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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: R-00973953 Pennsylvania Public Utility Commission v. PECO Energy Company Application for approval of a restructuring plan and Consumer Education Program. Initial and Further Hearings.

Philadelphia, Pennsylvania
October 14, 1997

Pages 409 to 666, inclusive

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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: R-00973953 R-00973953C0001-C0007 Pennsylvania Public Utility Commission v. PECO Energy Company
Application for approval of a Restructuring Plan and Consumer Education Program. Prehearing Conference, Initial and Further Hearings.

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Stenographic report of hearing held in Hearing Room 1, State Office Building, Philadelphia, Pennsylvania,

Tuesday,
October 14, 1997
at 10:00 o'clock a.m.

~~DOCKETED~~
OCT/22 1997

BEFORE

MARLANE R. CHESTNUT, ADMINISTRATIVE LAW JUDGE
CHARLES E. RAINEY, JR., ADMINISTRATIVE LAW JUDGE

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1 JUDGE CHESTNUT: This is the hearing scheduled with
2 respect to the case of Pennsylvania Public Utility
3 Commission versus PECO Energy Company at Docket Number
4 R-00973953C0001 through C0007. For the record let me state
5 that I am Administrative Law Judge Marlane R. Chestnut. To
6 my right is Administrative Law Judge Charles E. Rainey, Jr.

7 For the record, I would like all the counsel present
8 to identify themselves for the record, stating their name
9 and on whose behalf they are appearing. I'll start with
10 you, Mr. Bonney.

11 MR. BONNEY: Good morning, Your Honor. Thank you.
12 Paul Bonney for PECO Energy. With me today are Noel Trask
13 and Ward Smith.

14 JUDGE CHESTNUT: Thank you. Mr. Kleppinger?

15 MR. KLEPPINGER: Good morning, Your Honors. Dave
16 Kleppinger with McNeese, Wallace and Nurick representing
17 Philadelphia Area Industrial Energy Users Group.

18 JUDGE CHESTNUT: Thank you. Ms. Harris?

19 MS. HARRIS: Good morning, Your Honors. I am
20 Lillian Smith Harris and I am with the law firm Malatesta,
21 Hawke and McKeon and I am representing Municipal
22 Intervenors Group.

23 JUDGE CHESTNUT: Thank you. Mr. Cohen?

24 MR. COHEN: Thank you, Your Honors. Walter Cohen
25 representing Indianapolis Power and Light Company. With me

1 is Dan Magill from Barnes & Thornburg in Indianapolis
2 representing the company.

3 JUDGE CHESTNUT: Mr. Haver?

4 MR. HAVER: Lance Haver, pro se.

5 JUDGE CHESTNUT: Thank you. Mr. Hershey?

6 MR. HERSHEY: Steven Hershey, with Community Legal
7 Services representing CEPA, TAG, ACORN and John W. Long Jr.

8 JUDGE CHESTNUT: Thank you. Mr. Clearfield?

9 MR. CLEARFIELD: Dan Clearfield with the firm of
10 Wolf, Block, Schorr representing Enron.

11 MR. GORNISH: I am Gerald Gornish from, from Wolf,
12 Block, Schorr and Sollis-Cohen. We represent Enron Power
13 Marketing, Inc. We also represent Enron Energy Services
14 Power, Inc. on whose behalf the choice petition was filed.

15 JUDGE CHESTNUT: Thank you. Mr. Mickens?

16 MR. MICKENS: Good morning, Your Honors. Ken
17 Mickens, Senior Prosecutor, Office of Trial Staff.

18 JUDGE CHESTNUT: Thank you. Mr. Hawke?

19 MR. HAWKE: Yes. I am appearing on behalf of
20 Mid-Atlantic Independent Power Producers Group also known
21 as Mid-Atlantic Power Supply Association and appearing with
22 me is Janet Miller.

23 JUDGE CHESTNUT: Thank you. Mr. Doll?

24 MR. DOLL: Good morning, Your Honor. Craig Doll. I
25 represent Connectiv Energy, a division of Delmarva Power

1 and Light Company.

2 JUDGE CHESTNUT: Thank you. Mr. Russell?

3 MR. RUSSELL: Good morning, Your Honors. My name is
4 Paul Russell. I am representing Pennsylvania Power and
5 Light Company. With me today is Donald Kaplan from the
6 firm of Preston Gates and Ellis also representing PP&L.

7 JUDGE CHESTNUT: Thank you. Mr. Fitzpatrick?

8 MR. FITZPATRICK: Good morning, Your Honors. Terry
9 Fitzpatrick from Ryan, Russell, Ogden and Seltzer
10 representing GPU Energy.

11 JUDGE CHESTNUT: Thank you. Ms. Moury.

12 MS. MOURY: Good morning, Your Honors. Karen Oill
13 Moury representing the Office of Small Business Advocate.

14 JUDGE CHESTNUT: Thank you. Mr. Steinmetz?

15 MR. STEINMETZ: Good morning, Your Honor. My name
16 is Steve Steinmetz. I am here on behalf of the
17 Pennsylvania Office of Consumer Advocate.

18 JUDGE CHESTNUT: Thank. Mr. Dworetzky.

19 MR. DWORETZKY: Good morning, Your Honors. Joe
20 Dworetzky, from Hangley Aronchick on behalf of New Energy
21 Ventures.

22 JUDGE CHESTNUT: Thank you. Mr. Clark?

23 MR. CLARK: Good morning, Your Honors. Roger
24 Clark. I represent the Environmentalists.

25 JUDGE CHESTNUT: Thank you. Mr. Craig?

1 MR. CRAIG: Christopher Craig on behalf of State
2 Senator Vincent J. Fumo.

3 JUDGE CHESTNUT: Thank you. Mr. Nordstrom?

4 MR. NORDSTROM: Paul Nordstrom on behalf of
5 Allegheny Power.

6 JUDGE CHESTNUT: Is there any counsel present who
7 has not signed the appearance sheet or any party who has
8 not been represented?

9 (No response.)

10 JUDGE CHESTNUT: Okay, then. As you all know, the
11 first portion of this hearing will be conducted as a
12 prehearing conference to address various procedural
13 matters. Before we get to talk about the schedule, there
14 are some minor housekeeping matters. One is Enron's
15 motions for admission pro hac vice. Any objection?

16 (No response.)

17 JUDGE CHESTNUT: Those motions are granted. Are
18 there any other preliminary matters not involving the
19 schedule which any party wishes to address? Mr. Haver?

20 MR. HAVER: I just have my testimony to bring up.

21 JUDGE CHESTNUT: We are going to get to that later.
22 This is a prehearing.

23 Okay, then. We'll talk about the schedule. As I
24 understand, there are several schedules which have been
25 prepared and disseminated. An it was represented that it

1 might be a good idea for us to adjourn this prehearing
2 conference for a short time and see if the parties can come
3 to a consensus. Does anybody have a problem with that
4 approach?

5 (No response.)

6 JUDGE CHESTNUT: We'll take a short break and let
7 you folks try and work this out. Judge Rainey, did you
8 want to say something? I am sorry.

9 JUDGE RAINEY: I thought maybe we should say a time
10 for us to reconvene. Are there any suggestions from the
11 parties?

12 (No response.)

13 JUDGE CHESTNUT: How about 10:30?

14 JUDGE RAINEY: Okay.

15 JUDGE CHESTNUT: We'll reconvene at 10:30 or before.

16 (Whereupon, a brief recess was taken.)

17 JUDGE CHESTNUT: We'll go back on the record. We
18 gave the parties an opportunity to discuss the possibility
19 of a consensus schedule in terms of how to handle the case
20 from here. Was anybody able to accomplish anything?

21 MR. CLEARFIELD: Your Honor, we were able to resolve
22 several but not all issues.

23 JUDGE CHESTNUT: I hope you don't resolve them too
24 much because Judge Rainey and I have been perusing the
25 Commission's order and I hope it's consistent with the way

1 we read that order in terms of how it expects to decide
2 these issues. If you want to go ahead and tell us what you
3 have come up with or not come up with.

4 MR. CLEARFIELD: Your Honor, with respect to the
5 Enron petition and additional hearings, what we have agreed
6 upon is as follows, as best as I understand it and Mr.
7 Bonney, of course, will correct me if I misstate what we
8 have agreed to. The direct testimony in support of the
9 petition would be filed by noon on the 24th.

10 JUDGE CHESTNUT: This would be testimony in support
11 of the Enron?

12 MR. CLEARFIELD: Yes.

13 JUDGE CHESTNUT: Noon of --

14 MR. CLEARFIELD: October 24.

15 JUDGE CHESTNUT: Okay.

16 MR. CLEARFIELD: Other parties' testimony in
17 response to that testimony would be filed on November 7th.

18 JUDGE CHESTNUT: There's a problem right there, I
19 think.

20 MR. CLEARFIELD: Let me go through it and they then
21 we can -- our answering, or rebuttal testimony would be due
22 on the 12th.

23 JUDGE CHESTNUT: That's November 12?

24 MR. CLEARFIELD: Yes, ma'am. And then the hearing
25 schedule that we suggest is as follows: As it stands now

1 we have testimony that's been submit on so-called
2 unresolved issues, issues that aren't in the settlement;
3 aren't in the joint petition. Testimony on those issues, I
4 believe, has all been submitted and the testimony cycle is
5 completed.

6 We would have a hearing on the 14th as necessary for
7 those unresolved issues. And I assume at some point we
8 will come up with a comprehensive list of what those are.

9 Then there would be hearings on the 17th, 18th and
10 19th on the Enron petition as necessary.

11 JUDGE CHESTNUT: Uh-huh.

12 MR. CLEARFIELD: A brief without reply brief would
13 be due on December 2nd in compliance with the Commission's
14 order that would include findings of fact and conclusions
15 of law.

16 JUDGE CHESTNUT: Okay.

17 MR. CLEARFIELD: Where we have not been able to
18 resolve our differences is with respect to schedule for the
19 unresolved issues. As you recall, in your last prehearing
20 order, Your Honors, you had established a schedule for
21 resolution of those issues with hearings, et cetera.

22 Now, we have taken care of the hearings because we
23 have consolidated them as you can see. But I believe
24 there's a still a difference of opinion with respect to how
25 we proceed after those hearings. It is Enron's position

1 that the brief on the unresolved issues must be submitted
2 on December 2nd unless the company elects to extend the
3 decision date for the Commission.

4 We believe that the order has superseded prior
5 schedules and that we are under an obligation to present
6 all of the issues on that date, December 2nd, day. And I
7 won't speak for or characterize the company's position.

8 MR. BONNEY: Your Honor, we had previously agreed to
9 a schedule for resolution of the unsettled issues and in
10 fact, it was Enron's schedule that was adopted that calls
11 for hearings, main and reply briefs, recommended decision
12 in January and then exceptions and replies, polling by the
13 Commission in February and March and we would recommend
14 that we continue that schedule.

15 The Commission's order that was issued last week
16 states at page 5 that additional hearings must be conducted
17 with regard to those issues adding the restructuring issues
18 that have not yet been agreed to in the record so as to
19 provide an adequate record for adjudication of a
20 restructuring plan if the joint petition plan and other
21 settlement is reached.

22 I think it's consistent with that language to have
23 the continuation of the schedule we have set. In addition,
24 the Commission in a tentative order that it issued on
25 October 2nd concludes that the majority of the issues that

1 we are talking about here are generic in nature and may be
2 best resolved in Commission rule making dockets.

3 Proceeding with the schedule that we had already
4 established would give the Commission sufficient time to
5 finalize this order and to determine in which generic
6 proceedings those issues should be handled.

7 JUDGE CHESTNUT: Just to clarify that sentence that
8 you read on page 5 of the Commission's order that is the
9 sentence that is the subject of the errata sheet that is
10 being distributed today and it may be maybe clarified and
11 my understanding of the new language that's in going to be
12 in that sentence is on the last full sentence adjudication
13 of PECO's restructuring plan, if neither the joint partial
14 settlement petition nor another settlement is approved.

15 MR. BONNEY: Your Honor, I also point out we
16 distributed a letter that we filed with the Commission
17 today regarding extension of the proceedings. The copy
18 that I have distributed earlier had a typographical error.
19 It said May 12 about six lines down. It should be March
20 12.

21 I think I have a revised copy on the desk and the
22 revised copy is the one that's been submitted to the
23 Commission. But in that, we provide for just what the
24 Commission has clarified in this addendum that you read.
25 That is, that we would provide a full record on those

1 issues and for that matter, full litigation on the settled
2 issues if the settlement is not approved.

3 JUDGE CHESTNUT: Well, Judge Rainey and I have been
4 discussing with Chief Judge Christianson as well and while
5 there may be some merit in the way you have set up the
6 schedule there is a problem in that it's our understanding
7 from reading the order that the Commission wants to be able
8 to address all the issues by December 11th and not to defer
9 consideration of the original litigation positions if the
10 settlement is not approved.

11 MR. CLEARFIELD: Well, Your Honor, the position that
12 I have taken and I believe it's shared by the coalition, I
13 think is consistent with that and that is that we would
14 certify the record to the Commission on December 2nd. The
15 -- as part of this process, one of the other things we
16 have agreed to is that all the testimony that's been
17 submitted so far in essence is going to be stipulated into
18 the record.

19 Now, each side has their respective position with
20 respect to what the Commission can do once it gets this
21 case, but this procedure would, I think, be consistent with
22 an admonition that the Commission have the whole record
23 before it but on December 11th.

24 MR. BONNEY: Your Honor, if I could have a
25 clarification of what your understanding is, you said the

1 whole record. We obviously will not have had a whole
2 record with respect to all of the testimony that's been
3 submitted because the vast majority of testimony will not
4 have been subject to cross examination or briefing. So
5 it's impossible to do.

6 If you are including the settled issues and the
7 litigation positions that the parties have had it's simply
8 impossible to do that within the schedule that we have
9 talked about.

10 JUDGE CHESTNUT: Well, we are going to have to cram
11 it in, because that is the way that we read the order,
12 because you are right. I mean actually those issues are
13 the subject of testimony, responsive testimony and don't
14 need to be discovered but they have not had a chance to be
15 cross examined.

16 MR. BONNEY: But Your Honor --

17 JUDGE CHESTNUT: That's what we have to allow time
18 for in the litigation schedule so you can brief those
19 issues if necessary. Frankly, I am sure neither Judge
20 Rainey nor I want to cause unnecessary work for any party
21 here or for the Commission or for ourselves but we are
22 bound by the Commission's order as it's been issued to
23 date. And the fact is on December 11th they want all the
24 issues resolved unless PECO agrees to defer consideration
25 of all issues, not just partially.

1 MR. BONNEY: Well, Your Honor, if the Commission
2 rejects the settlement we will be consider deferring cross
3 examination on all issues. That's what --

4 JUDGE CHESTNUT: It's not a bifurcated schedule that
5 the Commission has put on.

6 MR. BONNEY: As a practical matter, then, how do you
7 suggest the parties cross examine that and brief both their
8 litigation position and their settlement position? It's
9 easy for Enron and MAPSA because they put on their
10 litigation position as a, quote, settlement. It's not
11 truly a settlement.

12 It's a litigation position, Your Honor and it would
13 be an extreme deprivation of our due process to require us
14 and the other parties frankly to litigate our case at the
15 same time that we have before the Commission consideration
16 of the settlement that we entered into. And furthermore as
17 a practical matter, I'm just not sure how we do it.

18 JUDGE CHESTNUT: Well, as practical matter we just
19 schedule a lot of hearings to be held.

20 MR. BONNEY: But what does our brief say? Here's
21 our statement in support of settlement and here's our
22 litigation position at the same time?

23 MR. HAWKE: That's not unusual. I point out --

24 JUDGE CHESTNUT: That's right. That's the way it's
25 done in every case.

1 MR. BONNEY: I am not familiar with any case that
2 it's been done. Our position is that the Commission will
3 look at the settlement position, determine whether it's
4 accepted or not and then permit litigation if it's not.

5 MR. HERSHEY: One of the other problems is that the
6 extent that we are proceeding with a litigated position and
7 review of the settlement some of the witnesses may have to
8 take contrary positions because necessarily, when you
9 settle a case, you are making compromises and making trade-
10 offs.

11 That's really untenable. And I understand that
12 that's not necessarily within your control, but I think we
13 need further clarification as to how to resolve that kind
14 of conflict.

15 MR. BONNEY: Let's he just add, to support --.

16 JUDGE CHESTNUT: Excuse me, Mr. Bonney. Mr.
17 Dworetzky wanted to speak.

18 MR. DWORETZKY: In response to Mr. Hershey, probably
19 Mr. Hershey identifies a problem caused by it being a
20 partial settlement. If it were a complete settlement, it
21 wouldn't be in that position but because it's a partial
22 settlement that's where we find ourselves.

23 MR. HERSHEY: I disagree. With the narrow issues
24 that we are concerned with, a litigation position is
25 necessarily almost by definition, different than the

1 position you take in a settlement on those narrow issues.
2 It has nothing to do with the issues that we don't
3 address.

4 The issues that we address in our litigation
5 position are the same as the issues we cover in our
6 settlement. There are, indeed, some additional issues in
7 the settlement and if Dr. Silkman had to testify as to both
8 in the same proceeding without any decision on whether the
9 settlement were approved or not, it would be rather
10 bizarre.

11 JUDGE CHESTNUT: Well he has testified to both in
12 this proceeding, hasn't he?

13 MR. HERSHEY: Well, but he has submitted prefiled
14 testimony. It's not been crossed. And in the very nature
15 of the Commission's treatment of settlements, this is
16 inconsistent with what we have always heard from the
17 Commission favoring settlements for good reason.

18 JUDGE CHESTNUT: I don't know if I agree with you
19 there. I really don't. I think it's not so much the
20 nature of the proceeding as to the timing of the
21 proceeding. That's the problem here. Any time there's a
22 settlement obviously there's a change that the litigation
23 position and that has to be addressed.

24 The problem here is PECO's refusal to extend the
25 December 11 date to consider all issues at once. The fact

1 is what you proposed is not what the Commission
2 contemplated and that could be addressed very easily.

3 MR. HERSHEY: I have to say that that is not only
4 PECO's position with regard to the settlement, low income
5 consumers have a very real interest in approval of the low
6 income provisions of that settlement before the winter. We
7 were disappointed that it was moved back to December 11th
8 because some people may go without electricity because of
9 that.

10 JUDGE CHESTNUT: Mr. Hershey. You really don't he
11 have to make emotional arguments. We are all aware of the
12 ramifications of this. Okay. And what we are trying to do
13 is work out something that complies with the Commission
14 order which still a workable process for everybody here and
15 so that no party's due process rights are infringed on.

16 It's not for us to sit here and tell you we expect
17 you to have this done by December 2nd. Judge Rainey and I
18 have both litigated. But we don't see that there's any
19 room in the Commission order to do anything other than to
20 have one completed proceeding by the date that the
21 Commission has in its order.

22 If PECO chooses to extend that date for a few weeks,
23 that may give you some room but you have to make some
24 decision in terms of how you are going to proceed. Given
25 the actions that you have taken so far.

1 MR. BONNEY: Your Honor, let me just say that as you
2 know from the letter that we filed we consider Enron's
3 filing of a choice plan to be a late filed action in this
4 proceeding and in fact, their motions for consolidation say
5 that. We did not have an opportunity to respond to that
6 motion before the Commission granted it.

7 In their motions Enron asserts that there would be
8 no prejudice to any party by it's filing. That's simply
9 not the case if the schedule that you are talking about is
10 adopted. I'd also point out we had scheduled three weeks
11 of hearing for litigation of the case alone. Now we have
12 an additional number of days associated with the Enron
13 petition.

14 JUDGE CHESTNUT: Right. But that's only three
15 days. That's three additional days.

16 MR. BONNEY: Yes. Your Honor. I can't -- given
17 that we had that much time, I can't imagine that the
18 Commission intended that we with do all that within a
19 month.

20 JUDGE CHESTNUT: Well, you see the same order that
21 we see.

22 MR. BONNEY: Yes. And I think the approach we have
23 outlined in our letter is consistent with the order.

24 JUDGE CHESTNUT: Ms. Moury?

25 MS. MOURY: OSBA's concern here with trying to put a

1 litigation and settlement on the same track is really
2 resources. One of the key reasons that we enter into any
3 settlement, including this one is to conserve resources and
4 as a result, we thought we were alleviating the need for
5 some of the hearing days, the need for our witness to come
6 in for cross examination, a brief on all of the litigated
7 issues that we list.

8 It seems to me that there really does need -- we do
9 need to have a resolution of the joint petition for
10 settlement before we then would go back and expend those
11 resources.

12 MR. CLEARFIELD: Your Honor, I just want to correct
13 one -- the motion for consolidation asks just that and for
14 consideration of that petition. The determination of and
15 the language in the Commission's order about all issues
16 being presented to it was not something that was in our
17 motion or in our petition, necessarily.

18 That is clearly a direction that the Commission has
19 provided. I think it's appropriate at this time before Mr.
20 Dworetzky does it, to indicate that it is our position that
21 the Commission is not bound to simply accept or reject the
22 partial settlement or the choice plan but in fact, to make
23 a determination at the end of that process and that because
24 of its inherent ability and obligation to enforce the
25 Electric Competition Act, has that authority to do so.

1 So that it is our position that there are -- there
2 may not be any need for further hearings after that process
3 but again, that's the Commission's determination that has
4 to be made.

5 MR. BONNEY: Your Honor, we strongly disagree with
6 that characterization and I think there's no legal basis
7 for it. In addition, it would be a severe detriment and
8 disincentive to engage in any settlement discussions if you
9 have to continue to litigate your case and after having
10 settled you can have a settlement that's modified.

11 MR. CLEARFIELD: If it settled without -- Your
12 Honor, that's what --

13 JUDGE CHESTNUT: It's always a possibility when you
14 settle a proceeding that the Commission is always free to
15 modify, reject or accept.

16 MR. BONNEY: I disagree. They can reject or they
17 can amend and say here are the conditions that would be
18 settled, but I don't believe they can say we'll modify the
19 agreement or impose it on you. I would also add that the
20 settlement agreement that we have entered into and Enron's
21 choice plan have a number of provisions that the Commission
22 doesn't have the authority to require in any event, even in
23 the context of restructuring litigation.

24 JUDGE CHESTNUT: Mr. Steinmetz?

25 MR. STEINMETZ: The OSA would like to seek

1 clarification. We would agree with PECO and Mr. Hershey in
2 that OCA's direct testimony does not necessarily support in
3 any way the settlement. We have not filed, although we
4 have filed a statement in support of the settlement, we
5 have not filed testimony specifically by OCA's witness in
6 support of settlement, and having to brief both our
7 litigation and our settlement position concomitantly just
8 seems like an impossible task.

9 JUDGE CHESTNUT: Mr. Steinmetz, what you chose to do
10 regarding filing testimony it seems to me you are stuck
11 with that unless we can work out some other schedule.

12 MR. STEINMETZ: We have to still --

13 JUDGE CHESTNUT: That's your decision to make.

14 MR. STEINMETZ: In our surrebuttal following our
15 direct in our litigation we have to file that as well under
16 this litigation schedule.

17 JUDGE CHESTNUT: I think all the rounds of testimony
18 have been presented. Everything's there.

19 MR. STEINMETZ: We have not filed surrebuttal from
20 our direct, from our original position. You know, we have
21 set up another broader schedule at that juncture.

22 JUDGE CHESTNUT: Mr. Mickens, did you want to say
23 something?

24 MR. MICKENS: Yes. Thank you. I would just like to
25 state on behalf of the Office of Trial Staff that the

1 schedule as has been proposed to morning would pose a
2 definite hardship for my office too. I have been
3 practicing before the Commission for a number of years and
4 this is the first time I have been faced with a possibility
5 of litigating and settling a case at the same time with
6 regard to the same issues.

7 I will merely state that I am aware of what the
8 order says and what the implications of the order
9 apparently are. I would state further, however, that if
10 the practical implications are what they appear to be, the
11 troubling legal ramifications indications that will result would
12 lead me to conclude that perhaps we would all be better
13 served by taking a different approach to this.

14 And I would suggest, I would certainly agree that
15 sometimes clarification is necessary, given the current
16 state of affairs, but it appears that perhaps the parties
17 need to reconvene and see if there's some way that we can
18 mutually agree to try to get over this bottleneck or get
19 through this.

20 JUDGE CHESTNUT: Mr. Hershey?

21 MR. HERSHEY: What I would propose, Your Honor, is
22 that we attempt for the moment to put aside this issue,
23 proceed with the witnesses today and in the meantime, some
24 of the parties might file a motion with the Commission to
25 reconsider.

1 JUDGE CHESTNUT: I am going to suggest that.
2 There's a Public Meeting next week and perhaps it would be
3 appropriate for someone to file a motion for
4 reconsideration or clarification. But I have to tell you I
5 don't think it unreasonable for the Commission to expect to
6 make one decision on all these issues, whether it's to
7 accept the settlement, modify it, reject, accept this plan,
8 that plan or the other.

9 I think this is the right way to go and I think the
10 Commission is right to do it that way and if it causes a
11 problem in terms of how you litigate it that's just
12 something we have to deal with. Timing is a different
13 question.

14 Once you talk about -- once I get resolved in terms
15 of what the process is then you talk about the timing
16 without implementing -- I think it's very clear at least at
17 this point it is, the Commission didn't contemplate a
18 bifurcated schedule to accept or reject the settlement then
19 throw it back into additional hearings additional briefs
20 and additional decision.

21 It's not the way to review or I'm not saying that's
22 not the way to go. Or it may not be easier, but at this
23 point I think maybe there should be some clarification.
24 But at some point, though, you just have to live with it.
25 You just have to proceed with it. And I think Mr. Hershey

1 is right.

2 I think we are ready to go ahead. We are all, I
3 think, very clear as to what the purpose of that testimony
4 is and what the witnesses will be. And we can go ahead and
5 have at least that part of the record ready and then we can
6 make a decision about how to proceed from there. But you
7 have to understand that is not a case that can be left
8 hanging around unresolved. It should be ready to be
9 wrapped up in one consolidated buys and it should be
10 wrapped up fairly soon. It's easier to do it that way.

11 Not only that, but also keep in mind that this
12 thing, at least part of it has been, you have been very
13 busy working at this case for a long time so it's not like
14 you are starting out from scratch here.

15 Obviously, the Enron choice plan was not presented
16 at the initial stage but on the other hand, it's not the
17 total, it's not a majority part of this proceeding; a big
18 issue, but it's not one that can't be discovered and
19 subject to hearings as you indicate in November.

20 Did that make it clear, Mr. Bonney?

21 MR. BONNEY: We were prepared to have this wrapped
22 up until the late filed litigation, second litigation
23 position by yet another Enron party, apparently was filed.

24 MR. CLEARFIELD: Your Honor, the Commission has
25 consolidated and said it wants hearings on that petition.

1 At this point, that's the state of the record.

2 JUDGE RAINEY: Let me just add that I am also
3 concerned with regard to the schedule in this case and I
4 don't see that it helps anyone to put it off too long and I
5 would state that pending the filing of a petition for
6 reconsideration and clarification, or clarification that
7 the parties think strongly about what we have before us
8 right now and work on some kind of a schedule that gets to
9 the Commission a full record in time for its December 11th
10 Public Meeting.

11 Otherwise, I think we are engaging in a game of
12 denial. We have before us a Commission order that had set
13 forth what it expects. That's all I have to say.

14 MR. BONNEY: Your Honor, let me --

15 JUDGE CHESTNUT: Mr. Bonney, go ahead.

16 MR. BONNEY: We have 60 some witnesses in the fully
17 litigated case. We have additional witnesses that have
18 been identified here and Enron apparently is going to
19 identify additional witnesses. Mr. Clearfield is committed
20 to that by this Friday.

21 But we may have some 70 witnesses, Your Honor and I
22 would just point out there may be some difficulty with
23 scheduling that.

24 JUDGE CHESTNUT: Believe me, there's nobody here who
25 has thought out that part of the process more than Judge

1 Rainey and I. But on the other hand, it's not a question
2 of -- it may not be about getting to the litigation. There
3 may be parties who wish to modify their litigation
4 positions -- I don't know -- and adopt a settlement
5 position as their litigation position. That's a
6 possibility.

7 I think that we will do as Mr. Hershey suggested and
8 go ahead. We'll put that issue aside right now, litigate
9 what we can this week. Meantime, we'll seek
10 reconsideration or clarification so that we can convene
11 maybe a telephonic prehearing and in the meantime just go
12 ahead with the schedule that's been adopted so far in terms
13 of exchanging testimony and maybe even setting hearing
14 dates to consider the Enron petition because that's not
15 really the issue here.

16 I think what's hanging us up is whether or not or
17 how and to what extent underlying litigation positions
18 should be litigated. Does everybody agree with that? Or
19 disagree with that?

20 MR. BONNEY: And how the unsettled issues should be
21 handled, as well.

22 JUDGE CHESTNUT: Well, the unsettled issues the same
23 are actually left for hearing at this point. Hasn't there
24 been testimony submitted on those issues?

25 MR. CLEARFIELD: I believe there has been. I think

1 really the difference of opinion is as to whether they
2 should be briefed on the brief that would be submitted on
3 December 2nd or whether they should adhere to the earlier
4 schedule that had been issued and reflected in your earlier
5 prehearing conference memo. Our view is that we should
6 consolidate all those and it can be done and I think Mr.
7 Bonney's taken a different view.

8 JUDGE CHESTNUT: There's no disagreement that they
9 can be the subject of those hearings?

10 MR. BONNEY: No.

11 MR. CLEARFIELD: No. We are scheduled a day, 4th is
12 scheduled for the unresolved issues.

13 JUDGE CHESTNUT: Well, hopefully by then we'll have
14 clarification of how this whole proceeding should be done
15 and we'll know whether or not you have to brief. At least
16 at that point you'll have the record for them. Okay? Does
17 everybody agree with that?

18 MR. BONNEY: Yes. Let me just say, Your Honor that
19 we would consider it a due process violation to have to
20 litigate the entire case and consider settlement at the
21 same time.

22 JUDGE CHESTNUT: Regardless, I mean, you can take
23 whatever action you feel is appropriate. We have said that
24 somebody should seek clarification from the Commission in
25 terms of its schedule and if your proposed bifurcated

1 schedule is acceptable, fine. If it's not, fine. If it's
2 not, you'll have the opportunity --

3 MR. BONNEY: Yes.

4 MR. DWORETZKY: I would suggest for the record that
5 the due process violation is something that results, in
6 part, because PECO didn't wish to extend the date from
7 December to January. They have the keys to the jail.

8 JUDGE CHESTNUT: That's right. I think that was
9 contemplated by the Commission when it issued its order
10 that if time is a problem then PECO had the option of
11 extending that December 11th date. That is what you were
12 supposed to notify us by the morning, and you didn't.

13 MR. BONNEY: Yes, I did, Your Honor. But Mr.
14 Dworetzky, apparently gives no merit or weight to the
15 arguments that have been raised about why delay is not in
16 the public interest. And I believe that in fact that their
17 filing, the Enron filing that was made was intended to
18 delay this proceeding. Which is not in the public
19 interest, in our view, Your Honor.

20 JUDGE CHESTNUT: It's not a productive use of our
21 time to discuss that.

22 MR. HERSHEY: Also, Your Honor, even if we accept
23 Mr. Dworetzky's position, neither I nor OCA nor Trial Staff
24 nor Small Business Advocate have the ability to extend the
25 schedule, and our rights are affected.

1 JUDGE CHESTNUT: Okay. Then I think are there any
2 other issues to be addressed at this prehearing?

3 MR. CLEARFIELD: Could we go off the record a
4 moment?

5 JUDGE CHESTNUT: Off the record.

6 (Discussion off the record.)

7 JUDGE CHESTNUT: Back on the record. Let's clarify
8 where we are in terms of scheduling. We are going to put
9 aside the question of how to proceed until I guess is it
10 PECO is going to seek reconsideration or clarification from
11 the Commission at some point.

12 MR. BONNEY: We will be participating in that but I
13 imagine a number a parties would be interested in --

14 JUDGE CHESTNUT: Not just limited to not having left
15 the --

16 MR. CLEARFIELD: I assume you mean beyond the
17 schedule we discussed this morning with respect to Enron's
18 position. Is that right?

19 JUDGE CHESTNUT: I was going to say we are all in
20 agreement about adopting that schedule.

21 MR. CLEARFIELD: I believe we --

22 JUDGE CHESTNUT: We are leaving open briefing on the
23 additional issues which are not resolved.

24 MR. CLEARFIELD: Briefing on additional issues and
25 the question of --

1 JUDGE CHESTNUT: Yes. The litigation petition issue
2 okay. Regarding the schedule, let me go over it again,
3 that you gave us Mr. Clearfield, was that testimony in
4 support of the Enron choice plan would be filed by noon on
5 October 24th.

6 MR. CLEARFIELD: Yes.

7 JUDGE CHESTNUT: Responsive testimony will be filed
8 on November 7th. Rebuttal testimony in response to the
9 responsive testimony to be filed on November 12th, a day of
10 hearing on the unresolved issues identified in the
11 Commission's tentative order will be held on November
12 14th. Hearings on the testimony submitted concerning the
13 Enron choice plan would be held on November 17, 18 and 19.

14 MR. CLEARFIELD: Yes.

15 JUDGE CHESTNUT: That's as far as I am prepared to
16 go in terms of the schedule. There will be some briefs
17 filled on -- let me say no, there will be briefs filed on
18 December 2nd. But the -- and those briefs will address the
19 -- that will address the PECO settlement, the Enron choice
20 plan and the unresolved issues. Everybody is in agreement
21 on that; right?

22 MR. BONNEY: No, Your Honor. We are not.

23 JUDGE CHESTNUT: That's right. You left open about
24 the unresolved issues.

25 MR. BONNEY: Yes, Your Honor.

1 MR. HERSHEY: Your Honor --

2 JUDGE CHESTNUT: As well as underlying positions.
3 Mr. Hershey?

4 MR. HERSHEY: I'm concerned with the use of the term
5 PECO settlement. It's not the PECO settlement. It's a
6 settlement involving a number of parties who signed the
7 settlement document.

8 JUDGE CHESTNUT: I was using that kind of
9 shorthand. Do you have another one?

10 MR. HERSHEY: The problem is reading in the
11 newspaper and it distorts things for people that would
12 read --

13 JUDGE CHESTNUT: Oh I think it's inaccurate it to
14 call it the PECO settlement. It's a settlement that PECO,
15 among other parties, agrees to. If you want to call it the
16 original settlement --

17 MR. HERSHEY: With that clarification.

18 MR. HAVER: But not the only settlement.

19 MR. DWORETZKY: The only partial settlement.

20 MR. HAVER: Agreed.

21 JUDGE CHESTNUT: We'll call it the proposed partial
22 settlement. How is that? If that will make you feel
23 better.

24 MR. CLEARFIELD: Just for clarification, I think
25 this is obvious. There were hearings, another set of

1 hearings that have been scheduled on the unresolved
2 issues. The only day of those hearings that we are now
3 going to have is the 14th.

4 JUDGE CHESTNUT: Didn't I say that?

5 MR. CLEARFIELD: It's just the other hearings that
6 will be canceled. The 12th and 13th should be canceled. I
7 think that's what you are clarifying.

8 JUDGE CHESTNUT: Okay.

9 MR. CLEARFIELD: Your Honor.

10 JUDGE CHESTNUT: Mr. Craig?

11 MR. CRAIG: Is it appropriate to schedule public
12 input hearings for the Enron petition?

13 MR. CLEARFIELD: Public input sessions?

14 JUDGE CHESTNUT: Is there a request for them? Are
15 you making a request?

16 MR. CRAIG: I am making an inquiry as to whether or
17 not it's appropriate to schedule public input hearings on
18 the Enron petition.

19 MR. CLEARFIELD: Your Honor, we would welcome a
20 public input on the Enron petition. I apologize for not
21 placing that on the schedule. We can try to work out the
22 date, but off the record and with you.

23 JUDGE CHESTNUT: It's a little awkward since they
24 haven't been asked for. Normally we schedule them in
25 response to requests so that we know when and where to have

1 them. Certainly, we are not against having public inputs
2 on any subject. Let's think about that. Sheer
3 Pennsylvania we can do is discuss it and gets back to you.

4 JUDGE CHESTNUT: Sure. There's no problem. But if
5 there are, I don't want them in that Media Government
6 Office Center again. That was a nice facility but there
7 has to be parking. We had a lot of complaints about how
8 inaccessible it was. So we'll see. Are there any other
9 housekeeping or prehearing conference issues.

10 MR. BONNEY: Yes, Your Honor. I was just going to
11 note that we have a witness lineup for this week and I
12 believe that we have had discussions with the parties about
13 this and I believe that they are all in agreement. But if
14 anybody doesn't have a copy of it, I have copies here.

15 JUDGE CHESTNUT: Okay.

16 MR. BONNEY: We'd also distributed a matrix for
17 parties to indicate very roughly how much cross examination
18 they thought and I think a number of folks have given that
19 to you, nonbinding kind of thing, so if that helps speed
20 things along.

21 I'd also ask if we could admit now all of the
22 testimony and the exhibits that have been identified in
23 connection with those pieces of testimony so that we can
24 avoid the direct litany that we might have to go through
25 and there have been some documents prepared, one of which

1 we revised the Appendix H that was submitted with the
2 partial settlement to reflect the additional testimony
3 that's been submitted in the three rounds of testimony over
4 the last couple weeks.

5 And this document shows in italics the testimony of
6 PECO and the other parties that has been submitted.

7 JUDGE CHESTNUT: So what you are saying is
8 incorporate that Revised Appendix H into the order instead
9 of reading it.

10 MR. BONNEY: That and the testimony that it
11 designates along with the exhibits that are attached to
12 that testimony.

13 JUDGE CHESTNUT: You are only talking about PECO
14 testimony or everybody's testimony?

15 MR. BONNEY: It would be hard to do it for everybody
16 else.

17 MR. CLEARFIELD: With your Honor's --

18 JUDGE CHESTNUT: You are stipulating into the record
19 all testimony identified in revised Appendix H?

20 MR. CLEARFIELD: I assume there could be a motion to
21 strike a particular --

22 MR. BONNEY: Particular section or subject to cross
23 examination as well.

24 JUDGE CHESTNUT: Any objection?

25 MR. COHEN: Do you have --

1 MR. MICKENS: Just a question, Your Honor.

2 JUDGE CHESTNUT: Sure.

3 MR. MICKENS: I needed to see that as well, needed
4 to make sure that all of my testimony was clearly
5 indicated.

6 MR. BONNEY: I believe that it is but I think maybe
7 subject to the caveats --

8 JUDGE CHESTNUT: Best for everybody to check to make
9 sure it does reflect --

10 MR. DWORETZKY: I would like to make sure that while
11 this categorizes the testimony by issue that those
12 categorizations are just for guidance but they are not
13 binding in terms of what testimony can be considered with
14 respect to.

15 JUDGE CHESTNUT: Certainly.

16 MR. BONNEY: That is fine. I would note that Enron
17 and NEV did not file testimony regarding stranded
18 investment and securitization earlier in this most recent
19 round of testimony with respect to the settlement.

20 JUDGE CHESTNUT: I'll tell you what I don't like
21 about this and maybe I am being nit-picky and legalistic
22 but it does not -- for PECO's testimony it's fine. But it
23 does not identify intervenor testimony by statement number
24 and exhibit number and that's what I have a problem with.
25 Maybe you could provide each of these parties could provide

1 a listing of the testimony and exhibits and that would be
2 fine.

3 MR. BONNEY: We could undertake to do that,
4 circulate it tomorrow morning for folks to check it if that
5 would be easier than --

6 MR. DWORETZKY: Your Honor circulated a helpful
7 sheet that had all the stuff on it. Maybe we could circle
8 on that what's included in this.

9 JUDGE CHESTNUT: I have a more up to date one but if
10 you want to do it, Paul or do you want to circulate mine, I
11 do want the parties to identify exactly what testimony and
12 exhibits they would like to be part of record. But I don't
13 have a problem with doing it by stipulation or by doing it
14 by incorporation of this. Mr. Cohen?

15 MR. COHEN: Your Honor, that would also include
16 incorporation of the cross examination from the
17 securitization proceeding?

18 JUDGE CHESTNUT: Your designation of the portions of
19 that record? Yes. Because as I remember the Commission's
20 order actually moved that whole record wholesale into this
21 one but we did want you to specify which portions you
22 intended to rely on. Mr. Haver?

23 MR. HAVER: My testimony is not listed on the
24 sheets. I don't know how significant that is to you.

25 MR. BONNEY: That's an oversight. I am sorry about

1 that.

2 MR. HAVER: But I would like it included.

3 JUDGE CHESTNUT: I'd to include a complete and
4 accurate list here. I can trust you all to work that out
5 and maybe at the end of this set of hearings give us a
6 complete list and we can move that into the record. Is
7 that okay with everybody?

8 MR. KLEPPINGER: And Judge, would you like copies
9 provided to the Court Reporter this week or --

10 JUDGE CHESTNUT: Well, I expect it on Friday before
11 we adjourn. You'll provide it and then we can move this
12 stuff into the record. I am not moving these documents
13 into the record now because I don't think they are specific
14 enough. We can do everybody's but I don't feel comfortable
15 doing the intervenor or testimony. So the sooner you do it
16 --

17 MR. CLEARFIELD: We would like to do it all at the
18 same time.

19 MR. BONNEY: We'll try to do this today and see if
20 we can get it tomorrow. Are we all clear on that? I know
21 it's a little awkward.

22 MR. BONNEY: I just want to note a couple of
23 things. There are, I believe, four witnesses whose
24 testimony is listed on this revised appendix H but who
25 don't appear on the witness lineup. Those witnesses are

1 Christ, Hopkins, Pratzon and Coles and the reason they
2 don't appear on the lineup is that the parties have agreed
3 that they will have no cross examination on the testimony
4 pieces.

5 MR. CLEARFIELD: What was the name you said after
6 Hopkins?

7 MR. BONNEY: Pratzon, P-r-a-t-z-o-n.

8 MR. CLEARFIELD: Off the record?

'9 JUDGE CHESTNUT: Does anybody object to these being
10 admitted by stipulation?

11 (No response.)

12 JUDGE CHESTNUT: No one --

13 MS. HARRIS: Lilian Harris here. Two of the
14 witnesses Mr. Bonney identified, Mr. Crist and Mr. Hopkins
15 were the witnesses for the Municipal Intervenors Group.
16 For purposes of administrative ease, I may not be in the
17 courtroom on Friday, I have two copies of their testimony
18 for the Court Reporter and Your Honors, if I could hand
19 them up to you and allow them to be admitted into the
20 record, now that would be convenient for me if it would be
21 convenient for you.

22 JUDGE CHESTNUT: That would be fine.

23 (Municipal Intervenors Group Statements Nos. 1, 2
24 and 3 were produced and marked for identification.)

25 JUDGE CHESTNUT: Crist and Hopkins, are they

1 identified on Revised Appendix H?

2 MS. HARRIS: Yes, they are. They are not identified
3 by statement number but I can work that out with Mr. Bonney
4 to make sure that the final copy does reflect that.

5 JUDGE CHESTNUT: The same thing is true of Ms.
6 Coles?

7 MR. CLEARFIELD: It's Mister, Your Honor.

8 JUDGE CHESTNUT: Oh. David. I beg his pardon.

9 Next does anybody have anything else of a
10 housekeeping nature?

11 MR. CLEARFIELD: Just there may be times when
12 portions of the testimony which is applicable or relevant
13 to an issue will be discussed this week will be referenced
14 or that we would like to reference it.

15 Is it -- can we agree that while the testimony has
16 not formally been moved into the record it will be moved
17 into the record so that we don't need to identify it and
18 move it into the record basically twice? Once if it's used
19 as part of cross examination and secondly, or and secondly
20 at the end of the or on Friday when it's moved into the
21 record.

22 JUDGE CHESTNUT: I notice by moving it till Friday
23 it's a little awkward because we are not supposed to cross
24 on testimony or an exhibit that's not been made part of the
25 record. Had this been more specific we could have

1 submitted that now and we wouldn't have had that problem
2 but yes, let's be reasonable about it. But let's not wait
3 maybe we shouldn't wait till Friday to have a specific
4 list. Maybe you folks can do it sooner. We'll deal with
5 it when it comes in.

6 MR. CLEARFIELD: Okay. Thank you.

7 JUDGE CHESTNUT: Yes, did you want so say
8 something?

9 MR. BONNEY: No, Your Honor. Thank you.

10 JUDGE CHESTNUT: Is there anything else? Mr. Cohen
11 do you want us to take your stipulation, then?

12 MR. COHEN: Yes, Your Honor. But --

13 JUDGE CHESTNUT: Has that been --

14 MR. COHEN: That would be a motion we would make on
15 the record not in the prehearing conference which I thought
16 was what we were still on.

17 JUDGE CHESTNUT: I know but I have thought about it
18 and I thought maybe it's appropriate to do now.

19 MR. COHEN: All right. Thank you.

20 PECO Energy Company and Indianapolis Power and Light
21 had entered into a stipulation agreement on September 17th
22 and promptly thereafter we submitted it to all of the
23 parties in the service list.

24 We have heard no objection to the stipulation and in
25 addition to that, I have spoken with most if not all of the

1 active parties who have indicated to me they have no
2 objection to what we are attempting to accomplish here
3 which is mainly for purposes of administrative convenience,
4 if not going over the same territory regarding the stranded
5 cost recovery and our concerns about the Commerce Clause
6 issues that were raised in the securitization proceeding
7 doing it here, but rather having that record being
8 incorporated into this record and that record being the
9 record that is considered on an appeal on those issues.

10 Having heard no objection and having had no
11 objection filed with the Commission within the ten-day
12 period, what we wish to do is enter into the record in this
13 proceeding, the stipulation and agreement that PECO Energy
14 and IPL have signed. I have copies available for everybody
15 here that we had sent it out to and also distributed a
16 draft of it at the fourth, the third prehearing conference.

17 JUDGE CHESTNUT: Okay. That will be made part of
18 the record. If you have copies for the Court Reporter,
19 that will be fine.

20 Does anybody have any other issue that should be
21 addressed at this time. Mr. Haver?

22 MR. HAVER: I'd like to be moved if the inactive
23 list to the active list so I get all of the filings.

24 JUDGE CHESTNUT: Okay. Then, I guess we'll go with
25 our first witness. Is that going to be you, Mr. Haver?

1 MR. HAVER: I think so. While I am coming up, may I
2 hand my testimony now.

3 JUDGE CHESTNUT: Hand it to the Court Reporter.

4 MR. HAVER: Since you are not going to move it I'd
5 rather leave it with you in case I'm not here Friday.

6 JUDGE CHESTNUT: Wait, I am confused. You have
7 pre-served your testimony.

8 MR. HAVER: Yes. How many copies do you need?

9 JUDGE CHESTNUT: You have to give two to the Court
10 Reporter. But Judge Rainey and I have your copies.

11 MR. HAVER: Your Honor, also in light of the public
12 hearing I am challenging, asking the people who attended to
13 expose themselves.

14 JUDGE CHESTNUT: Isn't that illegal?

15 (Laughter.)

16 MR. HAVER: I have asked them in light of Friday's
17 hearing, I have asked them to say who's paying them.

18 MR. CLEARFIELD: Does everybody get to do this?

19 MR. HAVER: I should hope you'd ask me this. I
20 don't know if you have the courage to do so, though.

21 MR. CLEARFIELD: Your, before Mr. Haver is
22 presented, I assume there's an issue that Mr. Hershey and I
23 have discussed and I believe resolved and it has to do with
24 an additional agreement between PECO and several of the
25 parties or entities that are represented by Mr. Hershey.

1 And this was obtained by, with consent from Mr.
2 Hershey during discovery and it is a side letter or side
3 agreement that sets forth certain additional terms that
4 PECO Energy and certain of the parties, including CEPA,
5 have agreed to.

6 JUDGE CHESTNUT: Excuse me. Are you doing this as a
7 response to Mr. Haver's letter that he just passed out?

8 MR. CLEARFIELD: Not at all.

9 JUDGE CHESTNUT: No it's separate.

10 MR. CLEARFIELD: I didn't read the letter.

11 JUDGE CHESTNUT: Okay. Fine.

12 MR. CLEARFIELD: The appropriate witness to raise
13 this may well have been Mr. Haver, in his position as with
14 CEPA, but Mr. Hershey and I have agreed that the side
15 agreement which I would hand out at this point will be
16 stipulated into the record as an exhibit and Mr. Haver is
17 going to make a statement with respect to that we agreed to
18 with respect to a certain portion of the agreement. Is
19 that correct?

20 MR. HERSHEY: With one correction, you are
21 accurate. We have agreed that this may be entered into the
22 record but it's not Mr. Haver who will make the statement.
23 Mr. Clearfield and I have agreed that it can be stipulated
24 that -- let me back up.

25 In the settlement agreement the side letter, it is

1 agreed that PECO will pay to the Delaware Valley Community
2 Reinvestment Fund the sum of \$3 million for community
3 development over a period of three years.

4 Mr. Clearfield asked who was it who selected the
5 Delaware Valley Community Reinvestment Fund and we have
6 agreed to stipulate that it was CEPA, TAG, and ACORN, that
7 is the coalition of groups that I represent, that proposed
8 that body to receive the funds and no other party.

9 MR. CLEARFIELD: Your Honor, I would propose that
10 this be marked as Enron Cross Exhibit, unless Mr. Hershey
11 prefers it to be marked as a CEPA exhibit.

12 MR. HERSHEY: I am indifferent. It's in the record.

13 JUDGE CHESTNUT: Somebody's got to identify it or
14 it's not going to be in the record.

15 MR. HERSHEY: We'll make it CEPA exhibit whatever
16 the number is.

17 JUDGE CHESTNUT: Since the parties have their own
18 exhibit numbering systems. Did you already use one for an
19 exhibit for your witnesses?

20 MR. HERSHEY: We have used a statement but not an
21 exhibit.

22 JUDGE CHESTNUT: I think for your exhibits, let me
23 check and see. I want to make sure it's all right. We'll
24 mark it as CEPA 2. CEPA Exhibit Number 2.

25 (CEPA Exhibit No. 2 was produced and
marked for identification.)

1 MR. HERSHEY: We are keeping the designation as CEPA
2 as the name rather than saying CEPA, TAG ACORN.

3 JUDGE CHESTNUT: Yes.

4 MR. HERSHEY: It's on behalf of all the parties I
5 represent.

6 JUDGE CHESTNUT: CEPA Exhibit 2 is the response to
7 Enron VIII-41.

8 MR. CLEARFIELD: Yes, Your Honor.

9 JUDGE CHESTNUT: And that's admitted.

10 (CEPA Exhibit No. 2 was admitted in
11 evidence.)

12 JUDGE CHESTNUT: Anything else before we proceed
13 with our first witness?

14 MR. HERSHEY: It occurs to me, Your Honor, that
15 while Mr. Haver's request was, may not be have been taken
16 seriously, I take it seriously and I would make the request
17 contained in his handout as an on the record data request.

18 JUDGE CHESTNUT: Well, the Consumers Coalition For
19 Choice is not a party to this proceeding.

20 MR. BONNEY: They may be affiliated with two other
21 parties, Your Honor, and I think that's the question.

22 JUDGE CHESTNUT: If he can identify someone to be
23 responsive to this request fine. It's not a party here.

24 MR. HERSHEY: Then I would simply extend the request
25 that if there is a formal party to this proceeding that has

1 a connection with Consumers Coalition for Choice or can
2 identify who does, if they would provide that information
3 for the record.

4 JUDGE CHESTNUT: Well, then I guess -- are you
5 making this an interrogatory addressed to all the parties
6 in this proceeding?

7 MR. HERSHEY: Yes, Your Honor. I am not going to
8 demand that every party write out a no. But I will ask
9 that any party that does have concrete information indeed
10 provide a written response.

11 JUDGE CHESTNUT: Well, we'll take that under
12 advisement. Does anybody have a response to it?

13 (No response.)

14 JUDGE CHESTNUT: Okay. Mr. Haver, do you want to
15 stand, please.

16 LANCE HAVER, called as a witness, having been duly
17 sworn, was examined and testified as follows:

18 DIRECT TESTIMONY

19 JUDGE CHESTNUT: Please give and spell your name for
20 the record.

21 THE WITNESS: Lance, L-a-n-c-e, Haver, H-a-v-e-r.

22 JUDGE CHESTNUT: State your address.

23 THE WITNESS: 6803 L-a-w-n-t-o-n Avenue.

24 Philadelphia, 19126.

25 JUDGE CHESTNUT: Go ahead. Do you want to identify

1 the statement that you have previously served and adopt
2 that as your testimony?

3 THE WITNESS: Okay. I am identifying as my
4 testimony the joint petition for settlement of PECO's
5 restructuring plan and it's my testimony.

6 JUDGE CHESTNUT: You are adopting the petition as
7 your testimony?

8 THE WITNESS: I am adopting my testimony in regard to
9 the joint petition for settlement.

10 JUDGE CHESTNUT: Let's make it clear. What you are
11 talking about is this document.

12 THE WITNESS: Yes.

13 JUDGE CHESTNUT: Which is your testimony. It's not
14 the joint petition?

15 THE WITNESS: That's correct.

16 JUDGE CHESTNUT: We'll call that Haver Statement 1.
17 Unless you have a different --

18 THE WITNESS: I have filed earlier, before Mr.
19 Mitnik's testimony a statement in support of settlement
20 which would probably be my one. This would be two.

21 JUDGE CHESTNUT: You're saying you don't want that
22 as your testimony also.

23 THE WITNESS: I am happy to do both. I am not sure
24 how Your Honor wants to treat the support of settlement
25 statements. It's not testimony per se.

1 JUDGE CHESTNUT: You can adopt it as your
2 testimony. I don't think it was filed, was it, in the time
3 frame?

4 THE WITNESS: There was no time frame set for the
5 filing of support of testimony?

6 JUDGE CHESTNUT: Sure there was. Let me see if I
7 have it here. This is what you're talking about called
8 statement of Lance Haver. Does everybody have that? Has
9 everybody received that?

10 MR. CLEARFIELD: Was that something that was filed
11 at the same time that some of the statements in support of
12 the partial settlement were filed?

13 JUDGE CHESTNUT: I don't remember when he did it,
14 frankly.

15 THE WITNESS: Yes.

16 MR. DWORETZKY: Is there a date on it?

17 JUDGE CHESTNUT: I thought you did it at the
18 prehearing.

19 THE WITNESS: I believe that I did, Your Honor.
20 Filed in the prehearing.

21 JUDGE CHESTNUT: It was passed out. Did you serve
22 the other parties?

23 THE WITNESS: I believe I served a copy on the
24 parties.

25 JUDGE CHESTNUT: Does everybody have a copy of it

1 who wants one?

2 MR. COHEN: We received a copy.

3 JUDGE CHESTNUT: Mr. Clearfield, do you need a
4 copy?

5 MR. CLEARFIELD: No. I just wanted to make sure I
6 know where we stand.

7 JUDGE CHESTNUT: Want to make sure we are talking
8 about the right documents here.

9 JUDGE RAINEY: So Mr. Haver, you are making both
10 statements a part of the record?

11 THE WITNESS: Yes, sir.

12 JUDGE CHESTNUT: So we'll say this one will be
13 Statement 1, called statement of Lance Haver and the other
14 will be Statement 2. Does anybody have a problem with
15 that.

16 (No response.)

17 JUDGE CHESTNUT: They are identified for the record
18 as Haver Statement 1 and Haver Statement 2.

19 (Haver Statements Nos. 1 and 2 were produced and
20 marked for identification.)

21 JUDGE CHESTNUT: Were these documents prepared by
22 you or under your direct supervision and control?

23 THE WITNESS: Yes.

24 JUDGE CHESTNUT: Do you have any additions, changes
25 or corrections?

1 THE WITNESS: No, I do not.

2 JUDGE CHESTNUT: If you were asked today -- I guess
3 we are not in question and answer format. But is this the
4 testimony you would give today if you were giving it as
5 your direct testimony.

6 THE WITNESS: Yes, it is.

7 JUDGE CHESTNUT: Okay. Then at this point you would
8 move that into the record?

9 THE WITNESS: Yes. I move them into the record.

10 JUDGE CHESTNUT: Are there any objections.

11 (No response.)

12 JUDGE CHESTNUT: Then the documents are admitted
13 (Haver Statements Nos. 1 and 2 were admitted in
14 evidence.)

15 JUDGE CHESTNUT: And then Mr. Haver, I guess, is
16 available for cross examination. Does any party have any
17 questions for Mr. Haver?

18 MR. CLEARFIELD: Your Honor. I have a few.

19 JUDGE CHESTNUT: Sure.

20 CROSS EXAMINATION

21 BY MR. CLEARFIELD:

22 Q Good morning, Mr. Haver.

23 A Good morning. Hope you made it home in time for
24 the holidays after Friday.

25 Q A little late, but I did make it?

1 JUDGE CHESTNUT: Please let's keep the colloquy to a
2 minimum, please. Pleasantries can be done off the record.

3 BY MR. CLEARFIELD:

4 Q Mr. Haver, on page 2 of the statement that was
5 admitted today?

6 JUDGE CHESTNUT: Which statement is that?

7 MR. CLEARFIELD: Statement 2, I believe.

8 JUDGE CHESTNUT: Statement 2.

9 BY MR. CLEARFIELD:

10 Q In the filth paragraph down, you discuss your
11 view of some developments at the early stages of telephone
12 deregulation or competition in long distance markets. Is
13 that right?

14 A Yes.

15 Q Now, you say that there's protection in the
16 agreement to stop the process that you described there,
17 that is that customers who made no choice were charged more
18 than those who chose. What paragraph -- are referring to
19 paragraph 36 of the settlement agreement that discusses a
20 special provision for residential customers?

21 A I am saying -- I don't have the paragraphs
22 memorized.

23 Q I understand this is the provision that says that
24 PECO, through a separate competitive generating supply
25 service company, can offer different services and rates but

1 must offer a rate that is equivalent to the standard market
2 offer that's offered by the distribution company. Do you
3 recall that part?

4 A I recall that paragraph, yes.

5 Q Is that the provision that you were referring to?

6 A Yes.

7 Q Are you aware, Mr. Haver, that PECO plans to
8 offer a number of other rates, including discounted rates
9 in addition to that standard market offer?

10 A Yes.

11 Q And in that context, wouldn't PECO be, in fact,
12 doing exactly what you have characterized the long distance
13 telephone industry as doing, that is offering a sort of
14 standard rate but discounting the rates for other customers
15 and other forms?

16 A No.

17 Q Does the fact that PECO plans to offer these
18 various rates both through its supplier company and its
19 distribution company trouble you with respect to the
20 protection that you believe was existent in paragraph 36 of
21 the settlement. That is the paragraph you just read?

22 A I was troubled by all the commotion that between
23 all the parties. I thought that all of this was -- I am
24 not sure though exactly what you are talking about because
25 the settlement unfortunately has been stopped by your

1 clients. So we have no way of knowing what the future
2 would look like in --

3 Q I am referring to a specific provision in the
4 settlement that says that the supplier, that PECO, in the
5 form of a competitive generation supply company, is
6 required to offer a rate for all-hours residential service,
7 that is equivalent to the standard market rate that PECO's
8 distribution company residential customers will be offered
9 pursuant to stipulation. Do you remember that part of the
10 question at settlement?

11 A Sure.

12 Q Now, if the supply company has to offer that
13 rate, but at the same time is able to provide various kinds
14 of discounted rates off of that rate, isn't that going to
15 defeat the purpose of that proceeding, that is to protect
16 in your view, to protect default customers?

17 A I don't believe you are correct.

18 MR. CLEARFIELD: That's all I have, Your Honor.

19 JUDGE CHESTNUT: Okay. Does anybody else have any
20 questions?

21 (No response.)

22 JUDGE CHESTNUT: Thank you very much. You are
23 excused.

24 THE WITNESS: Thank you.

25 JUDGE CHESTNUT: Then the next witness would be Mr.

1 Hill? Would you stand, please, and raise your right hand.

2 THOMAS P. HILL, JR., called as a witness, having
3 been duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 JUDGE CHESTNUT: Please sit down and give and spell
6 your name for the record.

7 THE WITNESS: My name is Thomas P. Hill, Jr. My
8 address is 2301 Market Street, Philadelphia, Pennsylvania.
9 19103.

10 JUDGE CHESTNUT: Okay, Mr. Bonney.

11 MR. BONNEY: Thank you, Your Honor.

12 BY MR. BONNEY:

13 Q Mr. Hill, by whom are you employed and in what
14 capacity?

15 A I am employed by PECO Energy Company. I am vice
16 president and controller of PECO Energy.

17 MR. BONNEY: Your Honor, as indicated on revised
18 Appendix H we have distributed five pieces of testimony
19 from Mr. Hill, direct testimony, rebuttal testimony which
20 are Statements 1, PECO Statements 1 and 1R; supplemental
21 rebuttal testimony; PECO Statement Number 1SR, rejoinder
22 testimony; PECO Statement Number 1-RJ, and supplemental
23 rejoinder testimony of Mr. Hill, at PECO Statement Number
24 1-SRJ.

25 JUDGE CHESTNUT: Excuse me. Did you have in there

1 1S?

2 MR. BONNEY: I did not list 1S although Mr. Hill did
3 submit yet another statement, but it's not related to the
4 issues we are here for. We have not asked that it be
5 admitted at this time.

6 Mr. Hill has also submitted, along with these
7 testimonies, 32 exhibits and they are labeled Exhibits
8 TPH-1, TPH-2, et cetera, through TPH-32.

9 JUDGE CHESTNUT: Okay.

10 MR. BONNEY: We ask that those be admitted subject
11 to cross examination.

12 JUDGE CHESTNUT: Excuse me for a second. Let me
13 make sure I have the statements in order 1, 1R, 1SR, 1RJ.
14 1-SRJ.

15 MR. BONNEY: Yes, Your Honor.

16 JUDGE CHESTNUT: When did he file 1-SRJ?

17 MR. BONNEY: We filed that I think it was October
18 8th. I am sorry, Your Honor. We filed it yesterday.

19 THE WITNESS: 13th.

20 MR. BONNEY: This was testimony in response to the
21 testimony that was submitted by environmentalists and by
22 agreement with the environmentalists, they permitted us
23 additional time to file that.

24 JUDGE CHESTNUT: We don't have that.

25 MR. BONNEY: We have copies available. Thank you

1 for clarifying that.

2 MR. BONNEY: Your Honor. Let me clarify. Exhibit
3 15, TPH-15 goes with the supplemental testimony that is not
4 being designated or requested to be admitted into the
5 record so we would ask at this time that the 32 exhibits
6 with the exception of 15 be admitted.

7 JUDGE CHESTNUT: So you are talking about 1 through
8 14 and 16 through 32?

9 MR. BONNEY: Yes, Your Honor.

10 JUDGE CHESTNUT: Any objections.

11 (No response.)

12 JUDGE CHESTNUT: Documents are admitted.

13 (PECO Statements Nos. 1, 1R, 1SR, 1RJ, 1-SRJ and
14 PECO Exhibits Nos. 1 through 14 and 16 through 32
15 was produced and marked for identification and
admitted in evidence.)

16 BY MR. BONNEY:

17 Q Mr. Hill do you have any corrections to the
18 testimony or schedules?

19 A Yes, I have one correction to my rejoinder
20 testimony identified as PECO Statement Number 1RJ, page 13,
21 line 10. On line 10 it indicates a purchase of 70
22 megawatts of capacity for the month of November by Delmarva
23 Power and Light or Connectiv, and that 70 megawatts should
24 be 75 megawatts.

25 Q Are there any further corrections, Mr. Hill?

1 A None that I am aware.

2 MR. BONNEY: Your Honor, the witness is available
3 for cross examination.

4 JUDGE CHESTNUT: Okay. Does anyone have any
5 questions for Mr. Hill? Mr. Doll?

6 MR. DOLL: Yes.

7 CROSS EXAMINATION

8 BY MR. DOLL:

9 Q Good morning, Mr. Hill.

10 A Good morning, Mr. Doll.

11 Q I take it that you were also responsible for the
12 preparation of the various appendices to the settlement?
13 Appendix A, B, C?

14 A Yes, I participated on behalf of PECO in the
15 construction of the joint petition for settlement,
16 including the various appendices.

17 Q Okay. Mr. Hill, do you happen to have, let's
18 just take for example out of Exhibit C the summary sheet
19 for 1999? And I just want to make sure of some things in
20 my own mind.

21 JUDGE CHESTNUT: I am sorry. What was that
22 reference, Mr. Doll?

23 MR. DOLL: It's Exhibit C to the settlement sheet --
24 to the settlement.

25 MR. BONNEY: I believe it's Appendix C.

1 MR. DOLL: I am sorry. Appendix C.

2 JUDGE CHESTNUT: Is that one of those --

3 MR. DOLL: That's it.

4 JUDGE CHESTNUT: Okay.

5 BY MR. DOLL:

6 Q Mr. Hill, as I understand your testimony from
7 1999, for example, the total sales is 33 million 569 and
8 change. Is that correct?

9 A Yes. The total annual sales for the pro forma
10 test year ended December 31, 1996 is 33,569,358.

11 Q And that is the sales that you used for 1999
12 through I believe it's 2008?

13 A We used the same sales for each of the years in
14 the proof of revenue, yes.

15 Q So essentially, you are testifying that there's
16 no load growth through 2008?

17 A I have indicated in my testimony in various
18 pieces of my testimony and also Mr. Cohn's testimony that
19 we do not believe, PECO does not believe as one of the
20 joint petitioners, that there is any reasonable projection
21 of sales growth. This sheet merely depicts the proof of
22 revenue overlaid on 1999 through the year 2008 overlaying
23 the provisions of the settlement.

24 Q Okay. And you use that same sales figure through
25 the year 2008. Am I correct?

1 A I have to correct you. This is a joint petition
2 for settlement of which PECO Energy was one of the
3 signatories to that settlement. The joint petitioners have
4 not utilized these sales in construction of this joint
5 petition.

6 PECO, through its testimony which includes my
7 testimony and Mr. Cohn's justifies the fact that sales are
8 relatively flat, i.e., no sales growth is projected over
9 the period of time that these rates will be employed, which
10 is 1999 -- excuse me, September 1, 1998 through December
11 31, 2008.

12 Q And the notation, I believe notation A on 1999,
13 as it is on all of them, says that the source for that
14 first column was Exhibit RAC-10 page 44 of 83. Is that
15 correct?

16 A That's what appears to be the note, yes.

17 MR. DOLL: Your Honor, I believe that this is
18 already in the record through the wholesale moving of thing
19 today but to make it easier I have had copies made and
20 would like to have it marked as Connectiv Cross Exam
21 Exhibit Number 1; page 44 of RAC-10.

22 JUDGE CHESTNUT: It will be so marked.

23 (Connectiv Cross Examination Exhibit No. 1 was
24 produced and marked for identification.)

25

1 BY MR. DOLL:

2 Q Now, looking at that Cross Examination Exhibit
3 Number 1 would you agree with me just from a mathematical
4 standpoint, that the numbers in your total column do not
5 equate to the number in your sales column?

6 A Which number are you referring to, Mr. Doll?

7 Q On Cross Examination Exhibit Number 1, the total
8 column, if you go down to C-2, allocator C-2 which you
9 state on your Appendix C you used for sales, would you
10 agree that the total sales do not match?

11 A Sales shown on RAC-10 total 33,167,070 MWH which
12 is not the same number that appears on Appendix C, which is
13 also the subject of an interrogatory response, question
14 response.

15 Q You have answered my question, Mr. Hill.

16 A Fine.

17 MR. BONNEY: I'd ask that the witness be permitted
18 to finish answering the question.

19 JUDGE CHESTNUT: He had fully answered the
20 question. He was going beyond that. I think we all
21 recognize that.

22 MR. BONNEY: If he wants to refer to an
23 interrogatory response that directly addresses this
24 question I think the witness should be permitted to do
25 that.

1 JUDGE CHESTNUT: You can do that on redirect.

2 MR. BONNEY: Thank you, Your Honor.

3 BY MR. DOLL:

4 Q I'd like to refer you to page 8 of Statement 1RJ?

5 JUDGE CHESTNUT: Did you say page 8?

6 MR. DOLL: Page 8, yes, Your Honor.

7 BY MR. DOLL:

8 Q Specifically, lines 4 and 5, specifically line
9 5. You basically state that Mr. Mitnick and Mr. Johnstone
10 employ wholly unrealistic sales levels. Are you there,
11 sir?

12 A Yes, I am.

13 Q Would you agree with me that Mr. Mitnick's sales
14 levels were taken from PECO's IRP from the resource
15 planning that was filed May 1st of 1997 with the
16 Commission?

17 A Yes. As I have indicated in response to
18 interrogatories that was the source of the data, which is
19 outdated information and therefore, in my opinion,
20 unrealistic.

21 MR. DOLL: If it please Your Honor I would like to
22 have marked Connectiv Cross Examination Exhibit Number 2 a
23 copy of the 1997 annual resource planning report that is on
24 file with the Commission.

25 JUDGE CHESTNUT: It will be so marked.

1 (Connective Cross Examination Exhibit No. 2 was
2 produced and marked for identification.)

3 JUDGE CHESTNUT: That's PECO's 1997 annual resource
4 report?

5 MR. DOLL: Yes.

6 BY MR. DOLL:

7 Q Just to be sure, you did agree, did you not, that
8 the numbers that were used by Mr. Mitnick came from this
9 report?

10 A That's my understanding. I would ask Mr. Mitnick
11 that question, but that's my understanding.

12 Q And that now it is your testimony that these
13 numbers are wholly unrealistic?

14 A Yes, it is. Absolutely.

15 Q Have you contacted the Commission or CEEP to
16 inform them that the numbers contained in your report are
17 wholly unrealistic?

18 A I believe the Commission and CEEP are both aware
19 that the numbers are unrealistic because they represent
20 merely an update of the 1996 data per the instructions of
21 CEEP and the Commission and do not reflect a current
22 estimate of sales for PECO Energy beyond the 1996 --

23 Q Mr. Hill, my question -- excuse me. My question
24 was did you inform the Commission that these numbers are
25 wholly unrealistic?

1 A No. I said the Commission is aware. The
2 Commission informed us that all they wanted us to do was to
3 update the resource plan for actual 1996 data because we
4 were involved in a restructuring proceeding. They did not
5 want an update of the sales beyond 1996 and said we could
6 use our prior year estimate. So they are outdated and
7 represent 1995 estimates.

8 Q Do you have any -- are there any written
9 documents to that effect?

10 A Just the instructions that my staff received from
11 CEEP in terms of preparing that document. I don't know
12 whether they were written or oral instructions. But I
13 believe they pertained to all the Pennsylvania companies.

14 MR. DOLL: Could I make an on record data request
15 that if they are in writing that they be supplied.

16 MR. BONNEY: I have a clarification as to what it is
17 exactly you are looking for. Are you looking for
18 communications from the Commission to PECO or from PECO to
19 the Commission?

20 MR. DOLL: Either way. What I am trying to find
21 out, Mr. Hill said that there was no communication from
22 PECO to the Commission. Being under oath, I believe that
23 testimony.

24 MR. BONNEY: Your Honor, that wasn't his testimony.

25 MR. DOLL: Then I misunderstood.

1 JUDGE CHESTNUT: Can I maybe clarify? I thought,
2 Mr. Hill, that you or your staff approached the Commission
3 or maybe you didn't approach the Commission, but it was
4 communicated to you by the Commission that it wasn't
5 necessary to provide updated projections.

6 THE WITNESS: Yes. It's my understanding that the
7 Bureau of CEEP contacted PECO, along with all the other
8 Pennsylvania companies and indicated that for the 1997
9 plan, all they wished for was to for us to superimpose the
10 '96 actual data replacing the '96 estimate which appeared
11 in the previous year's report which is very evident if you
12 lay this report side by side with the prior report and they
13 ask for no updates for sales because they knew we were
14 engaged in restructuring proceedings and did not wish to
15 burden us with an update to this plan.

16 Whether that was a verbal communication from the
17 Bureau of CEEP or whether that was a directive which was
18 written I will be happy to check and supply it for the
19 record.

20 JUDGE CHESTNUT: Mr. Doll?

21 MR. DOLL: The request then, would be anything that
22 came from the Commission to Mr. Hill.

23 BY MR. DOLL:

24 Q Mr. Hill, are you familiar with the comments that
25 PECO Energy Company filed to the Commission's tentative

1 order on the retail access pilot program?

2 A I am sorry. Would you repeat your question.

3 Q Perhaps this will refresh your recollection.

4 Your Honor, if I might, I'd like to have this marked as

5 Connectiv Cross Examination Exhibit Number 3.

6 JUDGE CHESTNUT: It will be so marked.

7 (Connectiv Cross Examination Exhibit No. 3 was
8 produced and marked for identification.)

9 JUDGE CHESTNUT: Excuse me. Don't forget to mark
10 the number on these before you pass them out. They can get
11 lost in the shuffle.

12 MR. DOLL: Thank you, Your Honor.

13 BY MR. DOLL:

14 Q Mr. Hill, have you had a chance to look at that
15 document?

16 A This appears to be the company's comments to the
17 Commission's preliminary order and it appears to be
18 submitted to the Commission on May 22nd, '97.

19 Q Okay. You would look --

20 A It appears to be parts of it.

21 Q I am sorry.

22 A If I am reading it correctly, it begins, my copy
23 begins on page 32.

24 Q Yes.

25 A And there are missing pieces of the document. Is

1 this intended to be a complete submission? Or a partial?

2 Q No. At this point, it is a partial.

3 A So this is not the company's complete submission
4 to that Commission order.

5 MR. DOLL: I don't want to get into a legal argument
6 with Mr. Hill.

7 JUDGE CHESTNUT: It's an extract of the comments.
8 Is that fair?

9 MR. DOLL: Extract of the comments relating to a
10 particular --

11 THE WITNESS: I think I was just indicating it was
12 not the complete response.

13 BY MR. DOLL:

14 Q Mr. Hill, on that page 32, in the second
15 paragraph, am I correct that when these comments were
16 filed, that you were relying upon a report prepared by ICF
17 Resources, Incorporated, which is the remainder of that
18 document?

19 MR. BONNEY: Request for clarification. When you
20 say you, do you mean PECO Energy or Mr. Hill?

21 MR. DOLL: I am sorry. I am referring to PECO
22 Energy.

23 MR. BONNEY: Thank you.

24 THE WITNESS: This is a report prepared by ICF
25 Resources which was used in that earlier proceeding but as

1 my counsel clarified, I did not participate in this
2 proceeding.

3 BY MR. DOLL:

4 Q Within the context of that paragraph, you are
5 saying that what ICF did was did a PJM model and that that
6 should be used for PECO?

7 MR. BONNEY: Objection. Your Honor, Mr. Hill just
8 testified that he did not participate in preparation of
9 this document and the document speaks for itself.

10 JUDGE CHESTNUT: Well, do you want to identify a
11 more appropriate witness who would be prepared to address
12 it?

13 MR. BONNEY: I am not sure what this is, Your
14 Honor. I am not sure where the line of questions are going
15 or on what subject matter they are going to.

16 JUDGE CHESTNUT: I think it's pretty clear, but Mr.
17 Doll, do you want to go ahead?

18 MR. DOLL: I thought it was, too. It is going to
19 the sales growth that has obviously been projected within
20 this document, whether PECO had at one time relied upon
21 this document.

22 JUDGE CHESTNUT: Aren't you attempting to impeach
23 Mr. Hill's characterization of Mr. Mitnick and Mr.
24 Johnstone's statements as unrealistic? By using other
25 documents prepared by someone else, not by PECO?

1 MR. DOLL: That's correct.

2 JUDGE CHESTNUT: I think that's an appropriate use.

3 MR. BONNEY: It may be, Your Honor, if Mr. Hill were
4 familiar with the document. If he's not, I am not sure
5 what asking him about his understanding of the paragraph
6 that he's reading right now has relevance to this
7 proceeding.

8 JUDGE CHESTNUT: I don't think Mr. Hill testified he
9 was unfamiliar with the document. I thought he didn't
10 prepare it.

11 MR. BONNEY: Well, Your Honor in showing the
12 document to the witness to refresh his recollection, Mr.
13 Doll hasn't asked him if his recollection has been
14 refreshed. So we don't know the answer to that question.

15 MR. DOLL: I can't -- I'll ask now.

16 BY MR. DOLL:

17 Q Are you familiar with the document I thought I
18 had --

19 A Are you referring to the ICF document that's
20 attached?

21 Q Yes.

22 A I have never read that document.

23 Q Are you aware the filing that was made?

24 A I am aware of our filing in the proceeding. I am
25 also casually aware that in that proceeding there was some

1 data prepared by ICF Resources that was used to support the
2 PECO position. But I am not familiar with this document.
3 I have not reviewed it. I'd be happy to if you'd like me
4 to.

5 Q Would you refer -- and this may be difficult to
6 see but in the lower left hand corner of the ICF document
7 it says page 18 and it talks about load growth.

8 A I see the paragraph you are referring to.

9 MR. BONNEY: I'm sorry to keep interrupting. Are
10 you referring to page 16 which says Load Growth or page 18
11 which says Responding to Load Growth, Addition of New
12 Capacity?

13 MR. DOLL: Chapter 3, Formulating Key Assumptions.

14 MR. BONNEY: I believe that's page 16.

15 MR. DOLL: You are correct, Mr. Bonney.

16 MR. BONNEY: Okay. Thank you.

17 BY MR. DOLL:

18 Q Have you familiarized yourself with that, Mr.
19 Hill?

20 A Do you want me to read it? I have not read it.
21 I have found the location.

22 JUDGE CHESTNUT: You can read it to yourself. I
23 think the document can be read by all.

24 (Pause.)

25 THE WITNESS: I have read those two paragraphs.

1 BY MR. DOLL:

2 Q Would you also now consider these load growth
3 projections that are mentioned in there to be wholly
4 unrealistic?

5 A These are load growth projections made by ICF or
6 at least in the report from ICF Keiser. They don't refer
7 to PECO. They refer to the PJM. And there's no PECO-
8 specific data mentioned in either of those two paragraphs
9 and I stand by my prior statement that the load forecast
10 utilized by your witnesses is totally inappropriate.

11 Q I take you back, then, to the first, the second
12 page of the document to that second paragraph.

13 A Uh-huh.

14 Q And were not these numbers adopted or at least
15 endorsed for capacity purposes for PECO?

16 A I can't answer your question. I don't know.
17 There's no reference in this paragraph or the prior
18 paragraph to PECO it's reference to growth within the PJM
19 over some period of time and there's an indication in the
20 second paragraph that load growth may be reduced for
21 greater load management efforts. I don't know what you are
22 --

23 Q I am confused now. Isn't that under the heading
24 of what PECO proposed? Wasn't your proposal --

25 MR. BONNEY: I believe he's arguing with the

1 witness. The document speaks for itself. It's obviously a
2 document that we filed. It says what it says.

3 MR. DOLL: I'll withdrew the question, Your Honor.

4 JUDGE CHESTNUT: Okay.

5 BY MR. DOLL:

6 Q Would you turn to page 13 of your testimony.

7 JUDGE CHESTNUT: Excuse me. Is that Statement 1RJ?
8 Or a different statement.

9 MR. DOLL: I'm sorry. Statement 1RJ page 13 that
10 you corrected this morning.

11 THE WITNESS: Yes, Mr. Doll. I have that.

12 BY MR. DOLL:

13 Q And you said that you know that Mr. Douglass was
14 able to purchase 75 megawatts of capacity. Is that
15 correct?

16 A Yes.

17 Q And who did he purchase that capacity from?

18 A PECO Power Team.

19 JUDGE CHESTNUT: I am sorry. From whom? PECO
20 Power --

21 THE WITNESS: PECO's Power Team, which is our
22 wholesale --

23 JUDGE CHESTNUT: Oh, Power Team.

24 THE WITNESS: -- agent of the company.

25 BY MR. DOLL:

1 Q Do you know the price?

2 A Yes, I do. I think I have supplied that in an
3 interrogatory response directly to Connectiv, PECC R-5
4 which lists the price of \$70.00 per megawatt-day which was
5 the offered price by Mr. Douglass to Mr. Ken Kornu on that
6 date and PECO took the price.

7 Q To your knowledge, has the Power Team -- let me
8 back up. Are you in contact with the Power Team on a
9 regular basis?

10 A Not on a regular basis.

11 Q You are aware of their function and you do talk
12 to the people in the Power Team?

13 A Occasionally, as business requirements
14 necessitate it to contact but not on a regular day-to-day
15 basis.

16 Q To the best of your knowledge, has PECO or the
17 Power Team entered into any capacity contracts for a period
18 longer than a month?

19 A Yes. It's my understanding that they have
20 engaged in contracts which go well beyond a month.

21 Q Would you happen to know the price at which those
22 contracts are being executed?

23 A Without being more specific than that, I don't
24 know how to answer your question. I don't have any data
25 before me which would indicate what those contracts are,

1 what those prices are. But I am aware that the company is
2 engaged in contracts for sale of capacity for periods
3 longer than a month and for periods shorter than a month.

4 Q I am not sure you are the correct witness but if
5 I were to ask you, do you know what the price for capacity
6 that PECO is making available through sale for a one-year
7 period, what that price might be today?

8 A I have no idea what that price would be today.
9 The appropriate person would be at the Power Team,
10 depending upon the market conditions and the availability
11 of capacity at the time the phone call was placed.

12 Q I take it one of the members of Power Team is not
13 going to be a witness in this proceeding? Mr. Bonney?

14 MR. BONNEY: Well, we have not submitted any
15 testimony by folks at the Power Team. That is correct.

16 MR. DOLL: If I may have a minute, Your Honor.

17 JUDGE CHESTNUT: Sure.

18 (Pause.)

19 MR. DOLL: I have nothing further, Your Honor.

20 Thank you very much, Mr. Hill.

21 THE WITNESS: You are welcome.

22 JUDGE CHESTNUT: Is there anyone who has additional
23 questions for Mr. Hill?

24 MR. CLEARFIELD: Yes.

25 MR. HAWKE: Yes.

1 JUDGE CHESTNUT: Mr. Clearfield and Mr. Hawke.

2 MR. HAWKE: Yes, I will also.

3 JUDGE CHESTNUT: Okay.

4 BY MR. CLEARFIELD:

5 Q Mr. Hill, it's true, isn't it, that among your
6 many responsibilities has been to advise PECO management
7 with respect to the financial effects or potential
8 financial effects of the partial settlement on the
9 company?

10 A Yes, I think as I indicated in our prior
11 deposition the company has talked, I have talked to company
12 senior executives as the discussions under the partial
13 settlement were evolving and I also made presentations to
14 the company on those discussions.

15 Q And you referenced your deposition, a deposition
16 that was conducted prior to the hearing. During that
17 deposition, it's correct, isn't it, that you describe
18 certain financial models that you prepared in order to
19 analyze the financial effects of the settlement or various
20 versions of the settlement, perhaps, prior to the time that
21 the settlement was finalized and signed. Is that right?

22 A I think that's a fair assessment. I have
23 reviewed such terms from PECO's perspective as one of the
24 joint petitioners viewing the gives and takes of the
25 settlement in terms of what the impact would be on PECO

1 Energy and its financial performance.

2 Q Without revealing any confidential information,
3 because you didn't give us any but generally, the financial
4 models were designed to show --

5 MR. BONNEY: I object to the characterization, Your
6 Honor. The deposition transcript and discovery that we
7 turned over to Enron and other parties contained a
8 significant amount of confidential information.

9 MR. CLEARFIELD: I am sorry. You are
10 misunderstanding. I was referring to the actual outputs of
11 the model. You didn't provide the outputs of the model
12 that the actual earnings per share or cash flow results of
13 your financial analysis to us, but you did provide other
14 data that is assumptions that went into your financial
15 models, did you?

16 A We did not supply earnings per share and cash
17 flow results from those analyses. We did provide to Enron
18 and NEV, who were present at my deposition the input
19 assumptions to the financial model as well as certain
20 selected outputs which we mutually agreed with satisfy your
21 data request.

22 Q Yes. And they did and there's no dispute about
23 that. You used the results of this data to advise senior
24 management of the financial effects of the settlement as
25 you saw them? Is that correct?

1 A They were part of my discussions with the senior
2 management team. Those results of those financial models
3 plus other attributes of the settlement as they were
4 evolving.

5 Q And did the results of those analyses also
6 contribute to your briefing -- well, strike that. Did you
7 discuss the settlement with the board of directors of the
8 company?

9 A I believe the board of directors relative to the
10 settlement, yes.

11 Q Did that briefing include the results either
12 directly or by reference, of the financial projections and
13 analyses that you did and that we have discussed
14 previously?

15 A Yes. I think as I indicated under the
16 deposition.

17 Q When did you prepare the financial analysis that
18 you used to brief senior management and the board of
19 directors, generally speaking?

20 A The material I used to brief them relative to the
21 financial settlement was done in the week or so before the
22 board meeting which I prepared my materials.

23 Q And do you remember the date that --

24 A Not off the top of my head I don't.

25 Q You also used this information prior to the time

1 the company actually formally signed the settlement. Is
2 that right?

3 A We used draft terms as we analyzed the document
4 as it was being developed and changes to the settlement
5 document were occurring.

6 Q Okay. And those analyses were conducted around
7 the time that the settlement was accepted in August of this
8 year? Is that correct?

9 A No. I think I indicated, again in my deposition,
10 that the company did modeling throughout the process as the
11 various provisions of the settlement document were being
12 negotiated so that we could evaluate PECO's position
13 whether we should accept or reject the settlement.

14 Q Okay. About when did that modeling start?

15 A I would say it would probably be in the June time
16 frame when our initial discussions with several of the
17 parties commenced.

18 Q About when did it end?

19 A The discussions, negotiations with the parties,
20 to my recollection, went right up till late August in which
21 case the party signed the document on the 25th of August
22 and it was submitted to the Commission on the 27th of
23 August.

24 Q You have testified that you used these data, at
25 least in part, to brief the senior management and the board

1 of directors. I assume that you were fairly careful in
2 your analysis and your determination of what, in your
3 opinion, was going to be the results, the financial results
4 of the settlement. Would that be a fair inference?

5 A I prepared or had prepared analyses working with
6 Mr. Bonney in preparation for the briefings to the board
7 and I used them for the purpose of informing them the value
8 to PECO Energy and also the risks associated with
9 participating in the partial settlement based upon the
10 various constraints that PECO would be placed under the
11 various terms and conditions within that settlement.

12 Q My question was simply that I assume, since you
13 were briefing your boss and the board of directors that you
14 were as careful as one could be in that circumstance to
15 make sure that the projections that you were making were,
16 in your view, a reasonable projection of the effects of the
17 settlement as you were able to analyze them. Is that fair?

18 A No. I don't think it reasonably describes what I
19 presented to management and the board. We presented a
20 settlement of numbers and we talked about the variability
21 within those sets of numbers and the various risks,
22 including the risk associated with stay-outs for T&D and
23 the extension of generation cap and the potential impacts
24 of inflation on that set of assumptions.

25 We talked about the costs and risks associated with

1 expanding the universal service program for accommodating
2 40,000 customers and raising that to a hundred thousand
3 customers. We did speak of a single set of numbers but we
4 did speak in terms of variations and risks and potential
5 benefits for those variations.

6 Q I understand, but the single set of numbers
7 wouldn't be the basis or the initial assumption you were
8 making with respect to the effects of the settlement and
9 then you would vary them or use them to analyze the effects
10 of various provisions. Is that fair?

11 A What we did was created a base case. But again,
12 that was not the only communication that went to the board
13 and senior management.

14 Q I understand. I understand. And that base case
15 used assumptions that in your view, were a reasonable set
16 of assumptions on which to make these additional estimates
17 or projections of how various portions of the settlement
18 would affect or would likely affect PECO. Is that fair?

19 A They were a set of a certain assumptions.

20 Q Were they a reasonable set of assumptions?

21 A I would say they were reasonable but they were
22 not subject to a firm point such as O&M expenses are going
23 to be at this level or projected to increase. There was
24 recognition that there was a significant risk to those
25 assumptions, but it was a starting point which management

1 could make a decision as to whether or not the joint
2 petition results would be achievable.

3 Q But you were comfortable with presenting that
4 starting point to the board as a reasonable case on which
5 to make additional analysis and additional conclusions.
6 Isn't that fair?

7 A As I have testified, Mr. Clearfield, it was a
8 base case which I presented.

9 Q It was a reasonable case as far as you were
10 concerned for the purpose for which it was going to be
11 used?

12 A It was a reasonable starting to discuss the
13 variations which I have further testified to.

14 MR. CLEARFIELD: Can we go off the record for a
15 moment, Your Honor?

16 (Discussion off the record.)

17 MR. CLEARFIELD: Your Honor, at this time, I'd like
18 to mark for identification as Enron Cross Exam Exhibit 1 a
19 multi-page document which is entitled PECO Energy Company
20 Assumption Used in Analyzing Settlement Agreement.

21 JUDGE CHESTNUT: Now, is this --

22 MR. CLEARFIELD: I ask that it be marked for
23 identification in this manner.

24 JUDGE CHESTNUT: Now, is this subject to being
25 treated as a proprietary and confidential document for

1 purposes of the record?

2 MR. CLEARFIELD: Yes, Your Honor, as off the record
3 we had a colloquy with Mr. Bonney and it appears that the
4 company wishes this to be protected and wishes it to be
5 treated in accordance with the standard proprietary
6 document procedures and that it be placed under seal and I
7 assume this part of the cross examination would also be
8 marked proprietary, Mr. Bonney.

9 MR. BONNEY: Yes, Your Honor and if we --

10 JUDGE CHESTNUT: If you would try and structure your
11 cross examinaton so it does not directly refer to the
12 numbers, then this portion of the transcript could be
13 okay. And I mean that's the way telephone cases are
14 usually done. Sometimes you can't help it.

15 MR. CLEARFIELD: There's at least a couple --

16 JUDGE CHESTNUT: If he can refer to the document
17 rather rather than saying the number that's contained on
18 the document, that makes it a little easier.

19 MR. BONNEY: Your Honor, I'd ask if there are going
20 to be cross examination questions with respect to this
21 document at all that the room be cleared of all persons
22 except for the parties and as to the parties, clearly as to
23 all parties that have not entered into a confidentiality
24 agreement with respect to this proceeding.

25 MR. GORNISH: Before I serve it I want to make sure

1 that --

2 JUDGE CHESTNUT: Let's go off the record a second.

3 (Discussion off the record.)

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6 PAGES 496 THROUGH 517 INCLUDE INFORMATION OF A PROPRIETARY

7 NATURE AND ARE CONTAINED IN A SEPARATE, SEALED TRANSCRIPT.

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1 JUDGE CHESTNUT: Is there further cross examination
2 of Mr. Hill?

3 MR. CLEARFIELD: I have some more questions, Your
4 Honor. Perhaps at this point it would be an appropriate
5 time to take a break.

6 MR. HAWKE: I have approximately 15 minutes.

7 JUDGE CHESTNUT: Does anybody else have cross for
8 Mr. Hill?

9 MR. DWORETZKY: I would think I would be short,
10 too.

11 JUDGE CHESTNUT: Let's go off the record.

12 (Discussion off the record.)

13 JUDGE CHESTNUT: Let's break until 2:00 o'clock.

14 (Whereupon, at 1:20 p.m., the hearing recessed to
15 reconvene at 2:00 p.m., the same day.)

16

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AFTERNOON SESSION

18 JUDGE CHESTNUT: Are we ready to resume? Mr.
19 Clearfield, I think we are in the middle of your cross of
20 Mr. Hill.

21 MR. CLEARFIELD: Yes, Your Honor. And I believe we
22 are back on to the public record at this point, just so
23 that is clear.

24 BY MR. CLEARFIELD:

25 Q Mr. Hill, I want to ask you a few questions about

1 how the provisions of the partial settlement regarding the
2 standard market rate would work in PECO's view. I
3 understand PECO's view. This is a question we explored
4 during the deposition, if you recall.

5 A Yes.

6 Q As I understand it, PECO has agreed to provide or
7 offer to default customers a standard market rate which
8 would be an all-hours rate for energy and capacity that
9 would be set at the end of the year for it to be applicable
10 to a next year period. Is that correct?

11 A PECO's understanding of the settlement is that we
12 will create a standard market rate applicable or available
13 for all customers that would be offered by the distribution
14 company and not just default customers anyone could take.

15 Q I am sorry. I should define default customer.
16 When I use the term I am speaking of customers who leave
17 PECO for generation services and then return. That's one
18 category, customers who don't make any choice, even though
19 they have the right to choose an alternative provider and
20 thirdly, customers who can't choose because of the first
21 year of direct access that's being phased in.

22 Do you understand the term the same way or is that a
23 fair way to define default customers?

24 A Well, I think just for clarity and obviously the
25 settlement document speaks for itself, but for a returning

1 customer I believe that customer has two options. In terms
2 of return, whether they want to go on to a standard rate or
3 the other rate and also if they want to come back they can
4 avail themselves as a monthly opportunity.

5 The other two categories I would agree with that
6 those customers who do not choose now get to make an
7 election. That would be one category customer that could
8 avail themselves of that rate and the other was --

9 Q Customers who aren't legally able to choose
10 because of the phase-in of direct assets.

11 A One third -- this is the joint proposal under the
12 joint petition for settlement. One third of customers
13 during calendar year 1999, will not be able to choose
14 alternatives. They would be able to avail themselves of
15 the market rate as well, standard market rate.

16 Q Now, when you set the standard market rate for
17 let's say 1999 are you going to commit that that rate will
18 be in effect for a year?

19 A It's our expectation that we will create a
20 standard market rate for 1999 and that for service during
21 1999.

22 Q And they'll be actually rates for each rate
23 class, a standard market rate for each class?

24 A That's our expectation. It would be filed like
25 our existing tariffs and rate tables. We would have a

1 standard rate for residential, straight residential
2 standard rate for residential heat, general service.

3 Q Is it also my understanding, am I correct that
4 the only limitation on PECO's ability to set the standard
5 market rate is that it cannot be greater than the
6 generation, the energy and capacity cap that's reflected in
7 table A of the settlement or more precisely, those that are
8 reflected in the rate schedules that are contained in
9 Appendix C, I believe, are of the partial settlement?

10 A I think what's more precise is that the rates
11 cannot exceed the maximum rate cap in effect for each rate
12 schedule.

13 Q But beyond that limitation, same rate that PECO
14 isn't going to be utilizing any particular formula or
15 calculation methodology to arrive at that standard market
16 rate. Indeed, it's going to, that rate's going to be based
17 on its view of what the market price should be or what
18 should be reflected in this rate at any particular time?

19 A Well, I would generally agree with that
20 statement. It would be PECO's local distribution company
21 that would establish those standard market rates based upon
22 whatever market data was available. Similar to any other
23 supplier in the market.

24 And would establish a rate which it would agree to
25 put in place and have in effect for the calendar years

1 indicated, '99 through 2008 and subject to the limitation
2 of the cap, in each of those years or caps in each of those
3 years.

4 Q Just so that my understanding is complete, for
5 example, if the all-hours energy and capacity price in 1999
6 turns out to be, let's say, two dot seven cents on average,
7 and that's putting aside any adjustments for delivery, et
8 cetera, PECO could decide to price its standard market rate
9 at a level lower than two dot seven cents, let's say for
10 residential customers or for any of the classes. Is that
11 your testimony?

12 A No, it's not. PECO is not going to know what the
13 market prices are going to be during the particular
14 calendar year in question. They are going to have to
15 estimate what that market is and then create a standard
16 market rate that it will offer on a retail basis to
17 consumers for the various classes, subject to the
18 provisions of the cap.

19 Q All right. Let's just change it just slightly.
20 Let's say in October. All of the information you have
21 indicates that the best projections are what the all-hours
22 energy and capacity price will be is that it will be 2.7
23 cents per KWH without taking into account any delivery
24 costs.

25 Is it your testimony that PECO, notwithstanding that

1 projection or that best estimate that still, or nonetheless
2 would price the standard market rate below to two dot seven
3 cents if it believed for whatever reasons that there was a
4 reason to do so or that the market prices demand it.

5 A I think again, this goes back to the same
6 testimony offered in the deposition that I don't understand
7 why the utility, PECO or local distribution company would
8 offer something below.

9 Maybe I don't quite understand what you are getting
10 at with your adjustments for the wholesale price relative
11 to the retail price, but obviously, it would be the local
12 distribution company's business incentive to try to meet
13 the market at the market price similar to any other
14 suppliers in order to maximize the potential for new
15 industry.

16 Q But it has some discretion to determine what that
17 market price is going to be to be reflected, it's going to
18 utilize or it's going to judge should be reflected in the
19 standard market rate in accordance with the settlement. Is
20 that right?

21 A That is my understanding, just like any other
22 supplier would have that ability to set what they believe
23 to the market price for their product.

24 Q Now, let's say that you have, this is a
25 hypothetical. You're reasonably certain that the delivered

1 cost of power for other suppliers in the -- the delivered
2 power to let's say residential customers for PECO in 1999
3 is going to be 3.5 cents per kilowatt-hour. All right?
4 And you are reasonably certain that that's what it's going
5 to cost another supplier, an independent supplier to
6 deliver power?

7 A I have a tough time with your hypothetical. I
8 don't know how I am going to know what other suppliers'
9 costs are to deliver. If you want to create a construct to
10 that nature, I'll be happy to go with it. But I don't know
11 where we'd ever get that data in order to know that.

12 Q Let's assume that you make this commitment.
13 Would that restrain your ability to set market price, that
14 information at all? Would you have to set it above? I am
15 sorry. You can set it above that level because ECC at this
16 point is set below that. Let's change it slightly.

17 Let's say that you do have this information, you
18 obtained it through a spy, completely legal, however, and
19 you find that the delivered price of power to residential
20 customers that deliver, cost of power to residential
21 customers to the other suppliers is that three cents in
22 1999. You know that's going to be the case. Would that
23 restrain your ability to set standard market rate at three
24 cents, in your view?

25 A In calendar year --

1 Q 1999.

2 A And we are talking about the average, not a
3 specific rate choice?

4 Q No, no, no. We are talking about the residential
5 rate class, rate R which I understand has a 1999 ECC energy
6 and capacity of three dot five cents in 1999, doesn't it?

7 A The generation, the cap generation price in '99
8 for residential is three cents, yes.

9 Q What I am asking you, do you know for certain
10 that it's going to cost other suppliers generally three
11 cents to deliver power to PECO, to PECO customers in its
12 service territory? Does that restrain your ability to set
13 market price at any level below the three cents?

14 A That fact doesn't constrain the company from
15 setting that price. It is the energy and capacity cap that
16 constrains the company from charging in excess of three
17 cents in that year.

18 Q So you could set it below but you can't set it
19 above it because you promised not to set any higher than
20 three cents. We could set it at or below the cap depending
21 on what we believe to be the prevailing market conditions
22 as determined by the local distribution company.

23 Now, with respect to the standard market rate, is it
24 also true that PECO expects to or believes that it's free
25 to offer additional products through the distribution

1 company through the disco. That may, in fact, be priced
2 differently than the standard market rate?

3 A Yes. As I indicated in my deposition, the
4 company is free to make other market offerings beyond the
5 standard market rate by the local distribution company
6 under the terms of the settlement.

7 Q That could include more deeply discounted rates?
8 As one product or service?

9 A I don't know what specifically they could or
10 could not or what would or would not offer. My suspect,
11 again, as I mentioned in the deposition is that it would
12 probably offer market rates for other types of services
13 requested by customers.

14 It could be a longer term contract. It could be a
15 shorter term contract than a year and depending on what
16 types of prices or offerings would have to be made to meet
17 the market, the local distribution company, like other
18 suppliers, would be able to meet that demand on a level
19 playing field.

20 Q What I asked you was does it include deeper
21 discounts in terms -- in PECO's view of its discretion on
22 the settlement?

23 A I don't, if you mean could it price at a value
24 below the standard offer, if that's what you refer to as --

25 Q Yes.

1 A Yes, it certainly has the ability to charge below
2 that. It could charge above that price as long as those
3 prices were below the cap provisions, the generation cap
4 provisions for the various tariffs.

5 Q I see. So as long as you have a rate that's
6 called the standard market rate, you could price above or
7 below that rate in your view?

8 A As long as it did not violate the provisions of
9 the cap in any one of the calendar years. Just like any
10 other supplier on a level playing field.

11 Q Okay. Now, you said, you might have a different
12 contract term other than a year. And this just may be a
13 clarification with respect to customers who have not chosen
14 or cannot choose, are you going to be requiring them to
15 sign a year contract at the beginning of choice or will
16 they be subject to any contract term?

17 A In terms of a customer who does not --

18 Q Not if -- I'm sorry. Has not chose or legally
19 can't choose as of yet. You are not going to require a
20 contract term for those customers in standard of marketing,
21 are you? Or are you?

22 A I suspect that it will be some provision within
23 the tariff which would define that there is, in fact, an
24 agreed upon price which if you want to call that a
25 contract.

1 Q No. I am sorry. I was trying to clarify the
2 term. I thought you had said that if you could provide a
3 service at -- you could provide a rate as a term different
4 than a year?

5 A Right.

6 Q Frankly, my understanding is that it was the
7 default customers who had the choice of either signing a
8 year contract to receive the standard market rate and the
9 protection of the ECC or else buy service at a monthly
10 market rate. And that there was no term that would be
11 established or be imposed for customers who have not chosen
12 or simply have not made or could not choose?

13 A I am going to have to ask you to start that all
14 over again. You lost me in that.

15 Q I wish you would have asked that earlier. Is
16 there any -- is your testimony that as of 1/1/99, a
17 customer doesn't choose even if they have a legal right to,
18 or cannot choose, that those customers will, those
19 customers be held to a standard market rate but will have a
20 term, a period of time in which, by which they would have
21 to take service?

22 A It would be my expectation that customers who did
23 not choose who had the opportunity to choose would become,
24 as you have defined it, a default customer and that
25 customer would have if they are a residential customer, a

1 one-year contract with the company covering calendar year
2 1999 with a standard market rate at or below the prices
3 provided for under the terms of settlement in Appendix C.

4 Q So they would be locked in for a year under
5 that --

6 A It would be my expectation that that would be
7 what the customer had elected as a default customer,
8 correct. If they wanted to make a change, I am sure they
9 could opt out of that and go to a different supplier and
10 not become a default customer but it would be a price,
11 all-hours price, applicable for that customer, residential
12 customer which would be in place for all of 1999 and the
13 customer would take service under the terms of that pricing
14 structure.

15 Q Mr. Mill, are you saying that these residential
16 customers will only get the benefit of the rate decreases
17 or the energy and capacity caps if they agree to sign a
18 year contract?

19 A I didn't testify to that.

20 Q I am trying to understand your testimony. What
21 context or what -- who would get the benefit of the energy
22 and capacity cap? What kinds of customers and under what
23 circumstances?

24 A Local distribution company customers who elected
25 to stay with PECO at the standard rate or other market

1 rates would get benefit of the -- if you are talking about
2 the 10 percent discounts, all customers would get that
3 benefit.

4 Any customers that could derive additional benefits
5 because the standard market rate or the market pricing from
6 the local distribution company was at or below the cap
7 could enjoy additional savings based upon the market being
8 lower in those cap prices.

9 Q Would they receive the protection of the cap if
10 the market price is one above the cap prices?

11 A Yes.

12 Q And when would they lose the benefit of the
13 energy and capacity cap, in your view?

14 A When they elected to go to an alternative
15 supplier of which we would have no control over what price
16 the customer was paying.

17 Q And then when they came back would they have the
18 benefit of the energy and capacity cap?

19 A If they came back from another supplier they have
20 two options. They can come back under the protection of
21 the cap which are delineated in the partial settlement
22 agreement or, if they came back for a short period of time
23 and just we had wished to shop for another supplier they
24 can avail themselves of a monthly option at which point
25 they would have the ability, they would take supply from

1 the local distribution company who would acquire it on
2 their behalf at market prices and in this instance, those
3 market prices could be in excess of the generation cap.
4 But that's an election that the customer, the returning
5 customer makes.

6 Q And local distribution company in this case,
7 PECO, acquiring generation, that would be acquiring it from
8 the gen. co., the separate affiliate of PECO?

9 A It could acquire it from, an affiliate could
10 acquire it from Enron, NEV, any supplier, licensed supplier
11 in Pennsylvania.

12 Q Let me ask you just to make sure that I
13 understand, PECO is not proposing nor does it have in mind
14 today a formula by which it would determine the market
15 price that it would use the standard market rate. Is that
16 right?

17 A As I testified in my deposition, PECO has no such
18 formula nor do I understand any other supplier has a
19 formula. They will price on the basis of market conditions
20 as they change over time.

21 Q They will price on the basis of PECO's view of
22 market conditions. Is that right?

23 A PECO will price on the basis of PECO's estimate
24 of the market. Enron will price on the basis of Enron's
25 estimate of the market.

1 Q Now, with respect to paragraph 36 of the
2 settlement, that's the provision that indicates that for
3 residential customers, PECO must offer a standard market
4 rate through its unregulated supply company which is, I
5 think you said in the deposition, equivalent to the
6 standard market rate that's going to be offered by the
7 disco. Is that right?

8 A If that's a statement of the petition, itself,
9 the joint petition for settlement, set a specifically --

10 Q Is that your understanding of what it says?

11 A That's market affiliates of PECO will offer the
12 same market rate as the local distribution company. That's
13 my summary understanding of that paragraph.

14 Q Now, the settlement doesn't prevent the market
15 affiliate of PECO to offer other rates, however, does it?

16 A There is no restriction on the market affiliate
17 just like there are with any other supplier.

18 Q Does any customer have to actually take that
19 standard market rate by the unregulated affiliate? Under
20 the settlement?

21 A No customer is required to take any market based
22 price under the terms of the settlement.

23 Q Is there any requirement --

24 A Specifically from a supplier.

25 Q Is there any requirement that the affiliated

1 supplier has to advertise the rate or make it known to
2 customers that the rate exists?

3 A I am not, according to the terms of the
4 settlement. There are no such restrictions.

5 Q I just want to again -- for whichever way you
6 understand is correct. With respect to the standard market
7 rate, you said it would be for a year. Does PECO reserve
8 the right to be able to change the rate during the year?

9 A The settlement, joint petition for settlement, is
10 silent on the term or the ability to change. I indicated
11 it would be -- I would anticipate that PECO would set the
12 standard market rate and it would be in effect for the
13 year.

14 Q So if it wanted to change rates or respond to
15 changes during the market, it would offer some other rates
16 or product. Would that be likely?

17 A As I indicated, there's no restriction in the
18 terms of the settlement and PECO's intention is to create a
19 standard market rate for customers that would be in effect
20 for the full calendar year in question.

21 Q You didn't answer my question this time.

22 A I think I did.

23 Q What I was asking is if it wanted to respond to
24 changing market conditions during the year it would have
25 the option of offering other products or services or other

1 rates to customers to respond to its view of how the market
2 has changed during that --

3 A PECO could offer other market rates throughout
4 the year but as I indicated, the company would, at this
5 point, agree to a standard market rate which it would
6 expect to put in place for that calendar year.

7 Q Let me shift gears on you a second, Mr. Hill.
8 Could you turn to page 21 of rejoinder testimony. That's
9 Statement 1RJ. Are you there?

10 A Yes.

11 Q I am trying to understand your testimony with
12 respect to these ancillary services. My understanding is
13 that you are indicating that Dr. Hieronymus included three
14 of the ancillary services you list there in the model. He
15 used to project market prices, market energy and capacity.
16 Is that right?

17 A Yes.

18 Q Now, can I ask you which ones -- which of those
19 ancillary services were included in there? In his modeling
20 results?

21 A I think the testimony states, my testimony states
22 that those three are regulation and frequency control,
23 energy imbalance and operating reserves, the spinning
24 reserve component were reflected in Dr. Hieronymus' price
25 estimates that he developed.

1 Q Now, does that include the 18 percent reserve
2 requirement that is presently a requirement of the PJM
3 agreement?

4 A Those three elements do not. They include the
5 three elements I indicated.

6 Q Okay. And does Dr. Hieronymus or do you have a
7 breakout for let's say the 1999 market energy and capacity
8 price that would indicate what portion of the price is
9 reflective of allowance for these three items?

10 A I don't have that data. I would suggest asking
11 Dr. Hieronymus what was built into his estimate.

12 Q Okay. Now, I am somewhat confused by your
13 answers, I guess, on page 22 where you say that -- well,
14 with respect to the other three, with the other three
15 ancillary services, how does PECO propose at this point to
16 collect or to recover the costs associate we would those?

17 A It's PECO's position that the other three
18 elements of ancillary service scheduling systems control
19 and dispatch reactive supply and operating reserves, with a
20 supplemental reserve are embedded in the transmission
21 prices which are contained in Appendix C and it would
22 expect to recover those customers that are taking supply
23 from PECO and availing themselves of PECO acquiring those
24 transmission services by paying those transmission rates.

25 If, in fact, a customer elects to have a supply from

1 an alternative supplier who, in turn, contracts for
2 transmission services, these three elements would become
3 part of the billing from that alternate supplier and
4 therefore, there would be no charge for transmission
5 service to that customer from PECO Energy.

6 Q So the item on, for example, Table A which shows
7 the overall item for transmission would not be charged to
8 that customer?

9 A That's correct if they take their supply from
10 another supplier who is providing transmission service.

11 Q With respect to your statement that you most
12 recently submitted, PECO Statement ISR-J, do you have
13 that?

14 A Yes.

15 Q On page 7 you discuss or respond to Mr.
16 Schoengold's suggestion about securitization. And you say
17 that the purpose of securitization proceeds is to
18 principally reduce stranded costs. Do you see that?

19 A Yes.

20 Q Is it PECO's view of that term that
21 securitization may only be used for those purposes?

22 A No. I think it's PECO's statement in conformity
23 with the language in the act that it must be used
24 principally to reduce stranded costs.

25 Q Did the prior order of the Commission regarding

1 securitization include language that indicated that the
2 costs, that the securitization proceeds should be used
3 exclusively or principally, if you recall?

4 A I believe in the securitization order -- and I
5 assume you are referring to the 1.1 billion --

6 Q Yes.

7 A -- order of the Commission.

8 Q Yes. The Commission's order of \$1.1 billion of
9 asset securitization, the company committed to utilize the
10 stranded costs fully for the re-purchase of existing
11 securities, both debt, preferred stock and common equity.
12 But you are not committing in the partial settlement to the
13 same extent?

14 A That's correct. Under the terms of the
15 settlement for the amount the company is committing to the
16 provisions of the act, which direct us to use the proceeds
17 principally to reduce our stranded costs.

18 Q What else is it going to use these proceeds for?

19 A At this point, the company is planning to use the
20 proceeds to repurchase debt and equity.

21 Q So that it would be using it to reduce its --

22 A Cost of capital. That's what it's currently --

23 Q Does it have any means to use it for any other
24 purpose?

25 A At that point we do not. But we would conform it

1 with provision of the fact that says we would use it
2 principally to reduce our outstanding securities.

3 Q Now, with respect to any amounts over and above
4 the amounts that are securitized, that is, that are
5 collected from a CTC, are there any restrictions on the
6 company's use of those proceeds?

7 A There are none to my knowledge. It's similar to
8 depreciation and amortization. It represents the company's
9 recovery of the assets over some period of time.

10 Q You had some discussions about market price
11 projections in your Statement RJ, particularly, for
12 example, on page 9, where you discuss the contentions of
13 some of the other witnesses in the proceeding. Do you see
14 that?

15 A I have page 9.

16 Q Now, you reference, on lines 8 through 12, for
17 example, you reference Dr. Hieronymus' energy and some --
18 his market clearing price analysis. Is that correct?

19 A I do refer to Dr. Hieronymus' analysis on those
20 lines.

21 Q In one of the schedules you provided you show
22 some results of those analyses on columns for the first two
23 columns on the left. That's on the TPH-29.

24 A Yes.

25 Q Those, am I right that these market -- those are

1 wholesale market prices for energy and capacity? For PJM?

2 A Are you referring to Dr. Hieronymus' analysis.

3 Q Well, actually I am referring to the PHB, the DRI
4 and the EIA forecasts.

5 A Dr. Hieronymus' projections, the two projections,
6 and for clarification, DRI is one fuel price forecast and
7 EIA is another fuel price forecast. Dr. Hieronymus
8 projected the market prices, the wholesale. This is for
9 wholesale market prices -- for, he's describing at this
10 point prices within the PJM.

11 Q Well, those prices wouldn't be applicable for
12 other PJM companies, would they?

13 A I don't see why they would not. But I would
14 direct that question to Dr. Hieronymus. They represent
15 market prices in our control area which is PJM.

16 Q I'm sorry. I guess I am confused. That would
17 mean, then, that if another PJM company had an energy or
18 capacity cap that exceeded this forecast, that would be an
19 indication that that cap covered the market price for
20 energy and capacity for that company as well? This is
21 another PJM company?

22 A I don't know whether I follow your question.
23 These are -- there's no reference to capital in this.
24 These represent Dr. Hieronymus' estimate of the market
25 price of energy and capacity within the PJM, based upon two

1 fuel prices for the years 1999 through 2008.

2 Q I see. What I am trying to understand is that
3 the market prices that are applicable here could also be
4 utilized to analyze, let's say, the energy and capacity
5 caps that would be proposed for PP&L. Is that right?

6 A If that's your desire to use that or PP&L's
7 desire to use it. They certainly could use Dr. Hieronymus'
8 estimate.

9 Q For PCJ?

10 A For PJM for their two fuel prices.

11 Q If someone were to indicate that the energy and
12 capacity cap for another PJM company was too low, vis-a-vis
13 their -- it was too low, would that be an indication that
14 they viewed the market price for energy and capacity in PJM
15 to be higher than these caps? I mean these market
16 supplies?

17 MR. BONNEY: Objection, Your Honor. I am not sure
18 to which company Mr. Clearfield is referring. Which
19 figures?

20 MR. CLEARFIELD: Let me withdraw that.

21 MR. BONNEY: There's absolutely no basis for a
22 hypothetical or any basis for a hypothetical if there is
23 one.

24 MR. CLEARFIELD: I withdraw.

25 BY MR. CLEARFIELD:

1 Q When you made your statements in your testimony
2 that you believe that these market prices, that the energy
3 and capacity caps for PECO were sufficient by referencing
4 Dr. Hieronymus' PJ market price forecasts, did you seek
5 information from your own affiliated generation suppliers
6 as to their opinion of the adequacies of those prices?

7 A I am still -- I'll take a crack at answering your
8 question because I am not quite sure. Did I offer Dr.
9 Hieronymus' estimate to our wholesale business entity which
10 is the PECO Power Team, to independently review those.

11 Q Yes.

12 A The answer to that question is I did not.

13 Q Oh. Let me show you a document that I am going
14 to ask to be marked as Enron Cross Examination Exhibit 3
15 for identification which is a multi-page document entitled,
16 Consumer Groups, Competitors Oppose New Jersey Utility's
17 Deregulation Plan. I ask that it be marked for
18 identification as Enron Cross Exam Exhibit 3.

19 JUDGE CHESTNUT: It will be so marked.

20 (Enron Cross Examination Exhibit No. 3 was produced
21 and marked for identification.)

22 BY MR. CLEARFIELD:

23 Q Mr. Hill, have you ever seen this document
24 before?

25 A No.

1 Q Does the logo on top there, PECO Energy, indicate
2 that it was produced by or sponsored by PECO Energy?

3 A Can't read what's under PECO Energy on the copy
4 here.

5 Q It does say PECO Energy?

6 A PECO Energy's name is on it. There's also a PECO
7 Energy Horizon Group.

8 Q It says Horizon Express. Does that mean anything
9 to you?

10 A I am assuming it came from our unregulated
11 subsidiary Horizon.

12 Q In fact, I believe it came from PECO Energy's
13 Horizon Group's web page. Would that appear to be likely?

14 A It could very well. I am not familiar with the
15 document nor the release.

16 Q Are you familiar with Horizon Group's position
17 with respect to PSE&G's unbundling -- restructuring plan,
18 and specifically the energy credit that it is proposing to
19 provide in its service territory?

20 A No, I am not.

21 Q Would you turn to page 3 of 5 of the press story
22 for a moment. Do you see in the seventh paragraph down, it
23 indicates that under PSE&G's proposal residential customers
24 would receive an energy credit 2.2 cents for each
25 kilowatt-hour used? Do you see that?

1 A I don't see where it indicates credit. It refers
2 to someone who uses an average 10.6 cents per kilowatt-
3 hour for electricity might receive an energy credit of 2.2
4 cents.

5 Q Right. They would -- doesn't that indicate that
6 under PSE&G's proposal they would receive a credit in that
7 amount?

8 MR. BONNEY: Your Honor, it doesn't indicate -- it
9 says the actual credit would vary depending on the market
10 price of the electricity. So I think the characterization
11 is incorrect.

12 BY MR. CLEARFIELD:

13 Q Mr. Hill, doesn't it say for a customer who pays
14 an average of 10.6 cents a kilowatt-hour they will receive
15 an energy credit of 2.2 cents for each kilowatt-hour used?

16 A It says they might receive it but the full credit
17 would vary depending upon the market price of the
18 electricity. That's what it says.

19 Q Now, let's go down three paragraphs where it
20 starts, Critics say the utility should put the remainder of
21 its generating revenue, roughly one cent per kilowatt-hour,
22 out to competition. Do you see that?

23 A I see that sentence, yes.

24 Q Now, let's just go down to the next page, see
25 where we have marked there critics contend that the energy

1 credit is so small that they may not provide enough of a
2 profit margin to entice competitors to offer service in New
3 Jersey. Do you see that?

4 A Yes.

5 Q And do you see the second paragraph from the
6 bottom there? Could you read that into the record there?

7 A The paragraph that begins, the marketers are
8 going to want to see a price range where they can fit, said
9 Gregory A. Cucci, president of Horizon Energy.

10 Q Horizon is your unregulated supply affiliate,
11 isn't it?

12 A Yes.

13 Q Isn't a fair reading of that that Mr. Cucci, with
14 respect to PSE&G's proposed energy credit, is suggesting
15 that the rate at least calculated for a customer who's
16 using 10.6 cents a kilowatt-hour will receive an energy
17 credit per kilowatt of 2.2 cents, simply too small to allow
18 for competition. That's a fair reading, isn't it?

19 A I don't know how you are attributing that to Mr.
20 Cucci. I guess that's what I am having trouble with.

21 MR. HERSHEY: Your Honor, I have an objection. If I
22 may, I mean we have all --

23 JUDGE CHESTNUT: You can't object to a question of
24 -- it's not your witness.

25 MR. HERSHEY: I am concerned about the problem with

1 taking a newspaper article and attributing any value
2 whatever to it and using it as the --

3 MR. CLEARFIELD: Your Honor, I have asked Mr. Hill
4 about the statements. I've asked him to make some
5 assumptions. He can say no.

6 MR. HERSHEY: I think these questions go far beyond
7 that kind of -- that intent. There's an attribution to a
8 newspaper article which may or may not be complete as to --

9 JUDGE CHESTNUT: Mr. Hershey, he's not your
10 witness. If Mr. Bonney feels it's an inappropriate
11 question for Mr. Hill, he will have to respond. I am sure
12 he can make an objection if he wants to.

13 MR. HERSHEY: He may not be my witness, but it's our
14 record, all of our record and it has an impact on the
15 record we all have to deal with.

16 MR. CLEARFIELD: Mr. Hill --

17 MR. BONNEY: Excuse me for interrupting, Your
18 Honor. Mr. Clearfield has asked Mr. Hill to read a number
19 of statements in a newspaper article. I am not clear at
20 this point whether Mr. Clearfield intends to enter this
21 into evidence. If he does, I would object because the
22 statements by unidentified critics in a newspaper article
23 are not of probative value in this case. They are
24 irrelevant.

25 JUDGE CHESTNUT: I don't think he's asking about

1 unidentified critics. Are you asking about statements made
2 by Mr. --

3 MR. CLEARFIELD: Mr. Cucci.

4 JUDGE CHESTNUT: Mr. Cucci.

5 MR. BONNEY: He's asked a series of questions, not
6 about that, Your Honor. He's asked for speculation
7 regarding Mr. Cucci's statement and how it relates to some
8 other statements that aren't unattributable to anyone. I
9 think it calls for speculation and the question is
10 objectionable.

11 MR. CLEARFIELD: I don't believe so, Your Honor.

12 JUDGE CHESTNUT: I am so confused, I don't remember
13 what the question is at this point, but the Genesis of the
14 question I think it's fair that Mr. Clearfield has the
15 right to try to impeach this witness by using statements
16 put out by the company. It's the same party.

17 MR. BONNEY: That's why I am confused. If you want
18 to ask questions about what Mr. Cucci stated, perhaps that
19 has a chance of being relevant but we have statements, a
20 series of statements by critics. I am not sure who those
21 critics are.

22 JUDGE CHESTNUT: This is a statement put out by PECO
23 Energy?

24 MR. BONNEY: It's an article in a newspaper, Your
25 Honor.

1 MR. CLEARFIELD: It was a newspaper article that was
2 reprinted on PECO Energy Horizon Group's web site.

3 JUDGE CHESTNUT: That amounts to a re-publication,
4 doesn't it?

5 MR. CLEARFIELD: Yes.

6 MR. BONNEY: No, Your Honor. We don't think so. I
7 am not sure what the significance is of a re-publication of
8 an article from the Star Ledger, Newark, New Jersey.

9 JUDGE CHESTNUT: You can argue about what probative
10 weight to put on, if any, later. Let's try to get this
11 hearing going. It's almost 3:00 o'clock and we still have
12 other witnesses to get to.

13 BY MR. CLEARFIELD:

14 Q Mr. Cucci is an employee of PECO Energy, is he
15 not?

16 A Mr. Cucci is the president of Horizon Energy.

17 Q Horizon is a wholly-owned subsidiary of PECO
18 Energy?

19 A Yes.

20 Q And on that, isn't it a fair reading of this
21 article that Mr. Cucci, when he refers to marketers wanting
22 to see a price range where they can fit is referring to the
23 unreasonably low level of energy credit that was referenced
24 on the previous page, on page 3? In your view?

25 A Since my counsel didn't object, I am going to try

1 to object on my own. Number one, I didn't see this article
2 until you dropped it in front of me. I have not read it at
3 all.

4 Even in the discourse that's been going on, you have
5 asked me to see whether it's on PECO's web site which it
6 appears to have been re-publication of an article which was
7 in a New Jersey paper of which the only thing that's stated
8 by PECO Energy is a quote from Mr. Cucci that says the
9 marketers are going to want to see a price range where they
10 can fit.

11 All the other previous sentences that you have tied
12 me into I don't see where they are attributable to Mr.
13 Cucci at all. So I can't draw your conclusion.

14 BY MR. CLEARFIELD:

15 Q Just a few questions about Mr. Cucci. Did --

16 A Would you like me to read the article and then
17 maybe I could speak to it?

18 Q I just wanted to point out certain statements.

19 A Because I have not read the article.

20 JUDGE CHESTNUT: Mr. Clearfield, I don't want to cut
21 you off in the absence of any kind of objection, but maybe
22 you could sharpen your questions here. I mean it's more
23 appropriate to ask Mr. Cucci these questions instead of Mr.
24 Hill.

25 MR. CLEARFIELD: Mr. Cucci, unfortunately --

1 JUDGE CHESTNUT: Isn't he -- he is a witness but
2 he's not actually listed as being scheduled for this set of
3 hearings. But I understand the point you are trying to
4 make and you know, at some point, it's just not worth it;
5 based on the way you are going about it. But why don't you
6 try --

7 MR. CLEARFIELD: I am trying to do it expeditiously,
8 not in any unfair or inappropriate way.

9 THE WITNESS: I think it's unfair to me, but I'll be
10 happy to read it and see what the article says if you give
11 me a fair opportunity to read the article.

12 JUDGE CHESTNUT: Why don't you take a minute and
13 read the article.

14 THE WITNESS: Thank you.

15 JUDGE CHESTNUT: I certainly think that's
16 appropriate.

17 (Pause.)

18 THE WITNESS: Okay. I have previously reviewed it.
19 If you'd like to ask your question.

20 BY MR. CLEARFIELD:

21 Q Let's start with page 3. I'll ask a few
22 questions as to whether you can support the 2.2 cent
23 discount by offering customers energy at lower prices?

24 A I see the reference.

25 Q Does that indicate to you that at least for a

1 customer who has an average revenue 10.6 cents that the
2 credit being offered by PSE&G was 2.2 cents per kilowatt?

3 MR. BONNEY: Objection. It also says in the
4 paragraph before that the actual credit would vary
5 depending on, I imagine, the price of electricity. I don't
6 know if we are trying to establish in this case that credit
7 that PSE&G has proposed in New Jersey and why it's real.

8 JUDGE CHESTNUT: I think earlier we were going to
9 talk about this and it just said might not. I think it's
10 presented almost as a hypothetical. I don't know whether
11 the PSE&G actually has indirect --

12 MR. CLEARFIELD: I would request, as a data request
13 if PECO has available any filed documents with respect to
14 Horizon's position and PSE&G that they provide same as an
15 on the record data request.

16 MR. BONNEY: Certainly.

17 JUDGE CHESTNUT: Is that a problem for you, Mr.
18 Bonney?

19 MR. BONNEY: Not at all, Your Honor.

20 JUDGE CHESTNUT: Okay.

21 MR. CLEARFIELD: Let me just review my notes, Your
22 Honor.

23 (Pause.)

24 BY MR. CLEARFIELD:

25 Q Mr. Hill, I just have one other point of

1 clarification that I just don't understand in your
2 testimony. I think it's on page 26?

3 JUDGE CHESTNUT: Of which statement?

4 MR. CLEARFIELD: Of Statement 1RJ.

5 BY MR. CLEARFIELD:

6 Q You are referring to statements that Mr. Cohn of
7 Enron has made in some previous proceeding?

8 A Yes.

9 JUDGE CHESTNUT: And on lines 8 to -- actually 9 and
10 10 it says that if supplier costs are going to be high and
11 it needs relief from the rate cap order to cover those
12 costs and its margin. Do you see that?

13 THE WITNESS: Yes.

14 BY MR. CLEARFIELD:

15 Q Is there a specific position that Enron or any of
16 the other suppliers have taken that indicates that they are
17 asking for the rate caps to be increased, of which you are
18 aware?

19 A That's my position, that Enron and the other
20 members of PECC are saying that under the cap provisions in
21 the joint petition for settlement that there is
22 insufficient room in order for competition to develop.

23 Q But when you mention the rate, any other
24 competitors know that indicates that he or any other
25 competitor wants the overall rate caps to increase so that

1 customer would actually be --

2 A I think it's clearly the intent of that testimony
3 to increase the room in order to provide greater room under
4 the generation rate cap in order for competition to
5 develop. That's the fundamental position of your witness.

6 Q But does that witness' testimony, if you know,
7 suggest that a customer could be subject to higher overall
8 rates? Even if the gen. cap was increased?

9 A Sticking with the gen. cap, the generation cap is
10 specifically what they are trying to increase.

11 Q I see.

12 A So this should say gen. cap. The generation is a
13 rate cap. Under the terms of the joint petition for
14 settlement.

15 Q You agree, don't you, that nothing in Mr.
16 Mitnick's testimony indicates overall rate capacity, the
17 last column that's shown on Table A, nothing in his
18 testimony indicates that those should be increased so that
19 customer's overall, in terms of overall they pay, overall
20 rate they would pay, let's say, in 1999 would be any easier
21 than what's been presented on that table?

22 A It's fairly obvious that absent the rate caps
23 there is no issue relative to constrained market prices
24 generated. That includes the generation rate cap and the
25 overall rate cap.

1 Q Is there a place in the testimony of Mr. Mitnick
2 that indicates that the overall rate cap should be
3 disregarded or should be abandoned in any way?

4 A I don't see that.

5 Q So you are referencing just the gen. cap in that
6 sense?

7 A Plus I added on to that if there were no caps in
8 place there would be no issue because it is the caps on the
9 prices that are preventing or constraining the component
10 which includes the generation cap.

11 Q Those caps are the statutory generation caps?

12 A No. These are the caps that are implemented by
13 the joint petition which are significantly below the
14 statutory rates.

15 Q You mean because they also include rate
16 increases?

17 A That is correct.

18 Q In 1999, for example, they include 10 percent
19 rate decrease. Is that what you are --

20 A There was a 10 percent rate decrease which lowers
21 the cap average one cent per kilowatt.

22 Q That's good for customers?

23 A That was regarding consumer protection defined by
24 the consumer groups in order for them to sign on to the
25 joint petition for settlement.

1 Q So a 14 percent rate decrease, for example, would
2 be even better?

3 A It would not be achievable.

4 Q Would it be better based upon the customer's
5 present --

6 A It would not be achievable. Therefore, I think
7 it would be, put the customer in a worse position because
8 PECO did not agree to a 14 percent rate reduction.

9 MR. CLEARFIELD: Your Honor --

10 JUDGE CHESTNUT: Please try to respond to --

11 THE WITNESS: I am trying, Your Honor.

12 BY MR. CLEARFIELD:

13 Q Would a customer overall be better off with a 14
14 percent rate decrease or worse off, yes or no?

15 A Is that a hypothetical that you are offering me.

16 Q Would a customer be better error worse off if he
17 received a 14 percent rate decrease as opposed to a 10
18 percent rate decrease?

19 A I would answer that as a hypothetical, if
20 obviously the larger rate decrease for a customer, assuming
21 they could achieve it, the better off they would be but
22 that goes a long way.

23 Q Okay. That's ail. Thank you very much.

24 MR. BONNEY: I'd like for the witness to finish --

25 JUDGE CHESTNUT: He did. If you want to ask on

1 redirect, you certainly may.

2 MR. CLEARFIELD: That's all I have, Your Honor.

3 JUDGE CHESTNUT: Mr. Dworetzky, you indicated you
4 have cross for this witness as well as Mr. Hawk, you too.
5 Do you want to go first?

6 MR. HAWKE: It doesn't matter to me.

7 MR. DWORETZKY: I'll be brief, Your Honor.

8 BY MR. DWORETZKY:

9 Q Mr. Hill, you originally filed a claim for
10 stranded cost recovery of \$6.8 billion. Is that correct?

11 A That was the company's original claim in April
12 yes.

13 Q You subsequently addressed your calculation of
14 what those stranded costs were to 7.4 billion. Is that
15 correct?

16 A That's correct.

17 Q But you did not change your legal claim that you
18 asserted? In other words, that despite having recalculated
19 the stranded costs your legal claim for stranded cost
20 recovery reached 6.8 billion. Is that correct?

21 A That's my understanding that's the remainder of
22 the limitations in the advice of counsel unless we notice
23 customers for a further increase that we are constrained by
24 the 6.8 billion original request in April.

25 Q Mr. Hill, you kept your claim at 5.8 billion.

1 A Correct.

2 MR. BONNEY: He's asked him twice and he's answered
3 the question. It's argumentative to ask it again and I
4 would ask that the attorneys for Enron and for NEV refrain
5 from re-asking the question in an argumentative manner. If
6 they don't like the answer, it's inappropriate to reask the
7 same question.

8 MR. DWORETZKY: Your Honor.

9 JUDGE CHESTNUT: Do you think that was the case
10 here? I think it was very clear that you we lay
11 activities. These disputes of what your claim is,
12 is this --

13 THE WITNESS: I believe our claim as indicated, was
14 our filing of 6.7 billion which we did not seek to change
15 that through any subsequent documentary subsequent
16 documentation.

17 JUDGE CHESTNUT: Is that responsive to your
18 question?

19 MR. DWORETZKY: That's helpful.

20 BY MR. DWORETZKY:

21 Q Mr. Hill, I'm asking you to presume that the
22 settlement did not exist. If PECO were tendered a check
23 for \$6.8 billion, would that satisfy the company's -- would
24 that fully satisfy the company's legal claim for stranded
25 cost recovery?

1 A No.

2 Q It would not?

3 A No. It would not.

4 MR. DWORETZKY: Thank you very much.

5 JUDGE CHESTNUT: Mr. Hawke?

6 MR. HAWKE: Good afternoon.

7 BY MR. HAWKE:

8 Q From your title, Mr. Hill, vice president,
9 controller, I assume you are an officer of the company. Is
10 that correct?

11 A Yes.

12 Q How long have you been an officer?

13 A Since 1990.

14 Q And you also are in charge and responsible for
15 regulatory compliance for the company?

16 A Yes. I have the responsibility for the rate area
17 of the company, r-a-t-e.

18 Q How long have you had that responsibility?

19 A Prior to being elected vice president and
20 controller, I was the manager of the rate division. So I
21 have been engaged in the rate area for many, many years.

22 Q How many years? More than 12?

23 A I have been in the rate area for 27 years, 28
24 years.

25 Q But you have been in charge for regulatory

1 compliance in that area for how many years?

2 A As manager for --

3 Q Approximately?

4 A -- five, four or five, and as vice president are
5 with rates under my direct control since 1990.

6 Q Now, you participated in the process the
7 stakeholder process that led to the passage of Chapter 28,
8 did you not?

9 A Yes. I was one of the participants.

10 Q That was called the stakeholders group?

11 A It has been referred to as the stakeholder group.

12 Q Essentially, the stakeholders group was a working
13 group that produced various negotiated drafts of
14 legislation that ultimately culminates in a final draft
15 given to the Legislature last fall for its consideration?

16 A That's my understanding.

17 Q And early on in those stakeholder negotiations,
18 the drafts provided for a three to five year transition
19 period as well as a four year phase-in period with customer
20 choice beginning in 2005. Is that correct?

21 A Generally, I don't know whether I could reiterate
22 but I know there were transition periods and phase-in
23 periods in the earlier drafts.

24 Q And PECO specifically supported a customer choice
25 total customer course beginning in 2005. Is that correct?

1 A Of PECO along with other parties, supported those
2 longer transition periods and phase-in period.

3 Q And then later on the legislation, the draft
4 legislation was modified to provide for the current
5 three-year phase in which provides for a full customer
6 choice in 2001.

7 A That's -- that along with other modifications
8 became a part of the final legislative package.

9 Q You, I think you will agree that it's fair to say
10 that in the past PECO has taken rather innovative steps to
11 retain load, such as the development of flexible pricing?

12 A Yes. We had gotten flexible pricing and other
13 tariff modifications in order to retain customer load.

14 Q And it's also fair to say that PECO was
15 relatively successful in obtaining the load?

16 A I don't know whether I would quite agree with
17 that. There was some significant amount of load that we
18 have lost in our service territory for business closure and
19 for other reasons. I don't know -- I don't know if that's
20 correct. Obviously if we were as successful as we had
21 been, our total sales would not have been as we have
22 experienced over the last ten years.

23 Q But you did experience certain successes in
24 respect to --

25 A We have retained loads but on net we have

1 basically been holding our own relative to certain --

2 Q And is it also fair to say that PECO was
3 generally successful in encouraging its larger customers
4 not to engage in cogeneration?

5 A I think we have a degree of development of
6 cogeneration where it makes business sense for those
7 customers and the company has encouraged that to inform the
8 cogeneration. But there has been a limited amount of
9 cogeneration development in our service. For reasons that
10 the customer would have to explain, not PECO.

11 Q And turning your attention to just briefly to
12 TPH-9, which is an attachment to Statement 1RJ, rejoinder
13 testimony, just to clarify a question that I had, in
14 follow-up to Mr. Clearfield's cross examination, these
15 numbers do not reflect what delivered price of power. Is
16 that correct?

17 A That's correct. These are wholesale prices for
18 all the numbers shown in the --

19 Q And the numbers that are shown there for the
20 three Western Pennsylvania companies, what do they
21 represent?

22 A They represent their estimates embodied in their
23 current plan for restructure system of the company adjusted
24 for a transmission charge to purchase power from their
25 control area which isn't carried into the PJM area.

1 Q Okay. Now, it's my understanding that you do not
2 do any special kind of quantification of what the delivered
3 price of power would be without regard to essentially those
4 that numbers that we find on Table A of the joint
5 petition. Is that correct?

6 A I believe Dr. Hieronymus in his testimony adjusts
7 some of those adjustments to move from a wholesale
8 transaction to a retail transaction.

9 Q But you, yourself, did not in Table A, do any
10 specific quantification of the total retail price of power?

11 A Well, just for clarification, table A referring
12 to the joint petition.

13 Q Page 8 of the joint petition?

14 A Table A of the joint petition. The company
15 participated in the development of all the prices including
16 the general prices which are shown in that table.

17 Q While we are at Table A, you would agree that
18 there is little, if any, difference between the market
19 generation cost projected for 1999 and the energy capacity
20 cap proposed in the settlement, wouldn't you?

21 A Would you repeat the question. I was looking at
22 the page.

23 Q You would agree, wouldn't you, that there is
24 little, if any difference between the market generation
25 costs projected for 1999 and the energy and capacity cap

1 proposed in the settlement?

2 A Well, the energy and capacity cap for 1999 is
3 2.80 cents per kilowatt-hour. And the range of wholesale
4 prices shown in Exhibit TPL-29 shows a range of 2.06 to
5 2.45. So -- and I would consider those to be significant
6 differences.

7 Q So you are disagreeing with my proposition?

8 A Yes. I would agree those are significant
9 differences.

10 Q And while we are at Table A, it's also my
11 understanding that PECO did not prepare a similar type of
12 table for each rate class? Is that correct?

13 A That's correct. The only translation of Table A
14 is the translation to the tariff sheet shown in Appendix C
15 of the joint petition.

16 Q Now, Mr. Hill, isn't it true in this case that
17 the legislation, the Competition Act tips the scales
18 decidedly in favor of the small customers?

19 A I don't quite understand your question. I think
20 there are consumer protections in the Competition Act. I
21 don't know whether I would class that as tipping the
22 scale. Obviously the consumer, value to the consumer was
23 of utmost importance in the development of the
24 competition.

25 Q But in terms of balancing between shareholder and

1 customer, it's your position that the legislation, as
2 drafted and passed by the Legislature, tips the scales in
3 favor of the customers.

4 MR. BONNEY: I would request a clarification of his
5 position? Are you referring a specific piece of his
6 testimony or you are you asking him to agree with your
7 statement?

8 MR. HAWKE: I am asking him to agree with my
9 statement.

10 THE WITNESS: I wouldn't class it that way, Mr.
11 Hawke. I would say that the act, itself, is an act which
12 balances the needs of customers or the desires of
13 customers. It balances the needs or desires of companies
14 and their shareholders. I think it reasonably reflects
15 other constituencies, including the suppliers, of which you
16 are representing one.

17 BY MR. HAWKE:

18 Q Now, you would agree that in order for there to
19 be a competitive market for the retail sales of
20 electricity, that PECO is going to have to lose market
21 share, would it not?

22 A My suspect is that PECO will, in its franchise
23 service territory, lose market share when competition takes
24 hold. I think we'll see that first in the advent of the
25 pilot program which is just about to take off and we'll see

1 further indications of that finding in January, 1999 when
2 competition actively begins.

3 Q Do you have any estimates or guesstimates of the
4 loss of market share by 2002?

5 A No, I do not.

6 Q Would you agree that from the perspective of PECO
7 shareholders it would be in the company's best interests,
8 of course, to recover the largest portion of its current
9 generation assets from the cost of those assets?

10 A I think it would be in the shareholders' interest
11 to recover all its assets and a fair return on those
12 assets, not just generation but also transmission and
13 distribution and all the others put into perspective.

14 Q And you would agree, also, that there would be
15 clearly less relative risk if the company could recover it
16 maybe through the CTC?

17 A Relative risk in what?

18 Q As opposed to recovery through energy and
19 capacity counts?

20 A Is this a one bucket or the other type question.
21 Is that what you are focused on?

22 Q From the generation assets was my question and
23 the follow-up is given that it would be in the best
24 interests to recover all those generation cost. It would
25 be best if that recovery took place through the CTC, would

1 it not? It would be less riskier?

2 A I don't know whether I'd class it as less risky.
3 It defines which pieces stranded and covers that through
4 the CTC and then the market piece through the market.
5 Obviously, to the extent the market plays out one way or
6 another, that portion is perhaps more risky than the CTC
7 but the CTC puts the company substantially at risk for
8 recovering that with the fact that there is no
9 reconciliation other than that it is assumed to be in there
10 such that any weather variations or sales variations a that
11 point would be at the risk of shareholders.

12 Q Now, it's your position, as I understand it
13 generally, that this joint settlement is designed to
14 promote a robust competitive market, is it not?

15 A I think it is the company's position, again,
16 being one signatory to the joint petition, that there is
17 ample opportunity for a competitive market to develop
18 within the construct of this joint petition.

19 Q And how would you define that competitive market?

20 A There will be competitive supply for energy and
21 capacity to customers over the period of time commencing
22 January 1st, 1998 through and including December 31, 2008.

23 Q And would you also agree that the developing of a
24 properly functioning and competitive market is a means of
25 insuring generation reliability?

1 A I think we'll have to wait and see on that one.
2 To some degree, what we are saying here is will the market
3 be sufficient to provide capacity as it's needed to meet
4 the customers or the load requirements and my sense is that
5 if the market is there, those requirements will be met.

6 The settlement, as it's constructed here, leaves,
7 over the entire transition period, the obligation to
8 provide energy and capacity to customers and the company
9 takes seriously the obligation to serve over that period of
10 time and retains the obligation to serve under the
11 provisions of the statute.

12 Q How many suppliers do you envision would be
13 necessary with some degree of equal market share to
14 constitute a robust competitive market?

15 A I guess my sense is that you do not need
16 competition, competitors to have equal market share to have
17 reasonable -- a reasonably competitive market. I think it
18 will be necessary for competitors to participate and the
19 indication that they are competing, itself, makes the
20 market and I would refer you again to some of the testimony
21 of Dr. Hieronymus which addresses that on point.

22 MR. HAWKE: That's all I have, Your Honor.

23 JUDGE CHESTNUT: Does anyone else have any
24 questions?

25 MR. HERSHEY: Your Honor, Mr. Hill made one

1 statement concerning my position which needs
2 clarification.

3 BY MR. HERSHEY:

4 Q Mr. Hill, do you recall you made a statements I
5 believe in a question by counsel that the customers
6 requested a 10 percent rate reduction.

7 A Something to that effect.

8 Q Would you agree that that was not the initial
9 request from CEPA and other consumer groups?

10 A That's correct.

11 Q And, in fact that, that initial demand was for 30
12 percent reduction?

13 A That is correct.

14 Q And why do we not see a 30 percent reduction in
15 this settlement?

16 A Because the company would not agree to a schedule
17 of rate decreases to that level and also the other
18 provisions we have offered up in the settlement. It was a
19 balancing of the company's interests and the consumers'
20 interests which brought that negotiation from the consumer
21 groups down and the company on that negotiation position of
22 full recovery of stranded costs to a level that we could
23 jointly agree to.

24 MR. HERSHEY: Thank you. Thank you, Your honor.

25 JUDGE CHESTNUT: Anybody else have any questions for

1 Mr. Hill?

2 (No response.)

3 JUDGE CHESTNUT: Do you have redirect, Mr. Bonney?

4 MR. BONNEY: Just a couple questions, Your Honor.

5 Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BONNEY:

8 Q Mr. Hill, in response to cross examination by Mr.
9 Doll, you indicated a price for a sale of capacity from
10 Delmarva to PECO at \$70.00 per megawatt-day. Do you recall
11 that question and your answer?

12 A Yes, I do.

13 Q Could you translate that price into a price per
14 kilowatt-year?

15 A Yes. The equivalent of a capacity price of
16 \$70.00 per megawatt-day is equivalent to \$25.55 per
17 kilowatt-year.

18 Q Mr. Clearfield asked you some questions regarding
19 Exhibit TPH-29.

20 A Yes.

21 Q Could you clarify for me whether the data that's
22 listed here in the first two columns is for other
23 Pennsylvania companies or for Pennsylvania companies and I
24 am referring you to the title of the exhibit?

25 A The first two columns?

1 Q Yes. PHB DRI. PHB EIA?

2 A The PHB DRI and PHB EIA are pricing that was in
3 PECO Energy's filing for restructuring as sponsored by Dr.
4 Hieronymus.

5 Q I direct your attention to Enron Cross
6 Examination Exhibit 3. This is the article from the Star
7 Ledger that you were discussing with Mr. Clearfield. Mr.
8 Hill, have you ever been misquoted or quoted out of context
9 in a newspaper article?

10 A Occasionally.

11 MR. BONNEY: That's all we have, Your Honor.

12 JUDGE CHESTNUT: Any recross?

13 MR. DOLL: I might, Your Honor. I have one
14 clarification. I know I am getting tired and it's getting
15 late. The hearing may be going. I thought Mr. Bonney
16 asked the question about the sale from Delmarva Power and
17 Light to PECO.

18 MR. BONNEY: If I did, I apologize.

19 RECCROSS EXAMINATION

20 BY MR. DOLL:

21 Q Would you care to clarify that, Mr. Hill? The
22 sale went the other way, didn't it?

23 A The sale was from PECO Energy to Delmarva slash
24 Connectiv for capacity during the month of November, 1997.

25 Q And that is just for that one month?

1 A That was all that Delmarva slash Connectiv asked
2 for in the request for capacity.

3 MR. DOLL: That's all.

4 JUDGE CHESTNUT: Anything further for Mr. Hill or
5 can he be excused?

6 (No response.)

7 JUDGE CHESTNUT: Thank you very much, Mr. Hill.

8 THE WITNESS: Thank you.

9 MR. CLEARFIELD: I would move in Enron Cross
10 Exhibits 1, 2 and 3.

11 MR. DOLL: And I likewise would --

12 JUDGE CHESTNUT: Before we get to you let's deal
13 with Enron first. Any objections?

14 MR. BONNEY: The only objection I have is to Enron
15 Cross Examination Exhibit 3 and I stated the objection
16 earlier. I don't think it's relevant to this case what
17 critics in New Jersey may have said with respect to a PSE&G
18 proposal.

19 It's also hearsay and as to the statement from Mr.
20 Cucci that's referenced in that article I have no objection
21 but to the rest of the exhibit I have that objection.

22 JUDGE CHESTNUT: I'll admit it not for what it's
23 worth in terms of what probative weight if there is any.
24 Mr. Doll?

25 (Enron Cross Examination Exhibits Nos. 1, 2 and 3
 were admitted in evidence.)

1 MR. DOLL: Your Honor, I would likewise like to move
2 into the record Connectiv Cross Examination Exhibits 1, 2
3 and 3.

4 JUDGE CHESTNUT: Is there any objection?

5 MR. BONNEY: No objection.

6 JUDGE CHESTNUT: Those documents are admitted
7 (Connective Cross Examination Exhibits Nos. 1, 2 and
8 3 were admitted in evidence.)

9 JUDGE CHESTNUT: The next witness that is the only
10 witness left on the lineup sheet is Mr. Silkman. Before we
11 start, can you identify which statements you are going to
12 be admitting in connection it with this witness? There
13 were a bunch of different ones filed, some of which
14 incorporated others. I want to make sure you have the
15 right ones.

16 MR. HERSHEY: The only testimony that we are
17 admitting in evidence here is the rebuttal testimony of
18 Richard H. Silkman, October 8, 1997. It's the only
19 document that Dr. Silkman can testify to, which we are
20 asking be admitted.

21 MR. CLEARFIELD: Your Honor, the agreement that we
22 made all other testimony would be admitted into evidence
23 includes Dr. Silkman's direct testimony just as it includes
24 everybody else's direct testimony.

25 MR. HERSHEY: I don't believe that's accurate.

1 MR. CLEARFIELD: Okay. I --

2 MR. HERSHEY: The initial testimony that Dr. Silkman
3 prepared in this proceeding went to one very narrow issue
4 which was the economic impact. We did not feel that that
5 was necessary to support the settlement which was the
6 purpose of this round of the proceedings and therefore, it
7 was not included.

8 I have no particular objection, if Mr. Clearfield
9 wants to cross on that. But it's not really relevant per
10 se to supporting the settlement. --

11 MR. CLEARFIELD: Your Honor, I am confused. In that
12 the revised Appendix H which we were using as the template
13 for determining testimony that was going to be admitted
14 into the record includes Dr. Silkman's testimony and
15 supplemental direct as number 16 on the first page. It
16 also includes it and as in the Item Number 5, impact on
17 community economic development. And therefore, Dr. Lyon's
18 testimony is being offered by PECO into the record.

19 MR. HERSHEY: But I believe that what's referenced
20 is the rebuttal testimony. It's not worded as precisely as
21 it might have been but it's the rebuttal testimony dated
22 October 8th which is -- I mean, it's not worth belaboring
23 the point.

24 JUDGE CHESTNUT: I think it is up to you to decide
25 what testimony you are going to put in.

1 MR. CLEARFIELD: Well, I have decided.

2 JUDGE CHESTNUT: Unless some wants to --

3 MR. CLEARFIELD: Your Honor, this brings a point
4 that perhaps I am just -- I thought we had an understanding
5 that all of the testimony that was originally submitted
6 either in support of or in opposition to the settlement
7 would be entered into the record by stipulation.

8 That's what's on Appendix H and therefore, that
9 would be part of the record now, in the proceeding. And
10 that's what you would eventually move into the record on
11 Friday. And as we mentioned that it would be done subject
12 to motions to strike or other statements, but that's what
13 we have agreed to.

14 That's what we discussed earlier today and
15 obviously, we cannot accept that until that only PECO
16 testimony would be moved into the record by all the
17 testimony.

18 JUDGE CHESTNUT: Well, there's no -- Mr. Hershey you
19 don't object to putting it in, do you?

20 MR. HERSHEY: Certainly if we go to a fully
21 litigated case, that testimony should be in the record. I
22 don't object. I mean we prepared it. It's good
23 testimony. But --

24 MR. CLEARFIELD: It's fine if it's going to go in.

25 MR. HERSHEY: It's not worth arguing about here.

1 Let's just put it in and move on.

2 JUDGE CHESTNUT: I would say it's up to you to
3 decide what your case is going to be.

4 MR. HERSHEY: Of course.

5 JUDGE CHESTNUT: The Commission does want a complete
6 record which the parties are free to pick and choose as
7 they wish to support their own positions. It's already
8 been served. Do you have cross on it, Mr. Clearfield?

9 MR. CLEARFIELD: I have some cross on his testimony
10 he submitted with respect to the settlement that refers to
11 his earlier testimony.

12 JUDGE CHESTNUT: Why don't we go ahead with his
13 second statement and see if it's necessary to put in the
14 first one, although I think the best course is to really
15 put in both. But --

16 MR. HERSHEY: Let me label the first document as
17 CEPA Statement 1 and the rebuttal testimony as CEPA
18 Statement 2. I'll ask Dr. Silkman if both the documents
19 have been prepared by him.

20 RICHARD H. SILKMAN, called as a witness, having been
21 duly sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 JUDGE CHESTNUT: Please sit down and give and spell
24 your name for the record.

25 THE WITNESS: My name is Richard H. Silkman,

1 S-i-l-k-m-a-n. The address is 76 Main Street, and that's
2 in Yarmouth, Maine 04096.

3 JUDGE CHESTNUT: Proceed.

4 BY MR. HERSHEY:

5 Q Dr. Silkman, were CEPA Statement Number 1 and
6 CEPA Statement 2 prepared by you?

7 A Yes, they were.

8 Q And if you were asked the questions that are in
9 those documents would you have the same answers today?

10 A Yes, I would.

11 Q And are those answers true and correct to the
12 best of the your information?

13 A Yes, they are.

14 Q And do you have any corrections on CEPA Statement
15 2?

16 A There is one typo that I did pick up earlier.
17 It's on page 4, line 23. The last word in that sentence
18 shouldn't be "sull." It should be full.

19 JUDGE CHESTNUT: I'm sorry. That's just a typo?

20 THE WITNESS: Yes. Just a typo.

21 MR. HERSHEY: With that, I ask that Dr. Silkman's
22 testimony be admitted into evidence and he's available for
23 cross examination.

24 JUDGE CHESTNUT: Any objections?

25 (No response.)

1 JUDGE CHESTNUT: The documents are admitted.

2 (CEPA Statements Nos. No. 1 and 2 were produced and
3 marked for identification and admitted in
4 evidence.)

5 JUDGE CHESTNUT: Does anyone have any questions for
6 Dr. Silkman?

7 MR. CLEARFIELD: Yes, Your Honor. I have a few

8 CROSS EXAMINATION

9 BY MR. CLEARFIELD:

10 Q Good afternoon, Dr. Silkman.

11 A Good afternoon.

12 Q Doctor, I am go to try to ask you in three or
13 four areas some questions with respect to your position in
14 rebuttal. In the first part of your rebuttal testimony,
15 starting on page 3, you discussed the value, if you will,
16 of the rate decreases that are reflected in the partial
17 settlement. Is that a fair characterization?

18 A I think that that part of the testimony relates
19 to whether or not we would expect to see something more
20 significant out of what Mr. Mitnick referred to as the body
21 politic.

22 Q You are not suggesting by this testimony that Mr.
23 Mitnick or the competitive coalition are suggesting that
24 the rate decreases that are reflected in the partial
25 settlement should not occur, are you?

A No, I am not.

1 Q In fact, you know that in the testimony of Mr.
2 Mitnick, he has suggested greater decreases?

3 A In the earlier years he has suggested rate
4 increases.

5 Q Let me ask you some questions about the testimony
6 you submitted, and it's he been labeled as CEPA Statement 1
7 which he is your first piece that you submitted?

8 A I did not bring a copy of that with me. I wasn't
9 sure. If you have a copy --

10 Q I do. And Your Honor, at this point -- Doctor,
11 these are fairly general and it should be easily
12 answerable. The first the part of your testimony,
13 basically, describes your conclusion that in general, using
14 a model that you describe in your testimony rate decreases
15 would have benefits to the economy and consumers in the
16 PECO service territory. Is that a fair characterization?

17 A Yes, that's correct.

18 Q And then generally, is it also fair that to
19 suggest that in the model that you have used, the larger
20 the rate decrease, if you will, the greater the benefits to
21 the economy and to consumers?

22 A That is correct.

23 Q And the benefits were increased, job creation,
24 and increases in disposable income generally?

25 A Generally, yes.

1 Q Now, you give an example in the testimony, for
2 example, on page 8 and 9 of a 10 percent rate reduction and
3 you indicate that based on the model you used that would
4 add approximately \$110 million to disposable income for
5 residential customers and the equivalent of 2,200 jobs. Is
6 that fair?

7 A That is correct, yes.

8 Q Now, again, is it also fair that more or less
9 proportionally if the rate increase was let's say double,
10 that in your view the increase to disposable income would
11 double and the job creation would double?

12 A Generally speaking, the model is linear so yes
13 that, would follow.

14 Q Now, on pages -- strike that. Do I understand
15 that basically the model attempts to identify two reasons
16 why this disposable income would cause increases to double
17 and the first is that usually reducing rates means
18 consumers would have more disposable income to spend on
19 other things?

20 A Yes.

21 Q The second is that when you reduce rates, people
22 use more of the product for which the rate reduction
23 applies. Is that fair?

24 A It's generally the case, yes.

25 Q And in fact, on pages 7 through 8, you indicate

1 you pretty much go throughout -- this is in your testimony
2 Statement 1 you indicate that based on your model if rates
3 for electricity were reduced you would expect to
4 residential, commercial and industrial customers, in fact,
5 even other customers such as municipal governments, would
6 respond to the lower prices by increasing consumption.

7 A If rates were reduced and stayed low, that's
8 correct.

9 Q And so based on this model we can assume that as
10 a result of the 10 percent rate decrease proposed in the
11 partial settlement you expect to see what's generally
12 called stimulation or positive price elasticity, that is
13 more usage by customers in the PECO service territories?

14 A Not necessarily. Reason is because you are
15 comparing two very different scenarios. The scenario that
16 was run for this analysis in the direct testimony assumes a
17 10 percent rate reduction that stays at 10 percent for the
18 entire period relative to other neighboring jurisdictions
19 and relative to base rates.

20 The settlement that's been proposed in the
21 settlement agreement, initially creates a 10 percent
22 reduction but that initial reduction is reduced over time
23 as a result of the terms of that -- of the settlement.

24 Therefore, it's less likely that there would be an
25 increase in consumption because people would anticipate the

1 fact that prices are going up in the future, relative to
2 the case that's used in this particular example. In the
3 direct testimony.

4 Q I was with you until you got to the people would
5 anticipate. With respect to the rate decreases that are
6 proposed, the 10 percent, 10 percent in the first two
7 years, in that period of time, again, based on your model,
8 you would expect that that would stimulate demand. Is
9 that --

10 A It would depend. Remember where the demand comes
11 from. Demand comes from people making decisions about
12 capital spending. If the rates were to fall by 10 percent,
13 and stay 10 percent lower for the entire term of the
14 settlement agreement, then people would be induced to spend
15 capital in order to achieve the benefits of the lower
16 rates.

17 If, however, the rates are going to fall by 10
18 percent in the first two or three years, and then over time
19 that 10 percent rate reduction is going to be eroded or
20 it's going to be given back or rates are going to be
21 increased relative to the 10 percent level.

22 Then it's not as clear that people will spend more
23 because the payoffs won't be as good but they are
24 non-capital related kinds of increases to demand that are,
25 that you describe on page 7 and 8, for example, consumers

1 use more electricity without spending more for appliances.

2 Q Sure.

3 A There are some reasons you might see a very short
4 term demand response. You might also see on the other
5 hand, gain in the path of rates. I think I argue this in
6 my rebuttal testimony. Because you might see people
7 responding very differently to the path of rates that are
8 going to occur as a result of the settlement agreement.

9 I think we are looking at two very different
10 situations. I want to emphasize that because I can see
11 where the confusion comes from. In the direct testimony,
12 my model was a 10 percent permanent knowable certain rate
13 reduction.

14 There was no question but that rates were going to
15 be 10 percent lower in the modeling that was done in this.
16 I also modeled, as you'll recall, further rate decreases to
17 see what would happen if it went to a national average.

18 That's not the scenario that occurs under the
19 settlement agreement. And therefore, to take the numbers
20 that are in the direct testimony and to apply them to the
21 settlement agreement would be very misleading.

22 Q Well, we have a rate reduction from the first
23 several years based on the total rate which start at 10
24 percent and then dissipate, is that right, through I guess
25 2002. Is that your recollection of the settlement?

1 A Rate decrease create 10 percent for the first
2 initial was it two years?

3 Q Yes and then 5 percent and 2 percent and then
4 it's back to the level of rates in 1999?

5 A That's correct.

6 Q Now, if, in fact, during that period of time, a
7 competitive customer were successful in reducing the price
8 at which consumers were actually purchasing generation, so
9 that those 10 percent rate decreases turned out to be
10 sustainable, in fact stayed at those levels would you
11 expect, again, that you would see the economy stimulation
12 that you described in your testimony that is customers will
13 begin to use more electricity in response to those lower
14 prices?

15 A If you could guarantee tea that that would occur
16 then I would expect to see some of the responses. But the
17 fact that it's not guaranteed suggests that it may not.

18 Let me give you an example. I mean, under my, the
19 direct testimony, the company thinking about relocating to
20 the Philadelphia region would experience 10 percent lower
21 electric prices with certainty. That certainty can be
22 factored into decisions about capital investments and so
23 forth.

24 More importantly, that 10 percent exists during the
25 time at which the company would expect to in be operating

1 the PECO service territory. Under the settlement agreement
2 the initial 10 percent rate reductions will apply only to
3 people who are currently here.

4 It may take two, three months for a company to be
5 able to relocate or move facilities to this locale to
6 expand its existing facilities. In these instances, what
7 it's looking at is not a 10 percent rate reduction.
8 Instead, what it's looking at is what's the settlement is
9 offering which its 5 percent, 2 percent, and then no rate
10 increases theoretically out into the future.

11 So they really are two different scenarios and we
12 would expect to see the demand response to be very
13 different.

14 Q When a model considers demand response, does it
15 do so based on nominal prices or real prices?

16 A It does so based on relative prices.

17 Q That is closer to real or non-real?

18 A It's closer to real. But it's not real the way
19 we tend to think of them. Real we don't to think of them
20 as against inflation.

21 What the model does is it allocates a certain amount
22 of national economic activity into different regions of the
23 country and then within different regions it looks at
24 what's going on on a cost basis in that particular region
25 relative to the national economy.

1 So it's not real in the sense that it's adjusted for
2 inflation. It's real in the sense that it's compared to
3 other geographic regions. So lower prices in PECO service
4 territory, for example, in Philadelphia area, the effect of
5 those lower prices will be to do two things.

6 It will be to lower the cost of doing business in
7 Philadelphia vis-a-vis everywhere else and that lowering
8 will stimulate additional investment, stimulate additional
9 demand here.

10 But it will also bring other activity that's
11 footloose that may be in the New York area may be in the
12 Virginia area that would otherwise like to be here but for
13 the higher electric prices. It will not bring that
14 activity here as well. So --

15 Q Would that relative price comparison consist of
16 the actual rate decreases that are suggested either in the
17 partial settlement or in the alternates proposed by the
18 others?

19 Aren't there also real price decreases as a result
20 of the rate caps that are imposed by the act that would
21 also create a relative reduction in prices as vis-a-vis
22 other parts of the region?

23 A There may be. Part of it, though, will depend on
24 whether the caps are actually enforced, in the sense that
25 they have constraining. Remember the caps are designed to

1 protect against market prices that are higher than the
2 caps.

3 If market prices are less than the caps, then the
4 price in the Pennsylvania area will be entirely comparable
5 to the price in the Pittsburgh area and will be fairly
6 comparable to the price in the Washington area and the New
7 York area and so forth. It's only when the market prices
8 exceed caps that you would expect to see the kinds of
9 impacts that you are talking about.

10 Q If the market prices are lower than the caps and
11 that would result --

12 A It will result --

13 Q -- in sustainable rate decreases, won't it?

14 A But that same rate decrease would be happening in
15 every other area as well because there would be phasing.
16 Same market prices. You would have to market that the
17 market prices in the Philadelphia region for whatever
18 reason were lower than the market prices in the competing
19 regions that Philadelphia competes against. And again,
20 it's relative to let's say last year or the last time
21 period.

22 Q But actually you have to also know how those
23 rates are reflected in the actual rate continuity. Just
24 because they are the same prices doesn't mean, for example
25 in Connecticut, that rates would reflect to a different

1 marketplace?

2 A That's right, and I'd say they are not being
3 reflected. If they are not being reflected, the comparison
4 is not accurate because of the rate continuity because of
5 whoever's version of the settlement you choose, the
6 reductions in market pricing potential be reflected in the
7 price the customer would pay there's more a chance if
8 market prices are low customers will see those benefits and
9 respond with this positive demand elasticity we discussed.
10 I think what you have to --

11 Q So that --

12 A -- argue there is that somehow or another, by the
13 time we would expect to see a response on behalf of the
14 industrial and commercial customers in particular that none
15 of the other states had engaged in restructuring, that none
16 of the other states had effectively, you know, required the
17 restructuring of the utility industry such that people were
18 now customers were now facing the market for generation.

19 There may be some instances in this country where
20 the restructuring won't occur by 2001, 2002, but most of
21 the areas that I am familiar with and most of the areas
22 that I think we would say people would compete against are
23 probably going to be either in restructuring or very close
24 to it by that time period based on my best guess.

25 Q Just to finish up here, all of the other things

1 being equal, it's more and more likely that we're going to
2 see stimulation of usage based on the rate decreases that
3 are proposed by the partial settlement or the other
4 alternatives than we are going to see a reduction in usage
5 as a result of those rate increases? Whether the tendency
6 is as completed in the model or not, the tendency still
7 would be to stimulate usage as result of those rate
8 decrease. Is that fair?

9 A You know, it's not -- economists all have this
10 they have got to do what's called seriatus parabolis
11 (phonetic). That's a Latin term.

12 Q They have that in Indiana, too.

13 A And probably with that is that it really the
14 conclusions that you are drawing only apply within that
15 context, all other things being equal. All other things
16 being equal. Lower prices will stimulate demand.

17 The problem here, though, is that all other things
18 aren't equal and in particular one of the things that's not
19 equal is that the utility industry here is going through a
20 restructuring. And what happens is as a result of that
21 restructuring is that customers have for the first time, in
22 about three years, have some certainty about what the
23 future offers.

24 With respect to market prices, with respect to what
25 they will have to pay for electricity. If the settlement

1 agreement goes forward, customers will know with certainty
2 what their T&D rates are and what their CTC slash ITC
3 charges are.

4 They will know what they will be paying for
5 electricity with remarkable precision relative to where
6 they were in 1994, 1995 and even 1996. As a consequence,
7 people who are selling energy conservation technologies,
8 people who are selling alternative options, alternative
9 ways of either are utilizing electricity, generating
10 electricity or consuming electricity will now have a fixed
11 bogey against which they compare this technology and that
12 uncertainty, I believe, it eliminates that the customer
13 that existed in this market is going to create the demand
14 for those kinds of technologies and those kinds of
15 organizational structures that will effectively allow
16 customers to get out from underneath that certain
17 transmission and distribution charge and CTC slash ITC
18 charges.

19 Q That's going to offset or there's going to be one
20 factor that in your view, could reduce demand and that
21 would be offset by or countervailing effect of rate
22 decreases for PECO that are either proposed in the partial
23 settlement or by other parties. Is that a fair statement?

24 A I think I argued in the rebuttal testimony that I
25 believe that it would. I have done no empirical study of

1 this. In fact, I am not even sure you can make that
2 statement because there's no empirical evidence available
3 yet. There are only examples of people making by decisions
4 today that they do not take two years or they are --

5 Q I understand. I'll withdraw the question. Let's
6 talk about another part of your testimony. And that is the
7 second part of your direct which you submitted orally and
8 that is you discussed the benefits of competition and there
9 are, you indicated that for example, on page 13, that the
10 Commission should ensure that retail markets for
11 electricity are fully competitive. Do you recall that
12 testimony?

13 A Yes, I do.

14 Q Do you still believe that today?

15 A I believe that the Commission should try to
16 ensure that markets are competitive.

17 Q All other things being equal, wouldn't higher
18 generation credits but nonetheless restrained by the
19 overall rate cap be more likely to produce competition and
20 thus produce competitive retail markets in PECO's service
21 territory?

22 A You would have to explain to me how you could
23 achieve higher generation credits in the early years and
24 what would happen in the later years. You would have to
25 look at it over a ten-year period.

1 It's entirely possible that the higher generation
2 credit in the early years could serve as a stimulus for
3 competition but that the price that you pay for those could
4 serve as a retardant of competition in the later years.
5 You would have to look at the entire package.

6 Q Once competition was stimulated, and do you
7 expect that that competitive activity will have any effect
8 on price or cost or delivering the product to market?

9 A I believe that it's possible but not certain that
10 a competitive market will lower the costs of delivering the
11 product and I qualify that by saying that we tend to
12 characterize a competitive market as having nonutility,
13 nonregulated generation.

14 I think it's very important that as we look at a
15 competitive market and we look at organizational sides of
16 the generation market and ask whether, in fact, it is
17 competitive, it's entirely possible to have no regulation
18 of generation but still not have a competitive
19 marketplace.

20 And so we have to look at both of those issues.
21 Simply deregulating generation does not guarantee a
22 competitive market. So we have to look at the issues.

23 Q But again, if it was a generation credit that led
24 to the development of a robust competitive market you would
25 have, it would be more likely that you would be able to

1 restrain that market power that you were just discussing
2 than it would be less likely without --

3 A Depends on its source. There are two sources of
4 market power. There's one source which is the traditional
5 one that we all understand where you have a monopoly that
6 controls 80, 90 percent or a 100 percent of the generation
7 in an area but we have come to understand by looking at
8 transmission modeling more carefully is that market power
9 can arise in localized context as a result of the fixed
10 nature of the transmission grid and that's something that's
11 very important.

12 You could have a perfectly decentralized generation
13 system in the sense that no one supplier had no more than
14 10 percent generation capacity but you could still have
15 instances of significant market power in those scenarios.

16 And the problem with that is that what it does is it
17 drives up market price. And if you see market price
18 starting to go up, the fact that you have in the
19 marketplace, sort of very unconcentrated generation, may
20 not mean that you get the benefits of the competitive
21 market.

22 It may mean, in fact, that what you create is a lot
23 of localized monopolies, each of which is able to exploit
24 their position and take advantage of transmission
25 constraints, historical allocation of transmission space,

1 and a lot of different issues and as a result, end up with
2 higher prices than you otherwise would have.

3 Q Doctor, I guess I am just confused about your
4 position, but assuming that all those things are
5 potentially potential, isn't the best -- again, the best
6 defense, if you will, the best way to try to break up that
7 potential abuse in market power to take steps to generate
8 or encourage a competitive market and specifically, by
9 establishing a generation credit which is reasonable
10 vis-a-vis projections of what the delivery market prices
11 would be? Doesn't that follow?

12 A I guess what I am trying to suggest is that if
13 the problem is too few owners of generation, then yes, the
14 answer is correct. If the problem is not related to
15 generation, but is related to some other factor, then no,
16 that's not correct.

17 Q What other factor would it be?

18 A Transmission. Let me give you an example.
19 Microsoft now has or had initially in its development an
20 exclusive arrangement with a number of computer companies
21 to install their systems in computers.

22 We could have a thousand other operating companies
23 out there developing operating systems but that wouldn't
24 solve the bottleneck. The bottleneck is the exclusive
25 arrangement between Microsoft and Compac and IBM and others

1 who are manufacturing PCs.

2 What I am suggesting here is that there are two
3 sources of market power. The first, and I think what you
4 are addressing generation, additional generation. The
5 second are the relationships that are similar to the
6 Microsoft computers are manufactured everywhere the
7 country. This is not list, but a transmission line.

8 And that transmission line may make it very
9 difficult for putting -- I mean if you put additional
10 generation out into the market, it won't solve that
11 fundamental bottleneck.

12 Q But it, to the extent that there is a greater
13 degree of competition at the retail end of the market,
14 wouldn't that be likely to create pressures to attempt to
15 solve that transmission bottleneck by bringing capital to
16 or in otherwise fixing that transmission bottleneck?

17 A I think there are --

18 Q By the --

19 A There are a lot of ways to solve this.

20 Q But isn't that one way?

21 A Sure.

22 Q On 12 and 13 of your testimony you talk about
23 your view that a low gen. cap provides some protection for
24 rate payers?

25 A Are we on the direct testimony.

1 Q No. This is the rebuttal.

2 A Okay.

3 Q You say that a low gen. cap provides better
4 protection for rate payers if market prices go up. Now, I
5 am having trouble understanding your testimony I am not
6 sure whether, after I go through this colloquy I'll
7 understand it any better, but let's just use this following
8 example, and it's a hypothetical.

9 Let's assume that the energy and capacity credit for
10 PECO, let's say, is two dot eight cents. We can probably
11 make that assumption. And let's assume that in 1999, in
12 fact, the market price for generation, delivery market
13 price is four cents. Are you following me now?

14 A Uh-huh.

15 Q Now, the customer would pay only the two dot
16 eight cents. Isn't that right?

17 A Uh-huh.

18 Q The customer is protected in the sense that they
19 don't pay the full market price assuming that that would be
20 charged. But they are still receiving power at the cap
21 that's in place in 1999. Isn't that right?

22 A Yes, 2.8 cents.

23 Q So the overall rate that he pays is eight dot
24 nine five cents?

25 A Correct.

1 Q Let's assume the opposite. Let's assume that the
2 energy and capacity credit changed just slightly to 3.8
3 cents. And let's turn out that again, let's assume that
4 the market price, again, is four cents in that year, in
5 fact. How much does the customer -- how much is it likely
6 that the customer will pay in that situation?

7 A It would pay the 8.95 plus that difference.

8 Q It would pay more than 8.95 cents?

9 A That's correct.

10 Q Have you assumed that the generation cap could be
11 exceeded in that context.

12 A I'm sorry. I didn't know the generation cap
13 still applied.

14 Q Yes. I said the generation cap balance is up to
15 3.8 cents.

16 A I thought you raised the generation cap two
17 points.

18 Q I did raise the generation cap. I did not raise
19 the rate cap.

20 A Which rate cap?

21 Q The overall rate cap?

22 A Statutory rate cap at 9.95.

23 Q The overall rate cap that's in the settlement, at
24 eight dot nine five?

25 A I'm sorry.

1 Q I am going to -- let's start over again this
2 series of questions from the beginning so we know what we
3 are answering.

4 JUDGE CHESTNUT: I think that's a good idea.

5 BY MR. CLEARFIELD:

6 Q Let's go back and assume the hypothetical that
7 where the energy and capacity cap is established at two dot
8 eight cents, the overall rate cap is 8.95 cents. And let's
9 assume in 1999 the market price turned out to be four
10 cents.

11 The customer will pay only two dot eight cents for
12 generation as an overall rate of eight dot nine five cents;
13 right?

14 A Under the settlement that's correct.

15 Q Let's assume the settlement has changed.
16 Everything else is the same except that the generation cap
17 is not 2.8 cents but it's 3.8 cents.

18 A So the CTC charge is the same.

19 Q Everything is the same, Doctor, except that the
20 three dot --

21 MR. HERSHEY: I am going to --

22 BY MR. CLEARFIELD:

23 Q -- CTC is reduced?

24 A So everything is not --

25 Q Is not the same overall rate, though, the eight

1 dot nine five cents. Are you with me?

2 A So we still have an eight dot nine five cents
3 total, we have a rate cap of 3.8 cents.

4 Q Right.

5 A And if we assume for purposes of the example that
6 the CTC was 3.04 cents in this example it would be 2.04
7 cents.

8 Q Let's assume the math is right.

9 A Assuming that's a penny.

10 Q Is the customer any worse off in the second
11 example than in the first example?

12 MR. HERSHEY: I am going to object. You're talking
13 about the mid term, the mid term, the long term and how do
14 we get there?

15 MR. CLEARFIELD: That's not a valid objection. The
16 customer -- the witness can explain if he's confused. I
17 asked if the customer was any worse off under the second as
18 opposed to the first.

19 MR. HERSHEY: It's --

20 JUDGE CHESTNUT: I think you can clarify what you
21 mean by worse off.

22 BY MR. CLEARFIELD:

23 Q Does the customer have to pay more in 1999 in the
24 first example as per the -- second example as opposed to
25 the first example.

1 MR. HERSHEY: The objection stands because as Mr.
2 Clearfield acknowledged, the CTC has to change and
3 therefore, that implies very directly that the prices and
4 the --

5 MR. CLEARFIELD: Excuse me. Mr. Hershey, I don't
6 think it's appropriate for you to answer.

7 MR. HERSHEY: I am objecting.

8 MR. CLEARFIELD: It's not a valid objection. The
9 witness is obviously capable of answering these questions.

10 MR. HERSHEY: I object to the form of the question,
11 which is not sufficiently precise.

12 JUDGE CHESTNUT: I think it is.

13 MR. CLEARFIELD: Do you understand the question,
14 Doctor?

15 THE WITNESS: The difficulty is that we know too
16 much. We know what happens in the year 2002, 2001, 2002.

17 MR. CLEARFIELD: I am just asking about 1999. Your
18 answer is --

19 THE WITNESS: In 1999 if you use those two
20 scenarios, the customer would be equally well off. In that
21 year alone.

22 BY MR. CLEARFIELD:

23 Q Let's take the same hypothetical but now we are
24 going change. Everything else is the same. Overall rate
25 cap is still eight dot the five cents and the ECC is three

1 dot eight cents. Okay? So we have taken example two and
2 we're -- let's assume that the market price actually turns
3 out to be three cents instead of four cents we mentioned in
4 our earlier example.

5 What do you expect to happen in that instance? What
6 is potentially possible to happen in that instance?

7 A Again, if we think about it very narrowly as 1999
8 what would happen is we would expect to see prices offered
9 at three cents in a pricing to the bundled price or
10 rebundled prices below 8.95 cents.

11 Q So with respect to that year, aren't customers
12 better off with respect to the overall price they are going
13 to pay with the higher generation cap as opposed to the
14 lower generation cap that we posited in our first
15 hypothetical.

16 A Certainly if I give you \$10.00 today and I tell
17 you to pay me back at 30 percent over the next three weeks,
18 today you are better off. I mean, I am not doubting the
19 that fact that you're better off today. The question is
20 what happens over time? Are you better off?

21 Q Where is the 30 percent?

22 A I just made that up.

23 Q So you are saying that there's some possibility
24 that in the future rates would go, would be higher because
25 of higher gen. caps today?

1 A Let me back up. What I am saying is that if look
2 at the very narrowly as a one-year deal, the deal that you
3 presented, assuming it could be achieved, is better off,
4 customer is better off under that.

5 Q Okay. Let's assume operating with respect to the
6 partial settlement. Aren't there gen. caps proposed in
7 every year of the ten years that are listed on Schedule 8 A
8 on page 8 of the settlement?

9 A Yes.

10 Q Don't each of those gen. caps reflect the overall
11 price that can be charged to PECO customers to those gen.
12 caps in each one of those years?

13 A Yes.

14 Q If the Commission adopts a final order in this
15 case in none of those years can the customer pay more than
16 those rates that are listed there. Is that right?

17 A That is correct.

18 Q So even if we change the gen. cap so that it
19 would progress from let's say three dot eight through that
20 period of time and subsequent and correspondingly reduce
21 CTC for the overall rate to stay within those gen. caps,
22 the customer couldn't pay more and it would have a
23 potential or paying less than he would get in a competitive
24 market. Isn't that right?

25 A It depends upon how you are changing the CTC.

1 When you said you would change the CTC.

2 Q If the CTC is change so that the discontinued
3 present value of the payments by customers to PECO was
4 identical to the present value of the payments that are
5 proposed on Table A, would customers only be better off in
6 that situation? Could the customer only be better off in
7 that situation?

8 A No. Because it would depend upon what you had to
9 assume about market prices. Let me show you what I mean.

10 Q They couldn't be any worse off.

11 MR. HERSHEY: Let him finish his answer.

12 THE WITNESS: Let me -- what you are suggesting is
13 that the stream from the two CTC parties has the same net
14 present value.

15 MR. CLEARFIELD: Isn't that possible.

16 THE WITNESS: That's the assumption.

17 JUDGE CHESTNUT: They are working it out. Thank
18 you, Mr. Hershey.

19 MR. CLEARFIELD: I am having trouble getting a word
20 in, not him.

21 THE WITNESS: If that's the case then what happens
22 under the first hypothetical, the settlement agreement that
23 you presented, the CTC slopes downward and what happens is
24 the generation rate caps slope upwards.

25 BY MR. CLEARFIELD:

1 Q Yes.

2 A Under the second hypothetical what happen is the
3 CTC slops upwards and therefore, the generation rate caps
4 can't slope upwards rapidly as under the first. Now, the
5 question is whether or not those generation rate caps are
6 realistic and I could get anybody to buy them, to accept
7 the --

8 Q I think I -- all right?

9 A Let me finish.

10 Q Sure.

11 A What I am suggesting is that if you can guarantee
12 that prices in the energy market will lay within those
13 market rates that you are putting in, the market rate will
14 lie below those generation rate caps that you are
15 suggesting under that new CTC structure, then it's possible
16 rate payers would be better off.

17 If you can't guarantee that, then what you are doing
18 as a rate payer, you are trading off reductions now for the
19 potential of higher costs in the future. And that's a deal
20 that rate payers have to make decisions about based upon
21 their own individual circumstances.

22 Q Doctor --

23 A If those rate caps are not realized in those out
24 years under the hypothetical that you have presented, what
25 ends up happening is customers can pay more over the

1 ten-year period than they would on RDT originally under a
2 settlement agreement.

3 Q Doctor, if in each year of the contract that the
4 rate cap, gen. cap can't go higher than that gen. cap
5 regardless of whether the CTC is lower or the gen. cap is
6 lower it follows a priori, that the customer cannot be any
7 worse off if you change the relative level of those two
8 rates?

9 A No. I don't because the rate caps that you are
10 talking about are not rate caps in the strictest sense.
11 Again, if you look at the settlement agreement.

12 Q Yes.

13 A And you compare that to the statute, the statute
14 says generation rate caps, effectively generation cap go to
15 2005. I assume that in the hypothetical you are presenting
16 you were looking am generation rate caps compared to the
17 settlement agreement which means through 2008.

18 Q Yes.

19 A Secondly, under the settlement agreement and
20 under the statute there are opportunities, depending upon
21 the circumstances, to go back in and ask for increases in
22 those caps depending upon what kinds of things are
23 happening in the energy market.

24 Q But Doctor, this is really using those
25 hypotheticals, I am --

1 A The hypothetical is an internally inconsistent
2 hypothetical.

3 Q It's not, Doctor.

4 A And what you are suggesting is that you can have
5 higher CTC charges and lower rate caps, generation rate
6 caps and all I am suggesting is, and you need to lower
7 generation rate caps to stay within the overall rate cap.

8 What I am suggesting is that you have to prove 0 to
9 me that those generation rate caps are achievable. If they
10 are not achievable, then what ends up happening is the
11 entities providing the power come in and say look, even
12 though we said the generation rate cap wasn't going to be
13 four cents a kilowatt-hour, now five and a half cents so
14 therefore, we need a one and a half increase in order to
15 supply power to these customers.

16 That one and a half cents is then added on to the
17 additional high CTC cost you have in your hypothetical
18 because it's upward sloped and now that you have tried to
19 exceed the cap.

20 Q So you are assuming that because of these
21 increased -- well, I am not sure what you are assuming.

22 If the CTC charge is in a sense reversed, Doctor,
23 wouldn't the energy and capacity caps actually be lower in
24 the later years, not higher?

25 A That's the problem. They have to be, by

1 definition.

2 Q Yes.

3 A The question is are they realistic.

4 Q But when PECO purchase --

5 A We can establish generation rates at two cents a
6 kilowatt or three cents a kilowatt, four cents a kilowatt,
7 but establishing it and adhering to it are two very
8 different things. If we say that the generation rate caps
9 for the year 2008 will be four cents a kilowatt-hour and
10 what happens is the market price for power out there is
11 five and a half cents a kilowatt-hour nobody will supply
12 power at four cents, we have no generation rate cap.

13 Q So that's your concern. It doesn't --

14 A And it's a serious concern.

15 Q If you set this, in your view, too low, although
16 you are not sure what too low is, then PECO or the
17 distribution company will ask for relief from the rate cap
18 in that context because they will be hypothetically
19 purchasing power at rates that exceed those rate caps. Is
20 that right?

21 A I am not sure. Whoever is supplying power would
22 ask for relief.

23 Q I tried to make it more general. If, in fact,
24 where will PECO likely get the power? Won't it get it from
25 its generation subsidiary?

1 A I am not sure whether PECO will be the provider
2 of last resort and therefore have to get --

3 Q Let's assume PECO's the provider of last resort?

4 A Whatever that provider --

5 Q Where will it get that power?

6 A In the marketplace.

7 Q PECO will not have the ability to purchase that
8 power from its own gen. co.?

9 A I don't know. By the year 2008 PECO may have
10 sold its generating facilities.

11 Q So you are saying because of the risk that PECO
12 may ask for relief from these rate caps that you are
13 willing to, you believe it's more appropriate to keep the
14 gen. cap lower in the early years?

15 A I am sorry. I don't understand why PECO keeps
16 coming into this. I don't know if PECO's going to provide
17 power. All I am suggesting is that if we create a
18 structure, the structure has to be realistic.

19 We have to have some anticipation that we are going
20 to be able to live within it if we want to compare it to
21 other structures. If we have no expectation that we are
22 going to be able to live within it, then to argue that we
23 are, and then hold it up as a hypothetical against
24 something else, makes no sense.

25 Q Have you done any independent study of whether

1 the generation, energy capacity cap price that's in Table A
2 reflects -- strike that. If the energy and capacity prices
3 actually are flatter, in fact, in your concern about relief
4 if the rate cap by whoever the provider of last resort is,
5 goes away or is dissipated am I following your answer to
6 that extent?

7 A You are but you have made one assumption.
8 Whatever anybody tells me today are going to be those
9 market prices in the year 2007 and 2008. Unless they put
10 their cap rate on line with a guaranteed contract to
11 provide at those prices.

12 Q We can't really know what the market is. We are
13 only getting what 2006 and seven?

14 A That's exactly right and that's why if we don't
15 apply some reasonable protection so that there isn't an
16 opportunity to say boy, those were way out of line, we
17 obviously need rate relief, if we don't step in and provide
18 some reasonable protection of those out years, then we run
19 the risk.

20 Having front end loaded benefits paying for them
21 twice in out years; once by virtue of the CTC which we now
22 have to recover the net present value on and secondly
23 because we get into --

24 Q The Commission can just say no to those requests
25 for rate relief, can't they?

1 A Assuming someone's going to have to provide power
2 and the Commission can't say no the market.

3 Q It could say no to the requests that the gen.
4 caps be increase. Isn't that -- just from your
5 understanding of what the statute provides?

6 A They could say no, but there would have to be
7 some alternative way of getting power. I mean, again, for
8 example, let's --

9 Q Isn't PECO --

10 MR. HERSHEY: Let him finish his answer, please.

11 THE WITNESS: Let's say that the Commission decides
12 to look at the provider of last resort function and decides
13 that really what that ought to be done is put out to bid
14 and so they choose the provider of last resort, let's say
15 your clients, Enron. Enron has no generation assets to
16 speak of; certainly not 9,000 megawatts of assets in the
17 PECO service territory.

18 Come the year 2006, 2007, Enron has agreed to four
19 cents a kilowatt-hour. Market price is now five and a
20 half cents a kilowatt-hour. For the Commission to order
21 Enron to provide at four cents is foolhardy because Enron
22 would say, Commission, we have no generation. We have to
23 buy it in the market.

24 The market is now demanding that we buy it at
25 whatever those prices are. Five, six and a half cents.

1 Therefore, we ask you to pass these costs through to rate
2 payers. And the Commission would be stuck between the
3 proverbial rock and a hard place and say well, I guess we
4 have to pass those costs on.

5 Q I am just going to try a couple more questions
6 and then I'll stop. Don't -- isn't there exactly the same
7 risk vis-a-vis PECO and the energy and capacity caps in the
8 2006, seven and eight that are listed that are prior to the
9 partial settlement. Don't we have the same risks? If PECO
10 wouldn't be able to deliver at the market price PECO will
11 have to come and ask for relief?

12 A Two things. It's a matter of degree. Number
13 one. The partial settlement says PECO, under terms of the
14 statute can go back and ask for relief. Any provider can
15 ask for relief from those rate caps.

16 Secondly, there's an element of a settlement, I
17 think, which is different from an order. A settlement is
18 an agreement among the parties. At some point in the
19 future it's entirely possible that PECO may seek relief
20 from those rate caps.

21 If energy prices were to go up substantially for
22 environmental reasons or for national security reasons or
23 for whatever the issues, are out there.

24 At that point, I think it would be incumbent upon
25 the Commission to examine the settlement in its entirety,

1 to determine how the parties have fared under the
2 settlement and to determine whether or not the provisions
3 of the settlement have somehow compensated an offset in the
4 rate, some of the risk that that provider is looking to
5 face in the year 2007, 2008.

6 So I think the nature of the settlement is different
7 in a Commission order in terms of having parties agreeing
8 to it up front voluntarily.

9 Q Do you think PECO would be less likely to ask for
10 relief because it was a settlement, in your view?

11 A I believe two things. I believe they would be
12 less likely to ask for relief, having agreed to a
13 settlement to again.

14 And it's not just PECO. It's whoever's providing
15 the service, number one. And number two, I think the
16 Commission would be less disposed to grant it.

17 Q And do you believe that those differentiations in
18 risk are important enough to give up the potential of
19 developing, the greater potentiality of a competitive
20 market that would come from high gen. caps in the early
21 years of the restructuring plan? Is that your testimony?

22 A Again, it's not simply that tradeoff.

23 Q But that's part of the tradeoff?

24 A This is part of the tradeoff. There are two
25 other important elements to the tradeoff. Let's assume for

1 a moment that somehow or another PECO was the supplier of
2 last resort and let's assume that PECO was able to live
3 under the generation rate caps in your hypothetical at 4.1,
4 4.2 or whatever that price is in out years.

5 And let's say that the Commission ordered PECO to do
6 that and let's say PECO agreed. If the market price in the
7 year 2007 is 5.5 cents and PECO as a result of the
8 Commission order is now selling its product at 4.1 cents or
9 4.2 cents, I don't think that's going to create a
10 competitive problem. In fact, what's going to happen is
11 everybody is going to flow to the default provider in
12 anticipation of the two and a half cent reduction in those
13 out years.

14 So setting the generation price in those out years
15 low has two problems with it. It has the problem that I
16 described at the beginning. That it may be unrealistic and
17 unachievable but secondly, even if the Commission was
18 successful in ordering it, all we have done is created the
19 problem that you are so adamant against today in the year
20 2008 where we have a generation provider in the market at a
21 rate cap which is the only one permitted to sell at that
22 price and not only are the only one permitted, the
23 Commission has actually ordered them to sell at that price.

24 Q Just to --

25 A It makes things seem a lot more difficult to

1 reconcile.

2 Q You have to agree or you would agree, wouldn't
3 you, that if a competitive market exists at that 2008
4 point, it is less likely that or let's switch it around
5 it's more likely that competition would drive prices down
6 and make it possible for PECO to purchase power within the
7 gen. caps that are created in it so that if that
8 competitive market was not created. Isn't that fair?

9 A Marginally, yes.

10 MR. CLEARFIELD: That's all I have, thank you.

11 JUDGE CHESTNUT: Does anybody else have questions
12 for Dr. Silkman. Mr. Dworetzky?

13 MR. DWORETZKY: I have a few.

14 BY MR. DWORETZKY:

15 Q Dr. Silkman, let's see if I understand what you
16 have been telling Mr. Clearfield. You are saying that --
17 I'm going to sit down if you don't mind?

18 A That's fine.

19 Q Your concern about the possibility that market
20 prices might rise in the future is a significant concern.
21 Is that correct?

22 A That's correct.

23 Q And that in contemplating the design of the
24 settlement agreement, you took that concern into -- that
25 was a major part of your motivation in the any of the

1 structuring the settlement agreement. Is that correct?

2 A That's correct.

3 Q You were a participant in negotiating the
4 settlement agreement. You were not just an observer. Is
5 that correct?

6 A That is correct.

7 Q Obviously, you don't know for sure that prices
8 are going to rise in the future but you are fearful of
9 that. Is that correct?

10 A It's a contingency that we have to be concerned
11 about.

12 Q And I take it there's a balancing that your fear
13 goes against the prices of the marketplace rates in the
14 agreement and needing to protect against the situations you
15 describe were balanced against your other assumptions about
16 the possibility that the market prices might be lower. Is
17 that correct?

18 A That's correct.

19 Q And you, I am going to put this in a balancing.
20 You have balanced it on the side of worrying about the
21 prices being higher and valuing that part of the settlement
22 agreement that give the protection that you described more
23 than the part that Mr. Clearfield described. Is that
24 correct?

25 A That's one item. Again. There are of a lot

1 of --

2 Q Stay with me. I'll give you a chance to get to
3 it?

4 MR. HERSHEY: Let him finish his answer.

5 JUDGE CHESTNUT: Let --

6 THE WITNESS: When I say balancing it's not simply
7 one thing on one side of the scale and another on the
8 other. I think what really went into this is thinking
9 through all of the potential risks that customers might
10 face.

11 One of the potential risks that we didn't get to
12 with Mr. Clearfield's cross examination is the concern of
13 market power early on as the market, as the competitive
14 market develops.

15 I am very nervous about any company that owns a
16 significant portion of generating assets being able to
17 exercise market power in localized power markets,
18 especially early on before additional generation can be
19 constructed.

20 It takes a fair -- as we have experienced in New
21 England, it takes a fair amount of time to do the
22 permitting, the site work, community development efforts,
23 gas transmission lines, voltage lines, getting equal
24 approval for transmission facilities, getting NERC approval
25 to rates, all of those things take an awfully long time.

1 Accordingly, if we create a situation where
2 generation is immediately deregulated, then there is going
3 to be a period of time during which the deregulation of
4 that generation is going to exist without any significant
5 new generation being put on line. During that period every
6 time, and this is especially true with transmission
7 constrained groups like PJM.

8 During that time there is the possibility that a
9 company in that position can exercise market power and
10 drive the prices up. Accordingly, if we set the generation
11 breakdowns high initially, we face the potential risk that
12 what will happen is those generation rate caps will be
13 realized even though the market price, absent those
14 generation caps and absent any kind of restructuring, might
15 have been substantially lower.

16 Simply by virtue of the exercise of monopoly power,
17 that's a concern that I have. That's more likely to happen
18 early on in the process than later on.

19 JUDGE CHESTNUT: Dr. Silkman, you have really gone
20 on quite a bit and it's getting a little bit late so I'd
21 really appreciate if you could think about phrasing your
22 answers a little more tersely.

23 THE WITNESS: I'm trying to be succinct.

24 JUDGE CHESTNUT: You have to be succinct. I
25 understand that but I would like to give Mr. Dworetzky a

1 chance to kind of guide you through his line of thinking
2 without you going off on every possible tangent.

3 I don't want you to file limited but I want to kind
4 of keep your answers short.

5 MR. HERSHEY: Your Honor, the problem is these
6 questions are vague and ask for certain assumptions which,
7 in a complex balancing, don't work and I mean --

8 JUDGE CHESTNUT: I was going to ask Mr. Dworetzky to
9 try and be mindful to carefully phrase his questions so
10 that he can result in short, clear, general answers.

11 MR. DWORETZKY: I will try to do that.

12 BY MR. DWORETZKY:

13 Q Dr. Silkman, I take it the problem you have just
14 described is also another problem that could result in
15 prices going up, market prices of generation going up,
16 monopoly power you just described?

17 A That's correct.

18 Q So that couples with the fear that we talked
19 about before, about the fear of market prices ultimately
20 becoming high. Is that correct?

21 A They happen for different reasons but they create
22 the same effect.

23 Q The same effect which is too high a price for
24 generation?

25 A That's correct.

1 Q High prices that you are being concerned about,
2 those prices would be higher than the market prices that
3 PECO used in connection with calculating its stranded
4 costs, wouldn't they?

5 A They would be.

6 Q And isn't it true that the CTC stream on which
7 PECO is collecting is based on their calculation of what
8 the stranded cost is as modified by the deal that's been
9 struck under the settlement agreement. Is that correct?

10 A Modified against price, yes.

11 Q And with all else being equal, if the market
12 prices that you fear may grow over time do, in fact, do
13 that, it may mean that the stranded cost which PECO
14 calculated and has presented are actually much higher than
15 they turn out to be. Is that correct?

16 A I followed you until you said the last one. I
17 thought you were going to say lower and that's why I was
18 confused.

19 Q I'll take the correction. Go right with it.

20 A I'll get it eventually. Yes. That is correct.

21 Q And so that to switching that, then, from looking
22 at it as an issue of total level of stranded costs and
23 thinking about it as the CTC that in the scenario I have
24 described it would be where the market prices really have
25 grown really much less than anticipated. CTC will have

1 been set higher than it should have been set to compensate
2 people for its actual level of stranded costs. Is that
3 correct?

4 A Because that's why the generation caps are in
5 there, the generation rate caps are there to prevent that
6 from occurring, and set generating which you suggest is a
7 very strong possibility.

8 MR. DWORETZKY: Thank you very much.

9 JUDGE CHESTNUT: Any other brief questions Dr.
10 Silkman?

11 MR. DOLL: I will be brief.

12 JUDGE CHESTNUT: Okay.

13 BY MR. DOLL:

14 Q Good afternoon,. Doctor, would you turn to page
15 5 of CEPA Statement 2 where you speak about the position
16 that Delmarva Power and Light Company has taken in other
17 jurisdictions. Are you suggesting that Delmarva is
18 recommending any disallowance of stranded costs in this
19 proceeding?

20 MR. HERSHEY: You are referring to the proceeding
21 cited on page 5 or --

22 MR. DOLL: I am sorry. In the PECO proceeding.
23 Thank you, sir.

24 THE WITNESS: I don't know what Delmarva is
25 recommending. I do know that the rate settlement agreement

1 includes a two billion dollar writeoff which is not full
2 recovery so if Delmarva supports the writeoff, then it
3 would be asking for something less than full recovery.

4 BY MR. DOLL:

5 Q I'll accept that. Would you turn to page 7,
6 please, of your testimony. The question and answer from 8
7 to 12, you say that sales growth will be negative, will be
8 more likely negative than positive. Have you done any
9 studies that would lead you to this conclusion?

10 A No, I have not.

11 Q On line 2, where you are talking about -- you say
12 over time. Have you covered any time frame?

13 A No, I have not.

14 Q Moving right along to page 10, line 9 through 12,
15 you say apparently he was unwilling to trust the
16 competitive market. Was this your conclusion or have you
17 discussed this with NEES?

18 A It is my conclusion.

19 Q Turning to page 11, lines 8, the paragraph 16
20 through 20, you talk about abusive initial market power.
21 If competition is not allowed to develop, this may have
22 been answered and if it has, please stop me -- if
23 competition is not allowed to develop for economic reasons,
24 would not your conclusion in the next sentence be exactly
25 opposite?

1 A When you say the next sentence I am not sure
2 which sentence you mean, sir.

3 Q Let me try rephrasing it. If competing entities
4 were economically blocked by an artificially low generation
5 cap, wouldn't PECO's market power increase?

6 A Their market power would remain the same but they
7 would not be able to use it because of the generation rate
8 cap.

9 Q So the market power would be the same and the
10 current market power is 100 percent as we sit here day?

11 A Close to it. It's good enough for --

12 Q That's good enough for me, too. On page 12,
13 lines 1 through 4 you talk about expansion of the
14 transmission grid. Do you have any idea or have you done
15 any studies of the time frame for this expansion to occur
16 or the cost or who would pay for this?

17 A There is no specific expansion proposed here.
18 It's a general concept. So I am not, when you say have I
19 done any study, I am not sure what you mean.

20 Q Are you not advocating an expansion of the
21 transmission grid? Maybe I read your testimony
22 incorrectly.

23 A I think you are reading it incorrectly. I am
24 suggesting that the best way to solve the problem is to
25 expand the transmission grid. I am not sure that that's

1 easy to do or it can be done cheaply or --

2 MR. DOLL: Okay. I have no further questions.

3 JUDGE CHESTNUT: Any further questions for Dr.

4 Silkman?

5 (No response.)

6 JUDGE CHESTNUT: Do you have any redirect, Mr.

7 Hershey?

8 MR. HERSHEY: If I may have one moment. Only one
9 question, I think.

10 REDIRECT EXAMINATION

11 BY MR. HERSHEY:

12 Q Dr. Silkman, you had a series of questions around
13 the issue of whether or not PECO would buy from its own
14 generating plants down the road. Do you recall those
15 questions?

16 A I do.

17 Q Would a code of conduct have any relationship to
18 PECO's ability to do that?

19 A A code of conduct would require the distribution
20 company to buy as if it were buying in an open market,
21 competitive market. I think it would make it very
22 difficult for a tied sale or a tied relationship to occur
23 because that's precisely what the code of conduct is
24 designed to prevent.

25 MR. HERSHEY: Thank you. That's all I have.

1 JUDGE CHESTNUT: Any recross based on the redirect?

2 (No response.)

3 JUDGE CHESTNUT: Thank you very much Dr. Silkman.
4 You are excused. We have one more witness. Mr. Douglass.

5 MR. CLEARFIELD: While Mr. Douglass is approaching,
6 I wanted to make a statement with respect to Mr. Mitnick
7 and that is that we intend to offer Mr. Mitnick tomorrow to
8 present some surrejoinder testimony principally of Mr. Cohn
9 and Dr. Hieronymus and we have a series of schedules that
10 have been used for that sort of rejoinder that I am going
11 to hand out to the company and the other parties who are
12 interested. I'll do that while Mr. Douglass is getting
13 settled.

14 MR. DOLL: I would like to have marked as PECC
15 Statement 4, the direct testimony of Richard K. Douglass.

16 JUDGE CHESTNUT: It will be so marked.

17 (PECC Statement No. 4 was produced and
18 marked for identification.)

18 RICHARD K. DOUGLASS, called as a witness, having
19 been duly sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DOLL:

21 Q I show you what has been marked as PECC
22 Statement Number 4. Is this the testimony you have
23 prepared for this case?

24 A Yes.

25 Q Are there any corrections you would like to make

1 to this testimony at this time?

2 A Yes. Title of the testimony is supplemental
3 testimony. This is original testimony. That's the only
4 change.

5 Q If I were to ask you the questions contained in
6 this testimony, would your answers be the same?

7 A Yes, they would.

8 MR. DOLL: At this time I would like moved into
9 evidence subject to timely objections, motions and cross
10 examination, the statement of Mr. Richard K. Douglass
11 marked as PECC Statement Number 4.

12 JUDGE CHESTNUT: Any objections.

13 (No response.)

14 JUDGE CHESTNUT: It is admitted

15 (PECC Statement No. 4 was admitted in
16 evidence.)

17 MR. DOLL: The witness is available for cross
18 examination.

19 JUDGE CHESTNUT: Does anyone have any questions for
20 Mr. Douglass. Mr. Smith?

21 MR. SMITH: Maybe I should go last if anyone else
22 has some.

23 MR. DOLL: You're on.

24 CROSS EXAMINATION

25 BY MR. SMITH:

1 Q Mr. Douglass, you are employed by Delmarva Power
2 & Light?

3 A Yes.

4 Q Are you the only Delmarva employee who will be a
5 witness in this proceeding?

6 A Yes.

7 Q To the best of your knowledge, are Delmarva and
8 Connectiv the same corporate organization?

9 A I believe Connectiv is a division of Delmarva.

10 Q But they are the same corporation?

11 A Yes.

12 Q Your job at Delmarva is to purchase power for
13 both Delmarva and Connectiv?

14 A When Connectiv has customers it would be my job
15 to buy power for Connectiv as well as Delmarva.

16 Q At the current time you are seeking to by power
17 for Connectiv; correct?

18 A Not myself personally.

19 Q About a week ago you and I had the opportunity to
20 speak during your deposition. Do you recall that?

21 A Yes.

22 Q We discussed your job. One of the thins that you
23 said and I just want to refresh your recollection here, is
24 that your job you purchase power for Delmarva, yes. Do you
25 also purchase power for Connectiv. At this point in time

1 Delmarva supplies all of the power for Connectiv. Do you
2 recall that?

3 A Yes.

4 Q Are you purchasing power for both Delmarva and
5 Connectiv?

6 A Somebody else in the company is talking to the
7 Power Team about a possible power source or emergency
8 source for the Connectiv and I am not directly involved in
9 that negotiation.

10 Q Thank you. And I appreciate that. Generally,
11 however, you are attempting to buy capacity for Delmarva?

12 A Yes.

13 Q To fulfill the needs of serving the regulated
14 customers in Maryland and Delaware?

15 A Yes.

16 Q How much are you looking for there?

17 A We are looking for 75 megawatts.

18 Q Over what period of time?

19 A We are looking for 75 megawatts for the remainder
20 of this planning period which is today until the end of May
21 31, 1998 and we are looking for a hundred to 125 megawatts
22 for the next planning period which is June 1st of '98
23 through May 31 of 1999.

24 Q And that's to serve your native load customers?

25 A That's correct.

1 Q And those are the customers who are protected
2 from competition by not only statute --

3 A At this point in time, yes.

4 Q At this point in time. You are also looking to
5 buy power for Connectiv. About 50 megawatts?

6 A Yes.

7 Q The purpose of that purchase would be to serve
8 customers in Pennsylvania pilots?

9 A Yes.

10 Q The majority of the effort's going towards the
11 PECO Energy service territory?

12 A I believe that's correct.

13 Q Your testimony today was offered on behalf of the
14 Pennsylvania Electric Competition Coalition, if you look at
15 page -- well, 1, line 7. With the footnote there
16 indicating that the members of the coalition are Connectiv
17 Energy and I think we said that's the same as Delmarva?

18 A That's correct.

19 Q Enron?

20 A Yes.

21 Q And New Energy Ventures?

22 A Yes.

23 Q So you are here according to testimony,
24 representing all three of those companies today?

25 A Yes.

1 Q Now, generally speaking your testimony deals with
2 whether capacity is available and you correct me if I'm
3 wrong, but basically you testified here that PJM capacity
4 is not available at this time and therefore, the effective
5 price is the deficiency penalty of \$58.40 per kilowatt-
6 year?

7 A I am testifying that generally capacity is not
8 available in the PJM marketplace for the two planning
9 periods. The balance of this planning period and the next
10 planning period for which Delmarva is seeking capacity.

11 Q Let's just make sure. Your testimony does not
12 address the administrative costs of marketing that power or
13 the capacity once it is acquired for retail delivery?

14 A No.

15 Q Determining the levels of profit margin that
16 would be needed by Connectiv is outside of your field?

17 A That's correct.

18 Q Study to determine the range of savings that
19 would be needed to attract customers are -- you are not in
20 that part of Delmarva?

21 A That's correct.

22 Q Let's go back to capacity. Capacity is basically
23 iron in the ground?

24 A Right. It's basically a reliability calculation.

25 Q But we are talking about whatever power plants

1 that are available to serve the load.

2 A Right. That's correct.

3 Q And you can meet that capacity obligation which,
4 by the way, is imposed by PJM. Is that right?

5 A PJM or as I understand it, by the host companies
6 and the Pa. pilots.

7 Q So you can meet that capacity obligation in a
8 number of different ways; correct?

9 A That's correct.

10 Q And have iron in the ground, your own generating
11 plants?

12 A Yes.

13 Q You can purchase power from a utility that is a
14 member of PJM?

15 A That is correct.

16 Q You can purchase from a utility that is not a
17 member of PJM?

18 A If that utility is located within the PJM control
19 area, yes.

20 Q Well, for example, you could buy from New York
21 utilities?

22 A Yes. But that capacity would be created by the
23 PJ.

24 Q And you do buy from Virginia utilities?

25 A That's correct.

1 Q You could buy from utilities in the midwest?

2 A That is correct.

3 Q You could purchase from nonutility generators?

4 A Yes.

5 Q From independent power producers?

6 A Yes.

7 Q You could do a demand side program that would get
8 you the functional equivalent of the capacity credit?

9 A I do not believe that is true. I think -- and
10 again, you are getting outside my area of expertise but I
11 think within the last few days, PJM has created rules that
12 would make it difficult to, if not impossible to count
13 demand side programs.

14 Q And how recently was that?

15 A I'd say within the last week.

16 Q So things have actually changed since you
17 testified in your deposition a week ago that you could get
18 credit?

19 A Yes. But I had a conversation with someone and
20 as I remember the conversation, I think the rules have
21 changed.

22 Q Okay and if all of those -- actually let's go
23 back to that for a second. In the deposition you described
24 to me that what happens with demand side management is that
25 your load goes down and so you have less need for capacity

1 credits; correct?

2 A Well, there's two ways demand side programs can
3 be counted. You can count demand side programs if it meets
4 PJM requirements as capacity or else you can count it as a
5 demand reducer, if you will, and but there are prescribed
6 rules in PJM of how that is to be done and as I -- my very
7 limited understanding of those rules are that as prescribed
8 by PJM recently, it would be very difficult, if not
9 impossible, for a company to count the demand side programs
10 and supplying capacity for a customer.

11 Q As capacity reduction?

12 A Yes.

13 Q What about has load reduction?

14 A I think that is the same case, too. But I am not
15 exactly certain.

16 Q And if all of these things fail you, that you pay
17 the PJM deficiency price?

18 A Correct. That is correct.

19 Q What happens if you bring more capacity, physical
20 capacity on line in the control area? What happens to
21 price of capacity?

22 A The price of capacity should decrease.

23 Q Thank you. Now, in order to might the PJM
24 installed capacity obligations, you do not need to purchase
25 your capacity obligation for a year; correct? You can make

1 a series of month-long or shorter trades?

2 A This is correct.

3 Q In your testimony, you state that PJM capacity is
4 not available at this time for purchase by suppliers like
5 Connectiv Energy for two planning periods. Do you see that
6 point at lines 15, 16?

7 A Yes.

8 Q Okay. The basis of this testimony, and the sole
9 basis for it is a series of phone calls you made beginning
10 in September; correct?

11 A That's correct.

12 Q From basically you spoke at the time you and I
13 spoke previously you had spoken to seven entities since
14 since then.

15 A Yes.

16 Q I'd like to talk to you about those phone calls
17 for a few minutes which form the sole basis, you say, for
18 your testimony?

19 A Yes.

20 Q You had a series of calls with PP&L.

21 A Correct. That is correct.

22 Q And you told me that you bought 25 megawatts of
23 capacity from them on October 2nd a few days after you
24 filed this testimony; correct?

25 A What was the date again, please?

1 Q October 2nd. From PP&L? That would be off I
2 think one of the supplemental logs?

3 A Yes. On October 2nd I bought 25 megawatts of
4 capacity from PP&L. That was all the capacity they had
5 available to sell.

6 Q That was just for the balance of October, is all
7 you bought it for?

8 A That is correct.

9 Q Do you think the price information here is
10 sensitive or not?

11 A I think it's commercially sensitive to the
12 companies supplying.

13 Q Let's get a neighborhood. It's well, well under
14 the deficiency price; correct?

15 A That's correct.

16 Q And on October 2nd they are still looking at
17 their can capacity session for the 1997-1998 planning year?

18 A That is correct.

19 Q Would it help to know around the 15th of this
20 month how much capacity they'll have available there?

21 A That is correct.

22 Q That's the extent of your discussions with PP&L?

23 A Yes.

24 Q PSE&G told you they are looking to bring some
25 fossil interests back. That would be an additional

1 capacity to the area?

2 A Yes.

3 Q They have a deal that ends up, that may free up
4 300 megawatts of capacity?

5 A Yes.

6 Q As of September 18th they told you that would
7 have capacity credits available but subsequently said that
8 they were going to have to stand back a little bit and see
9 if they could figure more out? September 18?

10 A Yes.

11 Q On September 30 they told you that their fossil
12 fuel is thinking of bringing additional capacity on line?

13 A Yes.

14 Q And on October 2nd they told you that they would
15 take bids for 50 megawatts of capacity on the 7th of this
16 month. Did you submit a bid?

17 A Yes, I did.

18 Q Did you get it?

19 A I haven't heard back from them.

20 Q Thank you. Your next group you spoke to was
21 GPU. Right?

22 A Yes.

23 Q You spoke to them four or five times during the
24 month of September. On October 1st you bought four
25 megawatts from them; correct?

1 A That is correct for the month of October.

2 Q At a price well below the PJM deficiency rate;
3 correct?

4 A That's correct.

5 Q You also spoke to New York State Electric and
6 Gas?

7 A Yes.

8 Q On September 8 you called and told them that you
9 needed capacity credit; right?

10 A That's correct.

11 Q Sometime thereafter you called and told them
12 about capacity?

13 A Yes.

14 Q Then you left three voice mails and never got
15 through to him?

16 A That's correct.

17 Q That was the extent of the negotiations the with
18 New York State Electric and Gas?

19 A That's right he has not returned my calls.

20 Q VEPCO, Virginia Power you started calling them in
21 late September. On September 22nd they indicated they did
22 have power available to be delivered at 25 a kilowatt year?

23 A Yes.

24 Q Even though they are outside the PJM service
25 territory they would deliver at that price inside the PJM

1 service territory taking the derate themselves?

2 A Yes. Up to 50 megawatts.

3 Q And they would do that for up to a hundred
4 megawatts?

5 A Yes.

6 Q According to your testimony, as of October the
7 you are negotiating with them for that?

8 A Yes.

9 Q You also called Enron?

10 A Yes.

11 Q They told you that they would probably have 125
12 megawatts available. Is that price sensitive?

13 A I don't know the price. I think I gave them a
14 price that I would buy it at.

15 Q What was that price?

16 MR. DOLL: Objection, Your Honor. I think we are
17 dealing with price sensitive information at this point and
18 as we had agreed through the deposition, and as we agreed
19 earlier we would talk in generalities about price
20 sensitivity and bids.

21 MR. SMITH: All right. I think I agree with you.
22 Let me check one thing. It's not designated in the
23 deposition as sensitive but there's -- I will treat it as
24 though it's in the same range as previous ones we talked
25 about.

1 THE WITNESS: Yes.

2 MR. SMITH: Correct.

3 THE WITNESS: Yes.

4 BY MR. SMITH:

5 Q You spoke to PECO Energy?

6 A Yes.

7 Q On September 4 you told them you were looking for
8 capacity?

9 A Yes.

10 Q September 18th your notes indicate that PECO
11 Energy told you that we had capacity and wanted to talk to
12 you the week of September 22nd?

13 A Right.

14 Q When did you file your testimony? September
15 29th?

16 A Yes.

17 Q Around September 30th PECO issued a standard
18 offer. Are you familiar with that?

19 A Vaguely familiar with it.

20 MR. SMITH: Your Honor, this is marked as PECO Cross
21 Examination Exhibit Number 1. I would like to have this
22 marked and ask the witness a few questions about it.

23 JUDGE CHESTNUT: It may be so marked

24 (PECO Cross Examination Exhibit No. 1 was produced
25 and marked for identification.)

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BY MR. SMITH:

Q Have you ever seen this document before?

A Yes.

Q Do you know enough about this document to generally describe it?

A Probably in its very basic terms.

Q When did you first see this document?

A Probably in early October.

Q October 2nd was the day of your deposition. Does that help you recall it?

A If you remember, we did not have it then. Probably the next day I would assume we received it.

Q Mr. South had it for about a week or so, or ten days?

A Yes.

Q Do you recognize that document as the document that was sent to you by PECO Energy offering to sell capacity under certain terms and conditions?

A It was sent to Delmarva. It was not sent to me, but yes.

Q On October 7 you bought 75 megawatts from PECO for the month of November.

A Yes.

Q At a price of \$70.00 per megawatt-day or that

1 translates to about 25, 55 per kilowatt-year?

2 A Yes, sir.

3 Q And that was your offer price.

4 A That was my offer price.

5 Q So you offered that price and we sold it to you
6 at that price. No further negotiation.

7 A No. That was not my original offer.

8 Q What was your original offer?

9 A My original offer was to buy power for 20 months
10 at a higher price and that was rejected and this was my
11 counter offer for one month.

12 Q And you are still in negotiations with PECO
13 Energy about whether to purchase that longer term power. ,
14 correct?

15 A No. Not -- you mean which longer term power are
16 you talking about.

17 Q Longer term capacity from PECO Energy over the
18 next year or two years?

19 A No. The last discussion I had with them was that
20 on the 6th they have capacity available for November,
21 submit a bid. PECO has a hard time evaluating beyond
22 November and so I submitted a bid on the sixth and on the
23 7th they said you had capacity for the month. November and
24 that's the last I have talked to them about capacity.

25 Q Have you called them back since then?

1 A No. Ken said that if they had capacity they
2 would call me.

3 Q The letter that you have had for several days
4 that indicates that PECO's accepting solicitations, market
5 based bids. Have you submitted one?

6 A No. As I indicated before, someone else is in
7 the process of handling this for Connectiv supply.

8 Q When I said a few minutes ago were still
9 negotiating with PECO Energy, I apologize. I meant the
10 company, Delmarva. Not you as an individual?

11 A Okay Delmarva as a company is still negotiating
12 with PECO.

13 Q Thank you. Since you and I spoke before you made
14 your first call to Panda Energy. What is Panda Energy?

15 A They are a nonutility generator or independent
16 power producer. I am not sure.

17 Q They told you that they have possible capacity
18 available for the entire calendar year 1998 and will talk
19 to you about it next week?

20 A Yes.

21 Q And the basis of the calls that we just discussed
22 were solely on the basis of the calls we discussed you
23 testified that capacity is not available at that time for
24 purchase by suppliers like Connectiv Energy for the two
25 planning periods, the excess capacity situation, which

1 witnesses have claimed existed does not exist today and
2 under these circumstances, the effective price is 5840 per
3 year. Correct?

4 A Yes.

5 Q We talked a little about your own opinion about
6 why you think there is a capacity shortfall right now and
7 your understanding of the market. Do you recall that?

8 A Vaguely.

9 Q You told me that when I asked you why you felt
10 this happens, why you were not getting quick responses to
11 your requests to buy capacity that you assumed that it was
12 uncertainty on the part of the utilities as to what their
13 needs for capacity are going to be and what the demand of
14 marketplace are going to be?

15 A Correct.

16 Q Do you recall that?

17 A Yes.

18 Q You told me that uncertainty had the two the.
19 The first was that it's always hard to tell under PJM what
20 your capacity needs actually are. It's hard to calculate.

21 A That's correct.

22 Q You agreed with me that what has been true for
23 years and years is going to be continue to be true?

24 A That's correct.

25 Q The second situation that caused uncertainty was

1 that the pilot programs are about to go up and running.
2 Nobody knows how much capacity they are going to need to
3 serve those loads right now; correct?

4 A That is correct.

5 Q And you told me that that uncertainty you expect
6 to verify very soon?

7 A Yes.

8 Q There's about 30 members of PJM?

9 A Yes.

10 Q You called about four of them looking for
11 capacity before you filed this testimony; correct?

12 A Yes, probably.

13 Q You called two utilities that are not members of
14 PJM and that was the extent of your calls for that?

15 A Yes.

16 Q You did not call any nonutility generators before
17 filing your testimony?

18 A That is correct.

19 Q You called one since and they told you that they
20 think they have capacity available for the entire calendar
21 year 1998?

22 A That is correct.

23 Q I guess we have to agree, then that's input from
24 Panda because you weren't sure who it was you called, one
25 or the other?

1 A Yes.

2 Q And you are now testifying that demand side
3 management programs you think you could not get capacity
4 credit for?

5 A That's correct.

6 Q You had no documentary basis for you testimony
7 other than these calls?

8 A That is correct.

9 Q You did not make any predictions or calculations
10 of what the market price of energy or capacity would be for
11 the future?

12 A Personally, no.

13 Q I am sorry?

14 A Personally, no.

15 Q You last looked at someone else's calculations
16 about six to nine months ago; correct?

17 A Yes.

18 Q You knew the name of the man at Delmarva who
19 would have some capacity?

20 A That's correct.

21 Q You did not seek him out to look at his
22 calculations before filing your testimony?

23 A That is correct. Because --

24 Q I am sorry. Were you done?

25 A Yes.

1 Q At your deposition I asked you to go get that,
2 those calculations, though predictions of future market
3 price an on the record data request?

4 A Yes.

5 Q Ten days ago. Still have not followed through
6 and done that; correct?

7 A I have contacted him and he has not called me
8 back.

9 Q You have done no study of capacity costs on a
10 going forward basis?

11 A That's correct.

12 Q When I asked you your estimate of energy and
13 capacity prices for 1999 to 2000, you told me that you
14 could make no prediction whatsoever about the capacity
15 prices for that time frame; correct?

16 A That is correct.

17 Q And you expect energy prices to be in the low
18 20's per megawatt-hour?

19 A Yes.

20 MR. SMITH: I'd like to mark PECO Cross Examination
21 Exhibit Number 2 which is a series of interrogatories
22 served originally by Senator Fumo's attorney.

23 (PECO Cross Examination Exhibit No. 2 was produced
24 and marked for identification.)

25

1 BY MR. SMITH:

2 Q Mr. Douglass, have you ever seen this set of
3 questions and answers before?

4 A I do not believe so.

5 Q You can turn to the second page of this and read
6 aloud the answer into the record of all of these
7 questions?

8 A Of all questions?

9 Q It's just one answer.

10 A On the second page.

11 Q Just read the answer to the question?

12 A See the testimony of Pennsylvania Electric
13 Competition Coalition.

14 Q We established earlier that you are such a
15 witness.

16 A Yes.

17 Q I don't want to play games here. You can
18 designate that there is somebody else, correct, who will
19 answer on behalf of Delmarva from your slate of witnesses.
20 If not, I want to go through and ask Mr. Douglass
21 Delmarva's positions on each of these questions.

22 MR. DOLL: If I may have one moment. I don't know
23 if you are waiting for --

24 MR. SMITH: I am waiting.

25 MR. DOLL: Mr. Mitnick handles most, if not all of

1 those things and he will handle these.

2 MR. SMITH: I want to be clear these were served on
3 Delmarva and not on PECC and not Mr. Mitnick. I am looking
4 for as you designate that Delmarva's answers to this will
5 come from a PECC witness. I to make sure that Mr. Mitnick
6 will be answering on behalf of Delmarva when he gives these
7 answers.

8 JUDGE CHESTNUT: Am I correct that this is an
9 exhibit which contains interrogatories asking questions
10 concerning a pleading, not testimony?

11 MR. SMITH: They were interrogatories that were
12 filed some time ago against Delmarva asking them to tells
13 us their position, their basis for several positions that
14 they had publicly stated. They answered that and they had
15 lots of options of ways to answer this. They answered that
16 by telling we were to go to the testimony of these
17 witnesses, and now I am asking which of those witnesses is
18 all I am really asking here.

19 JUDGE CHESTNUT: Well, obviously there's no
20 objection to it, but I can't see that it's proper
21 interrogatory at all. Like I said they didn't object to it
22 so you have waived response to it. Go ahead.

23 MR. DOLL: All Mr. Smith is saying is that Mr.
24 Douglass is here and sworn and says he's testifying on
25 behalf of PECC. I think from that standpoint, it's an

1 improper line of questioning to get into what is properly
2 Delmarva's position with the coalition, as is the case with
3 any group of people that you put together. There is a give
4 and take of various --

5 MR. SMITH: PECC has not requested intervention in
6 this presenting and if they did, we would argue that they
7 do not have legal standing to intervene in this case.

8 JUDGE CHESTNUT: Parties can always consolidate
9 themselves.

10 MR. SMITH: But they don't then shelter themselves
11 from discovery. Consolidation is a good thing but these
12 questions are not that difficult. Does Delmarva have price
13 projections for the time period that is at issue here. The
14 answer was given to talk to one of these witnesses.

15 That's same answer that was given by Enron, and NEV
16 said talk to Mitnick. All I want to do is make sure. We
17 have asked these questions in various forms over the months
18 and all I want to do is make sure that I understand who I
19 am supposed to be asking these questions.

20 JUDGE CHESTNUT: Did you do a follow-up
21 interrogatory?

22 MR. BONNEY: At least three times.

23 MR. DOLL: We answered that. We said Mr. Mitnick.
24 Just said it on the record.

25 JUDGE CHESTNUT: I have -- that was the answer I

1 have --

2 MR. CLEARFIELD: The answer is that Mr. Mitnick is
3 the is person. The answers will be from Mr. Mitnick and
4 those are the --

5 MR. DOLL: That's what I said.

6 JUDGE CHESTNUT: That's responsive.

7 MR. DOLL: The information is already --

8 MR. SMITH: There are certain issues regarding the
9 facts that are at issue in this case. I think we can all
10 agree that there are at least 10 facts underlying this. We
11 have asked these companies whether they of any evidence in
12 their files in their corporate files that go to these
13 factual issues and I am not required to send a formal
14 interrogatory to them when they give an answer that it will
15 be provided on the stand in --

16 MR. CLEARFIELD: We have completed the information
17 and we have directed them to the witness that is going to
18 support the allegations that we made. Any other
19 information that Enron would have is irrelevant or, and
20 it's highly business confidential.

21 Obviously, we are not going to turn over market
22 prices estimates that we use in our business just because
23 PECO wants to see them. There's -- we are not basing our
24 testimony on those. And they are merely illustrative.

25 MR. SMITH: That should have been the objection some

1 time ago, Dan.

2 MR. CLEARFIELD: You should have made a motion to
3 compel.

4 MR. SMITH: There was nothing to compel. The answer
5 that there would be a witness available. All I am trying
6 to do --

7 MR. DOLL: I said there is a witness --

8 MR. CLEARFIELD: You cross examine --

9 JUDGE CHESTNUT: Stop, stop, stop. As far as I am
10 concerned, you sent interrogatories, you got an answer, you
11 followed up and got a specific answer and that's it. If
12 you don't like it, that's too bad. They told you Mr.
13 Mitnick.

14 MR. SMITH: I am fine with Mr. Mitnick.

15 JUDGE CHESTNUT: Well, that's --

16 MR. SMITH: I just wanted to make sure of that
17 first.

18 BY MR. SMITH:

19 Q Similarly, I am going to skip Number 3, Exhibit
20 3, Your Honor, because I already had something marked which
21 is clear now is not relevant.

22 JUDGE CHESTNUT: Shall we remark it just so there's
23 no gap in the filing.

24 MR. SMITH: PECO Cross Number 3 which I will be
25 using later is the same --

1 JUDGE CHESTNUT: As long as you'll use it that's
2 fine.

3 MR. SMITH: The same set of questions filed by
4 Senator Fumo's Office distributed to Enron which I will
5 provide. And the answers thereto. So we will come back to
6 this when we get to Mr. Mitnick is what I want to do.

7 MR. CLEARFIELD: I should point out Miss Coles is
8 another PECC witness that does provide a basis with respect
9 to market prices, et cetera.

10 JUDGE CHESTNUT: Why are you passing this out now
11 you are not going to use it now, are you.

12 MR. SMITH: I am not going to use it now.

13 BY MR. SMITH:

14 Q Mr. Douglass, I want to ask you if you have seen
15 PECO Cross Examination Exhibit Number 4, the answers of
16 Delmarva to a series of interrogatories labeled MP-1.

17 A No I have not.

18 Q You have never seen that?

19 MR. SMITH: Your Honor, this set of interrogatories
20 goes to a series of assumption that go into market price
21 and we ask Delmarva in fact all of the parties if they
22 would offer alternative assumptions. This witness has
23 previously testified that he will be the only Delmarva
24 witness who is here. Now, when we ran into a situation Mr.
25 Hill earlier where he wasn't able to testify, your first

1 response was to ask us if we were going to bring in another
2 witness for that piece of cross examination, he didn't to
3 do that.

4 If Mr. Doll is willing to admit this into evidence
5 without a sponsoring witness as the position of Delmarva,
6 then I think that we can resolve that either way, I would
7 like them to designate a witness to come and discuss market
8 price position.

9 MR. DOLL: First of all, Your Honor, these
10 interrogatories were asked obviously before the partial
11 settlement was even offered in this case. Second of all, I
12 think it's quite evident that the only employee of Delmarva
13 that is here that has submitted testimony in accordance
14 with Your Honor's guidelines is Mr. Douglass.

15 I see absolutely no point in putting in
16 interrogatories that ask us about future natural gas
17 prices, future oil prices, future coal prices uranium
18 costs. Why clutter the -- the basic question is why
19 clutter the record with irrelevant material.

20 JUDGE CHESTNUT: Well, I have to say I understand
21 why he even mentions that these were interrogatories that
22 were sent to the parties prior to the partial settlement.
23 Does that make them somehow superceded?

24 MR. DOLL: Not to the extent that at the time, I
25 suppose the argument could be made that Delmarva has not

1 sponsored, nor does it intend to sponsor any witness,
2 obviously that has changed. It has changed by Mr. Douglass
3 being here. In light of the settlement. That's the only
4 reason.

5 JUDGE CHESTNUT: To do you want to update your
6 answer.

7 THE WITNESS: Well, but it is still -- maybe I am
8 seeing a bogey man that isn't there. The answer is still
9 correct. We are not, Delmarva is not sponsoring any
10 witness regarding, as we go through them, future gas
11 prices, prices future coal prices. Those answers are still
12 correct.

13 JUDGE CHESTNUT: Okay. So what's problem.

14 MR. DOLL: I don't see the relevance of this.

15 JUDGE CHESTNUT: I am not -- I think we have got a
16 pretty expansive definition of relevance in this proceeding
17 and I think it's been clear that my approach has certainly
18 been to let everything in unless there's a reason not to.
19 And cluttering up the record, although I personally am
20 sympathetic to that in this case, it is not a factor. I
21 think we'd rather have an actual record than a clean one.

22 MR. DOLL: It's my --

23 MR. SMITH: Thank you.

24 JUDGE CHESTNUT: On the other hand, let me say that
25 if you did want to update your responses I think it's

1 appropriate and I think you should unless you are willing
2 to stand by these.

3 MR. DOLL: I will look through this again.

4 MR. CLEARFIELD: I have to say Your Honor, it hasn't
5 come out but I believe there's another set like this for
6 Enron and we'll update it. To the extent that we failed to
7 recall that these interrogatories were there.

8 We can update it. The answer will be that Mr.
9 Mitnick and Ms. Coles will sponsor their testimony as set
10 forth in those documents. If the Commission needs to do
11 that, we'll do it.

12 MR. SMITH: That's he not what we are looking for,
13 Your Honor. These companies stated in sworn answers, I
14 think they are supposed to be sworn answers to discovery,
15 that they were not taking positions on certain key elements
16 of this case. And that, as Mr. Doll has just pointed out,
17 is still true.

18 And we are entitled, this, I thought, was a very
19 easy way to get this on the record that they did not have
20 think evidence on these issues and they have admitted in
21 writing that they are not taking positions or putting on
22 evidence on these key situations.

23 JUDGE CHESTNUT: I keep hearing you addressing Mr.
24 Dole. Are you talking about Mr. Doll?

25 MR. SMITH: Did I get that wrong.

1 JUDGE CHESTNUT: I want to be sure you are not
2 talking about someone else.

3 MR. DOLL: There is a D-a-h-l in one of the cases.
4 Just think of me as Craig.

5 JUDGE CHESTNUT: I think we have discussed enough
6 about those interrogatories, how you're going to handle
7 them, what this represents. At time it was answered
8 obviously, I am sure it was a correct answer on the part of
9 the responses. And if they feel that it is no longer a
10 valid representation, then they can update. I think all
11 parties have a continuing duty to do that do.

12 MR. SMITH: Thank you.

13 MR. CLEARFIELD: If the PECO is asking us to do
14 that, then we can do it. I am not sure what --

15 MR. SMITH: No. The regs indicate that the duty to
16 update is yours, not ours.

17 MR. CLEARFIELD: The rest of them; Your Honor --

18 JUDGE CHESTNUT: Let's go off the record.

19 (Discussion off the record.)

20 MR. SMITH: We have documents we want to try to move
21 in subject to Rule 5.407 which deals with records and other
22 motions and they are the comments, written comments filed
23 about Delmarva in the Maryland and the Delaware proceedings
24 regarding competition and I can tell --

25 JUDGE CHESTNUT: You didn't get this off a web site,

1 did you?

2 MR. SMITH: No. These were provided to us in
3 discovery by Delmarva. I think that takes care of whether
4 they are good stuff. PECO Exhibit Number 5.

5 MR. DOLL: Your Honor, I have to object.

6 JUDGE CHESTNUT: Don't object yet, Mr. Doll.

7 MR. SMITH: PECO Cross Examination Exhibit Number 5
8 will be the September 9, 1997 comments of Delmarva in the
9 Maryland -- I'm sorry I am reading the wrong -- Number 5
10 should be -- they are the comments of Delmarva to the
11 Delaware Public Service Commission on Electric Industry
12 Restructuring on September 12, 1997.

13 Number PECO Cross Exhibit Number 6 is the testimony
14 filed in the legislative hearing before the Maryland Public
15 Service Commission by Delmarva on October 13, 1997 and PECO
16 cross Exhibit Number 7 is the comments filed by Delmarva
17 about the Maryland Commission on September 9, 1997 in the
18 investigation into electric industry restructuring.

19 The Commission's regulations indicate that appoints
20 40 seven that these records and other proceedings can be
21 and are admissible in Commission proceedings upon request
22 and upon a showing that it will be relevant material to the
23 instant proceeding.

24 I would suggest, Your Honor, just as Mr. Clearfield
25 argued that a newspaper article quoting PECO's unregulated

1 subsidiary was relevant to try to impeach PECO's position,
2 so, too, is the sworn document or the comments filed in to
3 their regulatory agency by Connectiv's regulated portion
4 relevant to determining the veracity and the weight to be
5 given to Delmarva's positions in this case.

6 MR. DOLL: If I may --

7 JUDGE CHESTNUT: Mr. Doll, then, is it correct you
8 are making an objection now? You're moving them in now?

9 MR. SMITH: Yes.

10 JUDGE CHESTNUT: Response.

11 MR. DOLL: Objection.

12 JUDGE CHESTNUT: To which one?

13 MR. DOLL: I'll start stare with --

14 JUDGE CHESTNUT: Go in order. Let's start with 1,
15 really. Does anybody object to the answer, to PECO Cross
16 Examination Exhibit Number 1, which was the supply offer?

17 MR. DOLL: Yes, Your Honor. What we have, I assume,
18 just from looking at it is a generic draft unsigned
19 letter.

20 JUDGE CHESTNUT: If PECO does, in fact, have a
21 signed copy of the letter that went out to Delmarva Power
22 and Light, I will accept it under the best evidence rule.
23 A draft we don't know if this draft conforms with that
24 other letter.

25 MR. SMITH: I will say the witness did testify that

1 this is --

2 MR. DOLL: He said he generally knew what was in the
3 letter.

4 MR. SMITH: He read it. We can -- I don't know if
5 there's a signed version or not but we can endeavor to find
6 out and submit that. That was sent out. That's no
7 problem.

8 MR. DOLL: I would accept that as a substitute for
9 that exhibit.

10 JUDGE CHESTNUT: It's admitted subject to that.

11 (PECO Cross Examination Exhibit No. 1 was admitted
12 in evidence.)

13 MR. DOLL: What was Number 2.

14 MR. SMITH: It was the answers to interrogatories
15 to --

16 MR. DOLL: That has already been read in the
17 record. I see no relevance of that document being
18 admitted.

19 MR. SMITH: The questions have not been read into
20 the record. If we are going to do it that we'd have to
21 read them.

22 JUDGE CHESTNUT: It's admitted

23 (PECO Cross Examination Exhibit No. 2 was admitted
24 in evidence.)

25 JUDGE CHESTNUT: What about Number 3.

1 MR. SMITH: Absolute --

2 MR. DOLL: I thought three was --

3 JUDGE CHESTNUT: That's not been produced yet.

4 MR. SMITH: I am not offering that now.

5 JUDGE CHESTNUT: Now four is response to MP-1. I'll
6 admit Number 3.

7 (PECO Cross Examination Exhibit No. 4 was produced
8 and marked for identification and admitted in
evidence.)

9 MR. SMITH: Number 5 is the --

10 JUDGE CHESTNUT: Comments.

11 MR. SMITH: September 12 comments to the Delaware
12 Commission.

13 JUDGE CHESTNUT: Objection?

14 MR. DOLL: Yes, Your Honor. Under Section 5.407 and
15 I quote, when a proceeding or record in another proceeding
16 before the Commission is offered into evidence it's shown
17 to be relevant and material. I submit to you, Your Honor,
18 two things. Number one that is not a proceeding before
19 this Commission. Number two, there has been no foundation
20 laid for relevance or materiality in this instant
21 proceeding. I certainly did not, again, we get back to
22 cluttering the record, obviously, the record that we were
23 responding to is not in this record. Nor are any of the
24 other comments, nor is the Commission's final
25 determination.

1 JUDGE CHESTNUT: Well I think just because comments
2 appear in a proceedings doesn't give you the right to dump
3 in any document ever issued by that party.

4 MR. SMITH: The last note on this --

5 JUDGE CHESTNUT: 5.401, refers to proceedings before
6 the Commission. This is certainly not a proceeding before
7 this Commission, which doesn't preclude you from offering
8 it just answer.

9 MR. SMITH: What I will then do, rather than offer
10 it under 5.401 I will the offer it now.

11 JUDGE CHESTNUT: I just got the copies. Now, I
12 think Mr. Doll, your objection is what?

13 MR. DOLL: He was --

14 JUDGE CHESTNUT: You were objecting because it does
15 not have a foundation --

16 MR. DOLL: Yes, Your Honor.

17 JUDGE CHESTNUT: You have to have a witness to lay a
18 foundation for this.

19 MR. SMITH: It was referred to by them in
20 discovery.

21 JUDGE CHESTNUT: But do you have a witness of theirs
22 to sponsor it? Just because we refer to something in
23 discovery is not a basis for you introduce it.

24 MR. SMITH: I think let me say, Your Honor, that I
25 do think that the fact that they provided it in discovery

1 takes care of all questions of verification. It is what
2 they purport. It certainly is what they purport it to be.

3 MR. DOLL: I suggest because it's probative in
4 response to an interrogatory does not necessarily mean that
5 it is relevant and material for admissibility purposes. We
6 have comments that were made. These are not sworn
7 statements. They are not depositions this is not testimony
8 in another proceeding. These are comments.

9 JUDGE RAINEY: There's no sponsor and it's accepted
10 as an interrogatory response?

11 MR. DOLL: In this proceeding, no. They just merely
12 asked for comments and they are coming, as you can see from
13 Mr. Clark the assistant general counsel.

14 MR. SMITH: I simply would note earlier today Mr.
15 Hill was cross examined at length on our pilot comments
16 which he had never seen.

17 JUDGE CHESTNUT: It doesn't matter what you choose
18 to object to or not object to. You didn't object to it and
19 I didn't overrule any objections so it's not -- on what
20 basis did you object?

21 MR. BONNEY: On the basis that Mr. Hill was
22 unfamiliar with the document.

23 JUDGE CHESTNUT: Which one was that.

24 MR. BONNEY: The newspaper article.

25 JUDGE CHESTNUT: Mr. Hill is a pretty high up

1 official and I think he was aware of that proceeding. And
2 he didn't personally, for example --

3 MR. DOLL: Your Honor, number one, again, I
4 reiterate we are dealing with comments. Number two, I mean
5 they are not sworn statements, we are running late in this
6 proceeding, I don't see any relevance to have having
7 comments or having company officials come in to testify as
8 to something that doesn't even involve this Commission.

9 This in my humble opinion, if they feel that there
10 are inconsistencies that we are taking, they can in fact
11 point that out in brief.

12 JUDGE CHESTNUT: Well, you know I was thinking about
13 that. Which is as a matter of fact. I was going to say
14 you can argue about it in your brief and respond to their
15 arguments in brief but no one's going to have a chance to
16 do that. You are not going to have a response to how this
17 document is used either through testimony or in a brief and
18 that's the part that concerns me.

19 MR. BONNEY: With respect to the exhibits that you
20 permit to be entered into the record that other parties
21 offered in connection with cross examination of witnesses
22 today, Your Honor.

23 MR. CLEARFIELD: But we cross examined the witness
24 and we asked him questions. We built a foundation,
25 although sometimes not very well, but this is simply being

1 offered. I mean no one has any idea what's in this. It's
2 just not relevant.

3 MR. SMITH: I am asking Mr. Douglass who is familiar
4 with the document I questioned him on specific statements.
5 Which is what they did with Mr. Hill if that's what is
6 being offered. That's what you did before.

7 MR. BONNEY: Exactly what was done with respect to
8 the Star Ledger article which Mr. Hill said he was
9 unfamiliar with and with respect to comments which Mr. Hill
10 said he was unfamiliar with.

11 (Discussion off the record.)

12 JUDGE CHESTNUT: I'll admit them.

13 (PECO Cross Examination Exhibits Nos. 4, 5, and 7
14 were produced and marked for identification and
admitted in evidence.)

15 MR. DOLL: There are portions that you would like
16 designate to put in? I mean --

17 MR. SMITH: No. I'll actually leave the whole
18 thing. It's your --

19 JUDGE CHESTNUT: I'd like you to give me the reasons
20 that you wish to state for the record the reasons you wish
21 to put it in the record.

22 MR. SMITH: I can say with number 5 that materiality
23 is directly shown on page 58 in the following statement.
24 Delmarva believes strongly that non-litigated stranded
25 costs should be allowed for full recovery.

1 MR. CLEARFIELD: That's already that's in the
2 partial settlement.

3 JUDGE CHESTNUT: I don't see how it's even
4 inconsistent with any statement that's been made. You can
5 argue that. Let's move on.

6 MR. SMITH: Thank you.

7 JUDGE CHESTNUT: Now. I don't have six and seven.

8 MR. DOLL: Neither do I.

9 MR. SMITH: I am looking at six and even though it
10 has a couple comments it in, in fact. As I look at it now
11 statements of witness they're not here and I will withdraw
12 on that basis.

13 (Discussion off the record.)

14 JUDGE CHESTNUT: Is there anything particular, Mr.
15 Smith that you want to draw our attention to with regard to
16 Exhibit 7?

17 MR. SMITH: Yes, Your Honor. PECO Cross Examination
18 Exhibit Number 7 Delmarva believes that the price for this
19 service should be the market clearing price, plus any
20 administrative cost required to offer this service, not a
21 regulated price. That runs directly contrary to, I
22 believe, the comments in the alternative tiff litigation
23 position offered by Enron recently.

24 MR. CLEARFIELD: That is completely untrue and you
25 know it.

1 MR. SMITH: These comments are --

2 MR. CLEARFIELD: I am talking about so the record is
3 clear Mr. Smith's statements which I think.

4 MR. SMITH: I would note that what regulators in
5 Pennsylvania at least indicate that there can be a provider
6 of last resort that is different in the EDC with relevance
7 that particularly in a pleading from Maryland has to do
8 with this proceeding is unfathomable. And that's what we
9 are going to have to conference, I suppose, is those kinds
10 of misstatements.

11 MR. DOLL: And I anticipate their --

12 MR. CLEARFIELD: I would have to ask on behalf of
13 Enron to reconsider your ruling based on the comments and
14 statements Mr. Smith has made.

15 JUDGE CHESTNUT: Well, I have made the ruling but
16 I'll maybe we'll think about it. But I don't think I'll
17 change it, to be honest. Like I said, I adopt the approach
18 that when in doubt let it in. And then you can argue about
19 it. Maybe we'll leave it in.

20 MR. CLEARFIELD: Perhaps we need to think this
21 through --

22 JUDGE CHESTNUT: Maybe you could stipulate as to
23 it. I think an appropriate stipulation could be reached
24 which would govern the use of those documents which would
25 satisfy everybody. You can attempt to see if you can

1 resolve this.

2 MR. SMITH: The witness is available for redirect,
3 Your Honor.

4 JUDGE CHESTNUT: Does anyone have any questions for
5 Mr. Douglass?

6 MR. DOLL: Just a couple of questions.

7 REDIRECT EXAMINATION

8 BY MR. DOLL:

9 Q Mr. Douglas, you were asked by Mr. Smith about
10 the purchases that you made from PECO and others on a
11 monthly basis. From a planning perspective. Is it
12 preferable to purchase capacity on a month to month basis
13 or on a longer term basis?

14 A It's preferable to do it on a longer term basis
15 because of certainty as to what your supply picture is
16 going to look like in the future.

17 Q In your conversations with PECO and others, were
18 you able to purchase any capacity on a longer term basis in
19 one month?

20 A No.

21 MR. DOLL: Thank you. I have no further questions.

22 JUDGE CHESTNUT: Recross?

23 MR. SMITH: Nothing further.

24 JUDGE CHESTNUT: Thank you, Mr. Douglass. You are
25 excused.

1 That's the end of the witnesses that we had
2 scheduled for today. Let's talk about tomorrow. Are there
3 any changes to the witness lineup sheet that's been
4 distributed?

5 MR. BONNEY: No changes.

6 JUDGE CHESTNUT: So we'll go Johnstone, Hieronymus,
7 Coles and Mitnick tomorrow. Does anybody have a problem if
8 we start a little bit earlier? Like at 9:00 o'clock?

9 (Discussion off the record.)

10 JUDGE CHESTNUT: Seriously, does anybody have a
11 problem with starting at 9:00 o'clock tomorrow. Or do you
12 think it's not necessary? I don't want to go this late
13 tomorrow.

14 MR. SMITH: We have the two main PECC witnesses on
15 tomorrow. I think we'll need the time.

16 JUDGE CHESTNUT: Okay. We'll start at 9:00 tomorrow
17 morning. We're adjourned for today.

18 (Whereupon, at 5:49 p.m., the hearing recessed, to
19 reconvene at 9:00 a.m., the following day.)

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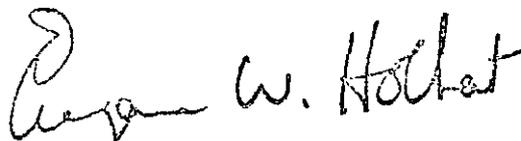
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3 proceedings are contained fully and accurately in the notes
4 taken by me during the hearing of the within cause, and
5 that this is a true and correct transcript of the same.
6

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