provisions of the Competition Act?**

9 A. No. Enron's securitization plan calls for the issuance of Transition Bonds with a
10 maturity of 124 months (see Direct Testimony of Andrew Fastow — page 12) —
11 which exceeds the maximum 10-year maturity permitted by Section 2812(g) of the
12 Competition Act.

13
14
15 **VI. ENRON IS AN INAPPROPRIATE ENTITY TO BE THE**
16 **PROVIDER OF LAST RESORT**
17

18 **Q. From a financial standpoint, do you believe that Enron is an appropriate entity**
19 **to be the provider of last resort?**

20 A. No. Enron is a special purpose entity with no apparent assets and only three
21 employees. In its present form, it does not have any cash flow or access to the
22 capital markets—in short, it has no financial integrity.

1 **Q. How does the Enron Plan attempt to remedy the fact that Enron has no financial**
2 **integrity?**

3 A. The Enron Plan and related testimony claim that Enron will have the necessary
4 contractual arrangements with PECO Energy and "appropriate financial backing" of
5 Enron Corp. to be the provider of last resort.
6

7 **Q. Are you familiar with this type of structure?**

8 A. Yes, it is a commonplace arrangement known as project financing in which limited
9 financial resources and contractual obligations are aggregated in a special purpose
10 entity and then leveraged to facilitate the financing of an asset such as a non-utility
11 generating facility or large scale power plant developed by an independent power
12 producer. Project finance structures are also often used to keep the special purpose
13 entity's obligations off the parent company's balance sheet. A more important aspect
14 is to create a structure in which the recourse of lenders and others, including
15 customers, is limited to the assets of the special purpose entity. This avoids exposing
16 the assets of the parent company to the risk of the transaction. In other words, in the
17 worst case, if the special purpose entity goes bankrupt, the parent company only loses
18 the assets that the special purpose entity was designed to finance.
19

1 **Q. Do you believe that a project-financed special purpose entity is appropriate as the**
2 **provider of last resort?**

3 A. Absolutely not. A project-financed special purpose entity should not be imported into
4 the public service arena where a broad array of consumers are dependent on that
5 entity for an essential service.

6
7 Before I explain the reasons for this conclusion, let me first emphasize a number of
8 the points from Mr. Hill's testimony. The Company does not believe that the
9 Competition Act authorizes the appointment of a provider of last resort other than the
10 regulated electric distribution company prior to the end of the transition period. Even
11 if the Commission disagrees with this position, the Company does not believe that the
12 Competition Act authorizes an entity which is not a public utility, and thus not subject
13 to regulation by the Commission, to be appointed as the provider of last resort prior
14 to the end of the transition period.

15
16 **Q. Explain why you feel the project-financed special purpose entity proposed in the**
17 **Enron Plan as the provider of last resort is inappropriate.**

18 A. Project finance, which is clearly an accepted financing technique for a specific asset,
19 will not allow the provider of last resort the financial flexibility needed to fulfill its
20 obligation to serve. Enron has conveniently avoided this dilemma by imposing all of
21 its service obligations and unanticipated liabilities on PECO Energy by contract as
22 described in the testimony of Mr. Sundemeir and Mr. Pratzon. Second, project

1 finance entities are typically highly leveraged and as thinly capitalized as the project
2 lenders will permit. Lenders are willing to accept this risk because the purpose of the
3 financing is to finance the specific asset. The special purpose entity contractually
4 obtains all of the necessary resources to construct, operate and manage that asset
5 concurrently with the financing. All of the assets and contracts of the special purpose
6 entity in this case, the contracts with PECO Energy, are then pledged to the lender.
7 Because of the limited assets and high leverage of the special purpose entity, lenders
8 typically require extensive control over the activities of the special purpose entity.
9 This restrictive financial structure and high leverage are not appropriate for an entity
10 which must have the financial integrity to meet its constantly changing obligation to
11 serve.

12
13 **Q. Do you have additional concerns about Enron as the provider of last resort?**

14 **A.** Yes. One of the conditions of the Enron Plan is that Enron, as the provider of last
15 resort, shall not be a public utility. As a result, Enron will not be subject to the
16 financial safeguards imposed by the Public Utility Code on entities which are
17 obligated to serve the public. The Commission will not have authority (i) to regulate
18 the transfer of customers or assets of Enron used or useful in the public service under
19 Chapter 11, (ii) to regulate the issuance of securities by Enron under Chapter 19 or
20 (iii) to regulate affiliated interest transactions of Enron under Chapter 21. All of
21 these safeguards are intended to protect the financial viability of an entity serving the
22 public and will not be applicable to Enron if it is not a public utility.

1 **Q. Won't these concerns be overcome by the commitment of Enron Corp. to provide**
2 **"appropriate financial backing"?**

3 **A. No.** The appropriate level of financial backing will apparently be negotiated between
4 Enron Corp. and the Commission prior to implementation of the Enron Plan. Since
5 Enron will not be a public utility, Enron Corp. will not be an affiliate of a public
6 utility under Chapter 21 of the Public Utility Code and the Commission will have no
7 authority whatsoever over Enron Corp. Thus, the Commission would not have
8 authority to require an increase in "the financial backing" offered by Enron Corp. if
9 necessitated by financial circumstances. In fact, absent a contractual right to enforce
10 the commitments of Enron Corp., the Commission may not be able to assure the
11 initial level of financial backing of Enron Corp. is maintained.

12
13 **VII. CONCLUSION**

14
15 **Q. Does this conclude your testimony?**

16 **A. Yes.**

Ability of ITC to Cover 9.66% Transition Bonds (No Base Load Growth)

Month	ITC	Usage	Collections	0% GRT	Net Collections	Beginning Balance		9.66% Transition Bonds			Period Shortfall (after applic of Subacct)	Accumulated Shortfall	Interest On Accumulated Shortfall
						50bps Ovrcllrztn Subaccount	50bps Capital Subaccount	Interest	Principal	Ending Balance			
Sep-98	0.0131	2,797,416,667	18,323,079	0	18,323,079	0	1,667,029	43,961,050	0	5,461,000,000	0		
Oct-98	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(5,647,863)	(5,647,863)	(45,465)
Nov-98	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(13,008,219)	(104,716)
Dec-98	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(20,427,827)	(164,444)
Jan-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(27,907,163)	(224,653)
Feb-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(35,446,707)	(285,346)
Mar-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(43,046,945)	(346,528)
Apr-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(50,708,365)	(408,202)
May-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(58,431,459)	(470,373)
Jun-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(66,216,723)	(533,045)
Jul-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(74,064,660)	(596,221)
Aug-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(81,975,772)	(659,905)
Sep-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(89,950,569)	(724,102)
Oct-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(97,989,562)	(788,816)
Nov-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(106,093,270)	(854,051)
Dec-99	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(114,262,212)	(919,811)
Jan-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(122,496,915)	(986,100)
Feb-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(130,797,907)	(1,052,923)
Mar-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(139,165,722)	(1,120,284)
Apr-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(147,600,897)	(1,188,187)
May-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(156,103,976)	(1,256,637)
Jun-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(164,675,505)	(1,325,638)
Jul-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(173,316,034)	(1,395,194)
Aug-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(182,026,120)	(1,465,310)
Sep-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(190,808,322)	(1,535,991)
Oct-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(199,657,205)	(1,607,240)
Nov-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(208,579,337)	(1,679,064)
Dec-00	0.0131	2,797,416,667	36,646,158	0	36,646,158	0	0	43,961,050	0	5,461,000,000	(7,314,892)	(217,573,292)	(1,751,465)
Jan-01	0.0223	2,797,416,667	50,462,500	0	50,462,500	0	0	43,961,050	6,501,450	5,454,498,550	(219,324,757)	(1,765,564)	
Feb-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	43,908,713	18,473,678	5,436,024,872	(221,090,321)	(1,779,777)	
Mar-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	43,760,000	18,622,391	5,417,402,480	(222,870,098)	(1,794,104)	
Apr-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	43,610,090	18,772,302	5,398,630,179	(224,664,203)	(1,808,547)	
May-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	43,458,973	18,923,419	5,379,706,760	(226,472,750)	(1,823,106)	
Jun-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	43,306,639	19,075,752	5,360,631,008	(228,295,855)	(1,837,782)	
Jul-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	43,153,080	19,229,312	5,341,401,695	(230,133,637)	(1,852,576)	
Aug-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	42,998,284	19,384,108	5,322,017,587	(231,986,213)	(1,867,489)	
Sep-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	42,842,242	19,540,150	5,302,477,437	(233,853,702)	(1,882,522)	
Oct-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	42,684,943	19,697,448	5,282,779,989	(235,736,224)	(1,897,677)	
Nov-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	42,526,379	19,856,013	5,262,923,976	(237,633,900)	(1,912,953)	
Dec-01	0.0223	2,797,416,667	62,382,392	0	62,382,392	0	0	42,366,538	20,015,854	5,242,908,123	(239,546,853)	(1,928,352)	
Jan-02	0.0277	2,797,416,667	69,935,417	0	69,935,417	0	0	42,205,410	27,730,006	5,215,178,116	(241,475,206)	(1,943,875)	
Feb-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	41,982,184	35,506,258	5,179,671,859	(243,419,081)	(1,959,524)	
Mar-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	41,696,358	35,792,083	5,143,879,775	(245,378,605)	(1,975,298)	
Apr-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	41,408,232	36,080,209	5,107,799,566	(247,353,902)	(1,991,199)	
May-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	41,117,787	36,370,655	5,071,428,911	(249,345,101)	(2,007,228)	
Jun-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	40,825,003	36,663,439	5,034,765,472	(251,352,329)	(2,023,386)	
Jul-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	40,529,862	36,958,580	4,997,806,892	(253,375,716)	(2,039,675)	

Ability of ITC to Cover 9.66% Transition Bonds (No Base Load Growth)

Month	ITC	Usage	Collections	0% GRT	Net Collections	Beginning Balance		9.66% Transition Bonds			Period Shortfall (after applic of Subacctts)	Accumulated Shortfall	Interest On Accumulated Shortfall
						50bps Ovrclrltrzn Subaccount	50bps Capital Subaccount	Interest	Principal	Ending Balance			
							Beg Bal = \$27,305,000						
Aug-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	40,232,345	37,256,096	4,960,550,796		(255,415,390)	(2,056,094)
Sep-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	39,932,434	37,556,008	4,922,994,788		(257,471,484)	(2,072,645)
Oct-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	39,630,108	37,858,334	4,885,136,455		(259,544,129)	(2,089,330)
Nov-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	39,325,348	38,163,093	4,846,973,361		(261,633,460)	(2,106,149)
Dec-02	0.0277	2,797,416,667	77,488,442	0	77,488,442	0	0	39,018,136	38,470,306	4,808,503,055		(263,739,609)	(2,123,104)
Jan-03	0.0311	2,797,416,667	82,244,050	0	82,244,050	0	0	38,708,450	43,535,600	4,764,967,455		(265,862,713)	(2,140,195)
Feb-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	38,357,988	48,641,670	4,716,325,785		(268,002,908)	(2,157,423)
Mar-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	37,966,423	49,033,236	4,667,292,549		(270,160,331)	(2,174,791)
Apr-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	37,571,705	49,427,953	4,617,864,595		(272,335,122)	(2,192,298)
May-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	37,173,810	49,825,848	4,568,038,747		(274,527,420)	(2,209,946)
Jun-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	36,772,712	50,226,946	4,517,811,801		(276,737,365)	(2,227,736)
Jul-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	36,368,385	50,631,273	4,467,180,527		(278,965,101)	(2,245,669)
Aug-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	35,960,803	51,038,855	4,416,141,672		(281,210,770)	(2,263,747)
Sep-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	35,549,940	51,449,718	4,364,691,954		(283,474,517)	(2,281,970)
Oct-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	35,135,770	51,863,888	4,312,828,066		(285,756,487)	(2,300,340)
Nov-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	34,718,266	52,281,392	4,260,546,674		(288,056,826)	(2,318,857)
Dec-03	0.0311	2,797,416,667	86,999,658	0	86,999,658	0	0	34,297,401	52,702,258	4,207,844,416		(290,375,684)	(2,337,524)
Jan-04	0.0306	2,797,416,667	86,300,304	0	86,300,304	0	0	33,873,148	52,427,157	4,155,417,260		(292,713,208)	(2,356,341)
Feb-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	33,451,109	52,149,841	4,103,267,419		(295,069,549)	(2,375,310)
Mar-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	33,031,303	52,569,647	4,050,697,771		(297,444,859)	(2,394,431)
Apr-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	32,608,117	52,992,833	3,997,704,938		(299,839,290)	(2,413,706)
May-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	32,181,525	53,419,425	3,944,285,513		(302,252,997)	(2,433,137)
Jun-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	31,751,498	53,849,452	3,890,436,062		(304,686,133)	(2,452,723)
Jul-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	31,318,010	54,282,940	3,836,153,122		(307,138,857)	(2,472,468)
Aug-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	30,881,033	54,719,917	3,781,433,204		(309,611,324)	(2,492,371)
Sep-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	30,440,537	55,160,413	3,726,272,792		(312,103,696)	(2,512,435)
Oct-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	29,996,496	55,604,454	3,670,668,338		(314,616,130)	(2,532,660)
Nov-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	29,548,880	56,052,070	3,614,616,268		(317,148,790)	(2,553,048)
Dec-04	0.0306	2,797,416,667	85,600,950	0	85,600,950	0	0	29,097,661	56,503,289	3,558,112,979		(319,701,838)	(2,573,600)
Jan-05	0.0300	2,797,416,667	84,761,725	0	84,761,725	0	0	28,642,809	56,118,916	3,501,994,063		(322,275,438)	(2,594,317)
Feb-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	28,191,052	55,731,448	3,446,262,615		(324,869,755)	(2,615,202)
Mar-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	27,742,414	56,180,086	3,390,082,530		(327,484,957)	(2,636,254)
Apr-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	27,290,164	56,632,336	3,333,450,194		(330,121,210)	(2,657,476)
May-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	26,834,274	57,088,226	3,276,361,968		(332,778,686)	(2,678,868)
Jun-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	26,374,714	57,547,786	3,218,814,182		(335,457,555)	(2,700,433)
Jul-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	25,911,454	58,011,046	3,160,803,136		(338,157,988)	(2,722,172)
Aug-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	25,444,465	58,478,035	3,102,325,101		(340,880,160)	(2,744,085)
Sep-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	24,973,717	58,948,783	3,043,376,318		(343,624,245)	(2,766,175)
Oct-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	24,499,179	59,423,321	2,983,952,998		(346,390,420)	(2,788,443)
Nov-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	24,020,822	59,901,678	2,924,051,319		(349,178,863)	(2,810,890)
Dec-05	0.0300	2,797,416,667	83,922,500	0	83,922,500	0	0	23,538,613	60,383,887	2,863,667,432		(351,989,753)	(2,833,518)
Jan-06	0.0344	2,797,416,667	90,076,817	0	90,076,817	0	0	23,052,523	67,024,294	2,798,643,139		(354,823,270)	(2,856,327)
Feb-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	22,512,977	73,718,156	2,722,924,983		(357,679,598)	(2,879,321)
Mar-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	21,919,546	74,311,587	2,648,613,395		(360,558,919)	(2,902,499)
Apr-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	21,321,338	74,909,796	2,573,703,600		(363,461,418)	(2,925,864)
May-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	20,718,314	75,512,819	2,498,190,780		(366,387,282)	(2,949,418)
Jun-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	20,110,436	76,120,698	2,422,070,083		(369,336,700)	(2,973,160)

Ability of ITC to Cover 9.66% Transition Bonds (No Base Load Growth)

Month	ITC	Usage	Collections	0% GRT	Net Collections	Beginning Balance		9.66% Transition Bonds			Period Shortfall (after applic of Subacct)	Accumulated Shortfall	Interest On Accumulated Shortfall
						50bps Ovrcllriztn Subaccount	50bps Capital Subaccount	Interest	Principal	Ending Balance			
							Beg Bal = \$27,305,000						
Jul-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	19,497,664	76,733,469	2,345,336,614		(372,309,860)	(2,997,094)
Aug-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	18,879,960	77,351,174	2,267,985,440		(375,306,955)	(3,021,221)
Sep-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	18,257,283	77,973,851	2,190,011,590		(378,328,176)	(3,045,542)
Oct-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	17,629,593	78,601,540	2,111,410,050		(381,373,717)	(3,070,058)
Nov-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	16,996,851	79,234,282	2,032,175,767		(384,443,776)	(3,094,772)
Dec-06	0.0344	2,797,416,667	96,231,133	0	96,231,133	0	0	16,359,015	79,872,118	1,952,303,649		(387,538,548)	(3,119,685)
Jan-07	0.0388	2,797,416,667	102,385,450	0	102,385,450	0	0	15,716,044	86,669,406	1,865,634,243		(390,658,234)	(3,144,799)
Feb-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	15,018,356	93,521,411	1,772,112,832		(393,803,032)	(3,170,114)
Mar-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	14,265,508	94,274,258	1,677,838,574		(396,973,147)	(3,195,634)
Apr-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	13,506,601	95,033,166	1,582,805,408		(400,168,781)	(3,221,359)
May-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	12,741,584	95,798,183	1,487,007,224		(403,390,139)	(3,247,291)
Jun-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	11,970,408	96,569,359	1,390,437,866		(406,637,430)	(3,273,431)
Jul-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	11,193,025	97,346,742	1,293,091,124		(409,910,861)	(3,299,782)
Aug-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	10,409,384	98,130,383	1,194,960,741		(413,210,644)	(3,326,346)
Sep-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	9,619,434	98,920,333	1,096,040,408		(416,536,989)	(3,353,123)
Oct-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	8,823,125	99,716,641	996,323,767		(419,890,112)	(3,380,115)
Nov-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	8,020,406	100,519,360	895,804,407		(423,270,228)	(3,407,325)
Dec-07	0.0388	2,797,416,667	108,539,767	0	108,539,767	0	0	7,211,225	101,328,541	794,475,865		(426,677,553)	(3,434,754)
Jan-08	0.0383	2,797,416,667	107,840,413	0	107,840,413	0	0	6,395,531	101,444,882	693,030,984		(430,112,307)	(3,462,404)
Feb-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	5,578,899	101,562,159	591,468,825		(433,574,711)	(3,490,276)
Mar-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	4,761,324	102,379,734	489,089,090		(437,064,988)	(3,518,373)
Apr-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	3,937,167	103,203,891	385,885,199		(440,583,361)	(3,546,696)
May-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	3,106,376	104,034,682	281,850,517		(444,130,057)	(3,575,247)
Jun-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	2,268,897	104,872,162	176,978,355		(447,705,304)	(3,604,028)
Jul-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	1,424,676	105,716,383	71,261,972		(451,309,332)	(3,633,040)
Aug-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	573,659	106,567,399	(35,305,427)		(454,942,372)	(3,662,286)
Sep-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	(284,209)	107,425,267	(142,730,694)		(458,604,658)	(3,691,767)
Oct-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	(1,148,982)	108,290,040	(251,020,734)		(462,296,425)	(3,721,486)
Nov-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	(2,020,717)	109,161,775	(360,182,510)		(466,017,911)	(3,751,444)
Dec-08	0.0383	2,797,416,667	107,141,058	0	107,141,058	0	0	(2,899,469)	110,040,528	(470,223,037)		(469,769,356)	(3,781,643)
Jan-09	0.0383	1,398,708,333	53,570,529	0	53,570,529	0	0	-	53,570,529	(523,793,566)		(473,550,999)	-

PECO STATEMENT NO. 21-E

RECEIVED

BEFORE THE

NOV 7 1997

PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

KJR

R. 973953

TESTIMONY

OF

DAVID J. PRATZON

DOCUMENT
FOLDER

REGARDING THE ENRON CHOICE PLAN

DOCKETED
NOV 12 1997

Regarding The Power Purchase Agreement,
Reliability and Safety and Procedures to Ensure Direct Access

November 7, 1997

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- 1 • participation in the design of PECO's supplier administration process for the implementation
2 of retail access, and presentation of PECO's plans to other stakeholder groups.

3
4 **Q. Have you previously testified in this proceeding?**

5 A. Yes. I submitted rebuttal testimony (PECO St. 21-R) that addressed transmission and PJM-
6 related issues associated with PECO's Restructuring Plan. In addition, I have submitted
7 testimony in PECO's retail access pilot program proceeding at PUC Docket No. P-00971170.

8
9 **Q. What is the purpose of your testimony?**

10 A. I respond to Enron Energy Services Power, Inc.'s ("Enron") testimony and filings in support of
11 its so-called "Choice Plan" (hereinafter, the "Enron Plan") as such testimony and filings concern
12 the Firm Energy & Capacity Purchase and Sale Agreement ("Power Purchase Agreement or
13 PPA") submitted by Enron. In particular, my testimony responds to Enron witnesses Steven J.
14 Kean, Douglas R. Bohi and Kenneth J. Slater. In addition, I address the adequacy of the Enron
15 Plan in articulating the processes necessary to ensure retail consumers' direct access to Electric
16 Generation Suppliers.

17
18 **Q. Please briefly summarize your testimony.**

19 A. My testimony on the Power Purchase Agreement can be summarized as follows:

- 20 • Under the Power Purchase Agreement Enron would be performing the functions of a Provider
21 of Last Resort in name only; PECO would be performing such functions in fact and substance.
22 • The Power Purchase Agreement would add no value, but rather would transfer value from
23 PECO to Enron. In particular, it would fail to compensate PECO adequately for the energy

1 and capacity and other services provided under the PPA, and provides no compensation to
2 PECO for the call contract rights it would give to Enron.

- 3 • The terms and conditions of the Power Purchase Agreement are so one-sided, oppressive and
4 confiscatory that such an agreement would never arise through freely negotiated dealings
5 between parties of equal bargaining position, and no reasonably prudent utility manager would
6 agree to such terms and conditions.
- 7 • The Power Purchase Agreement results in disparate treatment of default service customers
8 because it would penalize certain default service customers with higher prices.
- 9 • The Power Purchase Agreement shifts all risks to PECO. Thus, the PPA as drafted by Enron
10 is a totally risk-free proposition for Enron, while providing Enron with a profit opportunity.
11 This is a mismatch in the allocation of risks and rewards, and would not occur in a
12 competitively negotiated bilateral agreement.
- 13 • Under the Power Purchase Agreement, Enron would be able to escape accountability to
14 Pennsylvania default service customers, the Commission and other regulatory bodies.
- 15 • The Power Purchase Agreement is anti-competitive, because it would prevent PECO from
16 marketing its energy and capacity in competition with Enron and would make it unavailable to
17 Enron's competitors.

18
19 Further, I will testify that the Enron Plan would, for a variety of reasons, undermine reliability and
20 safety of providing electric service to customers in PECO's service territory.

21

1 Finally, my testimony regarding procedures to ensure direct access is that Enron has failed to
2 provide a clear, complete and adequate discussion of all of the processes necessary to ensure that
3 retail consumers and EGSs would have access to each other under the Enron Plan.
4

5 **II. THE POWER PURCHASE AGREEMENT**

6
7 **A. Overview of the Agreement**

8
9 **Q. Please generally describe the Power Purchase Agreement that was filed as part of the**
10 **Enron Plan?**

11 **A.** Enron has filed what it refers to as a “Firm Energy & Capacity Purchase and Sale Agreement.”
12 Through this agreement, which I shall refer to interchangeably as either the “Power Purchase
13 Agreement” or “PPA,” Enron contemplates that Enron would buy from PECO, and PECO would
14 sell to Enron, energy and capacity under the terms and conditions set forth in the PPA.
15

16 **Q. How does the Power Purchase Agreement proposed by Enron fit with its proposal to**
17 **become the Provider of Last Resort in PECO’s service territory?**

18 **A.** Based on my reading of the Enron testimony and the terms and conditions of the PPA, Enron is
19 submitting the PPA as the vehicle through which it would acquire some or all of the power
20 services necessary to supply energy to default service customers in PECO’s service territory.
21

22 **Q. Enron’s witness, Kenneth J. Slater, has likened the PPA to an all requirements contract**
23 **(Enron St. No. 4 at 8-9). Is that accurate?**

1 A. No. As detailed later on in my testimony, Enron has not proposed a traditional type of
2 requirements contract where the buyer commits to buying all of its needs from the seller and the
3 requirements are reasonably predictable. Rather, under the Power Purchase Agreement, Enron's
4 "requirements" would be in a constant state of flux. One obvious cause of this fluctuation is the
5 shifting of load to and from EGSs. The other and more significant cause is the creation of two
6 classes of default service customers and Enron's retention of an option – but not a requirement --
7 to buy power from PECO for one of those classes.

8
9 **Q. Is the scope of the Power Purchase Agreement limited to the purchase of energy and**
10 **capacity?**

11 A. No, it goes well beyond that. The PPA is really several contracts rolled into one: a contract for
12 the sale of energy and capacity, a call contract on energy and capacity, and a contract for
13 competitively available services such as energy procurement and energy scheduling.

14

15 **B. FERC Jurisdiction Over Power Purchase Agreement**

16

17 **Q. Is the sale of energy and capacity contemplated by the Power Purchase Agreement a**
18 **wholesale or retail transaction?**

19 A. It would be a wholesale transaction.

20

21 **Q. Please explain what makes it a wholesale transaction.**

1 A. Under the PPA, Enron would take title to the power at the point of delivery to the end-use
2 consumer, prior to the actual consumption by the consumer. See PPA at § 6.3 at 5. Thus the sale
3 of energy and capacity to Enron would be a sale of energy for resale.
4

5 **Q. What significance is there to the wholesale status of the energy and capacity purchase**
6 **under the Power Purchase Agreement?**

7 A. The significance is that such transactions are subject to the exclusive jurisdiction of the Federal
8 Energy Regulatory Commission ("FERC").
9

10 **Q. Does the FERC regulate PECO's wholesale sales of energy and capacity?**

11 A. Yes. PECO's wholesale sales of energy and capacity are covered by PECO's FERC Electric
12 Tariff - Volume No. 1 on file with the FERC. PECO also has on file with the FERC contracts for
13 long-terms sales of energy and capacity.
14

15 **C. Default Service Customers**
16

17 **Q. Who are the default service customers that Enron proposes to serve as the Provider of Last**
18 **Resort?**

19 A. Collectively, the default service customers to be served by Enron under its Plan are those
20 customers who are not being served by an EGS. The PPA actually recognizes two categories of
21 such customers: "Transitional Default Service Customers" and "Standard Default Service
22 Customers".

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Q. Could you explain the difference between the Standard Default Service Customers and the Transitional Default Service Customers?

A. Under the PPA proposed by Enron, "Transitional Default Service Customers" mean customers in PECO's service territory who either (1) never chose an EGs or (2) executes a one-year energy services contract upon "returning" to the PLR from Enron. On the other hand, "Standard Default Service Customers" are customers in PECO's service territory who exercised their retail choice options but returned to the default energy provider either voluntarily or involuntarily.

Q. What is your understanding as to how a customers who exercised its choice could voluntarily return to default service?

A. The most readily apparent circumstance is that the customer, for whatever reasons, either was dissatisfied with the services provided by the Electric Generation Supplier it chose or decided that it simply preferred the service it had been receiving as a default service customer.

Q. What is your understanding as to how a customer who exercised its choice could be involuntarily returned to default service?

A. The most likely scenario is that the customer is terminated by the EGS for failure to pay its bills. Other scenarios include the supplier's bankruptcy or loss of its Electric Generation Supplier license.

Q. Is there any disparity in the way in which the two classes of default service customers are treated under the Enron Plan?

1 A. Yes. As explained below, Transitional Default Service Customers are penalized during the early
2 years of the Enron Plan by being forced to pay above-market prices for energy and capacity.
3 However, to fully understand how this happens you first need to understand the nature of the
4 supply requirements that PECO must satisfy under the Power Purchase Agreement.
5

6 **D. Enron's "Requirements"**
7

8 **Q. What requirements of Enron does the Power Purchase Agreement cover?**

9 A. The Power Purchase Agreement covers "All Requirements" of Enron from September 1, 1998
10 through December 31, 2008 in supplying energy and capacity to default service customers.
11

12 **Q. How does the Power Purchase Agreement define "All Requirements"?**

13 A. "All Requirements" consist of both "Mandatory Requirements" and "Optional Requirements."
14 Enron's "Mandatory Requirements" are its requirements for serving the Transitional Default
15 Service Customers. See PPA at 2. Enron's "Optional Requirements" are its requirements for
16 serving the Standard Default Service Customers. Id. Moreover, the requirements for each
17 category of customers cover not just energy and capacity, but also "without limitation, all
18 ancillary and other services required to transmit, distribute and deliver such energy to such
19 customers" Id.
20

21 **Q. What is the significance of there being two categories of "requirements" that Enron must**
22 **satisfy in serving default service customers in PECO's service territory?**

1 A. The significance is that Enron, at its option, can purchase the energy and capacity it requires to
2 serve Standard Default Service Customers from either the marketplace or PECO. On the other
3 hand, Enron can only buy the energy and capacity required to serve Transitional Default Service
4 Customers from PECO.

5
6 **E. Disparate Treatment of Default Service Consumers**

7
8 **Q. How does Enron's differing obligations regarding default service customers affect those**
9 **customers?**

10 A. It is likely to have a significant adverse impact on Transitional Default Service Customers during
11 the early years of the Enron Plan. This occurs because those customers would be paying an
12 above-market price for energy and capacity. By contrast, because Enron has the option of buying
13 energy and capacity from the market to serve Standard Default Service Customers, those
14 customers may be able to obtain the same default service at a lower price.

15
16 **Q. In your view, is the disparate treatment of Transitional Default Service Customers a cause**
17 **for concern?**

18 A. Yes. The pricing structure under the Enron Plan results in an unfair penalty to such customers.

19
20 **Q. Could even Standard Default Service Customers end up paying above market prices for**
21 **energy and capacity during the early years of the Enron Plan?**

22 A. Yes. One could contemplate a scenario in which Enron, for whatever reason, might squander the
23 difference between the generation credit and the true market price of energy and capacity. Enron

1 has said that it has no desire to profit from default service customers but would simply pass
2 through its costs to such customers. (See Enron St. No. 1 at 20). As such, Enron may have little
3 incentive to minimize such costs to such customers. Further, to the extent there are no affiliate
4 abuse protections, Enron and EPMI as part of the same "Enron Corp. family" (see Enron St. No.
5 1 at 23) have a clear economic incentive to have Enron buy energy and capacity from EPMI at a
6 price just below the generation credit and in turn "pass on" those costs to the Standard Default
7 Service Customers. Thus, all default service customers could end up being overcharged for
8 energy and capacity in the early years of the Enron Plan.

9
10 **Q. Are there other features of the Power Purchase Agreement that may have an adverse**
11 **impact on default service customers?**

12 A. Yes. Article 9 says that in the event of a default by PECO on its delivery obligations, Enron can
13 collect all monies directly from Default Service customers. It further states that in such event,
14 "nothing [in the PPA] shall restrict Buyer's rights with respect to charges to Default Service
15 Customers pursuant to the Choice Plan and the Distribution Tariff." PPA § 9.3 at 8-9. I read this
16 to mean that Enron would be free to charge default service customers whatever it wants if PECO
17 defaults on its obligation to deliver energy and capacity under the PPA.

18
19 **Q. What opportunities are there for a default under the Power Purchase Agreement?**

20 A. There are numerous circumstances in which a default could occur under the PPA. For instance a
21 breach of any of the warranties constitutes a defaulting event. In one of the warranties, PECO
22 must represent and warrant that it either has the capacity and energy on hand or has access to
23 such energy and capacity in the marketplace which would allow it to fully satisfy its delivery

1 obligations. See PPA § 7.3. But one could contemplate a scenario in which PECO, due to no
2 fault of its own, does not have such access. That scenario could be a system power emergency or
3 a transmission problem. Even if such a situation were only temporary, it would appear that Enron
4 could declare a default and terminate the contract, freeing it to charge default customers whatever
5 it wants.

6
7 **F. Contract Price**

8
9 **Q. What is the contract price payable to PECO under the Power Purchase Agreement?**

10 A. The PPA contains two “contract prices,” one for Enron’s Mandatory Requirements and another
11 for its Optional Requirements.

12
13 **Q. What is the contract price for Enron’s Mandatory Requirements?**

14 A. The contract price is equal to the aggregate of a fixed price for a particular type of service – as
15 predetermined by Enron and set forth in the price list attached to the PPA – multiplied by the
16 quantity of that service, plus transmission and distribution costs. See PPA § 5.1 at 4.

17
18 **Q. What is the contract price for Enron’s Optional Requirements?**

19 A. The contract price is stated in the price list attached to the PPA as being “[a] fully compensatory
20 price based on a market index to be determined by default service provider.”

21
22 **Q. What do you understand that statement to mean?**

1 A. I understand it to mean that Enron would have complete discretion as to the price it would pay us
2 for energy and capacity delivered as part of its Optional Requirements. In essence, it is Enron as
3 the buyer that gets to set the price of the power sold – not PECO, the seller of the power.
4

5 **Q. Would the contract price stated in the Power Purchase Agreement fully compensate PECO**
6 **for all energy and capacity and services it must provide Enron?**

7 A. No, it would not for several reasons. First, Enron would not be obligated to purchase from
8 PECO the power needed to serve Standard Default Service customers, but would have the right
9 to do so. PECO thus must set aside a potentially significant portion of its generation assets just in
10 the event that Enron decides to exercise its call for PECO to serve Standard Default Service
11 Customer without any compensation to PECO for that reservation. As explained below, the
12 absence of a reservation fee is totally inconsistent with how the marketplace values call contacts
13 and options to purchase. Thus, the call contract provisions of the PPA are confiscatory as they
14 would transfer value to Enron without any compensation to PECO.
15

16 Second, there are numerous hidden costs imposed on PECO with the Power Purchase Agreement.
17 For example, the Power Purchase Agreement imposes all of the administrative burdens on PECO.
18 PECO must essentially act as Enron's agent in performing all tasks of energy supply
19 administration, including interaction with third parties and the PJM Office of Interconnection
20 ("PJM OP"). However, the contract price structure makes no provision for PECO's recovery of
21 these administrative expenses.
22

1 Third, the PPA appears to shift all transmission and PJM-related risks and expenses to PECO.
2 One example is that PECO is responsible for the transmission service required to deliver power
3 from outside PJM to the PJM border. Another is that the PPA requires PECO to procure energy
4 from the marketplace to the extent it does not have energy and capacity on hand to satisfy
5 Enron's requirements. However, PECO may have to purchase energy and capacity at a price
6 above the PPA's contract price. The contract price does not include compensation for such
7 expenses.

8
9 **G. Obligations of PECO**

10
11 **Q. Are you familiar with the MBC Services Agreement that Enron has filed as part of the**
12 **Enron Plan?**

13 A. Yes. I have reviewed its provisions and I am also familiar with the testimony of PECO witness
14 Brian D. Crowe with respect to that agreement (PECO St. No. 29-E).

15
16 **Q. Please summarize the totality of obligations that are imposed on PECO under the Power**
17 **Purchase Agreement and the MBC Services Agreement.**

18 A. Enron would require PECO to continue to perform all of the functions it presently performs as the
19 Provider of Last Resort in its own service territory at prices set by Enron. The only real
20 differences in service under Enron's Plan is that PECO would be required to send out bills with
21 Enron's name and logo instead of PECO's and Enron would insert itself between PECO, the
22 actual service provider, and retail customers for all customer communications functions. Thus,

1 Enron would assume the role of Provider of Last Resort in name and form only, not in fact or
2 substance. PECO would continue to perform all the work.

3
4 **Q. Please provide further details on the specific obligations that the Power Purchase
5 Agreement would impose on PECO.**

6 A. PECO's obligations under the Power Purchase Agreement would include the following:

- 7 • Energy Procurement. PECO must hold ready its generation to meet Enron's
8 requirements. PECO must purchase fuel and maintain plant operations staff to meet any
9 Enron demand under the PPA. To the extent that its own generation resources are
10 insufficient to provide the energy and capacity to satisfy "All Requirements" of Enron for
11 serving default service customers, PECO would have to buy energy and capacity in the
12 marketplace to bridge the gap, while absorbing all of the cost risk of any such purchases.
- 13 • Scheduling. PECO would be responsible for scheduling the energy required to serve
14 default customers. This includes commitment of PECO's own resources. Arrangements
15 with PJM for energy delivery, related transmission services, needed ancillary and other
16 pool support services, and record keeping and accounting for all energy deliveries under
17 the PPA.
- 18 • Delivery. Enron only takes title to the power at the point of delivery to the end-use
19 consumer. This means that PECO must make all necessary arrangements for delivering
20 the power over transmission and distribution facilities.
- 21 • Energy and Capacity Supply. PECO would be required to keep adequate supplies of
22 energy and capacity on hand to be able to serve all of the actual and potential Default
23 Service Customers.

- 1 • Generation Planning. Under the Enron Plan, Enron does not assume any obligation to
2 serve default service customers, but requires PECO to satisfy all the requirements of such
3 customers at all times. As such, PECO also bears the implied obligation to plan its
4 generation resources so that they are adequate to satisfy the power needs of such
5 customers.
- 6 • PJM Obligations. PECO is responsible for satisfying all of Enron's PJM obligations as a
7 load-serving entity, such as forecasting energy use, scheduling resources to meet energy
8 supply obligations, arranging for transmission service within PJM and outside the region
9 for any energy imports, meeting the PJM installed capacity obligation, complying with
10 PJM data requirements for planning, scheduling, operations and pool accounting, and
11 providing or paying for transmission ancillary services like operating reserves and for any
12 other services that PJM may from time to time require.

13
14 **H. Obligations of Enron**

15
16 **Q. Under the Power Purchase Agreement, would Enron have any obligation to purchase its**
17 **“Optional Requirements” from PECO?**

18 A. No. Enron has no obligation to buy energy from PECO to meet its “Optional Requirements.”
19 Indeed, the definition of Optional Requirements specifically provides: “Buyer shall not be
20 obligated to purchase its Optional Requirements from Seller . . .” PPA § 1.1 at 2.

21
22 **Q. What obligation would PECO have to Enron's Optional Requirements?**

1 A. Although Enron has defined "Optional Requirements" to exclude any obligation on Enron's part
2 to buy energy associated with such requirements, the definition specifically states that "Buyer shall
3 have the right to require Seller to sell to Buyer the Optional Requirements of Buyer at Buyer's
4 option." PPA at 2. As a result, Enron has a call contract on PECO's energy and capacity
5 resources and other services in order to serve Standard Default Service Customers for the more
6 than ten-year term of the PPA.

7
8 **Q. Does Enron make any firm commitment to purchase any quantity of power from PECO**
9 **during the term of the Power Purchase Agreement?**

10 A. No. The PPA nowhere specifies a minimum quantity of energy and/or capacity that Enron must
11 purchase from PECO. The PPA provides only that Enron will buy its Mandatory Requirements
12 from PECO, whatever they are. The level of these requirements would be constantly changing,
13 and can be subject to wide swings based on factors such as the market price for energy and how
14 Enron sets the energy price it charges Standard Default Customers. As explained in the testimony
15 of PECO witness Dr. William Hieronymus (PECO St. 6-E), the Enron Plan in its early years
16 would promote the migration of Transitional Default Service Customers to other Electric
17 Generation suppliers by penalizing such customers through above market pricing. Further, when
18 default service customers exercise their retail choice options but later return to default service,
19 their energy requirements would be lumped in with Enron's Optional Requirements. Inasmuch as
20 the Transitional Default Service Customers are the only grouping of default service customers for
21 whom Enron would have Mandatory Requirements, the total amount of energy and capacity that
22 Enron actually commits to buy from PECO is not only a moving target, it is a constantly declining
23 one.

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Q. Why then does Enron call the Power Purchase Agreement a “Firm Energy & Capacity Purchase and Sale Agreement”?

A. The word “firm” used in that context is intended to only describe the quality of the energy and capacity required to be supplied by PECO under the Power Purchase Agreement, and not Enron’s commitment to buy that power.

Q. Are there any other obligations that Enron would have under the Power Purchase Agreement?

A. Apart from payment, I found no others.

Q. Is Enron’s payment obligation under the PPA unqualified?

A. No. Enron can withhold payment to PECO by claiming the existence of “a good faith dispute.” Further, there is no provision that Enron pay disputed monies into any kind of escrow account. In addition, § 10.2 of the PPA appears to give Enron the right to set off against its payments to PECO any claims, real or perceived, that it may have against PECO.

Q. Does PECO have a corresponding set off right?

A. The Power Purchase Agreement is not clear on that point. While § 10.2 on its face applies as equally to Enron as it does to PECO, other provisions of the Power Purchase Agreement when read together appear to say that the contract price is PECO’s sole and exclusive remedy. If so, PECO would have no claim for anything other than its contract price. Thus it would appear that this section is being intended to benefit Enron only.

1
2 **I. Call Contract for "Optional Requirements"**

3
4 **Q. Following up on your testimony that the Power Purchase Agreement is several contracts in**
5 **one, including a call contract on energy and capacity, please briefly explain what a call**
6 **contract is.**

7 A. Simply, a call contract is like an option to purchase particular goods and/or services. It is an
8 agreement between a buyer and seller of a product or service, whereby the seller agrees to hold
9 onto the product or service for a specified time and to make it available for purchase by the buyer
10 during that time, generally at an agreed-on price. A call contract on energy and capacity would
11 work the same way; the seller agrees to make that energy and capacity available for a set period
12 so that the buyer can "call" on it during that period.

13
14 **Q. Please identify and describe the call contract provisions of the Power Purchase Agreement.**

15 A. If you look for a specific call contract section of the Power Purchase Agreement, you will not find
16 one. This is because the Power Purchase Agreement, as drafted by Enron, hides the call contract
17 provisions within the definitions section of the PPA. I refer your attention to the definitions of
18 "All Requirements," "Mandatory Requirements" and "Optional Requirements" contained in the
19 PPA, and which I addressed earlier in my testimony. Those definitions, combined with PECO's
20 obligation under the PPA to satisfy "All Requirements" of Enron, would give Enron the functional
21 equivalent of call rights on all of PECO's generation assets.

1 **Q. Please describe what the effects of these call right would be on PECO.**

2 A. The immediate effect is that, under the PPA, PECO would have a legal obligation to keep
3 sufficient energy and capacity available to satisfy Enron's Optional Requirements just in case
4 Enron decides to call on such energy and capacity. If PECO cannot satisfy its obligation from its
5 own generating units, it would have to purchase energy for Enron's use. And "Optional" means
6 exactly that; Enron does not have any corresponding legal obligation to buy any of the energy and
7 capacity that PECO must set aside for the possibility of satisfying Enron's Optional Requirements.

8
9 **Q. Please explain why the Power Purchase Agreement does not compensate PECO for the call
10 rights it gives to Enron.**

11 A. The PPA's call contract features force PECO to remove its energy and capacity from the
12 marketplace without any guarantee that Enron would buy that energy and capacity. While this
13 might be convenient from Enron's perspective, PECO would suffer lost opportunity costs if
14 Enron does not in fact exercise its call. Such lost opportunity costs would arise from the potential
15 sales that PECO could have made were it free to offer that energy and capacity to the marketplace
16 other than on a non-firm, hourly basis.

17
18 **Q. How consistent is the absence of a reservation fee for the call rights contained within the
19 Power Purchase Agreement with the way the marketplace values such rights?**

20 A. It is not at all consistent. The marketplace recognizes the opportunity costs to the seller of energy
21 through the payment of reservation fees for the right to call on energy. The size of the reservation
22 fee will depend on a variety of factors such as the type of energy product being sold, flexibility in

1 scheduling and the contract duration. A brokering market presently exists in which calls on
2 energy are regularly traded.

3
4 **Q. Please describe of the call contract products traded in this broker market.**

5 A. Yes. The call contract traded in this market are fairly standardized products. These products tend
6 to be highly structured and well defined. For instance, one product might be the right to call on
7 “peak energy in 50 MW blocks for 16 hours a day every day for one month.” In addition, the
8 product is likely to specify time windows in which the buyer must reserve the energy for delivery.
9 I note further that the call contract products currently in the market are usually fairly short in
10 duration and typically do not exceed one year.

11
12 **Q. What is the pricing structure for the types of call contract products available in the broker
13 market?**

14 A. Typically, these products have an upfront reservation fee as well as a separate price for the energy
15 actually called on by the buyer.

16
17 **Q. What variables affect the determination of a reservation fee?**

18 A. There are many variables that can affect the fee. However, a clear correlation exists between
19 certain features of a call contract product and the reservation fee, as follows: (1) the greater the
20 volatility of the product, the higher the reservation fee; (2) the greater the flexibility of the buyer
21 in exercising call option rights, the higher the reservation fee; and (3) the longer the term of the
22 call contract, the higher the reservation fee. Generally, in setting the price of a call product, the
23 seller is looking to reflect not just the value of the energy called upon, but also the uncertainties

1 and risks to the seller associated with product volatility and the buyer's flexibility in exercising call
2 rights.

3
4 **Q. How do the call rights contained in the Enron Power Purchase Agreement compare with**
5 **the typical call contract products in the marketplace?**

6 A. There really is no basis for comparison, because the PPA gives Enron virtually limitless flexibility
7 without requiring Enron to pay any reservation fee, let alone one that reflects the substantial price
8 and performance risks being borne by PECO. The call contract product contained within the PPA
9 is a poorly defined product, which increases the uncertainties and volatility of the PECO's
10 delivery obligations. There are no notification limits on the call rights of Enron for Optional
11 Requirements energy. Nor are there any provisions in the PPA that require Enron to forecast the
12 amount of energy it will call or release capacity it will not need. It would even be possible for
13 Enron to exercise its call on an hour by hour basis. In addition, the call contract would be in
14 effect for a term of more than ten years. Finally, the buyer – not the seller – is dictating the price
15 of the call product, and has set the reservation fee at zero. This is simply unheard of. It is
16 analogous to someone receiving an option to buy your house during the next ten years and not
17 paying a dime for that privilege.

18
19 As I explain later in my testimony, the result of the latitude that the PPA gives to Enron in
20 exercising call rights effectively eliminates PECO as a competitive supplier for many of the more
21 valuable wholesale energy supply products needed in the region.

1 **Q. In your view, would PECO ever offer a call product the same as the one reflected in the**
2 **Power Purchase Agreement?**

3 A. Absolutely not. To the extent PECO ever offered a call product for energy and capacity, it
4 would be PECO, and not the buyer, that would determine pricing, subject of course to
5 negotiations with the buyer; there would be a reservation fee; and there would be clearly defined
6 restrictions concerning the buyer's rights to exercise the call. Given the volatility and uncertainty
7 around the amount of energy and capacity to be supplied to serve retail load, that reservation fee
8 would incorporate a hefty premium.

9
10 **Q. Has PECO entered into any long-term sales of capacity and energy?**

11 A. Yes. In particular, PECO has entered into a 25 year agreement with Baltimore Gas and Electric
12 Company (Baltimore) and a 10 year agreement with Delmarva Power & Light Company
13 (Delmarva).

14
15 **Q. Can you describe the nature of the obligations in the Baltimore contract?**

16 A. Yes. The contract obligates PECO to supply 140 MW of capacity to Baltimore. Baltimore then
17 has the right to call energy from PECO, at set prices and according to clear scheduling
18 obligations. Protections are built into the contract that give PECO some certainty about the
19 schedule of energy deliveries in the near term, while providing Baltimore significant flexibility in
20 the long-term.

21
22 **Q. How are the prices structured in the contract with Baltimore?**

1 A. The prices include a capacity and an energy charge. The capacity charge, which acts as a
2 reservation fee, is paid whether or not Baltimore dispatches the energy. Thus, in the event
3 Baltimore elects to take no energy under the contract, it is still obliged to pay about 70% of the
4 amount it would pay if it dispatched all the energy available to it. This amount varies year-to-year
5 based on the cost of energy, but PECO anticipates that the capacity charges will not represent less
6 than 50% of the total revenue in any given year.

7

8 **Q. Is the Delmarva contract consistent with the Baltimore contract?**

9 A. Yes, although it approaches pricing in a different fashion. The Delmarva contract has a smaller
10 capacity charge. Some of the "reservation fee" is built into the price of energy in the contract.

11

12 **Q. Therefore, can Delmarva avoid some of its capacity costs by not scheduling energy under
13 the contract?**

14 A. No, just the opposite. Delmarva is obliged to take 95% of the maximum energy available to it in
15 every billing period. Thus, Delmarva has an obligation to pay at least the sum of its capacity
16 charges plus 95% of its potential energy charges. Delmarva's discretion in dispatching energy is
17 limited to 5% of its total potential energy take. Less than 3% of PECO's revenue stream is at
18 risk. In addition, PECO has a unilateral right to increase or decrease the amount of capacity
19 reserved by Delmarva, within certain prescribed limits.

20

21 **Q. Can you make any conclusions from these contracts?**

22 A. Yes. Review of these contracts, plus PECO's experience in contracting with IPP's, allows me to
23 conclude that, in most long-term contracts the buyer takes on significant obligations. Specifically,

1 the buyer is obliged for 50% - 100% of the total possible costs of contracts. The seller is
2 generally protected from the buyer walking away from or shopping the deal it struck. This is a
3 reasonable protection when the seller is committing to a long-term supply with fixed costs.
4

5 **J. Conditional Nature of Enron's Commitments**

6
7 **Q. Is Enron making an unconditional commitment to enter into the Power Purchase
8 Agreement?**

9 A. No. The Power Purchase Agreement is subject to several conditions precedent. They are: (1) the
10 final and non-appealable approval of the Enron Plan by the Commission; (2) the final and non-
11 appealable approval PPA by the Commission and the FERC of the transactions contemplated
12 under the; (3) PECO's execution, and delivery to Enron, of the MBC Services Agreement; and
13 (4) the final and non-appealable approval of the transactions contemplated under the MBC
14 Services Agreement.
15

16 **Q. What is the consequence of any one of these conditions not being satisfied?**

17 A. Unless Enron waives the condition, the Power Purchase Agreement automatically terminates. See
18 PPA § 2.2 at 3.
19

20 **Q. Apart from these conditions precedent, does the Power Purchase Agreement contain any
21 other qualifications on Enron's commitments under it?**

22 A. Yes. Enron has included a major "regulatory out" provision in the Power Purchase Agreement,
23 which gives Enron the right to terminate the Power Purchase Agreement fifteen days after any

1 order, rule or regulation that has a materially adverse effect on its rights as a default service
2 provider under the Enron Plan. See PPA § 3.3 at 4.

3
4 **Q. Does the Power Purchase Agreement define, or otherwise provide a standard for
5 identifying, a materially adverse effect?**

6 A. No. As such, Enron would be free to construe any unfavorable rule or regulation as materially
7 and adversely affecting its rights as a default service provider.

8
9 **Q. Putting aside the conditions precedent and the regulatory out you describe, does the Power
10 Purchase Agreement nonetheless evidence a commitment by Enron to assume all of the
11 obligations and liabilities of a Provider of Last Resort?**

12 A. No. The Power Purchase Agreement goes to great lengths to ensure that such obligations or
13 liabilities are not assumed by Enron, but remain with PECO. In particular, § 8.4 of the PPA
14 provides as follows:

15 **No Release/No Assumption.** Nothing in this Agreement shall operate or be
16 construed to release PECO from any obligations or liabilities it can or may have in
17 connection with the provision of energy and capacity in its service territory except
18 as specifically provided herein or in any related agreements. By entering into this
19 Agreement, and any related agreements, EESP does not assume, and shall under
20 no circumstances be held liable for, any Claims against or liabilities of PECO of
21 any kind or nature whatsoever.

22
23 In other words, PECO, not Enron, would remain the party ultimately responsible for serving
24 customers in PECO's "service territory," notwithstanding Enron's designation as PLR.

25
26 **K. Allocation of Risks**

1
2 **Q. How does the Power Purchase Agreement allocate risks associated with the provision of**
3 **default service between PECO and Enron?**

4 A. The Power Purchase Agreement shifts all risk to PECO. As detailed by the following, this ranges
5 from the normal market risks related to the procurement of energy to the risk of regulatory
6 changes. The principle risks allocated to PECO include:

- 7 • Price Risks: The Power Purchase Agreement provides PECO no protection against price
8 risks associated with the energy procurement activities that may be required in satisfying
9 Enron's requirements. This is particularly problematic because, in the later years of the
10 Enron Plan, PPA contract prices are below current estimates of generation market prices.
11 PECO would be forced to incur the higher market prices with no recovery of such costs
12 provided for in the PPA.
- 13 • Obligation to Serve: As stated above, although Enron wants to have the title of Provider
14 of Last Resort, it is unwilling to assume the obligations and liabilities that flow from that
15 status.
- 16 • Energy Procurement: The PPA obligates PECO "at all times to deliver the entire Contract
17 Quantity irrespective of whether Seller can supply such quantity from its own generation
18 resources or must obtain energy and capacity from other sources." PPA § 4.3 at 4. In a
19 given situation, this might mean that PECO would have to purchase and import power
20 into PJM to satisfy Enron's requirements. However, the PPA provides no compensation
21 to PECO for such procurement activities.
- 22 • Delivery: PECO would bear all risks associated with delivery of energy and capacity to
23 default service customers. Under section 6.3 of the PPA, Enron would not take title to

1 the energy and capacity until the point of delivery to the customer. It is only at that point
2 that “risk of loss” of the contract quantity transfers to Enron. This, however, is
3 meaningless given that there is no risk of loss once the energy and capacity is actually
4 delivered to the customer. Even this was not enough for Enron, however. Enron would
5 never take responsibility for third party liability in connection with the sale even when it
6 takes title. Instead, the PPA provides that PECO “shall be deemed to be in exclusive
7 control (and responsible for any damages or injury caused thereby) of the energy at all
8 times up to and including consumption by the end use customer.”

- 9 • Generation Planning: Under the Enron Plan, PECO – not Enron in its role as “provider of
10 last resort” – bears responsibility for the adequacy of generation resources needed to serve
11 default service customers.
- 12 • PJM Obligations: Under the PPA, PECO is responsible for both the day to day
13 administration of Enron’s responsibilities to PJM and for all costs of services provided by
14 PJM such as energy from the pool spot market, transmission ancillary services or installed
15 capacity obligations associated with default service customers. It is proposed by Enron
16 that PECO provide all of these services at no cost to Enron.
- 17 • PJM Capacity Derating Practices: Section 4.4 of the PPA also requires that PECO ensure
18 that Enron receives full credit for energy and capacity covered by the PPA, including for
19 purchases from third party suppliers that PECO might be forced to make. The effect of
20 this language is to shift to PECO all risk associated with the practices followed by the
21 PJM OI in valuing capacity. At present, these practices – over which PECO has no
22 control – entail an assessment by the PJM OI as to the deliverability of the capacity
23 resources identified by a load serving entity.

- 1 • Transmission Service Requirements: Section 6.2 of the PPA would assign to PECO all
2 risks associated with the vagaries of transmission service including control area services,
3 inadvertent energy flows, transmission losses and loss charges relating to the transmission”
4 of the power.
- 5 • General Liability: I noted earlier that PECO would remain liable for any damage or injury
6 caused by the delivery of power, even after Enron takes title to it. See PPA § 6.3. In
7 addition, PECO must indemnify Enron and any of its Affiliates with respect to any claims
8 for damage for injury connected to delivery of energy and capacity under the PPA even
9 when PECO was not at fault and even when Enron is negligent. See PPA § 8.2. While
10 there is a parallel provision to indemnify PECO with respect to claims connected to
11 Enron’s performance under the PPA, that provision is meaningless because payment
12 would be the only real performance obligation Enron has under the PPA. Even then,
13 Enron could evade that obligation through the so-called “good-faith dispute” provisions of
14 the PPA.
- 15 • Regulatory Changes: Section 3.3 of the PPA permits Enron to back out of its default
16 service provider role any time the regulatory climate changes, with as little fifteen days
17 notice. If Enron were to back out under such circumstances, PECO would be left to deal
18 with such regulatory changes.

19
20 **L. Accountability to Regulatory Authority**
21

1 **Q. Based on your reading of the Power Purchase Agreement and the Enron Plan, how**
2 **accountable would Enron be to regulatory bodies such as the Commission and the Federal**
3 **Energy Regulatory Commission?**

4 A. The writing is already on the wall on that issue. In its filing, Enron has made crystal clear that it is
5 unwilling to be subject to the same level of regulatory oversight that public utilities receive. The
6 Enron Petition is expressly conditioned on Commission's determination that "Enron as the PLR"
7 is not "a 'public utility' under 66 Pa.C.S. § 102."

8
9 In addition, the regulatory out contained in Section 3.3 of the PPA makes clear that Enron does
10 not want to bear the same type of regulatory risks that public utilities have been subject to for
11 decades. If the regulatory climate changes in a manner inconsistent with Enron's then existing
12 economic interests, Enron could readily exercise the "escape" option afforded by that section to
13 exit from its role as a default service provider.

14
15 **Q. What do you understand to be the possible consequences from a Commission ruling that**
16 **Enron as the Provider of Last Resort is not a public utility?**

17 A. In a nutshell, Enron would escape regulatory oversight of its organizational structure, its business
18 dealings and its interaction with affiliates. For example, the Commission would be completely
19 foreclosed from exercising its regulatory authority in connection with Enron, in its role as PLR,
20 under 66 Pa. Cons. Stat. Ann. § 508 (to vary, reform or revise contracts in the public interest), §§
21 1101 et seq. (to oversee the transfer of property used and useful in providing public service), §§
22 1501 et seq. (to oversee the adequacy, efficiency, safety and reasonableness of service and
23 facilities) and §§ 2101 et seq. (the power to oversee and approve certain contracts with affiliates).

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Q. Are there any other features of the Power Purchase Agreement that undermine Enron’s accountability to the Commission as the Default Service Provider?

A. Yes. One feature is that the Power Purchase Agreement allows Enron to transfer or assign the Agreement. See PPA §11.1.

A second feature is Enron’s right to “transfer, sell, encumber, assign or pledge the Agreement or the accounts, revenues or proceeds, hereof, in connection with any financing transaction, or other financial arrangements.”

Q. Please explain the potential pernicious effect that could result from allowing Enron to assign the Power Purchase Agreement.

A. Normally, any transfer or assignment of rights by a public utility would be subject to the review and approval of the Pennsylvania Public Utility Commission. PECO, for example, would have to obtain Commission approval to transfer or assign its property rights to another, including any affiliates, and such transfer must be consistent with the public interest and not just the private interest of the party. Under the Enron Plan, Enron contends that would be the Provider of Last Resort function, which by its very nature would be a public utility function. Nevertheless, Enron is affirmatively seeking to ensure that it is not treated as a public utility and the Enron Plan does not contemplate that status. The transfer or assignment of the PPA would not be subject to the review and approval of the Commission.

1 **Q. What would be the significance of the Commission’s inability to review a proposed transfer**
2 **or assignment of the Power Purchase Agreement by Enron?**

3 A. Simply, the Commission would have no control over who steps in to perform the provider of last
4 resort function. Such an occurrence would be wholly inconsistent with the Commission’s
5 statutory obligations to ensure the adequacy and safety of electric supply to Pennsylvania citizens.

6
7 **Q. Why would the second feature you described undermine the accountability of Enron to the**
8 **Commission?**

9 A. This provision would permit Enron to transfer or assign the revenues received by Enron from
10 customers to third parties. Thus, under Enron’s Plan, the Commission and customers within
11 PECO’s service territory could end up with a default service provider that has no assets, either
12 physically or financially, within reach of either customers or this Commission.

13
14 **M. Other Terms and Conditions of Power Purchase Agreement**

15
16 **Q. Is the Power Purchase Agreement even-handed in its description of the rights of the**
17 **Parties?**

18 A. No. The document is replete with one-sidedness. The following is only a sampling:
19 • The terms and conditions of the Power Purchase Agreement “must be satisfactory to EESP, in
20 its sole discretion . . .” PPA, § 2.1(b) at 3. . PECO has no such comparable discretion under
21 the PPA.

- 1 • Any changes made to the Power Purchase Agreement by the Commission or the FERC must
2 be satisfactory to EESP, in its sole discretion . . .” PPA, § 2.1 (a) and (c) at 3. PECO has no
3 such comparable discretion under the PPA.
- 4 • Enron would have the right to back out of the arrangement in the event of any final, non-
5 appealable order regarding the Enron Plan that “materially adversely affect[s] the rights or
6 obligations of EESP . . .” PPA, § 3.3. at 4. PECO has no such right.
- 7 • There are unequal remedies for breach of the Agreement. If PECO fails to deliver any part of
8 the contract quantity, Enron has the right to recover from PECO the “replacement price” for
9 that part not delivered, including any additional transmission charges it incurs. Even if Enron
10 does not purchase replacement power, PECO is subject to a charge equal to the difference
11 between the Contract Price of the “market price for such quantity of energy at such Delivery
12 Point *as determined by Buyer* in a commercially reasonable manner. Further, to the extent
13 Enron is unable “for any reason” to obtain replacement energy, the PPA provides that Enron
14 “shall have all remedies available at law or in equity.” By contrast, if Enron fails to satisfy any
15 obligation, the PPA makes no mention of PECO recovering anything other than the stated
16 contract price, and if one had any doubt that this is PECO’s sole and exclusive remedy, § 12.1
17 – typed in capitalized letter – removes all doubt.¹ So while Enron gets to have remedies at
18 law or equity for breach, PECO’s are “waived.”
- 19 • As detailed above, Enron would shift to PECO virtually all of the risks and obligations
20 associated with the transactions contemplated under the Power Purchase Agreement.

¹ That section provides that where the PPA sets forth “an express remedy or measure of damages” for any breach of any provision, that “such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor’s liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived.”

- 1 • Enron’s indemnification protections would extend to its affiliates; PECO’s does not. See PPA
2 § 8.2-8.3.
- 3 • If Enron defaults on its payment obligation, it would get a cure period and the right to call it a
4 good faith dispute with impunity. If PECO were to fail to deliver the contract quantity of
5 energy and capacity, there would be no cure period and Enron gets to terminate. See PPA
6 Article 9.
- 7 • Even though PECO must have the supply available at all times, Enron doesn't have to
8 purchase or pay for the energy and capacity for all the default customers, only some of them.

9
10 **N. Adverse Impact on Generation Marketplace**

11
12 **Q. At page 6 of his testimony, Enron witness Kean states that “the Choice Plan is . . . focused**
13 **on the development of a competitive market in PECO’s service territory.” (Enron St. No.**
14 **1). As far as the Power Purchase Agreement is concerned, does the Enron Plan accomplish**
15 **that end in your view?**

16 **A.** No. It is my view that the Enron Plan is anticompetitive. I reach that conclusion for two reasons.
17 The Power Purchase Agreement gives Enron the power to “hold hostage” PECO’s energy and
18 capacity that could be called upon to satisfy Enron’s “Optional Requirements” associated with the
19 delivery of energy services to Transitional Default Service Customers. This category of
20 “Requirements” is likely to expand over time as consequence of the Enron Plan’s pricing
21 structure. As stated by Dr. Hieronymus in his testimony, this pricing structure would tend to
22 drive retail customers away from default service in the early years of the Enron Plan, but would
23 drive them back in the later years. (PECO St. 6-E). If they return to default service they would

1 be categorized as a Standard Default Service Customer unless they sign an one-year contract with
2 Enron.

3
4 As a result of likely expansion of the Standard Default Service customer class, the unpredictable
5 nature of estimating the energy and capacity needed to satisfy their requirements, and the onerous
6 penalties associated with a failure by PECO to deliver even Optional Requirements, PECO would
7 be obligated to have such energy and capacity on hand and available to Enron even if Enron has
8 no intention of calling on it. Thus, at no cost to itself, Enron can keep PECO from marketing
9 energy and capacity freed up by departing retail access customers. This power effectively
10 prevents PECO from competing with Enron, EPMI or Enron's other affiliates in the marketing of
11 electric energy both at wholesale and at retail. It also denies Enron's or EPMI's other
12 competitors access to PECO's energy and capacity.

13
14 This outcome is especially ironic given Enron's recent complaints regarding the availability of
15 energy and capacity to serve load in the Pennsylvania retail access pilot programs. Indeed, Enron
16 has gone as far as requesting that FERC "order" PECO and other PJM utilities to sell energy and
17 capacity into the pilots. It would appear that Enron at least believes that access to PECO's
18 energy and capacity is a vital resource in the marketplace. However, through the Power Purchase
19 Agreement Enron, at no cost to itself, seeks to exercise exclusive control over that resource, with
20 the ability to prevent PECO from making that resource available to the marketplace, at Enron's
21 discretion.

1 Q. At page 17 of his testimony, Enron witness Bohi states: " Under the Choice Plan, PECO
2 will be required to provide a full requirements contract to Enron for the needs of the
3 Default Service customers. . . . PECO would sell the remainder of its output to marketers,
4 both to affiliated and independent marketers, on and off its system, under similar terms
5 and conditions." (Enron St. No. 3). Do you agree with Mr. Bohi's statement concerning
6 PECO's ability to sell the remainder of its output?

7 A. No. PECO's ability to sell the remainder of its output would be severely hampered by the
8 unlimited nature of Enron's call rights under the Power Purchase Agreement as well as by the
9 distortive effects of the Enron's Plan's pricing structure on shifts in retail load.

10
11 Q. Does the Enron Plan present any code of conduct concerns?

12 A. Yes. PECO witness J. Gregory Sidak (PECO St. 10-E) testifies about the potential code of
13 conduct concerns associated with the Enron Plan. I further note that in its October 1, 1997
14 application at the FERC for market-based rates authority, Enron did not propose to adopt any
15 type of code of conduct that would govern its relations with any of its affiliates. All Enron did
16 was file a code of conduct that would apply to the relationship between Portland General Electric
17 Company and its affiliates.

18
19 Q. Why wouldn't the PGE Code of Conduct be sufficient?

20 A. Enron in its stated role as PLR for PECO's service territory would still be able to pass on
21 nonpublic information and transfer value to affiliates such as Enron Power Marketing Inc. without
22 any violation of that Code.

1
2 **Q. Does the Enron Plan raise any additional concern related to Enron’s dealings with it**
3 **affiliates?**

4 A. Yes. I noted in reviewing the Power Purchase Agreement that Enron has included a definition of
5 affiliates that, as far as my experience is concerned, is unusual given the substantially high
6 threshold for finding affiliated status. Enron defines an affiliate as “[a]ny person that directly or
7 indirectly Controls, is Controlled by, or is under common Control with the person in question[.]”
8 PPA § 1.1 at 1. Thus, instead of the 5 to 10% threshold frequently used to establish affiliation,
9 Enron is proposing a 50% threshold. Under Enron’s definition of affiliate, two corporations 45%
10 of whose outstanding voting securities are under common control would not be deemed to be
11 affiliates. This definition is also utilized in the MBC Services Agreement that Enron has proposed
12 as part of the Enron Plan.

13
14 **Q. What is the significance of this higher control threshold for affiliate status?**

15 A. The higher the threshold, the greater the number of potentially affiliated transactions removed
16 from the oversight of the Commission. Considered in tandem with Enron’s failure to propose a
17 code of conduct to govern its relations with its affiliates, this definition raises the question of
18 whether the Commission would even be advised of all the affiliate transactions in which Enron
19 might be engaging. Indeed, given that Enron is demanding that the Commission find it not to be a
20 public utility, it appears that under the Enron Plan, the Commission would be completely
21 foreclosed from overseeing Enron’s dealings with its affiliates pursuant to 66 Pa. Cons. Stat. Ann.
22 § 2101 et seq.

1
2 **O. Evaluation of Power Purchase Agreement as a Whole**

3
4 **Q. At page 9 of his testimony, Enron witness Slater states that he does “not see why a prudent**
5 **manager would not sign” the Power Purchase Agreement.” (Enron St. No. 4). Do you**
6 **agree?**

7 **A.** Absolutely not. The Power Purchase Agreement is so completely one-sided, oppressive and
8 confiscatory that such a contract could not occur through freely negotiated arms length dealings
9 between parties of equal bargaining positions. In fact, I would be surprised if Enron has ever
10 made the same types of commitments in its power sales agreements as it seeks to impose on
11 PECO. As far as I can see, there is no value created by this agreement for either PECO or default
12 service customers. Instead, it allows Enron to get “money for nothing” by taking value from the
13 pockets of PECO’s shareholders for the benefit of Enron’s shareholders.

14
15 **III. RELIABILITY AND SAFETY IMPLICATIONS**

16
17 **Q. In your view, how would the Enron Plan, and the Power Purchase Agreement in particular,**
18 **affect the level of reliability and safety in the provision of electric service to customers in**
19 **PECO’s service territory.**

20 **A.** It would undermine the reliability and safety of such service for several reasons. First, the terms
21 of the Power Purchase Agreement are so oppressive and unfavorable to PECO that it may cause
22 irreparable financial harm to PECO. (See PECO St. 20-E). In that event, PECO may be rendered
23 unable to perform the type and level of functions it performs now in its current role as provider of

1 last resort. This is a critical point given that even under the Enron Plan, it is PECO, and not
2 Enron, that would be performing all of the Provider of Last Resort functions in fact and
3 substance.

4
5 Second, under the Enron plan, the Electric Generation Suppliers would be the sole point of
6 contact with retail consumers. Thus, EGSs would be interposed between PECO and all retail
7 access customers with respect to virtually all communications, even where such communications
8 relate to PECO's performance of its obligations as the Electric Distribution Company. In that
9 role, for example, PECO needs to have unfettered access to information regarding system
10 problems and outages. By putting marketers in the middle, the Enron Plan may impede such
11 communications, thereby creating an unsafe and unreliable system conditions. In particular, the
12 relaying of information from customers to EGSs to PECO may delay PECO's timely receipt of
13 crucial information necessary to prevent or mitigate system problems. In addition, customers'
14 efforts to communicate their concerns may be frustrated by their inability to reach the various
15 EGSs. Enron's total lack of accountability to the Commission and Pennsylvania citizens as
16 discussed above provides little comfort that Enron would be around to pick up the pieces when
17 problems materialize.

18
19 Third, Enron has provided the Commission with no information as to how emergency calls would
20 be handled. Enron itself has no employees who are located in Pennsylvania and who would be
21 familiar with the both the physical electric infrastructure and weather within PECO's service
22 territory. Indeed, I note that in its application to obtain a license to become an EGS in

1 Pennsylvania, Enron identified a person located in its Houston, Texas office as its “Pennsylvania
2 Emergency Management” contact person.

3
4 Fourth, from a planning perspective, the Enron Plan and the Power Purchase Agreement in
5 particular may undermine the adequacy of electric supply. Under the Enron Plan, it is PECO and
6 not Enron who would have the obligation to serve. At the same time, however, the Power
7 Purchase Agreement encumbers PECO’s ability to plan for the generation needs of default service
8 customers by: (1) providing Enron with call rights that allow Enron to make call decisions down
9 to the wire with no lead time for PECO to respond and (2) introducing pricing distortions that
10 drive retail access customers back to default service in the later years of the Enron Plan, further
11 exacerbating problems associated with forecasting load.

12
13 I note further that the pricing distortions introduced by the Enron Plan appear to conflict with
14 Enron’s witness Dr. Bohi’s testimony on the expected benefits of competition. At page 4 of his
15 testimony, Dr. Bohi states: “The benefits expected from competition follow from the more
16 efficient operation of the electricity market in PECO’s territory. By efficient operation of the
17 market, I mean that the supply of electricity would be produced and distributed at minimum cost,
18 subject to standards of reliability and quality of service, and that the supply of electricity would be
19 allocated to its highest-valued uses.” (Enron St. No. 3). However, based on Dr. Bohi’s
20 testimony, the Enron Plan would not produce efficiencies because consumers and EGSs would be
21 responding to incorrect price signals; as such, the Enron Plan would deny them the “benefits
22 expected from competition.”

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23

Q. What significance does all of this have with respect to the Commission’s recent proposed rulemaking on electric service reliability?

A. As PECO witness J. Barry Mitchell testifies (PECO St. 20-E), the Enron Plan would impair PECO’s financial integrity. As a result, PECO may not be able to conform to the standards to be set by the Commission in connection with its Proposed Rulemaking on Electric Service Reliability Standards (“Proposed Rulemaking”). Given further that Enron has taken every opportunity in drafting the Power Purchase Agreement to escape accountability to the Commission, there is no assurance that Enron would step in to implement standards that come out of the Proposed Rulemaking if PECO is unable to perform. Such an outcome could contravene both the expectations of the Pennsylvania legislature as reflected in the Competition Act, and those of the Commission as expressed in the Proposed Rulemaking.

IV. INADEQUACY OF PROCEDURES TO ENSURE DIRECT ACCESS

Q. In a retail choice environment, are there specific obligations for both the Electric Distribution Company and individual EGSs?

A. Yes. Close coordination is required so that all supply and delivery parties know their specific responsibilities, and to make sure that all customers are being supplied reliably.

Q. How were these responsibilities identified in the PECO pilot?

A. PECO developed a Policies and Procedures (“P&Ps”) document as part of its pilot implementation plan. This document enumerated each element of the supplier administration

1 process – the steps necessary for Electric Generation Suppliers to identify their customers,
2 coordinate energy forecasting and supply with both PECO and PJM, account for actual energy
3 use by their customers, and provide and receive other related services.
4

5 **Q. Has Enron proposed a set of policies and procedures comparable to those contained within**
6 **the PECO Pilot P&Ps for Electric Generation Suppliers as part of the Enron Plan?**

7 A. No.
8

9 **Q. Has Enron addressed the coordination among PECO, PJM and Electric Generation**
10 **Suppliers in any way in its Plan?**

11 A. In its proposed distribution tariff rule 3, Enron included a subset of the P&Ps from the PECO
12 pilot filing.
13

14 **Q. What is your view of the supplier administration process as proposed by Enron?**

15 A. The supplier administrative process proposed in the Enron Plan is seriously deficient. Several
16 important process steps are not addressed in any way. Even the process steps addressed in the
17 Enron Plan have been modified with no explanation given. Also, the limited P&Ps proposed by
18 Enron are misplaced. Rather than offer a coordinated view of the supplier administrative
19 process, Enron has buried its version of wholesale supplier P&Ps among several sections of the
20 retail tariff it has proposed for PECO. As such, Enron's version of supplier responsibilities is
21 incomplete and confusing.
22

1 **Q. Which existing supplier administrative processes did Enron delete from its retail choice**
2 **proposal?**

3 Enron did not address obligations to become a valid EGS, EGS obligations to meet PJM
4 requirements (such as obtaining and scheduling transmission service and maintaining installed
5 capacity obligations for regional reliability), the duty of EGSs to cooperate with PECO and PJM
6 during periods of system emergency, limits on commercial use of customer data provided by
7 PECO, and billing responsibilities of EGSs for services supplied by PECO.

8
9 I note that most of these deleted processes are not associated directly with the details of serving
10 individual retail electric customers, and therefore do not fit well in a retail customer tariff format.
11 However, it is important that interactions on the wholesale level be well understood and agreed to
12 by all parties so that the ultimate supply of energy to individual retail customers would work
13 smoothly. Whether by design or oversight, the Enron proposal omits assignment and
14 coordination of key EGS responsibilities at the wholesale level.

15
16 **Q. Why is Enron's method of dealing with PRPs through only a few rules set forth in a retail**
17 **tariff a mistake?**

18 A. Compared with energy supply by a franchised utility, energy supply in a retail choice environment
19 is administratively more complex, and potentially more prone to supply problems unless all
20 responsible parties know and meet their obligations. All parties involved in providing energy
21 services to retail customers have specific responsibilities to each other, to parties such as PJM,
22 and especially to the end use customers receiving the services. These responsibilities must be laid
23 out in a clear way so that individual entities cannot shirk their responsibilities or "lean" on the

1 resources or efforts of others. The Enron construct of blending wholesale and retail business
2 relationships and market responsibilities in a the retail tariff applicable only to PECO as the EDC
3 is both confusing, and would likely lead to continuing disputes and litigation.

4

5 **Q. Does this conclude your testimony?**

6 **A. Yes**

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NOV 7 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

R. 973953

KJR

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY

OF

JAMES W. SHARPE

REGARDING THE ENRON CHOICE PLAN

DOCUMENT
FOLDER

Regarding the Petition of
Enron Energy Service Power, Inc.
for Approval of Enron's "Choice Plan"

DOCKETED

NOV 12 1997

November 7, 1997

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6
7 **TESTIMONY OF JAMES W. SHARPE**

8
9 **I. QUALIFICATIONS**

10 **Q. Please state your name and business address.**

11 **A. My name is James W. Sharpe. My business address is 1100 Campanile Building,**
12 **1155 Peachtree Street, Atlanta, Georgia 30309-3630.**

13 **Q: Have you testified previously in this matter?**

14 **A: Yes. On July 18, 1997, I submitted rebuttal testimony (PECO Statement No. 23-R).**
15 **A statement of my qualifications is contained in my rebuttal testimony.**

16
17 **II. PURPOSE OF TESTIMONY AND SUMMARY CONCLUSIONS**

18
19 **Q. What is the purpose of your testimony in the proceeding?**

20 **A. There are two purposes of my testimony. First, I will describe the federal income tax**
21 **rulings requested by PECO Energy, in connection with the intended securitization**
22 **transaction, in its Private Letter Ruling Request submitted to the National Office of**
23 **the Internal Revenue Service (the "IRS") in March of 1997 and the critical importance**
24 **to PECO Energy of obtaining such rulings. Second, I will describe the potential**
25 **adverse impact of the Enron Plan on the federal income tax rulings requested by**
26 **PECO Energy.**

1 **Q. Please summarize your conclusions.**

2 A. There are significant differences between the PECO Energy securitization plan and
3 the Enron Plan that, in my opinion, would prevent PECO Energy from obtaining a
4 favorable private letter ruling from the IRS on the Enron Plan. Specifically, I believe
5 that the IRS would view the Enron Plan as a fully taxable sale by PECO Energy of
6 the Intangible Transition Property to the grantor trust formed by Enron to purchase
7 the Transition Bonds. If the transaction were viewed in this manner, PECO Energy
8 would be subject to an immediate income tax liability of over \$2.250 billion at the
9 time the Transition Bonds were sold to the grantor trust. In my opinion, it would be
10 imprudent for PECO Energy to proceed with the securitization transaction under the
11 Enron Plan under these circumstances. In contrast, I believe that PECO Energy will
12 be able to obtain a favorable private letter ruling from the IRS for its securitization
13 plan which will eliminate all of the material federal and Pennsylvania income tax risks
14 of securitization under the Partial Settlement.

15
16 **III. THE PECO ENERGY IRS RULING REQUEST**

17
18 **Q. Please describe the securitization transaction PECO Energy may undertake under**
19 **the Partial Settlement.**

20 A. PECO Energy will transfer Intangible Transition Property and its related right to
21 collect Intangible Transition Charges ("ITC") to a wholly owned Delaware business
22 trust (the "SPE"), which for federal income tax purposes will be treated as a division
23 of PECO with no separate tax identity. The SPE will issue Transition Bonds, the

1 proceeds of which will flow through to PECO Energy. PECO Energy will collect the
2 ITC from customers based on their usage of electricity and transfer the ITC collected
3 to the SPE to make principal and interest payments on the Transition Bonds.
4

5 **Q. What are the principal federal income tax issues?**

6 A. There are two principal federal income tax issues. The first issue is whether PECO
7 Energy's transfer of the Intangible Transition Property and related ITC to the SPE
8 followed by the issuance of the Transition Bonds secured by the Intangible Transition
9 Property and the related ITC will be treated as a financing transaction. The real
10 concern is whether PECO Energy has sold the Intangible Transition Property and
11 related ITC to the Transition Bondholders or has merely pledged its rights to the
12 Transition Bondholders as security for the SPE's obligation to pay principal and
13 interest. The second issue is whether PECO Energy will be permitted to include the
14 ITC in its gross income as utility services are provided to customers rather than at
15 such earlier time as the Public Utility Commission ("PUC") declares its qualified rate
16 order to be irrevocable.
17

18 **Q. What will be the tax consequences to PECO Energy if the IRS refuses to issue
19 either or both of the requested tax rulings?**

20 A. If the IRS refuses to issue either or both of the requested tax rulings, there could be
21 disastrous tax consequences to PECO Energy and to the overall securitization
22 transaction. If the transaction is considered a taxable sale of PECO Energy's right to
23 receive future ITC from the customers or PECO Energy is required to accrue the

1 future stream of ITC at the time the qualified rate order becomes irrevocable, then
2 PECO Energy would be forced to pay federal and Pennsylvania income taxes at a
3 combined effective rate of 41.4% at the time the securitization is effected rather than
4 as the ITC is received from the customers. In either case, the acceleration of PECO
5 Energy's tax liability would impose a prohibitive cost on the securitization
6 transaction. In my opinion, securing a favorable IRS private letter ruling in a
7 transaction of this magnitude and involving such difficult tax issues on which there is
8 virtually no direct precedent is absolutely critical.

9
10 **Q. Please describe the federal income tax rulings requested by PECO Energy, in**
11 **connection with the intended securitization transaction, in its private letter ruling**
12 **request submitted to the National Office of the IRS in March of 1997.**

13 A. PECO Energy has requested rulings from the IRS that: (1) PECO Energy's transfer
14 of the Intangible Transition Property and related ITC to the SPE and the issuance of
15 the Transition Bonds will be treated as a financing transaction rather than as a taxable
16 sale of the Intangible Transition Property and related ITC for federal income tax
17 purposes; and (2) PECO Energy will be permitted to include the ITC in its gross
18 income as utility services are provided to customers rather than at such earlier time as
19 the PUC declares its qualified rate order irrevocable.

20
21 **Q. Why do taxpayers request private letter rulings from the IRS?**

22 A. The taxpayer wants assurance that the characterization of the transaction contained in
23 the private letter ruling will be binding on the IRS.

1 **Q: What will be the tax consequences to PECO Energy if the IRS agrees to issue the**
2 **requested tax rulings?**

3 **A:** If the IRS agrees to issue the requested tax rulings, PECO Energy will not have to
4 recognize the Transition Bond proceeds as income when received and will be
5 permitted to include the ITC in gross income as utility services are provided to
6 customers rather than at such earlier time as the PUC declares its qualified rate order
7 to be irrevocable. Consequently, all of the material income tax risks associated with
8 the securitization transaction will be eliminated.

9
10 **Q. Prior to the introduction of the Enron proposal, what were PECO Energy's**
11 **expectations regarding a favorable outcome of its ruling request?**

12 **A.** PECO Energy's ruling request is currently under review by the Financial Institutions
13 and Products and the Income Tax and Accounting Divisions of the National Office of
14 the IRS. Prior to the introduction of the Enron proposal, expectations of a favorable
15 outcome were high based on similar rulings issued by the IRS in early
16 September, 1997 to three California utilities, who requested such rulings based on the
17 California electric competition legislation. The California electric competition
18 legislation parallels the Pennsylvania electric competition legislation, and the
19 California securitization plan employed by their utilities is quite similar to PECO
20 Energy's securitization plan. These rulings say, in effect, that for federal income tax
21 purposes the proposed securitization transactions will constitute financings and
22 therefore the California utilities will not have to pay any income tax on the proceeds

1 from securitization and they will not have to accrue income at the time the PUC
2 enters the irrevocable rate order.

3
4 **Q. Have you obtained a copy of the California tax rulings?**

5 A. No. They have not been published by the IRS and the California utilities have not
6 shared copies with other utilities and their professional advisors.

7
8 **Q. May PECO Energy rely on the California rulings?**

9 A. No, only the taxpayer to whom a private letter ruling is issued may rely on the ruling
10 it received. Therefore, PECO Energy is required to obtain its own private letter
11 ruling from the IRS if it wishes to obtain assurances that its securitization transaction
12 will be reportable for tax purposes in the manner PECO Energy desires.

13
14 **Q. If PECO Energy obtains a favorable ruling from the IRS, will it also be binding
15 on the Pennsylvania Department of Revenue (the "DOR")?**

16 A. As a practical matter, yes. The Pennsylvania corporate net income tax is imposed on
17 a taxpayer's taxable income as finally determined for federal income tax purposes,
18 subject to certain adjustments. Therefore, if PECO Energy obtains a favorable ruling
19 on the securitization transaction from the IRS, the Pennsylvania DOR will be bound
20 by that ruling.

21
22 **Q. Can you describe some of the more important concerns expressed by the IRS in
23 connection with its issuance of favorable tax rulings to the California utilities?**

1 A. The overriding concern is whether the SPE will maintain a significant equity interest
2 in the Intangible Transition Property and the related ITC. In other words, the IRS
3 will analyze closely all of the facts and circumstances surrounding the securitization
4 transaction to determine whether the SPE has merely pledged the Intangible Transition
5 Property and related ITC as security for the payment of principal and interest on the
6 Transition Bonds (as in a financing), or whether the Transition Bondholders have, in
7 substance, acquired the benefits and assumed the burdens of ownership associated
8 with the Intangible Transition Property and the related ITC (as in a sale). If the
9 transaction is treated as a sale, the SPE is merely a conduit for the collection of the
10 ITC as agent for the Transition Bondholders - i.e., the transaction is merely a
11 "pay-through" of the ITC from the customers to the Transition Bondholders.

12
13 The IRS is not willing to rule favorably on a securitization transaction unless the SPE
14 is projected to maintain a significant equity interest in the Intangible Transition
15 Property and the related ITC throughout the life of the Transition Bonds and is not
16 merely a conduit designed to effect a straight "pay-through" of the ITC from the
17 customers to the Transition Bondholders. If there is a direct "pay-through," the IRS
18 likely will refuse to rule favorably, in effect finding that the ITC has been sold to the
19 Transition Bondholders at the time that the securitization transaction is effected.
20 Thus, the discontinuity of the receipt of ITC by the SPE and the payment of principal
21 and interest on the Transition Bonds is an essential precondition to the conclusion that
22 the SPE, rather than the Transition Bondholders, owns the Intangible Transition
23 Property and the related ITC.

1 **Q. Please describe the principal requirements to establish that the transaction does**
2 **not constitute a straight "pay-through" of ITC received by the SPE to the**
3 **Transition Bondholders such that the SPE will be treated by the IRS as the**
4 **owner of the Intangible Transition Property and the related ITC.**

5 A. There are really four essential requirements, the absence of any of which would
6 imperil PECO Energy's ability to obtain a favorable tax ruling from the IRS.

7
8 First, PECO Energy must make a capital contribution in money equal to at least 50
9 basis points (0.5%) of the principal amount of Transition Bonds issued by the SPE.
10 This capital contribution may not be loaned by the SPE to PECO Energy or any of its
11 affiliates and must be available to the Transition Bondholders in the event that the
12 ITC collected by PECO Energy and transferred to the SPE is insufficient to timely
13 pay all principal and interest on the Transition Bonds. This requirement ensures that
14 the SPE will possess a significant amount of equity which is at risk throughout the life
15 of the Transition Bonds, thereby demonstrating that the SPE has its own money at
16 risk.

17
18 Second, the projected ITC, including any true-ups, must be sufficient to not only
19 timely pay principal and interest on the Transition Bonds as they become due, but
20 also to permit the SPE to build up an overcollateralization reserve ratably over the life
21 of the Transition Bonds in an aggregate amount equal to at least 50 basis points
22 (0.5%) of the principal amount of the Transition Bonds. This requirement ensures
23 that there will be a further build-up of the SPE's equity over the life of the Transition

1 Bonds. On the other hand, the absence of a material build-up in the equity of the
2 SPE is an indication that it does not possess an equity stake in the Intangible
3 Transition Property and related ITC.
4

5 Third, the Transition Bonds must provide a fixed schedule of principal payments due
6 over the life of the bonds and the Transition Bonds may not be callable prior to their
7 scheduled maturities, except for a so-called "clean-up" call made after at least 95% of
8 the aggregate principal amount of the Transition Bonds has been repaid by the SPE.

9 This requirement ensures that the SPE cannot use overcollections of ITC to fund early
10 redemptions of the Transition Bonds, thereby further demonstrating that the SPE has
11 an economic interest in the Intangible Transition Property and related ITC.
12

13 Fourth, debt service on the Transition Bonds should be payable on a quarterly or
14 semiannual basis, rather than on a monthly basis. This requirement ensures that the
15 receipt of ITC by the SPE will not be matched by an immediate or almost immediate
16 "pay-through" of substantially all of the ITC to the bondholders.
17

18 In summary, all of these requirements are designed to give substance to the claim by
19 the SPE that it possesses a real economic interest in the Intangible Transition Property
20 and related ITC that is distinguishable from the interest the Transition Bondholders
21 possess as secured creditors.
22
23

1 **IV. THE EFFECT OF THE APPROVAL OF THE ENRON PLAN**
2 **ON THE PECO ENERGY IRS RULING REQUEST**
3
4

5 **Q. In the context of obtaining a favorable private letter ruling from the IRS, how**
6 **does the Enron Plan differ from PECO Energy's securitization plan?**

7 **A. The Enron Plan differs in a number of ways from PECO Energy's securitization plan**
8 **which in my opinion will be critical to the IRS in deciding whether to issue a**
9 **favorable private letter ruling. These include:**

10 1. The ITC received by the SPE will be insufficient to pay principal and
11 interest on the Transition Bonds and to fund the overcollateralization reserve.
12 Indeed, within two months after the Transition Bonds are issued, the SPE's
13 aggregate deficit cash flow will exceed its initial capitalization.

14 2. Under the Enron Plan, the Transition Bonds will be issued at a stated
15 interest rate of 9.66% rather than at a market rate (presently about 6.5%) and
16 sold to the grantor trust at par. As a consequence, the grantor trust acquires
17 the Transition Bonds at a purchase price that is approximately \$1 billion less
18 than the fair market value of the Transition Bonds.

19 3. The principal amount of Transition Bonds to be issued under the Enron
20 Plan will equal 100% of PECO Energy's \$5.461 billion of stranded assets,
21 whereas PECO Energy would securitize not more than \$4 billion of such
22 assets.

23 4. Under the Enron Plan, the Transition Bonds will be owned by a grantor
24 trust rather than directly by investors.

1 5. Under the Enron Plan, payment of interest and principal on the
2 Transition Bonds appears to be monthly rather than quarterly or semi-annually.

3 6. Under the Enron Plan, PECO Energy would be required to enter into a
4 Power Purchase Agreement with Enron, which at the same time would own,
5 directly or through affiliates, the entire residual or equity interest in the
6 Transition Bonds.

7 7. Under the Enron Plan, Electric Generation Suppliers ("EGSs"),
8 including Enron, would be required to guarantee the payment of all ITC
9 applicable to energy sold by the particular EGS regardless of whether its
10 customers paid the ITC to the EGS. Thus, Enron would be in the position of
11 guaranteeing the receipt by the SPE of a portion of the ITC required by the
12 SPE to meet its obligations to pay principal and interest on the Transition
13 Bonds which in effect, are owned, directly or through affiliates, by Enron.

14 8. Under the Enron Plan, PECO Energy would be required to enter into
15 an ITC Shortfall Agreement under which a Guarantor would insure the receipt
16 by the SPE of the minimum amount of ITC projected by Enron based on a
17 level demand for electric energy in the PECO Energy service territory. Since
18 the SPE will not have sufficient cash flow to pay the fee due the Guarantor,
19 presumably either the grantor trust or Enron will pay it.

20
21 **Q. Mr. Fastow has testified on behalf of Enron that implementation of the Enron**
22 **Plan would not adversely affect PECO Energy's ability to obtain a favorable IRS**
23 **ruling on the securitization transaction. Do you agree with this conclusion?**

1 A. No, I do not agree. I do not believe that the IRS would issue a favorable ruling on
2 the Enron Plan.

3
4 **Q. Please explain why you do not believe that the IRS would issue a favorable ruling**
5 **on the Enron Plan.**

6 A. As I have already stated, there are major differences between the PECO securitization
7 plan and the Enron Plan which would prevent PECO Energy from convincing the IRS
8 that it should not treat the Enron Plan as a sale of the Intangible Transition Property
9 and related ITC to the grantor trust formed by Enron to hold the Transition Bonds.
10 In effect, there would be a straight "pay-through" of the ITC received by the SPE to
11 the Transition Bondholder and as a result the SPE would not retain a material interest
12 in the Intangible Transition Property and related ITC.

13
14 **Q. Why do you believe that the Enron Plan would be viewed by the IRS as a direct**
15 **"pay-through" of the ITC from the customers to the grantor trust formed by**
16 **Enron to hold the Transition Bonds?**

17 A. As demonstrated by the cash flows shown on Exhibit JBM-9, under the Enron Plan
18 the debt service on the Transition Bonds exceeds the ITC received by the SPE for
19 each of the first twenty-eight months after the date on which the Transition Bonds are
20 issued. Moreover, within two months after the date on which the Transition Bonds
21 are issued, the SPE's initial capitalization of \$27,305,000 (50 basis points (0.5%) of
22 the total principal amount of the Transition Bonds) will be entirely exhausted.
23 Therefore, after the second month, all of the ITC collected from the customers will be

1 paid straight through the SPE to the Transition Bondholders and the
2 overcollateralization reserve is never funded. Indeed, the computations show an
3 aggregate shortfall in payments of ITC received by the SPE of about \$450 million at
4 the end of the tenth year of the securitization transaction. As Mr. Mitchell has
5 testified, this cash flow analysis is based (1) on the statement in Sections 23(m) and
6 35(b) of the Enron Plan that the Transition Bonds will bear interest at a stated interest
7 rate of 9.66%; (2) on the same sales growth assumptions employed by Enron in its
8 financial analysis, namely that electric usage in PECO Energy's service territory will
9 remain static throughout the life of the Transition Bonds; and (3) on the ITC rates set
10 forth in the Enron Plan.

11
12 **Q. Will this straight "pay-through" structure satisfy the IRS requirements you**
13 **referred to earlier for issuing a favorable ruling?**

14 A. No, the securitization transaction proposed in the Enron Plan does not meet two and
15 possibly three of the four requirements the IRS has imposed for obtaining a favorable
16 ruling.

17
18 First, although PECO Energy will make a capital contribution to the SPE equal to at
19 least 50 basis points (0.5%) of the initial principal amount of Transition Bonds issued
20 by the SPE, this contribution will be exhausted within two months after the Transition
21 Bonds are issued. Therefore, as shown by Exhibit JBM-9, through substantially the
22 entire remaining life of the Transition Bond issue, the SPE will not have any equity at
23 risk.

-1 Second, the projected ITC to be received by the SPE, including any true-ups, will not
2 be sufficient to pay principal and interest on the Transition Bonds as they become
3 due. Nor will it permit the SPE to build up the overcollateralization reserve ratably
4 over the life of the Transition Bonds in an aggregate amount equal to at least 50 basis
5 points (0.5%) of the initial principal amount of the Transition Bonds.

6
7 Third, debt service on the Transition Bonds appears to be payable on a monthly basis
8 rather than a quarterly or semi-annual basis.

9
10 **Q. Are there any other factors present in the Enron Plan that would make it more**
11 **difficult to obtain a favorable ruling from the IRS?**

12 **A.** Yes. First, I believe the IRS would be very concerned that the fair market value of
13 the Transition Bonds exceeds the \$5.461 billion dollar face amount that PECO Energy
14 would receive for them by approximately \$1 billion because the rate of interest
15 payable on the Transition Bonds is set at an artificially high rate as stated in Mr.
16 Hiller's testimony. Second, I believe that the IRS would be concerned because Enron
17 will own all of the Class B residual interests in the grantor trust formed to own the
18 Transition Bonds and at the same time Enron will guarantee the collectibility of the
19 ITC from all of its customers in PECO Energy's service territory and will be a major
20 customer of PECO Energy. Thus, Enron will be on both sides of the transaction.
21 These concerns would be further exacerbated if Enron also paid the Guarantor
22 designated by Enron to issue its guarantee of the receipt by the SPE of ITC at the
23 rates projected by Enron.

1 **Q. Can you quantify PECO Energy's potential income tax liability if the IRS viewed**
2 **the implementation of the Enron Plan as a taxable transaction?**

3 A. At the time the securitization transaction is effected, the entire \$5,461,000,000 of
4 Transition Bond proceeds would be subject to federal and Pennsylvania income tax at
5 a combined effective rate of 41.4%. Thus, the total federal and Pennsylvania income
6 tax liability imposed on PECO Energy in the year in which the Transition Bonds were
7 issued would total \$2,260,854,000. In other words, the net proceeds of the
8 securitization would be reduced from \$5,461,000,000 to \$3,200,146,000.

9
10 **Q. Would you please summarize your conclusions?**

11 A. In my opinion, under the Enron Plan the IRS will not give PECO Energy a favorable
12 ruling and, further, there is a real and substantial likelihood that the IRS would view
13 the implementation of the Enron Plan as a taxable transaction, thereby exposing
14 PECO Energy to a potential federal and Pennsylvania income tax liability in excess of
15 \$2.250 billion. In contrast, I am quite confident that PECO Energy will receive a
16 favorable IRS private letter ruling on its planned securitization transaction.

17
18 **V. CONCLUSION**

19
20 **Q. Does this conclude your testimony?**

21 A. Yes.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KJR

R-973953

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY

OF

MICHAEL S. FREEMAN

REGARDING THE ENRON PROPOSAL

Regarding Retail and Wholesale Market Prices

DOCKETED
NOV 12 1997

November 7, 1997

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4

**TESTIMONY OF MICHAEL S. FREEMAN
REGARDING RETAIL AND WHOLESALE PRICES**

5 **Q. Please state your full name and business address.**

6 A. Michael S. Freeman, 2301 Market Street, S7-3, Philadelphia, PA 19103.

7

8 **Q. Have you testified previously in this proceeding?**

9 A. Yes. I submitted PECO Statement No. 26-RJ regarding wholesale and retail
10 market prices of energy and capacity.

11

12 **Q. What is the purpose of your testimony here?**

13 A. In response to statements about market prices for power and the development of
14 competitive markets contained in the testimony of Enron witnesses Steven J. Kean,
15 Kenneth J. Slater, Bruce R. Oliver, and Douglas R. Bohi, I provide an update to
16 my previous testimony on actual retail market prices and transactions. Since
17 October 16, when I last testified, more information has come to light on pricing
18 offers and innovative contracts that have been executed in PECO Energy's retail
19 access pilot program. In addition, I am able to present an update on wholesale
20 transactions in the PJM marketplace.

21

22 This new information strongly confirms my previous conclusion that a wholesale
23 and retail competitive market is in fact emerging.

24

1 Q. Which assertions of Enron witnesses Kean, Slater, Oliver, and Bohi will you
2 respond to?

3 A. Each witness, relying solely on Mr. Slater's long-run marginal cost basis for
4 valuing the future price of delivered retail power, asserts that the energy and
5 capacity caps contained in the Partial Settlement are not high enough and will
6 thwart competition.

7
8 Using actual, not theoretical, data from the retail access pilot programs, I will
9 show that the energy and capacity caps are not too low and that competition
10 manages to thrive despite Mr. Kean's prediction of a "chilling effect on the
11 development of meaningful competition." (Page 8, Line 8)

12
13 Moreover, I will discuss some of the cost-minimization and marketing strategies
14 that aggressive, innovative firms, such as Enron, can employ and are employing
15 right now in Pennsylvania and elsewhere. While Enron and other marketers
16 frequently talk about the business efficiencies that competition will unleash, such
17 strategies are notable by their absence in the testimony of all of the Enron
18 witnesses.

19
20 PECO witness Hieronymous separately will address Mr. Slater's marginal cost
21 analysis.

22

1 **Q. Please summarize your previous testimony.**

2 A. I explained that current wholesale energy and capacity transactions are in line with
3 or below the energy and capacity caps set forth in the Partial Settlement. On the
4 retail side, I found that the settlement's energy and capacity caps were above
5 offers to commercial and industrial customers that I was aware of with respect to
6 PECO's pilot program. Finally, I noted that unforeseen events that are driven by
7 competition can reduce wholesale prices. As evidence I cited the retail pilot
8 program standard offer made available to electric generation suppliers by PECO
9 Energy's Power Team, and the Power Team's solicitation for market-based bids
10 for energy and capacity.

11

12 **Q. Please explain the Power Team's standard offer and provide an update on**
13 **the results of the standard offer.**

14 A. As I explained in my previous testimony, the Power Team's standard offer is an
15 all-in wholesale product, including energy, installed capacity, delivery losses and
16 load-following. The cost of the standard offer is the market generation credits in
17 the unbundled pilot rates, less Pennsylvania Gross Receipts Tax. The standard
18 offer purchase will be for the entire 14-month term of the pilot.

19

20 As of November 7, four electric generation suppliers signed contracts with the
21 Power Team pursuant to the standard offer and will serve all of their customers in
22 the PECO pilot program with the energy and capacity they will purchase from the
23 Power Team. The average cost of the standard offer to the four marketers who

1 purchased it was 2.68¢/kWh. That is a delivered price. The other suppliers
2 participating in the PECO pilot purchased energy and capacity from other sources,
3 implying that they were able to get lower prices than the Power Team was
4 offering.

5
6 **Q. Please provide an update on retail prices in the pilot.**

7 A. I am aware of about 10 commercial and industrial customers obtaining quotes that
8 ranged from 2.25¢/kWh to 3.05¢/kWh. Residential customers have seen
9 Pennsylvania Power & Light Co. and Allegheny Energy Solutions increase
10 guaranteed savings from 10 percent to up to 12 percent. Conectiv is offering one
11 month's free energy, and QST Energy is offering a \$10 signing bonus along with
12 one month's free energy.

13
14 **Q. How do these retail offers and the Power Team standard offer compare with
15 the energy and capacity caps contained in the Partial Settlement?**

16 A. The offers are below the energy and capacity caps, both on a rate class basis and
17 an overall system average basis.

18
19 **Q. How have you become aware of information about the competitive market?**

20 A. As a member of the PECO National Energy Team, I speak with numerous
21 customers about their energy purchases. Competitive information sometimes
22 comes to light during those conversations. Additionally, I track our competition
23 through publicly available sources, such as industry publications. And we

1 frequently compete with companies such as Enron, Conectiv, NEV, and others in
2 states where there is retail access, and competitive information generally becomes
3 available during these competitions.

4 **Q. Has the National Energy Team signed contracts with any customers in the**
5 **Pennsylvania pilot programs?**

6 A. Yes. The National Energy Team has reached pilot agreements with six
7 commercial and industrial customers, from the small retail level to large
8 manufacturing. In all cases, the National Energy Team, acting as buying agent or
9 broker, was able to obtain energy and capacity for these customers at prices below
10 the PUC-mandated market generation credits of 3.0¢/kWh for commercial
11 customers and 2.7¢/kWh (in PJM; 2.4¢/kWh in ECAR) for industrial customers.
12 We have obtained wholesale energy and capacity from one of the companies that
13 intervened in this proceeding.

14
15 **Q. You stated during previous cross-examination that the National Energy**
16 **Team is operating in service territories other than PECO's. Can you clarify**
17 **that statement?**

18 A. The National Energy Team's objective is to reach agreements with customers that
19 have multiple facilities, generally outside of PECO's service territory. However,
20 some of the customers for whom we will broker energy and provide other services
21 have facilities in PECO's service territory, as well as other facilities across
22 Pennsylvania and in other states.

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Q. Besides the expected returns associated with the six contracts, why did the National Energy Team enter into the contracts?

A. If a group such as the National Energy Team, or suppliers such as Conectiv, Enron, or New Energy Ventures, can establish a strong relationship with a customer now, it will likely pay off as the competitive market develops. In the short term, the National Energy Team, along with its competitors, must develop approaches to the competitive market that will minimize cost and appeal to customers. Enron witness Bohi, who complains repeatedly that the proposed energy and capacity caps contained in the Partial Settlement will hinder competition because they are not high enough, nevertheless seems to agree with the outlook I describe. Writing in the October 1996 issue of *The Electricity Journal*, Dr. Bohi stated that “the pressures of competition will force marketing companies to represent the interests of their customers, simply because those companies that appeal to the diverse preferences among customers will be able to take customers away from firms that are less enterprising.” (Page 15)

I agree with his statement. Much of our time is spent trying to learn and understand the preferences of our customers with respect to power pricing and other products and services that may be of value. We then try to balance the interests and demands of our customers with our own economic interests.

1 **Q. Is there evidence that marketers share this approach and view of the market?**
2 A. Yes. Customers in Pennsylvania are demanding innovative products and services,
3 and the market is rapidly adapting to these demands. One of the National Energy
4 Team contracts, at the insistence of the customer, calls for a pilot metering project
5 on the customer side of the meter to determine the costs and benefits of more
6 sophisticated metering for purposes of load research. Another specifies an
7 elaborate shared-savings arrangement that the customer favored. Other marketers
8 have created innovative variations of performance-based pricing. In other cases,
9 marketers have packaged commodity pricing with demand-side services such as
10 peak reduction.

11
12 **Q. Does Dr. Bohi have other views regarding the energy markets with which you**
13 **agree?**

14 A. Yes. I agree with Dr. Bohi that less enterprising firms will fall behind. In the same
15 article, Dr. Bohi writes that “marketing companies that are the most successful in
16 negotiating terms that lower their power acquisition costs will be the most
17 successful in attracting and retaining customers. Firms that fail to obtain the best
18 terms will lose customers to the more enterprising competitors.” (Pages 15-16)

19
20 Michael R. Peevey, president and chief executive officer of NEV, has echoed Dr.
21 Bohi’s statement. “The competition in today’s energy services will be won by
22 those companies with world-class information and energy management services for

1 energy users,” Mr. Peevey stated in a company press release dated October 12,
2 1997.

3
4 **Q. Has Enron reflected these views of Dr. Bohi in its proposed “Choice Plan”?**

5 A. No. In their testimony, neither Dr. Bohi nor Enron witnesses Kean, Oliver, and
6 Slater give any credence to – or even mention – the importance of creativity and
7 enterprise in the energy markets. Instead, relying on Mr. Slater’s long-run
8 marginal cost analysis, they simply complain that the energy and capacity caps are
9 not high enough. They predict a moribund, dysfunctional market that excludes
10 new entrants. For instance, Mr. Kean states that the Partial Settlement will create
11 “anti-competitive road blocks.” (Page 11, Lines 6-7)

12
13 Nowhere in their testimony, however, can one find any reference to cost
14 minimization. There are no statements about negotiating the best terms with
15 generators to drive down costs, or about the risk management strategies for which
16 Enron can claim world-class expertise (“We are the recognized leader in
17 commodity risk management,” Enron’s home page declares) . The testimony is
18 silent on strategies to reduce transaction costs. And despite the oft-repeated
19 assertion of marketers that aggregations of retail loads will cut costs, Mr. Slater’s
20 analysis contains no mention of such efficiencies.

21
22 **Q. Do the claims of the Enron witnesses regarding the energy and capacity cap**
23 **suffer from any other significant flaw?**

1 A. Yes. Their claims reflect that they have completely ignored what is happening
2 right now in Pennsylvania, New England and California, including Enron's own
3 activities. The same claims about the unbundled energy and capacity prices were
4 raised before the pilot programs began. Witnesses for the marketers then
5 contended that residential load would cost approximately 4.0¢/kWh to serve.

6
7 **Q. You have stated that marketers have offered prices in the PECO pilot that**
8 **are below the market generation credits. How can they offer such prices**
9 **when Enron, Conectiv, New Energy Ventures, and other marketers have**
10 **claimed that the credits are below the delivered cost of retail power?**

11 A. Contrary to marketers' assertions, it is possible to obtain energy, installed capacity,
12 delivery losses, and the other cost items associated with retail power at prices
13 lower than the caps. As evidence, I cite my group's experience along with the
14 results of the Power Team's standard offer. Even if a marketer purchased its
15 power requirements from the Power Team, it is possible to design marketing
16 strategies that maximize profits.

17
18 **Q. Please explain what you mean when you say that marketers can design**
19 **strategies to maximize profits.**

20 A. I will use a simple example. Suppose a marketer signed up one commercial
21 customer who is served under PECO's General Service (GS) tariff. The
22 customer's market generation credit will be a function of the customer's load
23 factor, as the rate design of Rate GS is load factor-based. If the customer's load

1 factor is below the class average, the customer's market generation credit will be
2 more than 3.0¢/kWh. 3.0¢/kWh is the credit that results from applying average
3 load factor to the blocking of the market generation credit. At 40 percent load
4 factor, which is below the class average, the credit would be about 3.4¢/kWh. Let
5 us further suppose that this marketer buys all of its power requirements for the one
6 customer from the Power Team, which will charge the marketer approximately
7 2.7¢/kWh after GRT and losses have been accounted for. The market generation
8 credit that is extracted from the customer's bill will be 3.4¢/kWh; the marketer's
9 cost will be 2.7¢; and both parties can make money. The same holds true for
10 customers on Rate PD, which is load factor-based, and residential heating
11 customers, whose market generation price contains load factor blocking in the
12 eight heating months.

13
14 **Q. Are you suggesting that marketers target only low load factor GS and PD**
15 **customers, and residential heating customers?**

16 A. No, although some marketers have identified narrowly defined niches for
17 themselves (one marketer has targeted customers in Chester County only, for
18 example). My point is that with strategic planning, a marketer can amass a
19 balanced portfolio that will reduce its average cost. In fact, if a marketer were to
20 buy all its power requirements from the Power Team pursuant to the standard
21 offer, as several of the marketers did, it is quite easy to provide competitive pricing
22 for HT customers, even those with relatively high load factors. Marketers also can

1 strategically target those customers with whom they would like to establish long-
2 term relationships.

3
4 **Q. Has Enron been active in the pilot program?**

5 A. Yes. Although Enron witnesses Kean, Slater, Oliver, and Bohi claim that the
6 energy and capacity caps contained in the Partial Settlement will “thwart
7 competition in the generation of electricity for several years” (Kean, Page 5, Lines
8 8-9); and “would exclude new entrants from the market until at least 2003”
9 (Slater, Page 6, Lines 10-11), the company they represent has been aggressive in
10 the Pennsylvania pilot programs. In fact, the National Energy Team and Enron
11 competed head to head for a pilot contract with a major commercial customer
12 three weeks ago. Enron offered significantly more financial incentives than the
13 National Energy Team but lost the contract. Of course, Enron has been successful
14 with other customers.

15
16 **Q. Was Enron active in the New Hampshire pilot?**

17 A. Yes. In the two-year New Hampshire pilot programs, Enron is selling power for a
18 weight-averaged 2.5¢/kWh price to residential customers. The wholesale cost of
19 all-hours, spot market energy in the New England Power Pool has averaged in the
20 mid- to high 2.0¢/kWh range since the pilots began in the spring of 1996, year to
21 date. Jeffrey K. Skilling, Enron’s president, told *The New York Times* last
22 February that “once his company is able to compete for all the customers in the

1 state and build up a large base of customers, it will be able to recover its marketing
2 costs, make a profit and still keep the cost of power at the current low levels.”

3
4 **Q. Has Enron been active in the energy market in California?**

5 A. Yes. In California, where the retail market generation credit will be a rolling four-
6 week average of the wholesale Power Exchange hourly prices, which are forecast
7 to average about 2.4¢/kWh, all-hours, in 1998, applied to class average load
8 profiles, Enron has been particularly enterprising in trying to “appeal to the diverse
9 interests of their customers,” as Dr. Bohi wrote in *The Electricity Journal*. Enron
10 announced on October 23, 1997, that it would offer residential customers two
11 weeks of free electricity when California’s retail access program begins January 1,
12 1998, and that it had acquired an energy services company to enhance its product
13 offerings to customers.

14 **Q. Have other marketers been as enterprising as Enron in California?**

15 A. Yes. In addition to signing up customers for its Buyers Alliance and announcing
16 that it could produce “significant” savings for such customers, New Energy
17 Ventures is partnering with International Power & Light to offer customers small,
18 on-site generation to reduce reliance on the distribution company’s system and
19 reduce competitive transition charges.

20
21 **Q. Earlier you mentioned cost minimization. Can you provide an example of**
22 **ways that suppliers can reduce costs?**

1 A. Yes. There may be ways to reduce the cost of load balancing. Load balancing
2 costs are the economic penalties of under-delivery or over-delivery (in the
3 Pennsylvania pilot programs, there is no penalty for under- and over-delivery;
4 imbalances are cleared at PJM's market clearing price). For instance, the National
5 Energy Team has talked with generators in New England about purchasing
6 balancing "insurance" in an effort to drive down the cost. Also, installation of
7 more sophisticated metering may help reduce imbalances.

8

9 Indeed, in what was undoubtedly a decision to minimize the operational costs of
10 retail access, NEV has teamed up with LG&E Energy Marketing to provide
11 coordination of energy supplies, along with scheduling and billing services.

12

13 Marketers also can consider curtailable load or peak reduction strategies that may
14 allow them to avoid installed capacity payments and therefore drive down their
15 offers to customers.

16 **Q. What has your recent experience shown regarding the level, if any, of other**
17 **"retail business costs" for which customers will permit suppliers to charge?**

18 A. Many customers begin discussions about price by demanding an "index minus"
19 arrangement, under which the marketer and customer agree on an index of power
20 prices, and the customer then buys power for a fraction of the index price, say 95
21 percent. If a customer is willing to entertain a "cost plus" arrangement, under
22 which the marketer's acquisition costs and margin are transparent to the customer,
23 the baseline margin likely will be less than a mill. I am not aware of any customer

1 who would be willing to pay a markup of 15 percent, as other commenters have
2 testified to in this proceeding. I would also note that NEV, in its "New Energy
3 Buyers' Alliance Member Agreement," includes a charge of 4/100th of one cent per
4 kWh (i.e., 4/10ths of a mill) to cover the costs of "scheduling coordination,
5 procurement, meter reading and billing."

6
7 Second, marketers routinely tell customers that aggregation will produce load
8 curves that more closely resemble wholesale load curves (that is, higher load
9 factor), and therefore will cost less to serve. The benefits of load aggregation will
10 then be passed on to customers. For example, New Energy Ventures has stated
11 that "by aggregating the buying power of all members of the consortium (New
12 Energy Buyers' Alliance), New Energy Ventures works to obtain the best possible
13 prices for electricity in competitive markets." Enron attorney Dan Allegretti,
14 commenting on load aggregation in New Hampshire in this month's Energy
15 Buyer's Guide home page, said, "Where it (load aggregation) makes sense is
16 where the aggregator adds value, and that is either in the form of an improved load
17 profile, where there are positive commitments from the constituents, or in the form
18 of an improved marketing relationship."

19
20 **Q. Please summarize your testimony.**

21 **A.** I have stressed two points:
22

1 1. Marketers who approach retail access with innovative products and services,
2 who constantly seek ways to minimize costs, and who take a long-term
3 outlook, will win customers and save them money. In my view, it is not the
4 job of the Competition Act or the Commission to ensure the success of every
5 market intermediary who wishes to participate.

6 2. Prices that have been offered to retail customers in the PECO pilot program,
7 plus the availability of the PECO Power Team's standard offer, confirm that
8 wholesale and retail energy and capacity are available at costs below the caps
9 in the Partial Settlement.

10

11 **Q. Does this conclude your testimony?**

12 **A. Yes.**

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PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

R-973953

KJR

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY

OF

HOWARD HILLER

DOCUMENT
FOLDER

REGARDING THE ENRON CHOICE PLAN

DOCKETED
NOV 12 1997

Regarding the Petition of
Enron Energy Service Power, Inc.
for Approval of Enron's "Choice Plan"

November 7, 1997

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TESTIMONY OF HOWARD HILLER

I. QUALIFICATIONS

Q. Please state your name and business address.

A. Howard Hiller, Seven World Trade Center, New York, NY 10048.

Q. By whom are you employed and in what capacity?

A. I am employed by Salomon Brothers Inc. ("Salomon" or "Salomon Brothers") as a Vice President in the Fixed Income Capital Markets Group.

Q. Please provide a brief description of Salomon Brothers.

A. Salomon Brothers is a global investment bank that provides international financial services for corporations, governments, supranational organizations, central banks and other financial institutions. Salomon's principal offices are located in New York, London and Tokyo.

Q. Please describe your educational background and prior work experience.

A. I graduated from Cornell University in 1974 with a B.A. in Mathematics. I received a M.S. and Ph.D. in Mathematics from MIT in 1977-78. Between 1978 and 1986, I held a variety of research and teaching positions at Oxford, Yale, Göttingen and Columbia Universities. In 1986, I joined Citicorp Investment Bank as an Assistant Vice President in the Municipal Finance Group.

1 **Q. Please outline your experience with Salomon.**

2 A. In July 1987, I joined Salomon Brothers and spent four years as a Vice President in
3 the Financial Strategy Group working with utility and industrial clients on
4 fundamental financial policy issues like capital structure, dividend policy and debt
5 management. In 1992, I moved to our Fixed Income Capital Markets Group, focusing
6 on the electric and gas industries. During the period 1993-95, I worked with Puget
7 Sound Power & Light Company on the securitization of regulatory assets
8 corresponding to prior conservation investments that led to the first legislatively
9 supported U.S. utility securitization. Salomon was the lead manager for the Puget
10 transaction.

11
12 **Q. Please describe your responsibilities in your current position at Salomon,
13 particularly as they pertain to utility securitization.**

14 A. I am broadly responsible for providing advice to Salomon Brothers' electric and gas
15 utility clients on the design and execution of capital-raising and liability-management
16 strategies pertaining to debt and preferred stock securities. Currently, a significant
17 portion of my time is committed to the application of asset-backed finance technology
18 to the restructuring of the electric utility industry. Salomon is involved with utility
19 securitization advisory assignments in a number of states, including Pennsylvania,
20 California, Michigan, Massachusetts, Connecticut and New Hampshire. Salomon
21 Brothers is currently engaged as a financial advisor to PECO Energy in its
22 securitization program.

1 **Q. Have you testified on other occasions before utility regulatory agencies?**

2 In January 1997, I submitted testimony in PECO Energy's Application for Issuance of
3 a Qualified Rate Order under Sections 2808 and 2812 of the Competition Act (Docket
4 R-00973877).

5
6 **II. PURPOSE OF TESTIMONY**

7
8 **Q. Please describe the scope and purpose of your testimony.**

9 A. I have been asked by PECO Energy Company ("PECO Energy" or the "Company")
10 to evaluate the securitization of stranded costs under the Choice Plan (the "Enron
11 Plan") submitted by Enron Energy Services Power, Inc. ("Enron"). Specifically, I
12 have been asked to evaluate the feasibility of the securitization proposal under the
13 Enron Plan with respect to certain features of that proposal and the effects of Enron's
14 securitization plan on PECO Energy and Pennsylvania electric customers.

15
16 **Q. Can you summarize your broad conclusions?**

17 A. Yes. Without a release of the PECO Mortgage, the securitization is not possible.
18 Without a favorable tax ruling, PECO Energy's securitization is rendered
19 uneconomic.

20
21 Further, in applying securitization to stranded cost recovery, it is possible to have
22 "too much of a good thing." While securitization in moderation can be beneficial for

1 all parties involved, in excess, it will significantly weaken the utility's financial
2 integrity and, as a consequence, its ability to provide safe and reliable service. The
3 Pennsylvania legislature recognized this fact by authorizing the Public Utility
4 Commission (the "Commission") to issue a Qualified Rate Order only for amounts the
5 Commission finds to be "in the public interest" and then granting the utility discretion
6 as to whether or not to issue Transition Bonds authorized by the Commission in a
7 Qualified Rate Order. By maximizing the amount of securitization, while leaving the
8 costs associated with securitization with PECO Energy, Enron achieves its goal of
9 raising \$5.461 billion to pay PECO Energy for its stranded costs, but significantly
10 damages PECO Energy's financial integrity in the process.

11
12 **III. FEASIBILITY OF THE ENRON SECURITIZATION**
13 **PROPOSAL FROM A TAX AND LEGAL PERSPECTIVE**
14

15 **Q. Mr. Mitchell, in his testimony, discussed the feasibility of the Enron Plan and the**
16 **inability under the Enron Plan to obtain a release of the Intangible Transition**
17 **Property from the lien of PECO Energy's mortgage (the "PECO Mortgage").**
18 **How does the structure of the Enron Plan cause this result?**

19 **A.** As Mr. Fastow mentions in his testimony, the mechanics of the securitization
20 proposals under both the Partial Settlement and the Enron Plan are fundamentally the
21 same (the so-called "preferred" structure that Mr. Fastow references from
22 Mr. Mitchell's original testimony). Enron goes one step further and "splits" the

1 Transition Bonds into two classes: the Class A Pass-Through Certificates that will
2 effectively be market-based bonds, priced near par and sold to investors, and the
3 Class B Pass-Through Certificates that will be the residual interest that Enron takes.
4 To the extent that the Class B Certificates have value, the trustee under the PECO
5 Mortgage will view the transfer of Intangible Transition Property as inconsistent with
6 the asset release provisions of the PECO Mortgage.

7
8 **Q. Explain how the asset release provisions of the PECO Mortgage would prevent**
9 **the transfer of the Intangible Transition Property.**

10 A. After "splitting" the Transition Bonds, Enron plans to market \$5.461 billion in Class
11 A Certificates to investors and to transfer the proceeds from the sale as payment for
12 the Intangible Transition Property. The Class B Certificates will be issued directly to
13 Enron; however, under the Enron Plan, Enron will not be "paying" or "transferring
14 value" for the Class B Certificates. Because the Class B Certificates have positive
15 "value," the total amount actually being transferred in exchange for the Intangible
16 Transition Property (the payment for the Class A Certificates) is less than the value of
17 the Class A Certificates and Class B Certificates combined. As discussed by Mr.
18 Mitchell, the trustee under the PECO Mortgage is required to receive fair and equal
19 value prior to releasing the Intangible Transition Property and Intangible Transition
20 Charges from the lien of the PECO Mortgage. Because the Mortgage Trustee will
21 not be receiving fair and equal value for the Intangible Transition Property, the

1 Company will not permit the Intangible Transition Property to be released from the
2 lien of the PECO Mortgage.

3
4 **Q. What is the consequence of PECO Energy not having the Intangible Transition
5 Property released from the lien of the PECO Mortgage?**

6 A. The release of the Intangible Transition Property from the lien of the PECO Mortgage
7 is essential for the issuance of Transition Bonds.

8
9 **Q. The inability of PECO Energy to release the Intangible Transition Property
10 hinges on the value of the Class B Certificates. Have you estimated the value of
11 Enron's Class B Certificates?**

12 A. Yes. We estimate that the value of the Class B Certificates under current market
13 conditions (a 10-year Treasury rate of 5.90%) is approximately \$1.015 billion. If
14 Treasury rates rise to 7%, the upper end of Enron's 5.75%-7% range, then the value
15 of the Class B Certificates would decline to \$638 million.

16
17 **Q. Please describe how the cash flows of the Class B Certificates are determined.**

18 A. The cash flows of the Class B Certificates are effectively the residual flows that
19 remain after the Class A Certificates are serviced. In order to calculate the interest
20 and principal payments on the Class A Certificates, we have to assume a coupon rate
21 and a monthly retirement schedule for the principal amount of \$5.461 billion. An
22 appropriate market rate for the Class A Certificates is currently about 6.5%. There is

1 some flexibility with regard to the principal retirement schedule and we have created
2 one that is consistent with a weighted average life of 7.1 years. By assembling this
3 data, we can calculate the residual cash that flows to the holders of the Class B
4 Certificates.

5
6 **Q. How did you determine a market rate of 6.5% on the Class A Certificates?**

7 A. The likely pricing for bonds backed by regulatory assets has been a topic of thorough
8 discussion by investors, credit analysts, asset-backed specialists and electric utilities.
9 The consensus that has emerged is that bonds backed by transition charges will likely
10 be priced near where credit card securities with similar average lives are priced
11 (adjusted for the so-called amortization penalty). Given that the current reference
12 Treasury yield is about 5.9%, an appropriate market rate would be about 6.5%.

13
14 **Q. What are the sensitivities of this calculation to an increase in the reference
15 Treasury rate to 7%, the upper end of Enron's range?**

16 A. If Treasury rates increase to 7%, we assume that the appropriate market rate on the
17 Class A Certificates rises by a corresponding amount to 7.6%. In this case, the total
18 cash payment to the Class B Certificates is \$999 million with a present value of \$638
19 million, assuming a discount rate equal to the market rate on the Class A Certificates
20 of 7.6%. If the discount rate is increased to 8.5%, the present value of the Class B
21 Certificate payments declines to \$606 million.

1 **Q. Mr. Mitchell and Mr. Sharpe also discussed the difficulty of obtaining a**
2 **favorable tax ruling from the Internal Revenue Service ("IRS") on the**
3 **securitization proposal in the Enron Plan because of the inadequacy of the**
4 **Intangible Transition Charge ("ITC") revenue stream and the "pass-through"**
5 **nature of the structure suggested by the Enron Plan and the testimony submitted**
6 **in support thereof. Describe the inadequacy of the ITC revenue stream proposed**
7 **by Enron.**

8 A. If Enron's intent is to have Transition Bonds issued in the principal amount of \$5.461
9 billion at a "stated interest rate" of 9.66% as described in the Enron proposal and the
10 testimony submitted in support thereof (see Enron proposal p.22 and testimony of
11 Andrew Fastow, p.17-18), then the ITC cash flow in the early years is insufficient to
12 cover the payment of interest to Transition Bondholders.

13
14 **Q: What does "stated interest rate" mean?**

15 A: The generally accepted definition of "stated interest rate" is the coupon rate of a
16 bond.

17
18 **Q: How does the interest rate affect the analysis for the tax ruling?**

19 A: If the coupon rate is 9.66%, then during substantially all of the time the Transition
20 Bonds are outstanding, the cash flow is insufficient to pay interest on the Transition
21 Bonds, the capital required by the IRS is used up in two months, according to the
22 calculations included as Exhibit JBM-9 to Mr. Mitchell's testimony, and the cash flow

1 becomes a straight "pass-through" of ITC payments to Transition Bondholders. Given
2 these circumstances, it is unlikely that the structure would obtain a favorable tax
3 ruling from the IRS.
4

5 **IV. ADVERSE IMPACT OF SECURITIZING \$5.461 BILLION OF**
6 **STRANDED COSTS ON PECO ENERGY'S FINANCIAL INTEGRITY**
7

8 **Q. Please describe the difference between the Enron and PECO Energy**
9 **securitization proposals.**

10 A. The "macro" difference between the PECO Energy and Enron securitization structures
11 is the amount of stranded costs that is securitized. Under the Partial Settlement, the
12 Commission is to authorize PECO Energy to securitize up to \$4 billion of the \$5.461
13 billion of stranded costs that PECO Energy is authorized to recover. The Enron Plan,
14 to be implemented at all, requires that all \$5.461 billion of stranded costs be
15 securitized. As Mr. Mitchell discusses in his testimony, the Enron Plan is totally
16 dependent on a successful securitization.
17

18 **Q. Are there reasons why PECO Energy might choose not to securitize all of its**
19 **stranded costs even if it were authorized to do so?**

20 A. Yes. There are a number of important reasons why PECO would choose not to
21 securitize the full \$5.461 billion. These reasons include (i) the significant reduction
22 in cash flow resulting from securitization and (ii) the rating agencies' warning that

1 "over-securitization" may weaken the credit strength of both the Transition Bonds and
2 PECO Energy's own indebtedness.

3
4 **Q. What is the impact on PECO Energy's cash flow of increasing the amount of**
5 **stranded costs to be securitized to the amount proposed in the Enron Plan?**

6 A. Securitization is a double-edged sword for utilities. On the one hand, resolving the
7 uncertainty of stranded cost recovery generally sends a positive signal to the equity
8 market. On the other hand, securitization exacts a price: the utility's interest
9 coverage ratios and other key financial criteria are significantly impaired, likely
10 leading to sharply lower bond ratings, as detailed in Mr. Mitchell's testimony.
11 Furthermore, the reduction in the utility's cash flow is directly proportional to the
12 amount of securitization.

13
14 **Q. What other adverse financial impacts do you believe would occur from**
15 **securitizing \$5.461 billion of stranded costs?**

16 A. Securitizing \$5.461 billion of stranded costs would also influence the rating agencies'
17 view of PECO Energy's financial integrity and, therefore, impact the Company's
18 credit strength. The rating agencies have been candid about their view that there are
19 limits on the value of securitization to a utility. Although securitization is viewed
20 broadly as supportive of credit quality, securitizing *too many* assets can denigrate the
21 credit quality of the utility's debt.

22

1 Moody's wrote in their February 28, 1997 report: ". . . investors should be mindful
2 of the fact that although the pool of company bondholders will shrink, the
3 introduction of securitized bondholders entitled to the same cash flow to which current
4 bondholders are entitled may compromise current bondholders' position."

5
6 **Q. Does the Competition Act recognize that securitizing stranded costs may be
7 detrimental to the utility and not in the public interest?**

8 A. Yes. The Competition Act grants the utility the discretion of whether or not to issue
9 all or any amount of Transition Bonds authorized in a Qualified Rate Order. The
10 Pennsylvania legislature recognized that there may be circumstances where
11 securitizing stranded costs may be detrimental to the utility. The Competition Act
12 specifically states that following the issuance of a Qualified Rate Order the electric
13 utility "retains sole discretion regarding whether to assign, sell, or otherwise transfer
14 Intangible Transition Property or to cause the transition bonds to be issued, including,
15 but not limited to, the right to defer or postpone such assignment sale, transfer or
16 issuance."

17
18 In addition, the Competition Act authorizes the Commission to grant the utilities
19 permission to issue Transition Bonds only in an amount the Commission determines to
20 be in the "public interest." As discussed above and in the testimony of Mr. Mitchell,
21 securitizing \$5.461 billion in stranded costs will have a devastating effect on PECO

1 Energy's financial integrity and will adversely affect PECO Energy's ability to
2 provide safe and reliable service to its customers.

3
4 **V. GENERAL COMMENTS AND CONCERNS**

5
6 **Q. Assuming the viability of Enron's securitization proposal, do you have any**
7 **comments on Enron's up-front rate reduction of 20%?**

8 A. Enron's rate proposal should be evaluated in terms of its overall economic impact,
9 including its impact on PECO Energy's financial integrity and its ability to continue
10 to provide safe and reliable service at current levels, as PECO Energy is required to
11 do under the Enron Plan. My main concern with the Enron Plan is that it leaves the
12 impression that the securitization technology, if appropriately applied, can magically
13 create 20% rate reductions. The Commission in deciding the amount of securitization
14 that is "in the public interest" should question what the actual source of these savings
15 is and whether Enron is making a meaningful economic contribution to this process in
16 exchange for becoming the provider of last resort to a significant portion of
17 Pennsylvania's electric consumers.

1 **Q. Assuming again the viability of Enron's financing proposal, how does the Enron**
2 **Plan achieve a 20% rate reduction in the first two years?**

3 A. Ignoring some of the complexities of the Enron Plan structure, Enron's proposal
4 increases the amount of savings available to customers by (i) increasing the amount of
5 securitization (from up to \$4 billion to \$5.461 billion), and (ii) shifting savings from
6 the late years to the early years. As Mr. Mitchell discusses, increasing the
7 securitization amount will substantially damage PECO Energy's financial integrity and
8 its ability to provide safe and reliable service.

9
10 **Q. Do you have any other concerns with the Enron securitization proposal?**

11 A. Yes, I would like to mention two issues that are not addressed in the Enron Plan.
12 First, the proposal does not appear to take into account the potential impact of
13 Pennsylvania's Gross Receipts Tax in calculation of revenues. Second, the Transition
14 Bond structure of 124 months violates the Competition Act's limitation on the
15 maturity of Transition Bonds to 10 years, or 120 months.

16
17 **Q. Please restate your broad conclusions.**

18 A. Enron has devised a plan that substantially weakens PECO Energy at a time of
19 significant change within the electric utility industry. Despite industry restructuring,
20 PECO Energy remains responsible for the maintenance of the transmission and
21 distribution system, the billing and collection process and, even under the Enron Plan,
22 the generation of electricity for default customers. The Enron Plan is a complex

1 financial scheme that re-engineers PECO Energy effectively into an "employee" of
2 Enron, where PECO Energy contractually provides to Enron all of its traditional
3 utility functions. Further, the Enron Plan falls apart without securitization; the Partial
4 Settlement does not. In addition, as the testimony of Mr. Sharpe and Mr. Rayzis
5 clearly indicate, there remain a number of unresolved technical and legal obstacles
6 that the Enron Plan has failed to address in any substantive detail. My testimony is,
7 in essence, that "there is no free lunch" and the excessive securitization that Enron
8 proposes will do irreparable damage to PECO Energy's financial integrity,
9 particularly in light of PECO Energy's continuing critical role in all facets of serving
10 electric customers in Pennsylvania.

11
12 **Q. Does this conclude your testimony?**

13 **A. Yes, it does.**

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KJR

NOV 7 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

R-973953

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY

OF

GEORGE RAYZIS

DOCKETED
NOV 12 1997

REGARDING THE ENRON CHOICE PLAN

DOCUMENT
FOLDER

Regarding the Petition of
Enron Energy Service Power, Inc.
for Approval of Enron's "Choice Plan"

November 7, 1997

TESTIMONY OF GEORGE RAYZIS

1 **Q. Please state your name and business address.**

2 A. George Rayzis, 123 South Broad Street, Philadelphia, PA 19103.

3

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by First Union National Bank ("First Union") as a Vice President in
6 its Corporate Trust Department.

7

8 **Q. Please state your professional background and your current responsibilities with**
9 **First Union.**

10 A. In my present position in the Corporate Trust Department, I am responsible for the
11 administration of corporate and municipal bonds in accordance with the governing
12 bond documents. My duties also include the administration of escrow accounts in
13 accordance with the governing escrow agreement.

14

15 First Union is the trustee for the mortgage indenture securing the First and Refunding
16 Mortgage Bonds issued by PECO Energy (the "PECO Mortgage"). I have direct
17 responsibility for administration of the PECO Energy Mortgage Bond account at First
18 Union.

1 I have fourteen years of experience working in the corporate trust industry and three
2 years of experience working as a bank internal auditor. I received a BS from LaSalle
3 College and a MBA from Temple University.
4

5 **Q. As trustee, whose interests do you represent?**

6 A. Under a mortgage indenture, the lien on the mortgaged property is granted by the
7 debtor to the mortgage trustee for the benefit of the bondholders. In such capacity,
8 the mortgage trustee acts as a fiduciary for the bondholders.
9

10 **Q: What is the principal amount of PECO Energy's first mortgage bonds that**
11 **remain outstanding?**

12 A: As of September 30, 1997, \$3,844,355,000 of first mortgage bonds that were issued
13 under the PECO Mortgage remained outstanding.
14

15 **Q: What property of the Company is subject to the lien of the PECO Mortgage?**

16 A: Substantially all of the properties of the Company are subject to the lien of the PECO
17 Mortgage. The Company's property that is subject to the lien of the PECO Mortgage
18 includes all of the Company's "rights, claims, contracts, leases, patents, patent rights
19 and agreements, all accounts receivable, accounts, claims, demands, choses in action,
20 books of account, cash assets, franchises, ordinances, rights, powers, easements,
21 water rights, riparian rights, licenses, privileges, immunities, concessions and
22 consents now or hereafter owned by the Company [and] all other property, real,

1 personal and mixed not hereinbefore specified or referred to, of every kind and nature
2 whatsoever now owned, or which may hereafter be owned by the Company (except
3 shares of stock, bonds or other securities not now or hereafter specifically pledged
4 hereunder as aforesaid)" (Page 12 of the PECO Mortgage).

5
6 **Q: Do the terms of the PECO Mortgage permit the Company to sell property free**
7 **from the lien of the PECO Mortgage?**

8 A: Article VI, Section 3 of the PECO Mortgage provides that, so long as the Company is
9 not in default, mortgaged property may be released from the lien of the PECO
10 Mortgage provided the Company has sold or exchanged such property to be released
11 for cash or other property of at least equal value. Article VI, Section 4 of the PECO
12 Mortgage requires that the cash or other property received by PECO Energy from the
13 sale of mortgaged property must be deposited with the mortgage trustee.

14
15 **Q: How will the trustee know that property to be released from the PECO Mortgage**
16 **has been sold for cash or other property of at least equal value?**

17 A: Article VI, Section 6 of the PECO Mortgage requires the trustee to receive a sworn
18 statement of the president or a vice president of PECO Energy, and a copy of a
19 resolution of PECO Energy's board of directors, stating, among other things, that the
20 sum of the cash and/or the value of the other property received by PECO Energy
21 equals or exceeds the fair and reasonable value of the property to be released from the
22 lien of the PECO Mortgage. That section further provides that if the fair value of the

1 property to be released from the lien of the PECO Mortgage is 10% or more of the
2 aggregate principal amount of bonds secured by the PECO Mortgage at the time, the
3 trustee must be supplied with a certificate or opinion by an independent engineer,
4 appraiser or other expert as to the fair value of the property to be released and that
5 the proposed release will not impair the security under the PECO Mortgage in
6 contravention of the provisions of the PECO Mortgage.

7
8 **Q. Mr. Mitchell testified that the PECO Mortgage will constitute a first lien on the**
9 **Intangible Transition Property while it is held by the Company. Do you agree**
10 **with this conclusion?**

11 A. Yes, I have been so advised by my counsel.

12
13 **Q: Would the PECO Mortgage require the certificate of an independent engineer,**
14 **appraiser or expert, as described above, in connection with the sale of the**
15 **Intangible Transition Property and related Intangible Transition Charges to the**
16 **special purpose entity in return for cash as part of the process of securitization?**

17 A: Yes, because the value of the Intangible Transition Property and related Intangible
18 Transition Charges would exceed \$384 million, or 10% of the mortgage bonds
19 outstanding, the PECO Mortgage would require such a certificate.

1 **Q. Does the PECO Mortgage permit the mortgage trustee to accept a sworn**
2 **statement and the opinion of the independent appraiser or experts from any**
3 **party other than PECO Energy?**

4 A. No. Article VI, Section 3 of the PECO Mortgage is very specific. The request for
5 the mortgage release must be from the Company and must be accompanied by the
6 sworn statement of the Company and the independent engineer, appraiser or expert as
7 to the fair value of the property to be released.

8
9 **Q. Based on Mr. Mitchell's testimony that the Company would not be able to deliver**
10 **the sworn statement of the Company or opinion of the independent appraiser or**
11 **expert that the amount received by PECO Energy under the Enron Plan equals**
12 **the fair value of the Intangible Transition Property, would the Company be**
13 **permitted under the terms of the PECO Mortgage to allow the release of the**
14 **Intangible Transition Property?**

15 A. Absolutely not. Article V, Section 7 of the PECO Mortgage provides that "[the]
16 Company will not voluntarily create or suffer to be created any... lien... having
17 priority to the lien of [the] indenture...." Article VIII, Section 2 declares the breach
18 of such a covenant to be an "event of default" under the PECO Mortgage.

19
20 **Q. Does this conclude your testimony?**

21 A. Yes, it does.

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

NOV 7 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

R-973953

KJR

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY

OF

BRIAN D. CROWE

REGARDING THE ENRON CHOICE PLAN

DOCUMENT

FOLDER

BOCKETED

NOV 12 1997

Regarding Code of Conduct, Billing and Metering, and Enron's
Proposed Metering, Billing, and Collection Services Agreement

November 7, 1997

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TESTIMONY OF BRIAN D. CROWE

I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. Please state your full name and business address.

A. Brian D. Crowe, 2301 Market Street, Philadelphia, PA 19101.

Q. By whom are you employed, and in what capacity?

A. I am employed by PECO Energy Company ("PECO" or the "Company") as Director, Customer Choice Implementation.

Q. What is your educational background?

A. I received my Bachelor of Science in Electrical Engineering from Drexel University in Philadelphia, Pennsylvania. I also received my Master of Business Administration, with a concentration in finance, from Drexel University.

Q. Please describe your work experience with PECO.

A. I joined PECO in October, 1987 as an engineer in the Company's Controls Branch. In December, 1988, I took a position as a Project Engineer in the Company's Substation Branch where I worked on the construction of new transmission and distribution substations as well as additions to existing substations. In June, 1991, I joined the Company's Marketing and Sales Department as an Account Manager. I was responsible for managing daily interactions between a number of university and hospital customers and PECO. In June, 1995 I took a position as a Corporate

1 Strategist in the Company's Corporate Planning and Development Group. In
2 August, 1997, I was appointed Director, Customer Choice Implementation.

3
4 **Q. Please describe your former responsibilities as a Corporate Strategist for**
5 **Corporate Planning and Development, and your new responsibilities as**
6 **Director, Customer Choice Implementation.**

7 A. As a Corporate Strategist I was responsible for the review and analysis of retail
8 competition activities in the electric industry and their implication for the industry
9 and PECO. As the Director of Customer Choice Implementation, I am responsible
10 for implementing and managing the Company's retail electric pilot program and
11 the phase-in of customer choice. My responsibilities include overseeing customer
12 choice activities such as customer selection, supplier interface, training and
13 development, billing, pilot customer service and customer education.

14
15 **Q. Have you previously testified before the Commission?**

16 A. No.

17
18 **Q. Mr. Crowe, what is the purpose of your testimony?**

19 A. The purpose of my testimony is to respond to certain features of the Enron Plan.
20 Specifically, I will:

- 21 • Propose that, with one additional protection, the Commission adopt the
22 consensus Code of Conduct, as developed and approved by the Commission's
23 Competitive Safeguards Working Group;

- 1 • Respond briefly to Enron's new arguments regarding whether billing and
2 metering should be competitively provided;
- 3 • Explain why Enron's proposed MBC Services Agreement, under which PECO
4 purportedly would provide to Enron metering, billing and collection services
5 for default customers who would be served by Enron as the Provider-of-Last
6 Resort (PLR), is anti-competitive, against the public interest and entirely one-
7 sided to the detriment of PECO and benefit of Enron;

8 I am also adopting as my testimony the previously distributed testimony of PECO
9 witness Mr. Gregory A. Cucchi (PECO St. 15 and PECO St. 15-R) regarding
10 Code of Conduct and billing and metering.

11

12 **Q. Why are you adopting Mr. Cucchi's testimony on those issues?**

13 A. Since shortly before he submitted his rebuttal testimony in mid-July of this year,
14 Mr. Cucchi's responsibilities have shifted from implementing the procedures and
15 systems necessary to implement direct access to developing certain PECO
16 competitive businesses. Implementation of customer choice for PECO is now my
17 primary responsibility. In that role, I have overall responsibility for Code of
18 Conduct implementation and for adaptation of PECO's billing and metering
19 systems to accommodate customer choice. In addition, in my previous position, I
20 was responsible for assisting Mr. Cucchi, who was then Vice President for
21 Corporate Planning, with the development of PECO's policy with respect to billing
22 and metering issues.

II. PROPOSED CODE OF CONDUCT

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Q. What Code of Conduct does PECO propose be adopted in this proceeding?

A. PECO proposes that, with one additional protection, the Commission adopt the Consensus Code of Conduct developed by the Commission's Competitive Safeguards Working Group ("Consensus Code").

Q. Please describe the additional provision you mentioned.

A. To the Consensus Code, PECO has added Paragraph K, which contains cross-subsidization protections and guidelines for the appropriate nature and degree of functional separation between PECO's competitive generation and regulated distribution functions, areas on which the Working Group was unable to reach consensus.

Q. Did you participate in the Working Group process?

A. Yes, I attended several meetings and participated in one held by conference call. The Working Group held numerous meetings from May to September all of which were well attended by utilities, customers, electric generation suppliers ("Suppliers"), and Commission representatives. In fact, the Group comprised 27 participants who had no connection with electric utilities and seven representatives from the utilities. Following 18 weeks of diligent work, and through a broad consensus, the Group developed the Consensus Code. As the Group's Chairman, John A. Levin, noted in the Final Report to the Commission, the Group

1 recommended that the Consensus Code form the basis for the “establishment of an
2 enforceable code of conduct for the restructured electric power industry.” I have
3 attached to my testimony as Exhibit BDC-1 a copy of the Consensus Code with
4 PECO’s additional protection.
5

6 **Q. How does this code compare to the code PECO had previously proposed in
7 Mr. Cucchi’s rebuttal testimony?**

8 A. The two codes are comparable and contain reasonable prohibitions designed to
9 prevent potential anti-competitive abuses. This Consensus Code, however, is even
10 more explicit as it expressly addresses PECO’s implementation of the Code of
11 Conduct (Paragraph H); disclosure of customer information (Paragraph B); as well
12 as disclosure of non-public information about operational status and about the
13 availability of the distribution system (Paragraph F).
14

15 **III. RESPONSE TO ENRON’S PROPOSAL TO UNBUNDLE BILLING,
16 METERING AND OTHER CUSTOMER SERVICES**
17

18 **Q. What is PECO’s position on unbundling and deregulating billing, metering
19 and other customer services?**

20 A. To briefly summarize, PECO’s position is that the Commission should not
21 unbundle billing, metering and other customer services because to do so
22 contravenes the Competition Act and is against the best interest of the Company’s

1 customers.¹ To comply with the Competition Act and the Commission's
2 Guidelines on Maintaining Customer Service at the Same Level ("PUC Folder 11
3 Guidelines") PECO does not believe that any customer service functions should be
4 unbundled and offered as competitive services. In contrast, under its Plan, Enron
5 expands its original unbundling proposal that covered just metering and billing to
6 include all customer service functions.

7
8 As we have discovered in implementing our pilot program, customer choice for
9 generation supply is itself confusing and raises many questions and concerns for
10 customers. There are additional complex issues associated with unbundling and
11 deregulating metering, billing and other customer services. To unbundle and
12 deregulate these services now, simultaneously with introducing choice for
13 generation supply, adds unnecessary further complexity and confusion.

14
15 **Q. Has the Company changed its position after review of Enron's Plan?**

16 A. No. Enron's Plan does not offer any new or compelling reasons for unbundling
17 these services. In fact, Enron's Plan, and the testimony submitted in support of it,
18 merely assumes that unbundling of these services will occur.

19
20 **Q. Please elaborate on why these services should not be unbundled.**

21 A. The Competition Act requires that "[t]he electric distribution company shall
22 continue to provide customer service functions consistent with the regulations of

¹ PECO's position on unbundling billing and metering is discussed in the direct and rebuttal testimony of Mr. Cucchi (PECO St. 15, pp. 15-26 and PECO St. 15-R, pp. 2-14).

1 the commission, including meter reading, complaint resolution and collections.

2 Customer services *shall at a minimum, be maintained at the same level of quality*
3 *under retail competition.*” 66 Pa. C.S. §2807(D).(emphasis added). I do not
4 believe that customer service can be maintained at the same level of quality if all
5 customer service functions, including billing and metering, are unbundled and
6 deregulated.

7
8 For example, Enron proposes in (Rule 16.3(a)) of its Distribution Tariff that the
9 Meter Service Provider (MSP) perform meter readings at no less than 99%
10 accuracy level. PECO specifies a meter reading accuracy rate of one error per
11 3000 reads which is 99.97%. Likewise Rule 16.2 (Meter Tests of MSP Owned
12 Meters) allows the “MSP the option to make tests, upon request, to supply special
13 information regarding the end use of service,” in contrast to PECO’s tariff that
14 *requires* the Company to perform such tests when requested.

15
16 The proposed unbundling of all customer service functions also violates the PUC
17 Folder 11 Guidelines. In listing the types of customer service interactions between
18 the EDC, Supplier and residential customers, the guidelines provide that “all
19 physical activity relating to metering such as setting meters, testing, calibrating,
20 change-out, etc. are to remain EDC functions.” The guidelines also state that
21 because the EDC “retains the responsibility for provision of transmission and
22 distribution services, the requirements of 52 Pa. Code §56.191 and §56.192
23 relating to restoration of service, remains with the EDC.” As such the PUC

1 guidelines clearly do not permit these customer service functions to be performed
2 by Suppliers.

3
4 **Q. Please explain why unbundling and deregulating these services would be
5 against the best interest of customers?**

6 A. Enron's proposed Distribution Tariff (Rule 22) permits numerous providers to
7 perform customer service functions. Although Enron's plan purports to assume all
8 PECO's customer service responsibilities, it fails to explain how allowing customer
9 service activities to be split among many companies would work without any
10 adverse affects on customers. Under this rule, a customer may have one provider
11 for meter reading, one provider for complaint resolution, and another provider for
12 billing. I believe that this would be detrimental and lead in effect to a decrease in
13 customer service, a result prohibited by the Competition Act. For, with numerous
14 providers involved, customers will not be able to get answers to their questions on
15 the first call, but will have to be transferred repeatedly. As customer satisfaction is
16 directly linked to the ability of the Company to answer inquiries immediately, such
17 a situation will result in delayed responses and decreased customer satisfaction and
18 service. Secondly, if the Company cannot respond on the first call, the inquiry may
19 then be considered a dispute as defined by 52 Pa. Code §56.2, resulting in various
20 providers investigating a matter that could otherwise have been easily addressed.

21
22 In addition, if metering is made competitive and customers can switch Suppliers
23 monthly, changing meters when a customer changes Suppliers will produce

1 inefficiencies, inconvenience, additional costs to customers and customer
2 confusion. Consider the situation in which a customer questions his meter reading
3 and the customer has had numerous Suppliers and meters. How will the Company
4 and Suppliers respond to the inquiry? Who will the customer call to register his
5 dispute? Who will test the meter? What if a meter test is required and the meter
6 has been removed and relocated to another customer of the Supplier? As such,
7 with competitive metering a seemingly simple inquiry by a customer regarding his
8 meter reading can require a complex dispute investigation that would not be
9 necessary if the Company retained ownership and control of the billing meter.

10
11 **Q. Will the unbundling and deregulating of customer service affect service**
12 **reliability?**

13 A. Yes. Enron's Rule 22 provides that the EGS is to receive outage calls directly
14 from the customer and then refer the information to the Company. This creates a
15 risky, and potentially dangerous, situation if a report is delayed, lost or not
16 processed accurately. Speed in responding is critical in an emergency situation.
17 Any time you add intermediaries between the customer and the ultimate service
18 provider (in this case, PECO) you increase the potential for inaccuracies and the
19 length of response time.

20
21 **Q. Please respond to Mr. Reising's claims on the merits of unbundling and**
22 **deregulating billing, metering and other customer services.**

1 A. Although Mr. Reising claims that competition in billing, metering and other
2 customer services will lower the costs of these services, he offers no facts to
3 support this conclusion. In addition, Mr. Reising claims that the “monopoly” in
4 these services has inhibited any growth in technology. I do not agree. PECO
5 currently offers and uses real-time and remote meters that allow customers to
6 manage their use of electricity in low cost periods and also allow numerous pricing
7 options for the customer. There is no reason why PECO will not continue to take
8 advantage of new metering technology. I also have no doubt the Commission can
9 capably oversee this matter in the future.

10

11 Finally, Mr. Reising’s testimony on the merits of unbundling what he terms “non-
12 wire services” focuses strictly on competitive metering. He offers absolutely no
13 evidence that the deregulation of billing or of other customer services will produce
14 any benefits to consumers.

15

16 **IV. ENRON’S PROPOSED MBC SERVICES AGREEMENT**

17

18 **Q. Have you reviewed Enron’s proposed MBC Services Agreement?**

19 A. Yes, I have. I note that Enron has presented no witness to explain or support the
20 terms of the proposed MBC Services Agreement (“Agreement”). Therefore, my
21 testimony will be directed to the Agreement and not to any specific testimony.

22

23

1 **Q. You have already explained PECO's objections to Enron's proposal to**
2 **unbundle and deregulate billing, metering and other customer services. Does**
3 **PECO have other objections to the Agreement?**

4 A. Yes. Even if PECO did not fundamentally object to unbundling those services as it
5 does, PECO would not enter into the Agreement offered by Enron for numerous
6 reasons. First, the Agreement is grossly one-sided, insulating Enron from all
7 financial risks and shifting those risks to PECO. Under the Agreement, Enron
8 assumes the role of Provider of Last Resort ("PLR") in name only. Second, the
9 Agreement is against the public interest. For, the Agreement itself, as well as
10 Enron's requirement that it not be considered a public utility, would effectively
11 remove from the Commission its power to supervise Enron as PLR with respect to
12 metering, billing and customer service functions. In essence, either the
13 Commission (and PECO) do things Enron's way, or Enron will terminate the
14 agreement and abandon its PLR status. Third, the Agreement is anti-competitive
15 as it would enable Enron to share confidential information with affiliates and take
16 advantage of its PLR label to unfairly profit at PECO's and customers' expense.
17 Finally, the Agreement is ambiguous on a number of important matters.

18

19 **1. The Agreement is Grossly One-Sided**

20

21 **Q. Please explain how the proposed MBC Services Agreement is one-sided and**
22 **insulates Enron from financial risks.**

23 A. The entire Agreement is structured so that Enron does not have to invest any

1 capital, or risk losing even a penny through operations. Enron's only duty is to
2 receive money collected (by PECO) from Default Service customers, and to pay a
3 portion of that money to PECO at a specified amount per kWh delivered to such
4 customers. PECO provides all the service, incurs all costs, and all variations in
5 costs, and retains all the liability.

6
7 **Q. Doesn't PECO currently incur those costs?**

8 A. Yes. Currently PECO as the provider of generation incurs costs to provide
9 metering and billing and customer services, and faces the resulting financial risks.
10 Enron in contrast wants to assume the name of PLR, but none of the risks,
11 financial or otherwise.²

12
13 **Q. Please identify those portions of the Agreement that insulate Enron from
14 risk.**

15 A. Under Article 2.2, it would be PECO's responsibility to comply with all future
16 directives of the Commission and the Legislature in performing MBC Services
17 under the Agreement. Although such directives could increase the cost to provide
18 MBC Services, Enron has no responsibility to pay PECO for any increase in costs
19 resulting from changes in service required by law or regulation. Furthermore,
20 there is no provision in the Agreement that would allow PECO to recover from

² Rule 24.9 of the Default Service Tariff provides specific proof that Enron's goal is to assume merely the title of PLR but none of its actual obligations, risk or liability. Under that rule, Enron assumes absolutely no liability for any damages caused by any failure in the supply or delivery of electricity. Rather, PECO retains full liability for any such damages.

1 Default Service Customers any increases in costs resulting from such mandates.³

2
3 Similarly, under Article 3.1 it appears PECO, not Enron, would bear all the risk for
4 any increase in the gross receipts tax. If the tax liability exceeds the amount
5 reflected in the cost of service that forms the basis for PECO's current distribution
6 rates, PECO could bear the entire cost of that increase, even though Enron
7 nominally is the PLR. Furthermore, it is unclear whether and how PECO would be
8 made whole for any such increases.

9
10 **Q. Are there other risks that Enron avoids under the proposed Agreement, even**
11 **though it claims to be the PLR?**

12 A. Yes. Article 7.3 places all credit risk upon PECO, including not only customers'
13 failure to pay for the energy portion of their bills, but also their failure to pay for
14 transmission and distribution costs. PECO bears the entire risk of any increase in
15 uncollectible accounts expense for Default Service Customers, while Enron, as the
16 PLR, is assured total recovery of its energy costs to serve Default Service
17 Customers. I note, in particular, with regard to this provision that Enron now
18 proposes to treat CAP customers as Default Service Customers (Enron St. No. 5,
19 p. 11). As a result, the purported "safety net" offered by Enron for payment-
20 troubled customers costs Enron nothing, with all risks and costs borne by PECO.

21

³ Not only does Enron bear no risk for increases in costs resulting from regulatory action, under Article 4.4, it has a unilateral right to terminate the Agreement if regulatory action "materially adversely affects" its rights.

1 Q. **Please continue with your explanation of other one-sided provisions in the**
2 **Agreement designed to benefit Enron at PECO's expense.**

3 Articles 3.4 and 7.5 represent additional examples of how patently unfair and one-
4 sided the Agreement is. These articles require PECO to incur expenses to
5 "manage" the PECO-Enron "relationship" and to provide extensive reports to
6 Enron concerning the provision of MBC Services -- costs not currently incurred by
7 PECO and for which Enron pays nothing. Furthermore, PECO must bear all the
8 expense to change all of its bills and envelopes to reflect Enron's logo. These
9 additional activities required by the Agreement provide no value to customers.

10
11 Another one-sided provision is Article 3.2, which works in tandem with Article
12 7.2. Under the Agreement, PECO presumably will cycle the bill on a monthly
13 basis and receive payment from Default Service Customers in the same manner as
14 it does currently for all customers.⁴ However, PECO will not retain the portion of
15 customer payments related to MBC Services. Instead, under Article 7.2, PECO
16 must immediately remit to Enron the portion of customers' payments related to
17 MBC Services. PECO must then wait for 15 days after the end of the month to
18 receive payment for MBC services provided. Thus, Enron will have the use of the
19 portion of payments attributable to MBC Services for 15 to 45 days after payments
20 are made.

21

⁴ The agreement does not explain meter-reading and billing procedures. I assume nonetheless that cycle meter reading and billing is intended, only because PECO would have insufficient human resources to read all Default Service Customer meters on a single day.

1 In addition, PECO bears all the risks and costs in collecting and remitting such
2 payments, but receives no compensation from Enron for such activities.

3
4 Moreover, under Article 7.2 PECO has no right to deduct, retain or set off
5 amounts collected from customers, even if, for example, Enron fails to pay PECO
6 under the proposed Power Purchase Agreement. No similar restriction applies to
7 Enron. In fact, in the event of a PECO default under the Power Purchase
8 Agreement Article 8.3 provides that, Enron can collect *all* amounts due from
9 Default Service Customers (including amounts owed PECO for providing
10 distribution services) and use them to offset its costs.

11
12 The pervasive one-sidedness of the Agreement is apparent in numerous other
13 provisions including the following:

14 -- Enron, in its sole discretion, decides whether the Conditions Precedent to
15 the Agreement have been satisfied (Article 5).

16 -- Enron, in its sole discretion, can assign its responsibilities under the
17 Agreement to any affiliate it desires (Article 15.10).

18 -- Enron, in its sole discretion, decides whether to extend the Agreement
19 beyond December 31, 2003 (Article 4.3).

20 -- Enron, in its sole discretion, can terminate the Agreement if it decides that
21 PECO has failed to meet performance standards (Article 6.1), or if a law or
22 regulation or order “materially adversely affects” its rights (Article 4.4).

23 -- Enron claims to be the PLR, but PECO remains fully obligated and liable to

1 provide energy services in the PECO service territory (Article 12.3).

2 -- Because Enron's sole duty under the Agreement is to pay PECO, the
3 nominally parallel indemnification obligations are really only an indemnification of
4 Enron by PECO (Articles 12.1; 12.2).

5
6 **2. The Agreement Thwarts the Commission's Oversight**

7
8 **Q. Your second objection is that the Agreement effectively limits the**
9 **Commission's authority to supervise Enron as PLR. Please explain.**

10 A. In the Agreement, Enron has incorporated at least two provisions designed to
11 protect it against the possibility that the Commission could decide, or be asked, to
12 modify, expand or regulate Enron's duties or responsibilities as PLR.

13
14 The first provision is Article 4.4, which provides in pertinent part:

15 In the event that a final, non-appealable order, rule or regulation. . .
16 becomes effective, the effect of which is to materially adversely
17 affect the rights or obligations of EESP under the provisions of the
18 Distribution Tariff governing default service, EESP shall have the
19 right. . . to terminate this Agreement. . . .
20

21 This is a rather astonishing provision. Given that Enron's status as a non-utility is
22 a condition to acceptance of the Enron Plan, Enron in effect is trying to push the
23 Commission out of utility regulation and into contract enforcement. But
24 essentially in this contract provision, Enron has said to the Commission, "apply the
25 rules to us and we'll walk away." Although PECO, as a public utility, and as the
26 current PLR, must obey any final Commission order, rule or regulation, Enron

1 seeks to assume the title of PLR while avoiding regulation as a public utility *and*
2 claiming the right to negate any adverse Commission action by unilaterally
3 terminating the MBC Services Agreement without any further obligation.

4
5 And what happens when Enron chooses to terminate the Agreement? Does Enron
6 remain as the titular PLR, even though it has no assets or employees to actually
7 provide PLR service, or can Enron simply quit as PLR? Under Article 4.5, which
8 provides that termination of the Agreement does not release PECO⁵ from its
9 obligation to provide MBC Services, (see also Article 12.3) Enron apparently can
10 abandon its title of PLR leaving PECO in that role, a role PECO actually has
11 throughout the Agreement.

12
13 Article 13 is a second provision designed to thwart the Commission's oversight
14 authority. Under this provision, disputes about interpretation of the contract must
15 be submitted to arbitration, in apparent conflict with the Commission's power,
16 under Section 508 of the Public Utility Code, to supervise contracts entered into
17 by utilities.

18 **3. The Agreement is Anti-Competitive**

19
20 **Q. You also indicated that the Agreement would enable Enron to engage in anti-**
21 **competitive conduct. Please explain.**

22 **A. Article 2.6 of the Agreement requires PECO to furnish Enron with full information**

⁵ It is unclear how one party to a two-party Agreement can terminate the Agreement yet still bind the other party.

1 on metering, billing and collection relating to Default Service Customers.
2 Significantly, however, the Enron Plan Code of Conduct that prohibits sharing of
3 information with affiliates applies only to PECO, not to Enron. As a result, unlike
4 other PLRs, Enron may provide *its* competitive affiliates with sensitive customer
5 information to the exclusion of other suppliers. Thus, for example, Enron could
6 advise its affiliated electric generation supplier, Enron Power Marketing, Inc.,
7 whenever a customer terminates service with another generation supplier, thereby
8 giving Enron Power Marketing, Inc. impermissible leads to potential new
9 customers. Enron could also use its “insider information” to direct its affiliate’s
10 marketing efforts only to “good paying” customers, or to customers with
11 profitable load profiles. Enron’s affiliate would also not be prohibited from
12 claiming in public advertising that it has a “special” relationship with the PLR,
13 Enron. These are *all* restrictions that PECO is willing to apply against itself as
14 PLR, but to which Enron has not committed in the Enron Plan.
15

16 4. The Agreement is Ambiguous

17
18 **Q. Finally, you indicated that the Agreement is unclear and ambiguous in a**
19 **number of critical matters. Please explain.**

20 A. The largest single uncertainty relates to customer billing and service complaints.
21 Under Enron’s proposal, it claims to be the PLR. However, PECO performs the
22 services. If the customer files a complaint, who must undertake the defense --
23 PECO or Enron? Who must pay legal fees - PECO or Enron? If PECO must pay

1 for the defense, what portion of the payment for MBC Services is intended to
2 compensate for such costs? The Agreement answers none of these questions.

3
4 The Agreement also does not explain how PECO is to undertake meter-reading
5 and billing for Default Service Customers. Are they to be read and billed in cycles
6 chosen by PECO, or will Enron direct meter-reading and billing dates?

7
8 Other uncertainties in the Agreement include:

9 -- Who defines "materially adversely affect" for purposes of Enron's
10 unilateral termination right under Article 4.4.?

11 -- Is Enron designating PECO its affiliate because this Agreement
12 allows Enron to direct certain activities and policies of PECO?

13 -- If PECO cannot read a customer's meter when scheduled, due to
14 weather or other reasons outside PECO's control, must PECO provide written
15 notice to Enron? (Article 11.1)

16 -- Article 2.2 references the need to comply with "applicable
17 Competitive Safeguards," but no "Competitive Safeguards" apply to this
18 Agreement.

19 -- Exhibit A contains no "prices for non-wires services" for Rate SL-S
20 or CAP Rate.

21
22 **Q. Based upon all of the forgoing, in your opinion, would a reasonably prudent**
23 **utility manager enter into such a one-sided and flawed contract?**

1 A. Definitely not.

2

3

V. CONCLUSION

4

5 Q. Does that conclude your testimony?

6 A. Yes, it does.

7

8

9

10

11

12

13

14

15

16

17

CODE OF CONDUCT

- A. An Electric Distribution Company ("EDC") shall not give any Electric Generation Supplier ("EGS"), including without limitation its affiliate or division, any preference or advantage over any other EGS in processing a request by a distribution company customer for retail generation supply service.
- B. Subject to customer privacy or confidentiality constraints, an EDC shall not give an EGS, including without limitation its affiliate or division, any preference or advantage in the dissemination or disclosure of customer information and any such dissemination or disclosure shall occur at the same time and in a comparable manner. "Customer information" means all information pertaining to retail electric customer identity and current and future retail electric customer usage patterns, including appliance usage patterns, service requirements or service facilities.
- C. No EDC shall engage in false or deceptive advertising to customers with respect to the retail supply of electricity in the Commonwealth.
- D. An EDC shall, in cooperation with all stakeholders, establish and file with the Commission dispute resolution procedures to address alleged violations of this Code of Conduct.
- E. An EDC shall not illegally tie the provision of any electric distribution service within the jurisdiction of the Pennsylvania Public Utility Commission ("Commission"): (a) to the purchase, lease or use of any other goods or services offered by the EDC or its affiliates; or, (b) to a direct or indirect commitment not to deal with any competing EGS.
- F. An EDC shall not provide any preference or advantage to any EGS in the disclosure of information about operational status and availability of the distribution system.
- G. An EDC shall supply all regulated services and apply tariffs to non-affiliated EGSs in the same manner as it does for itself and its affiliated or division EGS, and shall uniformly supply all regulated services and apply its tariff provisions in a non-discriminatory manner.
- H. Every EDC and its affiliated or divisional EGS shall formally adopt and implement these provisions as company policy and shall take appropriate steps to train and instruct its employees in their content and application.
- I. In the event that an EDC customer requests information about EGSs, the EDC shall provide the latest list as compiled by the Commission to the customer over the telephone, or in written form or by other comparable means. In addition, an EDC may provide the address and telephone of an EGS if specifically requested by the customer by name. To enable electric distribution companies to fulfill this obligation, the Commission shall maintain a written list of licensed EGSs. The Commission shall regularly update this list and provide such updates to electric distribution companies as soon as reasonably practicable. The Commission shall

compile the list in a manner that is fair to all EGSs and that is not designed to provide any particular EGS with a competitive advantage.

- J. An EDC or its affiliate or division shall not state or imply that any delivery services provided to an affiliate or division or customer of either are inherently superior, solely on the basis of their affiliation with the EDC, to those provided to any other EGS or customer or that the EDC's delivery services are enhanced should supply services be procured from its affiliate or division.
- K. Employees of the EDC who have responsibility for operating the distribution system, such as receiving requests for power, purchasing power, scheduling delivery, or billing and metering, shall not be shared with its affiliated or divisional EGS, and their offices shall be physically separated from the office(s) used by those working for its affiliated or divisional EGS. Any shared facilities shall be fully and transparently allocated between the EDC function and the EGS function. EDC accounts and records shall be maintained such that the costs a EGS incurs may be clearly identified. Further, the EDC shall not: (1) sell non-power goods or services to an EGS affiliate or division at a price below the higher of cost or market price for said goods or services; and (2) purchase non-power good or services from an EGS affiliate or division at a price above the market price for said goods or services.

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the matter of Pennsylvania Public Utility Commission v. PECO Energy Company Pa. PUC Docket No. R-00973953.

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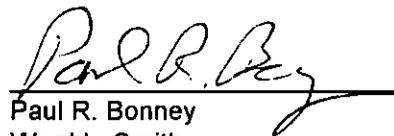
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Dated: November 7, 1997

Senate of Pennsylvania



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VINCENT J. FUMO
Chairman

PAUL S. DLUGOLECKI
Executive Director

DEMOCRATIC COMMITTEE ON APPROPRIATIONS RECEIVED
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November 7, 1997

DOCUMENT
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James J. McNulty, Acting Prothonotary
Pennsylvania Public Utility Commission
Room 206, North Office Building
Harrisburg, PA 17105-3265

KJR

Re: In re the Matter or the Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Pennsylvania Public Utility Code - PUC Docket No. R-00973953.

Dear Mr. McNulty:

Enclosed for filing is an original and three copies of the Responsive Testimony of Richard H. Silkman to the Enron "Choice" Proposal. This testimony was previously filed and served on all parties of record, but the attachments to the testimony were inadvertently omitted. This testimony is submitted on behalf of Senator Vincent J. Fumo, CEPA, TAG, ACORN, and John W. Long, Jr.

We apologize for any inconvenience we may have caused you.

Copies of this letter and the previously omitted attachments are being served on all parties today.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris B. Craig".

Christopher B. Craig
Counsel

cc: Service List

4

DOCUMENT FOLDER

**Exhibit SILKMAN-2
 Revised Estimated Net Present Value of Choice Plan Savings**

Market Price = Generation Credit in the Choice Plan

System-Wide Savings (Based on Average Rates from Partial Settlement Agreement and Choice Plan)

Year	Sales (MWh)	CTC Savings (\$000)	Market Price (\$/kwh)	Generation Credit		Generation Savings (\$000)	Total Savings (\$000)
				Partial Settlement (\$/kwh)	Choice Plan (\$/kwh)		
9-12/98	8,395,802	\$ 83,622	0.0348	n.a.	\$ 0.0348	\$ -	\$ 83,622
1999	33,569,358	\$ 560,608	0.0348	\$ 0.0280	\$ 0.0348	\$ (228,272)	\$ 332,337
2000	33,569,358	\$ 560,608	0.0348	\$ 0.0280	\$ 0.0348	\$ (228,272)	\$ 332,337
2001	33,569,358	\$ 281,883	0.0354	\$ 0.0320	\$ 0.0354	\$ (114,138)	\$ 167,647
2002	33,569,358	\$ 110,779	0.0363	\$ 0.0350	\$ 0.0363	\$ (43,840)	\$ 67,139
2003	33,569,358	\$ 6,714	0.0372	\$ 0.0370	\$ 0.0372	\$ (8,714)	\$ -
2004	33,569,358	\$ (53,711)	0.0381	\$ 0.0397	\$ 0.0381	\$ -	\$ (53,711)
2005	33,569,358	\$ (60,425)	0.0389	\$ 0.0407	\$ 0.0389	\$ -	\$ (60,425)
2006	33,569,358	\$ (265,198)	0.0399	\$ 0.0477	\$ 0.0399	\$ -	\$ (265,198)
2007	33,569,358	\$ (433,045)	0.0408	\$ 0.0537	\$ 0.0408	\$ -	\$ (433,045)
2008	33,569,358	\$ (473,328)	0.0416	\$ 0.0557	\$ 0.0416	\$ -	\$ (473,328)
Total	344,088,382	\$ 318,608				\$ (621,033)	\$ (302,425)
Net Present Value @ 8%		\$ 689,743				\$ (494,740)	\$ 195,002
Net Present Value @ 10%		\$ 724,622				\$ (489,001)	\$ 255,621

1998 savings computed as 10% of total revenues (8,395,802,000 x \$ 0.0998) and applied to CTC Savings PROTHONOTARY'S OFFICE

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Exhibit SILKMAN-2

Revised Estimated Net Present Value of Choice Plan Savings

Market Price < Generation Credit in the Choice Plan

System-Wide Savings (Based on Average Rates from Partial Settlement Agreement and Choice Plan)

Year	Sales (MWH)	CTC Savings (\$000)	Market Price (\$/kwh)	Generation Credit Partial Settlement (\$/kwh)	Choice Plan (\$/kwh)	Generation Savings (\$000)	Total Savings (\$000)
9-12/98	8,395,802	\$ 83,622	\$ 0.0280	n.a.	\$ 0.0348	\$ -	\$ 83,622
1999	33,569,358	\$ 560,608	\$ 0.0280	\$ 0.0280	\$ 0.0348	\$ -	\$ 560,608
2000	33,569,358	\$ 560,608	\$ 0.0280	\$ 0.0280	\$ 0.0348	\$ -	\$ 560,608
2001	33,569,358	\$ 281,983	\$ 0.0320	\$ 0.0320	\$ 0.0354	\$ -	\$ 281,983
2002	33,569,358	\$ 110,779	\$ 0.0350	\$ 0.0350	\$ 0.0363	\$ -	\$ 110,779
2003	33,569,358	\$ 6,714	\$ 0.0370	\$ 0.0370	\$ 0.0372	\$ -	\$ 6,714
2004	33,569,358	\$ (53,711)	\$ 0.0381	\$ 0.0397	\$ 0.0381	\$ -	\$ (53,711)
2005	33,569,358	\$ (60,425)	\$ 0.0389	\$ 0.0407	\$ 0.0389	\$ -	\$ (60,425)
2006	33,569,358	\$ (285,198)	\$ 0.0398	\$ 0.0477	\$ 0.0398	\$ -	\$ (285,198)
2007	33,569,358	\$ (433,045)	\$ 0.0408	\$ 0.0537	\$ 0.0408	\$ -	\$ (433,045)
2008	33,569,358	\$ (473,328)	\$ 0.0416	\$ 0.0557	\$ 0.0416	\$ -	\$ (473,328)
Total	344,089,382	\$ 318,608				\$ -	\$ 318,608
Net Present Value @ 8%		\$ 689,743				\$ -	\$ 689,743
Net Present Value @ 10%		\$ 724,622				\$ -	\$ 724,622

1998 savings computed as 10% of total revenues (8,395,802,000 x \$.0985) and applied to CTC Savings

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Exhibit SILKMAN-2
Revised Estimated Net Present Value of Choice Plan Savings

Market Price > Generation Credit in the Choice Plan

System-Wide Savings (Based on Average Rates from Partial Settlement Agreement and Choice Plan)

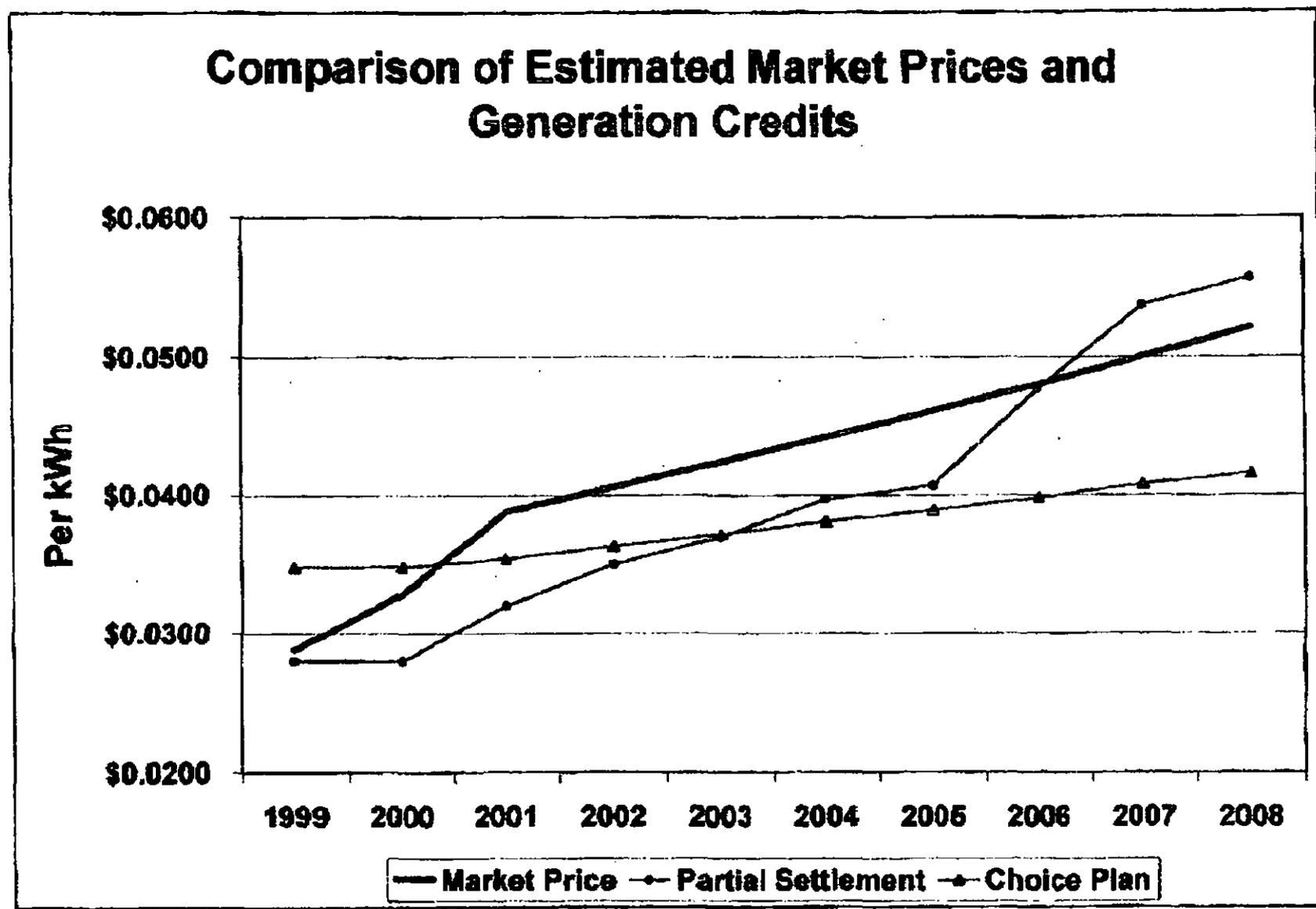
Year	Sales (MWh)	CTC Savings (\$000)	Market Price (\$/kwh)	Generation Credit		Generation Savings (\$000)	Total Savings (\$000)
				Partial Settlement (\$/kwh)	Choice Plan (\$/kwh)		
9-12/98	8,395,802	\$ 83,822	n.a.	n.a.	\$ 0.0348	\$ -	\$ 83,822
1999	33,569,358	\$ 560,608	\$ 0.0288	\$ 0.0280	\$ 0.0348	\$ (28,855)	\$ 533,753
2000	33,569,358	\$ 560,608	\$ 0.0329	\$ 0.0280	\$ 0.0348	\$ (164,490)	\$ 396,118
2001	33,569,358	\$ 281,983	\$ 0.0388	\$ 0.0320	\$ 0.0354	\$ (114,136)	\$ 187,847
2002	33,569,358	\$ 110,779	\$ 0.0408	\$ 0.0350	\$ 0.0363	\$ (43,640)	\$ 67,139
2003	33,569,358	\$ 8,714	\$ 0.0424	\$ 0.0370	\$ 0.0372	\$ (6,714)	\$ -
2004	33,569,358	\$ (53,711)	\$ 0.0442	\$ 0.0397	\$ 0.0381	\$ 53,711	\$ (0)
2005	33,569,358	\$ (60,425)	\$ 0.0461	\$ 0.0407	\$ 0.0388	\$ 60,425	\$ 0
2006	33,569,358	\$ (265,198)	\$ 0.0480	\$ 0.0477	\$ 0.0398	\$ 265,198	\$ -
2007	33,569,358	\$ (433,045)	\$ 0.0500	\$ 0.0537	\$ 0.0408	\$ 308,836	\$ (124,207)
2008	33,569,358	\$ (473,328)	\$ 0.0521	\$ 0.0557	\$ 0.0418	\$ 352,478	\$ (120,850)
Total	344,089,382	\$ 318,608				\$ 684,815	\$ 1,003,423
Net Present Value @ 8%		\$ 689,743				\$ 219,448	\$ 809,190
Net Present Value @ 10%		\$ 724,622				\$ 158,211	\$ 880,833

1998 savings computed as 10% of total revenue (8,395,802,000 x 0.0996) and applied to CTC Savings

Exhibit SILKMAN-3
Comparison of Estimated Market Prices and Generation Credits

Year	Market Price (\$/kwh)	Generation Credit	
		Partial Settlement Agreement (\$/kwh)	Enron Choice Plan (\$/kwh)
9-12/98	n.a.	n.a.	\$ 0.0348
1999	\$ 0.0288	\$	\$ 0.0280 \$ 0.0348
2000	\$ 0.0329	\$	\$ 0.0280 \$ 0.0348
2001	\$ 0.0388	\$	\$ 0.0320 \$ 0.0354
2002	\$ 0.0408	\$	\$ 0.0350 \$ 0.0383
2003	\$ 0.0424	\$	\$ 0.0370 \$ 0.0372
2004	\$ 0.0442	\$	\$ 0.0397 \$ 0.0381
2005	\$ 0.0461	\$	\$ 0.0407 \$ 0.0389
2006	\$ 0.0480	\$	\$ 0.0477 \$ 0.0398
2007	\$ 0.0500	\$	\$ 0.0537 \$ 0.0408
2008	\$ 0.0521	\$	\$ 0.0557 \$ 0.0416

Market Price Estimates from Mitnick Testimony - Exhibit SAM-2



**Exhibit SILKMAN-4
Adjustments to Mr. Slater's LRM Estimates**

	Adjustments to Slater's Estimates				Generation Credits Enron Choice Plan
	Slater's Estimates	Load Factor	Line Losses	Escalation Rate	
1998	0.03187	0.03843	0.04132	0.04132	0.0348
2000	0.03239	0.03893	0.04186	0.04258	0.0348
2001	0.03281	0.03944	0.04240	0.04384	0.0354
2002	0.03323	0.03995	0.04296	0.04515	0.0363
2003	0.03367	0.04047	0.04351	0.04651	0.0372
2004	0.03410	0.04099	0.04408	0.04780	0.0381
2005	0.03455	0.04153	0.04465	0.04934	0.0388
2006	0.03500	0.04207	0.04523	0.05082	0.0398
2007	0.03545	0.04261	0.04582	0.05235	0.0408
2008	0.03591	0.04317	0.04642	0.05392	0.0418

Line Losses adjustment for both capacity and energy computed as 0.63 from Mitnick, Exhibit SAM-2

Load Factor adjustment for capacity only computed as 0.60 from Mitnick, Exhibit SAM-2

Overall Escalation Rate increased to an average of 3% per year

Enron Energy Services Power, Inc.
Docket No. R-00973953
Docket No. P-00971265
SENATOR VINCENT J. FUMO
Interrogatories, Set II

Witness: Steven J. Kean

FUMO-II-6:

Please provide a detailed explanation of the meaning and consequence of paragraph 35(e) on page 29 of the Enron Petition. Please include a response to the following:

- a) What limitations, if any, are associated with the phrase "withdraw its Petition and the Choice Plan at any time" as used in paragraph 35(g)?
- b) Does Enron reserve the right to "withdraw its Petition and the Choice Plan at any time" following Commission approval? If so, would said withdrawal effect the professed 20% customer rate reduction? Would said withdrawal effect the remaining provisions of the Partial Settlement that are incorporated as part of the Enron Petition?

Response:

- a) Known limitations are identified in Section VI of Enron's Petition. There may be other limitations not known at this time.
- b) Yes; Yes; Yes.

Enron Energy Services Power, Inc.
Docket No. R-00973953
Docket No. P-00971265
PECO Energy Company
Interrogatories, Set XI

Witness: Steven J. Kean

PECO-XI-17:

Please provide a copy of every projection of market prices that Enron or its advisors and consultants relied upon in preparing the Enron Choice Plan and Petition. Please provide a copy of other projections of market prices in PECO's service territory or in PJM that are in Enron's possession.

Response:

Subject to previously filed partial Objections to Question 17, and without waiver thereof, Enron Energy Services Power, Inc. ("EESPI") hereby responds as follows:

Please refer to the Testimony of Steven A. Mitnick on behalf of the Pennsylvania Electric Competition Coalition (PECC Statement No. 1) filed at Docket No. R-00973953 on September 29, 1997, regarding a projection of market prices that EESPI relied upon in preparing its Choice Plan and Petition.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In re the Application of PECO Energy
Company for Approval of its Restructuring
Plan Under Section 2806 of the Pennsylvania
Public Utility Code**

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+
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Docket No. R-00973953

CERTIFICATION OF SERVICE

I Christopher B. Craig, attorney for Senator Vincent J. Fumo, hereby certify that a copy of the foregoing document has been served in person or by first class mail at the addresses indicated below. I further certify that the manner of service satisfied the requirements of 52 PA.Code §§ 5.75 and 1.54.

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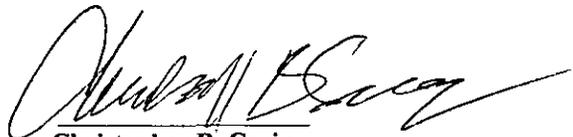
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