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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: R-00973953 Pennsylvania Public Utility
Commission v. PECO Energy Company For approval
of its restructuring plan under Section 2806 of
the Public Utility Code. Prehearing Conference.

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Pages 1 to 71, inclusive

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In re: R-00973953 Pennsylvania Public Utility Commission
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Stenographic report of hearing held in
Hearing Room 3, North Office Building,
Harrisburg, Pennsylvania,

Tuesday,
April 15, 1997
at 10:00 o'clock a.m.

- - - - -

BEFORE

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

APPEARANCES:

KENNETH L. MICKENS, ESQUIRE
CHARLES D. SHIELDS, ESQUIRE
P. O. Box 3265
Harrisburg, Pennsylvania 17105-3265
Appearing on behalf of Pennsylvania Public
Utility Commission Law Bureau

MARY MCFALL HOPPER, ESQUIRE
WARD L. SMITH, ESQUIRE
PAUL R. BONNEY, ESQUIRE
NOEL H. TRASK, ESQUIRE
2301 Market Street
Philadelphia, Pennsylvania 19101-8699
Appearing on behalf of PECO Energy Company

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PAUL R. BONNEY, ESQUIRE
NOEL H. TRASK, ESQUIRE
2301 Market Street
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Appearing on behalf of PECO Energy Company

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3 WOLF, BLOCK, SCHORR & SOLIS-COHEN
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5 Harrisburg, Pennsylvania 17101
6 Appearing on behalf of Enron Corp.

7 STEVEN P. HERSHEY, ESQUIRE
8 PHILIP A. BERTOCCI, ESQUIRE
9 COMMUNITY LEGAL SERVICES
10 1424 Chestnut Street
11 Philadelphia, Pennsylvania 19102
12 Appearing on behalf of CEPA, TAG, John W.
13 Long, Jr.

14 CHRISTOPHER B. CRAIG, ESQUIRE
15 Room 545 Main Capitol Building
16 Harrisburg, Pennsylvania 17120
17 Appearing on behalf of Senator Vincent J.
18 Fumo

19 KAREN OILL MOURY, ESQUIRE
20 Suite 1102, 300 North Second Street
21 Harrisburg, Pennsylvania 17101
22 Appearing on behalf of Office of Small
23 Business Advocate

24 WALTER W. COHEN, ESQUIRE
25 ANDREW J. GIORGIONE, ESQUIRE
26 204 State Street
27 Harrisburg, Pennsylvania 17101
28 Appearing on behalf of Indianapolis Power,
29 and Light Co.

30 JANET MILLER, ESQUIRE
31 MALATESTA, HAWKE & MCKEON
32 100 North Tenth Street
33 P. O. Box 1778
34 Harrisburg, Pennsylvania 17105
35 Appearing on behalf of Mid-Atlantic Power
36 Supply Association

37 DAVID M. KLEPPINGER, ESQUIRE
38 DEREK P. WILLIAMSON, ESQUIRE
39 MCNEES, WALLACE & NURICK
40 100 Pine street
41 Harrisburg, Pennsylvania 17101
42 Appearing on behalf of Philadelphia Area
43 Industrial Energy users Group (PAIEUG)

1 APPEARANCES: (Continued)

2 PAUL E. RUSSELL, ESQUIRE
Two North Ninth street
3 Allentown, Pennsylvania 18101
AND
4 DONALD A. KAPLAN, ESQUIRE
PRESTON, GATES & ELLIS
5 1735 New York Avenue, N. W.
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6 Appearing on behalf of Pennsylvania Power &
Light Company
7
8 ALAN BARAK, ESQUIRE
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9 Appearing on behalf of "Environmentalists"
10
11 TANYA J. MCCLOSKEY, ESQUIRE
STEVEN STEINMETZ, ESQUIRE
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Harrisburg, Pennsylvania 17120
12 Appearing on behalf of Office of Consumer
Advocate
13
14 JOHN L. MUNSCH, ESQUIRE
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601
15 AND
DEBORAH A. SWANSTROM, ESQUIRE
16 VERNEN, LIPFERT, BERNHOVEN, MCPHERSON and HAND
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17 Washington, D. C. 20005
Appearing on behalf of Allegheny Power
18
19 TERENCE FITZPATRICK, ESQUIRE
DAVID DESALLE, ESQUIRE
RYAN, RUSSELL, OGDEN & SELTZER
20 800 North Third Street, Suite 101
Harrisburg, Pennsylvania 17102
21 Appearing on behalf of GPU Energy
22
23 CRAIG A. DOLL, ESQUIRE
214 State street
Harrisburg, Pennsylvania 17101
24 Appearing on behalf of Delmarva Power &
Light Company
25

1 APPEARANCES: (Continued)

2 LANCE HAVER
3 6048 Ogontz Avenue
4 Philadelphia, Pennsylvania 19141
5 Appearing Pro Se

6 DAVID BOONIN
7 2005 Broad Street
8 Philadelphia, Pennsylvania 19107
9 Appearing on behalf of New Energy Ventures

10 - - - - -

11 HOLBERT ASSOCIATES
12 EUGENE W. HOLBERT, RPR
13 P. O. Box 6144
14 Harrisburg, Pennsylvania 17112-0144

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1 JUDGE CHESTNUT: This is the first prehearing
2 conference scheduled in the matter of Pennsylvania Public
3 Utility Commission versus PECO Energy Company at Docket
4 Number R-00973953. The appearance sheet is making its way
5 around the room. I am Administrative Law Judge Marlane R.
6 Chestnut. With me is Administrative Law Judge Charles E.
7 Rainey, Jr.

8 I have indicated that the appearance sheet is making
9 its way around. While that is happening, I'd like to have
10 all counsel present to identify themselves for the record
11 saying their name, their address and on whose behalf they
12 are appearing. I'll start with Mr. Bonney.

13 MR. BONNEY: Thank you, Your Honor. I am Paul
14 Bonney with PECO Energy, 2301 Market Street in
15 Philadelphia. With me today are Mary Hopper, Ward Smith,
16 and Noel Trask all from PECO Energy.

17 JUDGE CHESTNUT: Thank you.

18 MR. MICKENS: Good morning, Your Honors. My name is
19 Ken Mickens. I represent the Office of Trial Staff. Also
20 with me in this case is Charles D. Shields. Mailing
21 address, P. O. Box 3265, Harrisburg, Pa.

22 JUDGE CHESTNUT: Thank you.

23 MS. MCCLOSKEY: My name is Tanya McCloskey. With me
24 today is Steve Steinmetz. We represent the Office of
25 Consumer Advocate. Our address is 1425 Strawberry Square,

1 Harrisburg, Pennsylvania.

2 MR. BARAK: Alan Barak, 1417 Blue Mountain Parkway,
3 Harrisburg, Pennsylvania 17112 representing the
4 environmentalists.

5 MR. COHEN: Good morning, Your Honor. My name is
6 Walter Cohen, with me is Andrew Giorgione,
7 G-i-o-r-g-i-o-n-e. My address is 204 State Street,
8 Harrisburg, 17101, and we represent Indianapolis Power and
9 Light Company.

10 MR. GORNISH: Good morning, Your Honor. My name is
11 Gerald Gornish with the law firm of Wolf, Block, Schorr and
12 Solis-Cohen. Our Harrisburg address is 305 North Front
13 Street, Suite 401, 17101 and we represent Enron Corp. We
14 filed an application to intervene today.

15 MR. RUSSELL: Good morning, Your Honor. My name is
16 Paul Russell. I am representing Pennsylvania Power and
17 Light Company. Our address is Two North Ninth Street,
18 Allentown, Pennsylvania, 18101 and we have filed this
19 morning requests, motions for admission pro hac vice on
20 behalf of Donald A. Kaplan and Lisa M. Helfrick as
21 co-counsel if these motions are granted.

22 MR. DOLL: My name is Craig Doll. I am at 214 State
23 Street, Harrisburg, Pennsylvania, 17101 and I represent
24 Delmarva Power and Light Company.

25 MR. KLEPPINGER: Good morning, Your Honor. David

1 Kleppinger, and with me today is Derek Williamson from the
2 law firm McNeese, Wallace and Nurick, 100 Pine Street,
3 Harrisburg, Pennsylvania 17101 and we represent the
4 Philadelphia Area Industrial Energy Users Group. We will
5 be filing a complaint shortly.

6 JUDGE CHESTNUT: How about a petition to intervene?

7 MR. KLEPPINGER: Do you prefer a petition to
8 intervene?

9 JUDGE CHESTNUT: If you file a complaint, it will be
10 deemed by the Prothonotary to be a petition to intervene.
11 We are not going to be overly technical. If you just call
12 it a motion to intervene or something like that, that's
13 fine, as long as it has substantially the correct
14 information.

15 MR. KLEPPINGER: You want me to do that in writing a
16 opposed to verbally today?

17 JUDGE CHESTNUT: Of course. You know how we love
18 paper.

19 Anybody else?

20 MS. MOURY: Good morning, Your Honor. Karen Oill
21 Moury for the Office of Small Business Advocate. I am at
22 300 North Second Street, Suite 1101, Harrisburg.

23 MR. MUNSCH: John Munsch. I am representing
24 Allegheny Power. My address is 800 Cabin Hill Drive,
25 Greensburg, Pa. 15601. Allegheny Power will be filing a

1 petition to intervene shortly. With me is Deborah
2 Swanstrom of the law firm Vernen, Lipfert, Bernhoven,
3 McPherson and Hand and we'll be filing a motion for their
4 admission shortly.

5 JUDGE CHESTNUT: Thank you.

6 MR. FITZPATRICK: My name is Terrence Fitzpatrick
7 with Ryan, Russell, Ogden and Seltzer. With me is David
8 DeSalle, also of our firm. We represent GPU Energy. We
9 have not filed a petition to intervene and there hasn't
10 been a final decision whether to do so but I expect that
11 will be made shortly, Your Honor.

12 JUDGE CHESTNUT: Any other counsel present?

13 MR. HERSHEY: Steven P. Hershey and Phillip A.
14 Bertocci, 1424 Chestnut Street in Philadelphia, 19102,
15 Community Legal Services. We represent CEPA, TAG and John
16 W. Long and we may be adding to that list in the near
17 future.

18 MR. BOONIN: David Boonin. I am not an attorney but
19 we will be retaining counsel for New Energy Ventures that
20 will be filing an appearance in this case.

21 JUDGE CHESTNUT: Anyone else that hasn't been
22 introduced?

23 MR. CRAIG: My name is Christopher Craig. I
24 represent State Senator Vincent J. Fumo. The address is
25 545 Main Capitol Building, Harrisburg, Pa. 17120 and we

1 have filed a motion to intervene in this matter.

2 JUDGE CHESTNUT: Anybody else?

3 MR. HAVER: Lance Haver, and I will be representing
4 myself, if the hearings are accessible to the public in
5 Philadelphia where we pay the bills. If you choose to hold
6 the hearings some place where it's not possible for us to
7 participate for me to get involved and have my voice heard,
8 then I'll have no choice but to not participate.

9 JUDGE CHESTNUT: Thank you, Mr. Haver.

10 MS. MILLER: Janet Miller with the firm Malatesta,
11 Hawke and McKeon. Our mailing address is P. O. Box 1778,
12 Harrisburg, Pennsylvania, 17101. We represent Mid-Atlantic
13 Power Supply Association and a decision whether to
14 intervene is being made at this time.

15 JUDGE CHESTNUT: Thank you. Is there anybody else
16 willing to identify themselves publicly in this
17 proceeding?

18 JUDGE CHESTNUT: Okay. At this point let me state
19 for the record Judge Rainey and I have received prehearing
20 memoranda from OTS, OCA, OSBA, PECO, and that's it,
21 actually. Does anybody else have a prehearing memorandum
22 that they wish to hand up?

23 (No response.)

24 JUDGE CHESTNUT: Next item that we'll address then
25 are the outstanding petitions to intervene, or similar

1 motion. The first one is Senator Fumo's application for
2 leave to intervene. Is there any objection?

3 MR. BONNEY: Your Honor, we don't have any objection
4 to their participation, to Senator Fumo's participation but
5 as with some other petitions, by their nature, I think they
6 have certain interests in this case, and those interests
7 may limit their participation in the case. In this case,
8 we have no objection to Senator Fumo's participation as a
9 customer of ours.

10 JUDGE CHESTNUT: Okay. The application for leave to
11 intervene is granted. The next one is the environmental-
12 ists, which consists of the Clean Air Council, Sierra Club,
13 Citizens Action, Grassroots Alliance for a Solar
14 Pennsylvania, Nonprofit Energy Savings Investment, Savings
15 Program and the Philadelphia Solar Energy Association. Is
16 there an objection to their complaint, protest and petition
17 to intervene?

18 MR. BONNEY: Similarly, no objection to their
19 participation as environmentalists.

20 JUDGE CHESTNUT: Okay. Then the petition to
21 intervene is granted. The other pleadings are redundant.

22 The third is the petition to intervene of Delmarva
23 Power and Light. Is there any objection?

24 (No response.)

25 JUDGE CHESTNUT: Granted. The fourth is the

1 petition to intervene of PP&L. Is there any objection?

2 (No response.)

3 JUDGE CHESTNUT: That is granted. Are there any
4 objections to the motions for admission pro hac vice
5 submitted by PP&L in this case?

6 (No response.)

7 JUDGE CHESTNUT: They are granted. And the final
8 procedural intervention I have is the motion to intervene
9 from Enron. Is there any objection?

10 (No response.)

11 JUDGE CHESTNUT: That's granted also. Let me just
12 state as a general matter, like I said that --

13 MR. COHEN: Your Honor, if I could, we, on behalf of
14 Indianapolis Power and Light, filed on Friday a petition to
15 intervene.

16 JUDGE CHESTNUT: Well, we didn't get it.

17 MR. COHEN: We sent it to Judge Rainey, but not to
18 yourself because I had been told actually that Judge
19 Cocheres was the judge. But it has been filed with the
20 Prothonotary.

21 JUDGE CHESTNUT: It's not in the files as of today.
22 Maybe it's being processed. Do you have a copy now?

23 MR. COHEN: No. I don't have it with me.

24 JUDGE RAINEY: For some reason, Mr. Cohen, I didn't
25 receive a copy of that.

1 JUDGE CHESTNUT: Did you fax it?

2 MR. COHEN: No. We filed it at the offices. We can
3 deal with that at some later point.

4 JUDGE CHESTNUT: Let me state generally, there's
5 often a delay in our receiving documents that you file in
6 Harrisburg or that you send to be filed in Harrisburg. It
7 takes a while for things to get from Harrisburg to
8 Philadelphia.

9 So if you are going to file something, we'd prefer
10 if you would also send us a copy directly, a copy for
11 myself and a copy for Judge Rainey. But I have no reason
12 to disbelieve that you filed it, Mr. Cohen. So is there an
13 objection to it or do you wish to see --

14 MR. BONNEY: We have seen a copy, Your Honor and we
15 have a similar statement as I made previously; that is, we
16 have no objection to their participation, but we may object
17 down the road to testimony or briefs that are filed if they
18 extend beyond the scope of the interests that they have in
19 the case.

20 JUDGE CHESTNUT: Okay. That's something to be
21 addressed at the proper time. Is it a petition to
22 intervene that you filed?

23 MR. COHEN: Yes, Your Honor.

24 JUDGE CHESTNUT: That will be granted. Are there
25 any further petitions to intervene or motions of a similar

1 nature?

2 (No response.)

3 JUDGE CHESTNUT: Next procedural item to be
4 addressed, then, is the hearing schedule. I am not sure if
5 everybody is aware of the schedule which Judge Rainey and I
6 developed because at the time we didn't have a service list
7 so I couldn't really send it to too many parties. Does
8 everybody have the schedule?

9 MR. HERSHEY: Are there extra copies, Your Honor?

10 JUDGE CHESTNUT: You know, that's not a bad idea. I
11 can have copies made or I could just read it out. Why
12 don't I -- we'll take a few minutes' break. Why don't we
13 do that and have copies made.

14 (Whereupon, a brief recess was taken.)

15 JUDGE CHESTNUT: Has everybody had a chance to look
16 at the schedule?

17 (No response.)

18 JUDGE CHESTNUT: There's not a lot of flexibility in
19 terms of this case in terms of scheduling. As you know,
20 there's a statutorily imposed deadline.

21 MS. MCCLOSKEY: Your Honor?

22 JUDGE CHESTNUT: Yes, Ms. McCloskey.

23 MS. MCCLOSKEY: Yes, as I mentioned in my prehearing
24 memo last week, the OCA asked the companies, both PECO and
25 PP&L who have filings on April 1st if they would agree to a

1 voluntary extension of the suspension period to the first
2 Public Meeting scheduled in January, just to try to
3 alleviate some of the scheduling problems that we have.

4 At this point we haven't been informed as to when
5 the first Public Meeting in January will actually occur,
6 although January 8th is the first Thursday in which there's
7 not a holiday scheduled.

8 Looking at your schedule for Commission order and
9 assuming January 8th, that provides us approximately an
10 additional three weeks to attempt to manage both this
11 schedule and for the intervenor parties who are
12 simultaneously litigating the PP&L case to try and provide
13 some semblance of order to the two cases together.

14 I did raise that with the company last week in a
15 discussion which they were going to consider. I have also
16 put it in my prehearing memo. I think that would give us
17 some additional time that we would require.

18 JUDGE CHESTNUT: Mr. Bonney, do you have a
19 response?

20 MR. BONNEY: Yes. We would consider that if that
21 would be of assistance to the parties or the Commission.

22 JUDGE CHESTNUT: When would you consider it? The
23 purpose of this prehearing conference is to establish a
24 schedule.

25 MR. BONNEY: If there's a specific proposal, we'd be

1 happy to consider it. I don't know if there's a specific
2 proposal.

3 JUDGE CHESTNUT: I thought there was a specific --

4 MS. MCCLOSKEY: The specific proposal is to the
5 first Public Meeting in January. Slight problem we have is
6 we haven't heard from the Commission as to when that
7 meeting will be scheduled. We could assume January 8th.
8 It could be January 15th; assuming January 8th. I don't
9 believe the Commission has scheduled that far ahead.

10 JUDGE CHESTNUT: How would you anticipate the extra
11 time would be used?

12 MS. MCCLOSKEY: I would anticipate the extra time
13 would fall in the actual litigation that we would
14 essentially move the recommended decision back
15 approximately two weeks; which would give us additional
16 time for some of the time to be utilized for additional
17 time for briefing. Others of it could be utilized. I
18 think the testimony preparation is critical to the
19 parties.

20 Essentially, our testimony is due in 60 days, almost
21 65 days from today which is an extremely short period of
22 time, given the complexity of the issues. So I would see
23 it trying to fit into the entire litigation from the
24 testimony filing through your recommended decision with a
25 little bit of that time put into each area.

1 JUDGE CHESTNUT: I can't see where one or two days,
2 then, in each phase is really of any benefit to you.

3 MS. MCCLOSKEY: Right. I think the bulk of the time
4 being in the testimony phase would be much more
5 beneficial. But it would give us an additional, the time
6 frames for the brief that might only require an extra day
7 or two in the briefing time frame. And that may just occur
8 by the way the hearing schedule falls.

9 JUDGE CHESTNUT: So what's your proposed schedule?

10 MS. MCCLOSKEY: Since we haven't heard back from the
11 company, we didn't have a proposed, an exact proposed
12 schedule but I think we could go off the record perhaps and
13 talk with the parties to see if we could shift the schedule
14 back, start with moving the recommended decision back
15 approximately two weeks and then back up from that point.

16 MR. KLEPPINGER: Your Honor, just a question. Your
17 schedule worked off the assumption that your decision had
18 to be out two months before the end of the suspension;
19 right?

20 JUDGE CHESTNUT: Yes.

21 MR. KLEPPINGER: So if we can change the end of the
22 suspension date, we can maybe back into a schedule that's
23 similar to yours in time frames but gives everybody a
24 little extra time.

25 JUDGE CHESTNUT: I don't, you know, necessarily have

1 a problem with this. But this is a complicated issue in
2 this particular type of proceeding and I am not real sure,
3 given the way the statute's worded, that that's even
4 possible. We certainly want to ensure that everybody has a
5 full and fair opportunity to present their case.

6 In fact, I see that as what my role is here.
7 Sometimes that means forcing people to comply with
8 deadlines so that the process is able to proceed, you know,
9 fairly. At this point I am not real sure how to respond
10 because it's kind of indefinite.

11 You don't have another schedule. I understand why.
12 The thing is we are involved, too, and there's other
13 Commission personnel, you know, on the same track. It's
14 really hard since this impacts the schedule. I think it's
15 important that we would have established a litigation date
16 in this prehearing but maybe we can just address it later.

17 MR. BONNEY: Your Honor, only one other comment now
18 and I'd be happy to talk about it further. If it goes to
19 January 15th, I think it poses problems for us as far as
20 closing the books and crunching the time we have to do that
21 so that if the first Public Meeting date of the Commission
22 is January 8th that that would probably be doable from our
23 bookkeeping side but beyond that, it would pose some
24 problems.

25 (Pause.)

1 JUDGE CHESTNUT: Judge Rainey and I have obviously
2 just conferred on this. It looks to us like the best thing
3 to do at this point is adopt the schedule that we proposed
4 but leave open the possibility of changing it. That way
5 you can come up with something specific. That will give
6 parties who may object to it an opportunity to object.

7 I think it's important that we do have some schedule
8 to start going by now. I recognize that there may be a
9 possibility of extending the process. Is that okay with
10 everybody?

11 (No response.)

12 JUDGE CHESTNUT: Any objection to that?

13 MR. BARAK: What is it that we need to do so that
14 you can address the proposal that's on the table right
15 now? Is there something that we --

16 JUDGE CHESTNUT: You have to have a specific
17 proposal.

18 MR. BARAK: Just change this document that we have
19 in front of us, different dates, for example?

20 JUDGE CHESTNUT: I think this is the way the case
21 has to proceed in terms of the process, in terms of filing
22 testimony and then having hearings. That I don't see to be
23 changing. What I see changing are the dates, themselves,
24 maybe slip it a little as Ms. McCloskey indicates, slight
25 slippage a little here and there, depending on what you are

1 talking about.

2 Like I said, I am concerned here that the way the
3 statutes -- well, we can address that if you have something
4 specific. Okay.

5 MS. MCCLOSKEY: Yes, Your Honor. I think that was,
6 in PECO's previous case which is just concluding there was
7 extensive briefing as to the question as to whether the
8 Commission could extend the schedule and we have asked for
9 a voluntary extension which is done routinely in base rate
10 cases where the statute is worded similarly. I think we
11 can get over that hurdle when the time comes.

12 JUDGE CHESTNUT: But we don't have to address that
13 right now.

14 MS. MCCLOSKEY: That's correct.

15 JUDGE CHESTNUT: We ought to recognize there's a --
16 okay.

17 MR. BONNEY: We just expect that that be done
18 shortly.

19 JUDGE CHESTNUT: The sooner the better so people now
20 know in terms of their schedules. I am not so much
21 concerned about dates that you file your testimony as I am
22 about hearing dates because that's something that's within
23 your own knowledge in terms of how you conduct the cases
24 and how much time you need. And it doesn't really affect
25 us directly. Yes, Mr. Doll?

1 MR. DOLL: Just one comment. I assume that as is
2 the custom, these are all in hand days.

3 JUDGE CHESTNUT: Yes. I was going to get to that in
4 my discussion on service of documents. Right now we are
5 still talking hearing dates. So we have talked generally
6 -- Mr. Haver, did you have something?

7 MR. HAVER: I think in the proposed schedule there
8 are no public hearings scheduled.

9 JUDGE CHESTNUT: We are going to get to that, of
10 course. The next issue is where -- Mr. Bonney.

11 MR. BONNEY: I am sorry to interrupt. We just had
12 one minor change to the first technical conference. Some
13 parties suggested that we move that to the 23rd, which is a
14 week from tomorrow, rather than tomorrow, to give the
15 parties a little bit of additional time to review the
16 filing before we go to that.

17 JUDGE CHESTNUT: I have indicated that those dates
18 can be changed by your agreement. You know best when you
19 are in the best position to conduct that. That doesn't
20 impact us at all, so that's fine. Mr. Kleppinger?

21 MR. KLEPPINGER: Yes. One clarification on rebuttal
22 testimony date. It's listed July 18 as PECO rebuttal. Is
23 it safe for us to assume that that includes any cross
24 rebuttal as well?

25 JUDGE CHESTNUT: Certainly, this was really an

1 internal thing that I developed. So I took a lot of
2 shortcuts, but yes. Mr. Barak?

3 MR. BARAK: I am thinking what we have here is
4 public record without the need of faxes, send letters to
5 the other parties. Could you rule today, pursuant to Mr.
6 Bonney's suggestion, that the first technical conference
7 will be held on April 23rd and thereafter, could you
8 simply, just for the record, adopt the schedule as amended
9 with the other comment that we had here.

10 Then we have a public document that we can show to
11 the world tells us where this case is going.

12 JUDGE CHESTNUT: Sure, but I always also anticipate
13 issuing a prehearing order that will incorporate the
14 decisions that are made today.

15 MR. BARAK: Thank you.

16 JUDGE CHESTNUT: Anything else before we go on with
17 further hearing scheduling type of subissues?

18 (No response.)

19 JUDGE CHESTNUT: The next issue I have is the
20 location of the hearings. Mr. Haver raised this and
21 obviously, Judge Rainey and I are based in Philadelphia.
22 So Philadelphia does not seem like an unreasonable place
23 for us to have a hearing. I recognize there are staff
24 constraints, especially to people who are involved with
25 PP&L at the same time, though. Mr. Hershey?

1 MR. HERSHEY: Your Honor, we would urge that all of
2 the hearings, both the evidentiary hearings and the public
3 input sessions, be held in Philadelphia. That's service
4 territory. That's where the people live, the businesses
5 are, that are going to be affected.

6 The Pennsylvania Code recognizes that that is one of
7 the key factors in determination so I'd ask that all the
8 hearings be held in Philadelphia.

9 JUDGE CHESTNUT: Any objection?

10 (No response.)

11 JUDGE CHESTNUT: Then we'll say that that will be
12 done. Of course, public inputs will be held at various
13 locations in the service territory, not specifically in
14 Philadelphia, itself. We'll get to that.

15 MR. HERSHEY: I misspoke when I said that. Thank
16 you.

17 MR. GORNISH: Your Honor, the technical conference,
18 is that going to be held in Philadelphia or here?

19 JUDGE CHESTNUT: That's something you can talk about
20 with the company off the record. Okay? I mean, it doesn't
21 impact us so whatever arrangements are made can be made.
22 If there's a problem that we can help with, let us know,
23 but I am sure that the company will be as accommodating as
24 possible.

25 MR. GORNISH: I just wondered if it could be

1 postponed one day to the 24th. I don't know.

2 JUDGE CHESTNUT: You can talk about that later.
3 That doesn't directly involve us.

4 MR. BONNEY: Your Honor, it may be helpful if we
5 decide to have it here to schedule a room or perhaps we can
6 talk with the scheduling staff.

7 JUDGE CHESTNUT: Just let us now. Sure.

8 MR. BONNEY: Thank you.

9 Of course, as we get closer to whenever it is that
10 the hearing is going to be held, we'll expect daily witness
11 lists. We can talk about the order of witnesses but I
12 would like this process to go as smoothly as possible for
13 everybody. I would expect everyone here to act in a
14 cooperative and professional way to present your case.

15 My objective really is truly to make sure people
16 have a fair chance to present what it is they feel is
17 important and I am not going to be unduly legalistic in
18 terms of titles of documents, but on the other hand, there
19 is due process that has to be recognized, and that applies
20 to everybody. We did talk about witness lists.

21 Let's talk about public input. Obviously, we have
22 no objection to scheduling public input hearings. Does
23 anybody have a specific proposal?

24 MR. HAVER: Your --

25 JUDGE CHESTNUT: Mr. Haver?

1 MR. HAVER: Not as to specific dates but the time
2 frame. I believe it's most helpful to have the public
3 input hearings after the evidentiary hearings before the
4 briefs are filed so the public has an opportunity to
5 actually learn a little bit more about what is going on and
6 what's being discussed.

7 As Your Honors, I am sure, recognize, this is a very
8 complex case and holding public input before they have an
9 opportunity to understand some of the issues means that all
10 they turn into is a gripe session.

11 JUDGE CHESTNUT: That's a good point. But also I
12 think we have to have it early enough so that testimony
13 given at public input hearings can be used as part of the
14 case. And there's two kinds of countervailing things'
15 there.

16 Based on the schedule that we have, which is what we
17 are going to go with for now, recognizing that it may
18 change, but generally, I would assume it would be most
19 convenient for the parties to have them when the hearings
20 are scheduled in Philadelphia, or is that too much of a
21 burden for you?

22 You tell us. You are the ones who really have to do
23 this. We'll be glad to schedule them. We'll be glad to do
24 the Commission internal process. Mr. Mickens, do you have
25 a suggestion?

1 MR. MICKENS: Your Honor, I suggest that the public
2 inputs be held during the hearings. I know it would
3 certainly help our office if that were the case.

4 JUDGE CHESTNUT: Recognizing that we have to have
5 enough lead time to provide notice.

6 MR. HERSHEY: That's something we could discuss off
7 the record and perhaps even as late as the second
8 prehearing conference, have more specifics on that.

9 The only other suggestion I would make is that at
10 least in Philadelphia, that there be an afternoon and
11 evening session to accommodate seniors, who won't come out
12 at night; some people who work and can't come during the
13 day, so that you get everybody who would like to
14 participate.

15 JUDGE CHESTNUT: Certainly. Mr. Boonin?

16 MR. BOONIN: Your Honor, if I may also suggest we
17 are dealing with a week right around Labor Day, and having
18 been Commissioner in Philadelphia conducting public
19 hearings on both sides of Labor Day, your turnout seems to
20 be much lighter beforehand than after hand. You may want
21 to take that into advisement in setting a schedule.

22 JUDGE CHESTNUT: I'll keep that in mind. We also
23 won't schedule any Friday evening public input hearings.
24 At some point you have to get us specific dates because
25 there is a substantial amount of lead time that we have to

1 coordinate with Commissioner's offices as well as arrange
2 for facilities.

3 That's a pretty burdensome paper process in terms
4 of, you know, doing it, so we'll leave that open for now.
5 Is there someone who will assume the responsibility of
6 getting back to us with that?

7 MS. MCCLOSKEY: At the risk of volunteering, perhaps
8 our office should volunteer because we also will have the
9 PP&L public input hearings that I assume will be occurring
10 at very near the same time and I am sure both the
11 Commissioners and our office will be attending both.

12 JUDGE CHESTNUT: Okay. That's a good idea. Thank
13 you, Ms. McCloskey.

14 MR. HAVER: Your Honor, it may be premature but I'd
15 like to call to your attention at the public hearing held
16 in Philadelphia there was some difficulty in getting the
17 Commission to notify the building administrator. The
18 hearing was held in the penthouse where not all the
19 elevators went to.

20 For whatever reason the building administrator did
21 not want signs posted helping people to know which
22 elevators to use to get to the penthouse. It's not the
23 easiest room to find.

24 JUDGE CHESTNUT: I'll make every effort to make it
25 accessible. That's the whole point of having the public

1 input.

2 MR. HAVER: That's something that's not always
3 done. It's one the things that falls through the cracks.
4 Perhaps you could put on the record that part of
5 publication is to notify the building administrator that
6 there have to be signs up to get to the actual hearing.

7 JUDGE CHESTNUT: I don't think we need to get into
8 that much detail. I am sure you can depend on us to do a
9 good job. If not, bring it to our attention at --

10 MR. HAVER: The truth is that by the time we bring
11 it to your attention, the hearing's being held.

12 JUDGE CHESTNUT: I will keep your comments in mind.
13 I don't think that it will be a problem. Anything else for
14 public inputs before we move on?

15 MS. MULLIGAN: Mary Mulligan. I work with Bureau of
16 Liaison here at the Public Utility Commission. Still on
17 notification. One thing that is maybe not obvious with the
18 parties on notification is making available via the
19 Internet a summary of plain language summary of the
20 restructuring filing that when consumers call PECO for
21 information about the case they can provide this document
22 instead of worrying about what they are going to do with
23 the ten plus volumes.

24 We have suggested this in the past and informally to
25 PECO and I wanted to go on the record to express an

1 interest in seeing that done as a way to give consumers
2 free tools for being able to give their testimony. Also
3 PP&L has already volunteered to do that and has made
4 available, both in the Internet and through the --

5 JUDGE CHESTNUT: Mr. Bonney, is that plan present?

6 MR. BONNEY: No.

7 JUDGE CHESTNUT: It seems like a good idea.

8 MR. HERSHEY: On behalf of CEPA, we have some
9 comments on that particular plan because if the notice
10 which was provided for this proceeding is any indication of
11 what might appear on the Internet site, it would tend to be
12 information which is very much biased in the company's
13 favor and which does not really fairly inform consumers of
14 what is at stake in the proceeding.

15 So that if the Commission was to sponsor to ratify
16 any kind of information that's going to be provided by
17 consumers, we should know what the procedure is to
18 determine what kind of information is going to be put on
19 the Internet.

20 JUDGE CHESTNUT: Right. But my guess, isn't it
21 PECO's web site that's going to be used as opposed to the
22 Commission's web site? Ms. Mulligan, is that how you
23 anticipate that working?

24 MS. MULLIGAN: This question at this time, there is
25 a good point here because one of the things we are looking

1 at with the Commission's brand new web site, as of this
2 week, hyperlinking to the companies, and that hasn't been
3 determined yet as to whether we are going to be able to do
4 that with the idea that we can hyperlink to the company's
5 site, someone can download directly from the company.

6 So in the past, we have reviewed for plain language
7 and objectivity, the various publications that have gone
8 out to the public.

9 JUDGE CHESTNUT: Okay. Mr. Bonney?

10 MR. BONNEY: We would be willing to do that.

11 JUDGE CHESTNUT: I trust that you'll work together
12 to come up with some sort of plain language statement to be
13 used for that purpose. Notify Ms. Mulligan and perhaps the
14 OCA's office. Mr. Barak, did you have a comment about
15 that?

16 MR. BARAK: There's an easy way to be sure everybody
17 gets their story to the public, to tell their story without
18 leaning on any one party to tell a story a certain way.
19 That is per your comments on cooperation, if we could just
20 get a statement from everybody here that we will all agree
21 to hypertext link our web sites to those others in the
22 case, it's a piece of cake. You put a sentence in. You
23 put a sentence into a page. That's all it is.

24 I could do it in the time we are talking, to all of
25 us who have been on web.

1 JUDGE CHESTNUT: I'll let you guys work that out
2 yourself. I expect you all to work in good faith to come
3 up with some acceptable thing.

4 MR. BERTOCCI: Your Honor, I mean this is our
5 position is that this is a Commission responsibility to
6 ensure that the customers get fair and accurate information
7 about what is going on, that it is not -- and we are not --
8 and that is fair information.

9 And therefore, it seems to me to be ultimately the
10 Commission that has to, ultimately the Commission is
11 ultimately responsible for the content of what goes out to
12 the public, that the Commission ultimately must review this
13 information.

14 JUDGE CHESTNUT: I think I have indicated that I
15 expect Mr. Bonney to work with Ms. Mulligan, perhaps the
16 OCA and OTS, come up with a document that they agree is
17 language that they feel is appropriate and if everybody
18 agrees, fine. If there's a problem, then we'll deal with
19 it.

20 MR. BERTOCCI: In -- while we are on this subject,
21 information to consumers about these proceedings, Your
22 Honor has a copy of a motion and many people here have a
23 copy of the motion that was filed today objecting to the
24 proposed notice which PECO has announced that it is sending
25 out to customers and the motion also requests an order from

1 the Commission requiring amendment of that notice. Just to
2 summarize the notice in general terms --

3 JUDGE CHESTNUT: No. Please sit down. You are
4 jumping out of order here a little bit. We'll address
5 that. I was going to get to that. Did you want to respond
6 to that motion or do you want -- we were going to take it
7 under advisement and have PECO respond to it. That's
8 something that could be worked out.

9 MR. BONNEY: Are you referring to Ms. Mulligan's
10 motion?

11 JUDGE CHESTNUT: I am talking about Mr. Bertocci.

12 MR. BONNEY: We'd like an opportunity to reply in
13 writing to the motion.

14 JUDGE CHESTNUT: Okay.

15 MR. BONNEY: About notice?

16 JUDGE CHESTNUT: Uh-huh.

17 MR. BERTOCCI: One issue here is that the
18 announcement has been that the notice is being included as
19 a bill stuffer already. Is that true? Is this notice
20 already being sent to customers?

21 MR. BONNEY: That's true.

22 MR. BERTOCCI: Can you give us an idea of what
23 percentage of customers have been sent -- you send notices
24 out in a billing cycle through the month.

25 MR. BONNEY: Starting the 3rd of April we have a 30-

1 month billing cycle.

2 MR. BERTOCCI: Would be --

3 MR. HILL: Almost half.

4 MR. BERTOCCI: So that it's a matter of some urgency
5 so that customers are not misinformed about the nature of
6 these proceedings, that the Commission rule on this soon.

7 JUDGE CHESTNUT: Okay. I agree soon but not right
8 now. I don't think it's fair to expect us to issue a
9 ruling right now, but of course everybody recognizes the
10 situation here. Mr. Haver?

11 MR. HAVER: We could easily take the time necessary
12 to review it if PECO would agree to stop sending out the
13 current bill stuffer until you have had a chance to rule.

14 JUDGE CHESTNUT: I don't think that's fair. People
15 have already gotten it. They may as well not stop. They
16 may have to send out a revised one or revised notice. I
17 don't know the practicality. It doesn't seem to be fair to
18 me that some people would get it and some people would
19 not.

20 MR. HAVER: Would it be better to give everybody bad
21 information rather than giving half of the people bad
22 information? Is that what you're saying?

23 JUDGE CHESTNUT: You are not --

24 MR. HAVER: If you do that what they will do is send
25 out something that is prejudiced against the consumer that

1 it is wrong. You could stop that right now and give an
2 opportunity to evaluate the notice or make a decision and
3 if in fact, if they should never have sent it out, only 50
4 percent of the people have received incorrect information.

5 JUDGE CHESTNUT: Mr. Bonney.

6 MR. BONNEY: Your Honor, as I say, we'd like an
7 opportunity to reply. If it was urgent, I believe that
8 this motion could have been filed some time ago, or brought
9 to our attention. A copy of the filing was sent directly
10 to all the parties.

11 But we had similar arguments on the notice in the
12 securitization filing and my quick glance at this indicates
13 to me that the arguments are not with merit. They are
14 without merit. But that's our argument on it and there
15 isn't a request for a stay with it as well. So as I said,
16 we would like the opportunity to reply in writing to this
17 motion which we just received this morning.

18 JUDGE CHESTNUT: Mr. Craig, did you want to say
19 something?

20 MR. CRAIG: I'd like to point out as Mr. Bonney
21 indicated that this is not a surprise to them. These items
22 were fundamentally discussed and objections were raised,
23 though ignored in the last proceeding. I believe one of
24 the appropriate remedies that the Commission could consider
25 would be allowing Consumer Advocates to have access to the

1 mailing to provide their own bill stuffer in informing
2 consumers prior to the public hearing or throughout the
3 proceeding concerning the proceeding and what it may or may
4 not resolve.

5 It is the position of Senator Fumo that the current
6 notice is biased in favor of PECO and we stand in support
7 of the motion of CEPA, et al.

8 JUDGE CHESTNUT: Okay.

9 MR. BERTOCCI: Your Honor, just to bring this to a
10 close, at this point, I do want to underscore that it is
11 the Commission's responsibility to instruct PECO on the
12 notice which is sent giving information to customers about
13 proceedings before this Commission. Really, we are not
14 talking about something that the company does, you know, of
15 its own free will, with its own -- within its own
16 discretion.

17 The notice that is sent out, is that a notice which
18 is required by the Commission or under which the Commission
19 has to exercise its control and authority to make sure that
20 it is a neutral notice that is reasonably calculated to
21 inform customers of the interests that are -- of the
22 interests that are at stake in this proceeding.

23 That's why I think it's really urgent that the
24 Commission address this right away and not permit more
25 notices to go out which the Commission might find itself in

1 a position of saying to it we don't think they should go
2 out or continue to go out, but the information we are going
3 to -- put aside what you have received before and now read
4 this second notice.

5 MR. BONNEY: Your Honor, I just wanted to point out
6 the criticisms in notice in the prior case were essentially
7 the same and secondly that we did run this notice past the
8 Commission Staff before it was sent out.

9 MR. HERSHEY: But you know --

10 JUDGE CHESTNUT: I don't want to get into an
11 extended argument. I don't think it's appropriate. I
12 understand the thrust of the motion. Mr. Bonney, why don't
13 you prepare a response in writing to be filed no later than
14 Friday.

15 MR. BONNEY: Very well.

16 JUDGE CHESTNUT: We'll address it quickly.

17 MR. HERSHEY: It's also not accurate to say that
18 this was rejected. It was discussed on the record. Acting
19 Chief Judge Christianson himself said PECO had put its own
20 spin on the notice and there was never any Commission
21 action one way or the other.

22 But many of the same arguments that are advanced
23 today, though not all, were advanced then. PECO eliminated
24 some of those most glaring problems but not all. And
25 what's the harm to PECO if it stops using customer revenues

1 now to send out a notice that's in question in a nine month
2 case. They can send it out later.

3 JUDGE CHESTNUT: Mr. Bonney, I am going to direct
4 that you get together perhaps with Mr. Hershey, perhaps
5 with Ms. Mulligan seeing that the public interest is
6 represented and see if you can work out a mutually
7 acceptable language and some way to deal with this.

8 In the meantime, if you want to send written
9 responses, we'll deal with it that way. I think you are
10 better off trying to get a consensus on this if you can,
11 and that recognizes everybody's interest here.

12 (Discussion off the record.)

13 JUDGE RAINEY: There was a brief discussion with
14 regard to the matter that just took place and I believe
15 that it would be in everyone's interest to allow those
16 parties who have a problem with the notice that has been
17 proposed by PECO to file by Friday, that's April 18th,
18 1997, their own proposed notice and we will request that
19 Mr. Bonney, in your discussions with the Consumer Advocate
20 and TLS attempt to arrive at an amended notice which is
21 agreeable to all the parties and to include that with any
22 answer that you file and also notifying us of those areas
23 where you were not able to agree.

24 So maybe that we could it at least narrow where the
25 problems are with the notice as proposed.

1 MR. BONNEY: One clarification, Your Honor. Are you
2 asking that we file a response to that motion by Friday,
3 and do we have an opportunity to reply to the other filings
4 after that or assuming that we are, I hope that we are able
5 to reach agreement on it, but if we are not --

6 JUDGE RAINEY: It was my hope that you would be able
7 to get together with those other parties between now and
8 Friday. And by Friday, to file with us your answer to the
9 motion, the answer to the motion my include an amended
10 notice which has in it those, that language agreed upon by
11 the party who have some objection to the notice that's
12 presently in the filing and if you can show to us exactly
13 where any legal problems are, then we can address that.

14 Now, we would look forward to and would really
15 appreciate it if you could come back to us Friday and say
16 we have reached agreement with the parties with regard to
17 the language which should appear in the notice and the
18 matter is resolved in that particular way. But by Friday
19 at least we should have some idea regarding where the
20 problems are with regard to the proposed notice.

21 MR. HERSHEY: We'll be available to meet immediately
22 after this. But we think it's important to expedite the
23 process so if anybody wants to join in that meeting.

24 JUDGE CHESTNUT: I would encourage anybody with an
25 interest in meeting after this prehearing conference to see

1 Mr. Hershey. If you don't, this really is your only chance
2 to object to it.

3 We are not going to entertain a continuing series of
4 people objecting to the agreed upon language if there is
5 agreed upon language. Okay? Is everybody clear on that?

6 MR. HERSHEY: Thank you.

7 JUDGE CHESTNUT: We'll move on then to further
8 issues involving this case. The next subissues I have are
9 with regard to the scheduled dates that are listed there
10 for testimony and briefs are dates of receipt, not dates of
11 mailing.

12 Faxing documents is not permitted as proof of
13 official filing. You can't fax a document to either us or
14 to the file room and have that considered to be your
15 official document. That's in the Commission's regulations
16 if you want to fax a motion to us and follow up with a hard
17 copy as a "heads up" to us, that's fine. But I will not
18 accept briefs that are faxed. I will not accept testimony
19 that is faxed or any kind of long pleading. You can use an
20 overnight service but don't over-fax, please.

21 MR. GORNISH: Does in hand include faxing to other
22 parties?

23 JUDGE CHESTNUT: Yes. It does not really -- no.
24 I'm sorry. Maybe I misspoke there. If you have a
25 testimony, due for testimony, if you have an agreement with

1 the party that they we will accept a faxed document, that's
2 fine. Otherwise, it really does need a hard copy in hand,
3 I think.

4 MR. GORNISH: Since I am in Philadelphia, I don't
5 normally have that problem but we'll work that out.

6 JUDGE CHESTNUT: That's something you can work out
7 also. But don't abuse the fax machine with respect to
8 Judge Rainey and myself. We only have one in the office
9 and it gets a lot of use. Is there anything else on that
10 that anybody wishes to comment?

11 (No response.)

12 JUDGE CHESTNUT: Next item that I wanted to mention,
13 although it's not really an issue, is that we do expect to
14 have a transcript available in Philadelphia in the same way
15 it was done in the securitization case.

16 MS. MCCLOSKEY: Is the transcript on regular
17 turn-around or three day or --

18 JUDGE CHESTNUT: I have no idea.

19 (Discussion off the record.)

20 MS. MCCLOSKEY: Is the transcript on an expedited
21 basis?

22 JUDGE CHESTNUT: Yes. That's all I have with
23 respect to that issue and I am going to move on to
24 parties. I am sorry. Mr. Barak?

25 MR. BARAK: Your Honor, I requested on behalf of the

1 environmentalists that transcripts be posted on the
2 Commission's web site and/or its bulletin board.

3 JUDGE CHESTNUT: If possible, I am not sure. I am
4 not sure what the Commission is capable doing with respect
5 to that.

6 MR. BARAK: I believe on the investigation on
7 restructuring the Commission did. As you know, I have been
8 involved with some litigation that's pending. I don't want
9 to get into any of that. How do we proceed, just as a
10 practical matter, to get a resolution of that?

11 JUDGE CHESTNUT: I'll check into it.

12 MR. BARAK: Thank you.

13 JUDGE CHESTNUT: I'll write myself a note. Now, did
14 you mean the Internet plus the web site or just the web
15 site?

16 MR. BARAK: I'd say both. It's going to be easy to
17 post them at BBS because you already have staff doing it.

18 JUDGE CHESTNUT: I'll check into that.

19 MR. HERSHEY: It's a tremendous help to those
20 parties that have very limited resources.

21 JUDGE CHESTNUT: I think it's a good idea. The
22 question is, is it capable of doing it or where that is,
23 but I'll certainly check into it and urge that it be done,
24 if possible.

25 Then let's -- I'd like to move on. I have already

1 talked about parties, how you become a party. Notice has
2 really been filed in a petition to intervene or a similar
3 document which has substantial information that indicates
4 your interest. We do kind of take a liberal approach.

5 If you do have an interest, they'll grant this. And
6 they will be being granted unless they are objected to
7 within ten days. And if they are objected to within ten
8 days, we'll issue an order addressing that.

9 Let's talk about types of parties, active versus
10 inactive, and who gets served with what. The way that we
11 have defined active and inactive in this proceeding is
12 basically the same way as it's done in rate cases with one
13 modification.

14 Inactive parties will get hearing notices, the
15 recommended decision and the Commission's order. They may
16 participate in public input hearings. They will not
17 receive briefs, testimony, interim orders or other
18 documents from the active parties. The active parties will
19 receive all documents and must copy all active parties on
20 documents they send to us for the Commission or any other
21 party that are expected to attend the technical hearings,
22 present witnesses and conduct cross examination. Just so
23 it's clear.

24 What is different here from the normal kind of rate
25 case proceeding is that inactive parties will not get

1 routine interim procedural orders; which we anticipate
2 there may be a lot of them. The other thing I want to put
3 you on notice about with respect to the service list is we
4 can only have one person on our service list.

5 The Commission has its own service list where
6 everybody who files is on it but for purposes of service of
7 documents from our bureau, we want you to designate one
8 person. It can be more names, but one address. One entry,
9 I guess is a probably a better way to say it.

10 People who attend the prehearing are deemed active
11 and everyone else is deemed inactive unless permission is
12 granted to become active. Is everybody who's here, does
13 everybody here intend to be an active party or is there
14 someone who would be prefer to be treated as an inactive
15 party at this point?

16 MR. HAVER: Your Honor, I don't have resources to go
17 through all of it. I was wondering if it would be
18 acceptable to Your Honors if I was an active party but on
19 very limited points. In other words, I am not going --
20 don't want to mislead you. I am not going to be able to
21 participate fully but there are things that are of specific
22 interest to me. Those are things I would want an
23 opportunity to cross examine some witnesses.

24 JUDGE CHESTNUT: Well, I am not sure about this
25 partial active business. Like I say, I don't want to

1 inhibit anybody but on the other hand, it's expensive to
2 have to serve all kinds of documents on people who may not
3 be interested in them.

4 MR. HAVER: I would be happy to make some
5 arrangement with the everyone and let them know what I
6 would like and wouldn't like. That would be acceptable.

7 JUDGE CHESTNUT: Except that we are the ones that
8 have to put out the service list. Do you want to be
9 inactive with the right to participate in hearings? Would
10 that --

11 MR. HAVER: That would be fine if there would be
12 some place when I wanted the information I could get it.

13 JUDGE CHESTNUT: Sure. We can also talk to Mr.
14 Hershey.

15 MR. HAVER: I certainly don't want anyone to be
16 burdened with me, frankly.

17 JUDGE CHESTNUT: I think we can work that out.

18 MR. HAVER: If it's not working I would obviously
19 petition to become an active. I don't want to bear the
20 expense of other people, of the things I will not be
21 examining on.

22 JUDGE CHESTNUT: It's hard to answer at this point.
23 I think everybody who's filed does want to take an active
24 role in some areas. I am not sure if there will be
25 neighborhood groups filing or individuals filing. What I

1 am concerned about in terms of people who want to express
2 their opinion but may not be aware that they can do that at
3 public input hearing. Does anybody have any comments or
4 suggestions? Mr. Bonney?

5 MR. BONNEY: Thank you, Your Honor. Just one
6 clarification. I trust that the inactive parties do not
7 receive the company's responses unless requested.

8 JUDGE CHESTNUT: Right. Speaking of that, do not
9 send data requests or discovery answers to the Commission
10 or to Judge Rainey or myself. They are not part of the
11 record until they are made part of the record. Also do not
12 send your filed testimony to the Commission or to the
13 Prothonotary. Wait until introduced at the hearing. It
14 will become part of the record and part of the hearing
15 folder.

16 I want to just go back to the service list. We'll
17 maintain an up to date service list. But if you have a
18 question about it, feel free to call our office if you have
19 something to serve.

20 MS. MCCLOSKEY: That was my next question. Are you
21 going to issue you a prehearing order to that service
22 list?

23 JUDGE CHESTNUT: Certainly, but also obviously, it's
24 going to be a moving target. Mr. Barak?

25 MR. BARAK: You will save maybe 20 secretaries' time

1 if when you issue your order, the diskette file you give to
2 Mr. Munch, who is operating the BBS for the Commission has
3 your office's service list sort of label file that all our
4 secretaries have to do is simply download that service list
5 file.

6 JUDGE CHESTNUT: We can certainly put our service
7 list on disk. I am not sure. You are probably more
8 familiar with how this operates than I do.

9 MR. BARAK: My point is if you post that on the BBS
10 or the web site or both then you'll cut down on calls to
11 your office. You'll cut down on Xerox. It will cut down
12 on a lot of people wasting a lot of time. It would be
13 wonderful if you could do --

14 JUDGE CHESTNUT: We are all in favor of efficiency.
15 That's certain. Mr. Kleppinger.

16 MR. KLEPPINGER: Before we leave the party status,
17 in an abundance of caution, given your desire to have
18 petitions to intervene as opposed to complaints, is it fair
19 to assume that the rights of parties that file a petition
20 to intervene will be as strong as the rights of a party if
21 they had filed a complaint?

22 The reason I ask the question is that there are
23 possibilities in this case that pieces of the case will
24 settle among some parties and not all parties and I want to
25 be assured that my rights, if I am an intervenor, to pursue

1 those issues if I don't sign off on the settlement are
2 equivalent to my rights if I had filed a formal complaint
3 against the filing.

4 JUDGE CHESTNUT: I think my answer is yes. But I am
5 not sure if that is the right answer to the question that
6 you are asking. My response is that your rights are fully
7 protected.

8 MR. KLEPPINGER: There is case law where the rights
9 are different between an intervenor and a complainant,
10 particularly in the case of a partial settlement, and
11 that's why we were going to file a complaint, quite
12 honestly, instead of an intervention.

13 JUDGE CHESTNUT: Okay.

14 MR. KLEPPINGER: May I file a complaint instead,
15 Your Honor?

16 JUDGE CHESTNUT: No. But I think we can recognize
17 that your rights will be protected. I am not sure how.

18 MR. KLEPPINGER: Then I want to file a complaint.

19 JUDGE CHESTNUT: Well, you have to make the decision
20 as to how you proceed, recognizing the process the
21 Prothonotary's Office has set up.

22 MR. KLEPPINGER: You indicated a complaint would be
23 treated like an intervention which if that's the way it's
24 going to be, I would prefer to file a complaint.

25 JUDGE CHESTNUT: For purposes of docketing, that's

1 why you need to talk to the Prothonotary's Office. That is
2 the way we are looking at it, in terms of docketing because
3 there's a difference between how complaints are treated and
4 interventions are treated.

5 Interventions have to be filed one way. There's a
6 whole different way of treating them in terms of within the
7 Commission. That's what I was focusing on, not in terms of
8 identifying rights and status of the parties. Okay?

9 MR. KLEPPINGER: Okay. Thank you. We plan to file
10 a complaint, then, Your Honor.

11 JUDGE CHESTNUT: I don't blame you.

12 MR. BARAK: Back to service lists, Your Honor. What
13 I heard you saying is that at least for your office and
14 your mailing costs and all the work there will be one
15 service list with one address per party. However, of
16 course, as is typical in these cases, many of us have said
17 please serve and we have given analysts' names. You have a
18 copy of the notice you have to send it.

19 JUDGE CHESTNUT: Right. And I'd like you to
20 designate who the one is.

21 MR. BARAK: For the purposes of the Commission and
22 parties sending things back and forth we have two
23 consultants and we have two offices. Roger Clark will be
24 first-chairing this case, and we'll notice that. And he's
25 in Philly.

1 Can we all create a service list for us chickens out
2 here that we can use and can we use that spirit of
3 corporation so we don't have any fights as to --

4 JUDGE CHESTNUT: Absolutely, you can make
5 arrangements with other parties to have anybody served
6 that, you know, how you work that out. That's not really
7 what's being addressed here. I am trying to keep the
8 service list manageable for our purposes. What you can
9 arrange with other parties is really up to you.

10 MR. BARAK: I am asking for more of a blessing than
11 that --

12 JUDGE CHESTNUT: I am not going to do that. I am
13 going to say we will not prohibit it. We'll encourage the
14 parties to cooperate with each other. I am not going to
15 direct that one party serve six or seven entities of one
16 party. I am not going to make that kind of blanket
17 endorsement.

18 I will expect you to work it out, though, but at
19 this point you only have to serve one. But I would think
20 it's in everybody's interest that the process go smoothly.
21 Anything else, then, before we move on to a different
22 topic?

23 (No response.)

24 JUDGE CHESTNUT: Before we move on, we are still on
25 parties and representation. Corporations must be

1 represented by an attorney and attorneys, have to seek
2 permission, if they are not licensed to practice in
3 Pennsylvania; whatever the regulations require. Obviously,
4 they are not going to take a hard line on that.

5 Service of documents, I think we have pretty much
6 gone through that. Does anybody have any comments they
7 wish to make on that?

8 (No response.)

9 JUDGE CHESTNUT: We have talked about designating
10 one name for the service list. Faxes, service of
11 interrogatories and answers; is there anything else that
12 anybody wants to bring up? Mr. Barak?

13 MR. BARAK: This is more of a heads up, Your Honor.
14 There is a lot of computer modeling done for the company's
15 filing and I know we are going to have a technical
16 conference. One of the issues that I think you have seen
17 in other cases is whose model gets run when someone wants
18 to do an alternative scenario.

19 We would like to hear from the company as soon as
20 possible as to the possibility of using the company's model
21 for those alternative runs.

22 JUDGE CHESTNUT: Well, I don't think it's
23 appropriate from our -- I think we see that as almost an
24 interrogatory and generally with interrogatories, we don't
25 want to be involved unless you can't resolve it yourself.

1 That means at a stage of a motion to compel.

2 MR. BARAK: Thank you.

3 MS. MCCLOSKEY: Are we on to new issues?

4 JUDGE CHESTNUT: We seem to be sliding into it.

5 MR. BARAK: I thought that was new issues.

6 JUDGE CHESTNUT: Did you want to bring something
7 up?

8 MS. MCCLOSKEY: Yes. I just have two issues. The
9 first deals with the record from the prior proceeding.
10 Judge Cocheres issued his recommended decision yesterday
11 and recommended that the Commission roll that record into
12 this proceeding, and I would like to bring that to your
13 attention and request that that be done for two purposes.

14 One is there was testimony and significant cross
15 examination and hopefully we can cut down and not duplicate
16 ourselves in this proceeding if we have that.

17 Secondly there was extensive discovery issued in
18 that proceeding. We'd like to also roll that discovery
19 into this proceeding so that it can be utilized, if
20 necessary, in this proceeding. Since the discovery is
21 issued under oath that that same oath would be applied to
22 the answers in this proceeding.

23 JUDGE CHESTNUT: Mr. Bonney?

24 MR. BONNEY: No objection, Your Honor.

25 JUDGE CHESTNUT: I think it makes sense not to do it

1 twice, myself. But on the other hand, I am somewhat
2 concerned about incorporating -- are we talking about
3 incorporating the whole record into the record in this
4 proceeding or portions of it that you want to designate?

5 MS. MCCLOSKEY: I believe Judge Cocheres'
6 recommendation was to incorporate the entire record. It
7 seems to be significantly duplicative of the issue
8 presented here and in fact, even some of the testimony is
9 the same.

10 JUDGE CHESTNUT: I want to keep in mind that Judge
11 Rainey and I do not have that record. We physically don't
12 have it. And I am not sure in terms of us getting it. We
13 can get the transcripts, but I am not sure about
14 documents. So if you have something you would like, if you
15 want to give us a copy of your testimony, for example, that
16 you submitted, we would appreciate it.

17 MS. MCCLOSKEY: Okay.

18 JUDGE CHESTNUT: I am going to say the least we have
19 to rely on the file room to make us a copy, the better.
20 Mr. Hershey?

21 MR. HERSHEY: I would suggest that portion of the
22 entire record become a part of this record and perhaps you
23 could designate the groundrules in your prehearing order as
24 to how we should handle pieces of the record which we may
25 consider particularly important and then we'll go by the

1 guidelines that you set.

2 JUDGE CHESTNUT: Sure. One thing to keep in mind,
3 though, is that the Commission has not addressed the
4 recommended decision in that case, yet. So to the extent
5 they may do something different, we have to keep that
6 open.

7 MR. HERSHEY: But the evidence is still the same.

8 JUDGE CHESTNUT: They may not accept the
9 recommendation to incorporate or to give consideration.

10 MR. HERSHEY: I understand that, but that's exactly
11 why we would make it here, and the other thing that we
12 might do, we as parties, is talk about the logistics of
13 this and maybe help out in the process.

14 JUDGE CHESTNUT: I wish you would, frankly, Mr.
15 Barak.

16 MR. BARAK: I seem to need some clarification, Your
17 Honor. Typically a party or parties might file a motion
18 before you to incorporate something else. In this case,
19 effectively I think what we have is a motion to incorporate
20 the securitization order record. Do you require or will
21 you address in your prehearing order whether you will
22 require any such formal motion or are you taking this as
23 such a motion?

24 JUDGE CHESTNUT: I think we are beyond the motion
25 stage. I think it's almost been directed that we

1 incorporate the record in our consideration. I think it
2 makes no sense to have to address it twice if it's the same
3 information, make it easier on all of you, actually.

4 I am just, as Mr. Hershey indicated, the logistics
5 are something we have to work out because I want to be sure
6 that the parties in this case who I am not sure if there
7 are parties in the case who are not parties to the
8 securitization case, that they have access to that record,
9 too. But that's something you can deal with if and when it
10 appears.

11 MR. HERSHEY: I am sure we can all accommodate that
12 with no problem.

13 JUDGE CHESTNUT: Yes. Did you have something else,
14 Ms. McCloskey?

15 MS. MCCLOSKEY: I did and it slipped my mind.

16 JUDGE CHESTNUT: Maybe it will come back to you.

17 MS. MCCLOSKEY: It will come back to me.

18 JUDGE CHESTNUT: Let's talk about discovery. We
19 talked about it a little bit. Now, generally in rate cases
20 we modify the Commission's discovery time lines. Do you
21 think that's necessary here?

22 MS. MCCLOSKEY: That actually was my second item.
23 Again, we didn't file a formal motion but since we are down
24 to approximately 60 days until the testimony is due, it
25 seems warranted to shorten the discovery period.

1 I was operating under the 15 day rule as if this
2 were a rate case. What I would suggest is that we shorten
3 it to ten.

4 JUDGE CHESTNUT: Is that a problem for you, Mr.
5 Bonney?

6 MR. BONNEY: With a clarification. You mean ten
7 business days?

8 MS. MCCLOSKEY: Ten calendar days.

9 MR. BONNEY: We tend to get things on Friday about
10 3:00 typically by fax and that means that cuts that down
11 significantly to about six days, typically. So if it's ten
12 business days, then --

13 MS. MCCLOSKEY: I was using ten calendar days. If
14 there has been a problem with receiving discovery late on
15 Friday afternoon, perhaps we could have a special rule that
16 would either add a day or two to that or shift the time of
17 accounting to Friday after twelve.

18 MR. BONNEY: How about this as a suggestion? Ten
19 calendar days with some -- try not to get things to us on
20 Friday late and if we get a whole bunch of questions at one
21 time and we are having trouble with the ten days that we'll
22 talk with the party about that and try to work out a
23 solution.

24 MS. MCCLOSKEY: I think that would be workable.
25 Again, if the company begins to get a lot of late discovery

1 on late Friday afternoon, they can contact us to possibly
2 work out an acceptable time.

3 JUDGE CHESTNUT: I would expect to be reasonable
4 about it. If you're saying 6:00 o'clock on Friday, you
5 have to expect that there will be some delay in getting
6 them. I do anticipate people acting in good faith here.
7 If there's a problem we'll address it.

8 Speaking of that, in terms of modifying time limits,
9 we'll say that objections to interrogatories are to be
10 communicated orally within three working days of receipt of
11 the interrogatory and in writing within five working days
12 and that motions to compel will be filed within three
13 working days of the receipt of the written objections.
14 That is standard.

15 Does anybody have a problem with those changes? And
16 let me make it clear that objections to interrogatories, if
17 they are not made subject of a motion to compel, the
18 interrogatory is deemed to be withdrawn. The process is
19 really designed to narrow it, to give you an opportunity to
20 determine whether you really do want to continue with that
21 interrogatory or not, or modify it somehow.

22 Okay, now, related to discovery in parties'
23 prehearing memo, they requested a completion date for
24 initial discovery by May 21st. Does anybody have a problem
25 with that?

1 MS. MCCLOSKEY: Yes, Your Honor. We do.

2 MR. MICKENS: We do, too.

3 MR. BARAK: Yes.

4 JUDGE CHESTNUT: Why?

5 MS. MCCLOSKEY: As you know, this is a large,
6 complex case presenting new issues. The parties, I think,
7 will be in the process of developing their testimony which
8 won't be due until June 20th and in fact, as they begin to
9 write in this new area, this new field, I am sure
10 additional questions may come up.

11 Therefore, I think the May 21st date is simply too
12 soon and in fact, discovery may be necessary after we all
13 see each other's testimony in terms of what issues are
14 raised and fleshed out there. As well as I am concerned
15 about the impact on discovery on rebuttal on peoples'
16 rebuttal testimony.

17 JUDGE CHESTNUT: Mr. Mickens?

18 MR. MICKENS: Yes, Your Honor. OTS would support
19 the OCA's position for the additional reason that under the
20 Electric Competition Act, the company can update and change
21 its case throughout the proceeding. As a matter of fact,
22 in the securitization proceeding this happened.

23 So what we have is certainly the potential for a
24 moving target throughout the proceeding and we certainly
25 believe that given that fact, the parties should have the

1 opportunity to discover information throughout the
2 proceeding.

3 JUDGE CHESTNUT: Mr. Bonney?

4 MR. BONNEY: Your Honor, maybe there's some
5 confusion. I think our request was that discovery directed
6 to our initial filing be completed by May 21st.

7 JUDGE CHESTNUT: I'm sorry. Maybe --

8 MR. BONNEY: Maybe it wasn't clear from our
9 memorandum. But that was the request and I think if
10 there's additional discovery on rebuttal or surrebuttal
11 testimony or the updates, certainly we would expect that.

12 MR. HERSHEY: I'd suggest, Your Honor, that there be
13 no restriction. I think that as issues come up through the
14 case, then other evidence, initial filing takes on an
15 importance which it might not have had earlier and it's not
16 unusual for discovery to be ongoing for these proceedings.

17 I think particularly as you get through the course
18 of the proceeding, a new witness may be added for one of
19 the intervenors. That new witness may have a new view that
20 wasn't expressed in discovery before, and I think it's very
21 important that discovery is completely ongoing.

22 MR. BARAK: This is the mother of all rate cases for
23 this company for a while. If when we are all done, and
24 after the act is fully implemented and we have all put our
25 grandchildren through college on litigation based on it, I

1 hope that the one thing we can say is that we gave
2 everybody a chance to fully explore the issue before the
3 orders were set and the Commission did the things that it
4 did to affect this industry for the next 50 years.

5 If we have an abuse of discovery, sometime after May
6 21st, that's what you wear those robes for and I fully
7 expect to hear from PECO or any of the parties that
8 somebody is being abusive. I would appreciate it if you
9 would let us try to deal with these issues, grapple with
10 them.

11 We have a lot to learn here too, as do our
12 consultants. If we have a problem, you'll hear about it.
13 Thank you.

14 JUDGE CHESTNUT: I concur with your statements, Mr.
15 Barak. I think we have made it clear that we do intend to
16 be a truly open kind of proceeding and that everybody does
17 have a fair chance to examine the filings, to think about
18 it what they are going to file and to file.

19 On the other hand, you have to recognize there are
20 practical constraints to be implemented by the time
21 limits. And the fact that you do have, you know, a target
22 sitting there that everybody is circling around and in
23 terms of practical constraints, I would expect that again,
24 people try to do their discovery as soon as they can.

25 I recognize things come up, so I don't think --

1 Judge Rainey and I do not feel it's appropriate at this
2 point to put a particular date in but like I said, we do
3 expect you to do your discovery as soon as you can,
4 recognizing that issues may come up or may get in a
5 consultant, as Mr. Hershey said, but you have to recognize
6 that's just a practical constraint in terms of what you
7 expect the company to respond to in a timely fashion and as
8 Mr. Barak indicated if somebody's being abusive, we'll deal
9 with it.

10 I am not sure how or what we can do but we will do
11 something. I'd really prefer to hope that you would
12 conduct yourselves reasonably here. And it's really not
13 necessary to put a particular time limit but on the other
14 hand, you have had the filing and you will have had an
15 opportunity to review it. So the sooner we get started,
16 the better. Okay? Is there anything else relating to
17 discovery?

18 MR. BONNEY: Your Honor, it would be helpful to us
19 if we could receive discovery on diskette and I know
20 there's been a lot of talk about more modern technology and
21 that's just an area where I think it would be useful or
22 perhaps by Internet, as well. It saves us the time of
23 retyping them and --

24 JUDGE CHESTNUT: Sure. That's a good idea.

25 MR. BONNEY: I wouldn't suggest that it be a

1 requirement. If it's hard for somebody or whatever, that's
2 fine. But if that can be accommodated that way, we would
3 request --

4 MR. HERSHEY: If you would circulate to all the
5 parties information about your web site and how to navigate
6 it, we'll be happy to cooperate.

7 MR. BONNEY: Be happy to.

8 JUDGE CHESTNUT: Okay? I am sorry. Mr. Doll?

9 MR. DOLL: Just one question on that. In what
10 format are you capable of handling if you send diskettes?

11 MR. BONNEY: Why don't I include that in the letter
12 that goes around and I'll get that technically right,
13 because I am sure I'll put you --

14 JUDGE CHESTNUT: What letter that goes around?

15 MR. BONNEY: At Mr. Hershey's suggestion, I was
16 going to send a letter to all the parties identifying our
17 E-mail address or on what format diskettes could be --

18 JUDGE CHESTNUT: That's a good idea.

19 MR. HERSHEY: I assume in your prehearing order
20 you'll also address whether, how you want the briefs filed
21 as far as diskettes?

22 JUDGE CHESTNUT: We were going to get to briefing
23 later. But generally, you know, yes. Sure we appreciate
24 if you file your disks -- if you provide a disk with your
25 brief but we'll send out a specific order or letter talking

1 about briefs if we get to that.

2 Who knows, you may settle this case or it may not be
3 necessary to file briefs.

4 Speaking of settlement, have there been any kind
5 settlement discussions or is anybody willing to take the
6 lead in seeing if issues be can be addressed or resolved?
7 Have there been any settlement discussions?

8 MR. BONNEY: There have not been with us on the
9 restructuring case, but there have been generally
10 discussions mostly coming out of the securitization case,
11 and we would hope to continue those. We would be happy to
12 take the lead as far as contacting parties and --

13 JUDGE CHESTNUT: I would encourage you to try and
14 see if there may be issues, areas of agreement, even if the
15 areas you are agreeing are procedural or substantive or
16 whatever. Whatever you can do to that extent would be a
17 good idea.

18 We can address this at the second prehearing
19 conference, but at that point I would expect that all would
20 have participated in settlement discussions because if you
21 are not willing to at least talk about settlement, we
22 really shouldn't be here.

23 Anything else about settlements? We encourage
24 technical conferences, depositions, whatever is necessary.
25 Mr. Craig, maybe you are the best person. Can you update

1 us as to the status of that appeal?

2 MR. CRAIG: It's not an appeal. It's an original
3 jurisdiction complaint. Tuesday we get a response from
4 you, the PUC responds to it and all other intervenors would
5 probably march in at that time as well.

6 JUDGE CHESTNUT: Let me just make sure that I have
7 that straight. Is that proceeding addressing the legality
8 of the statute?

9 MR. CRAIG: It's addressing the General Assembly's
10 -- an internally generated proceeding addressing the
11 manner in which the General Assembly considered the Act
12 that all the filings are made pursuant to what's done in
13 derogation of three different sections of Article 3 of the
14 State Constitution.

15 It has been our, my client's position that
16 settlement discussions would appropriately include that
17 complaint, as well.

18 JUDGE CHESTNUT: But this has to --

19 MR. CRAIG: That's correct.

20 JUDGE CHESTNUT: You haven't requested a temporary
21 injunction.

22 MR. CRAIG: We have not requested a preliminary
23 injunction.

24 JUDGE CHESTNUT: Do you anticipate when your request
25 for a permanent injunction would be issued?

1 MR. CRAIG: It would depend on really when the
2 Commonwealth Court schedules it and if one of the other
3 parties asks for a summary judgment on the matter. Or if
4 for some reason we found a legal precedent out there and
5 we'll ask for preliminary relief.

6 JUDGE CHESTNUT: Okay. Thank you.

7 Is PECO going to need a protective order in this
8 case?

9 MR. BONNEY: In connection with that suit?

10 JUDGE CHESTNUT: No. In connection with the case.

11 MR. BONNEY: For confidentiality purposes?

12 JUDGE CHESTNUT: Yes.

13 MR. BONNEY: Yes. And we have put together a
14 confidentiality agreement which I think everyone one found
15 acceptable in the securitization case and we would be happy
16 to work with the parties on protective order or
17 confidentiality in this case, as well.

18 JUDGE CHESTNUT: Okay. The next issue I have are
19 the issues that were identified by Commissioner Hanger in
20 his statement attached to the February 13, 1997 order at
21 Docket Number M-00960890F0003. I want everybody to be sure
22 they address those issues.

23 The next issue I have is PECO's request for
24 litigation summaries. That was listed in the prehearing
25 memo. Does anybody have a comment on that?

1 MR. HERSHEY: Some of us did not get that prehearing
2 memorandum until this morning so we have not had an
3 opportunity to really review it and also --

4 JUDGE CHESTNUT: Why don't you take a minute to
5 review that now, that particular part.

6 MR. HERSHEY: I am always reluctant to offer an
7 opinion after reviewing it for just a few minutes in the
8 middle of a hearing.

9 JUDGE CHESTNUT: Isn't that what you expected us to
10 do with your motion?

11 MR. BONNEY: We are not asking for anything
12 different than what is normally the practice under the
13 Commission's regulations for litigation position
14 summaries.

15 It's set forth, I believe, at two parts of the
16 Commission's regulations and we are not talking about
17 anything complicated but rather for purposes of orderly
18 disposition of the case, and identifying and resolving
19 issues to have the parties prepare really and to facilitate
20 the second prehearing conference to do that several days
21 before that, a summary of their position in the case.

22 JUDGE CHESTNUT: Seems like a good idea to me, to
23 the extent the parties can do it.

24 MS. MCCLOSKEY: I was going to say my comment, Your
25 Honor, is really to the extent that the parties can do it.

1 Again, we are going to still be in the midst of discovery
2 and preparing our direct testimony in trying to narrow our
3 issues.

4 I think we went through this in the securitization
5 proceeding and there was a bit of concern, in that if you
6 can't identify a document you would be precluded from ever
7 raising it. Therefore, we tended to get lengthy buckets of
8 issues which tend to be very productive.

9 MR. MICKENS: Your Honor, OTS' concern would be the,
10 you know, seems like the date keeps getting earlier and
11 earlier, too. My concern is that first of all, we filed a
12 -- OTS filed a prehearing conference (sic) today in which
13 we listed issues at this time.

14 As far as I am concerned, that satisfies this
15 requirement unless people have some other -- PECO has some
16 other idea of whether it would be necessary for May 16th.

17 JUDGE CHESTNUT: I think if it would change any of
18 those issues between now and May 21 is what PECO is
19 concerned about; right?

20 MR. BONNEY: Yes. Again, I won't -- it's not our
21 intention that we would later argue that someone failed to
22 raise something that's in their testimony. We'll have the
23 testimony and have an opportunity to reply to that but
24 rather the intention is to get people to focus as you have
25 in your prehearing memo, also.

1 JUDGE CHESTNUT: I think another way it could be
2 dealt with would be to require the submission of prehearing
3 memoranda in which I would expect you to identify the issue
4 at that point that you expect to raise.

5 MR. MICKENS: And the only caveat I would have to do
6 that, Your Honor we specifically indicate in our prehearing
7 memoranda that the issues we have identified are the issues
8 that we have identified to date and the only concern that I
9 would have with regard to this is that as of May 16, I am
10 going to be held to a requirement that there was an issue
11 that I have not raised.

12 At that point I am going to be limited or prohibited
13 from dealing with it, and that's my concern.

14 JUDGE CHESTNUT: We already addressed that, Mr.
15 Mickens. I thought I indicated that I expected you to list
16 your issues in a prehearing memorandum at the second
17 prehearing conference but if there's an issue you raise
18 that's not listed then you have to have a good reason --
19 you may have a good reason -- that you should be permitted
20 to raise that issue. It may be that it wasn't discoverable
21 before that.

22 MR. BARAK: I'll tell you what I'll do. I mean, I
23 hear what you are saying, but I'll tell you what I am going
24 to do. I am going to throw in a bucket. Attached to that
25 I am going to do it in a footnote to the prehearing

1 memorandum.

2 I am going to put in a paragraph just because
3 virtually every one of us has been in litigation where we
4 didn't use the magic words in the prehearing memo and a
5 year later in some other related proceeding, we are
6 hammered with it.

7 So we will do what we can to accommodate it I don't
8 want to spend a lot of consultant money on issues we are
9 not going to deal with.

10 JUDGE CHESTNUT: Mr. Barak, I am sure you are going
11 to do exactly what I did when I was litigating, specify the
12 issues I was aware of and put in some kind of weasel
13 language to leave the door open for additional issues, and
14 that's fine. It's really for your own benefit that you do
15 that, not just for PECO's benefit. It lets you focus on
16 what your -- Mr. Hershey?

17 MR. HERSHEY: When did you want your prehearing
18 memorandum.

19 JUDGE CHESTNUT: The day before the prehearing
20 conference or the day of the prehearing conference is
21 fine.

22 MR. HERSHEY: Would that be prior to the May 16
23 request?

24 JUDGE CHESTNUT: Yes. I am talking about that. Mr.
25 Haver?

1 MR. HAVER: I am not quite sure exactly how to ask
2 this so let me do the best I can. In incorporating the
3 record from the previous case in this record, it's my
4 belief that what we have seen on the record is facts that
5 entitle consumers to an immediate rate reduction. The
6 truth is that the longer -- PECO thought the longer they
7 are able to charge surplus and excessive rates.

8 I am now considering filing for a rate reduction
9 that reflects how much savings they have gained through
10 their global retraining and through laying off a third of
11 their work force. I believe under the ethics laws we are
12 entitled to that. Is this the type of motion I can put
13 before you?

14 JUDGE CHESTNUT: Do you want it put before me?

15 MR. HAVER: Will it be --

16 JUDGE CHESTNUT: We will address anything you file,
17 sure.

18 MR. HAVER: And this is what you want prior to the
19 May 16th?

20 JUDGE CHESTNUT: I am not sure you are putting your
21 question directly. I can't prohibit any party from filing
22 whatever they think is appropriate. I can't tell you you
23 can't file it, Mr. Haver. I am telling you that if you do
24 file something, it will be done in a proper fashion.

25 MR. HAVER: My point is, Your Honor, that at this

1 stage the longer PECO is able to drag out these
2 proceedings, we will not be getting the benefit that I am
3 entitled to in other rate --

4 JUDGE CHESTNUT: We can't talk about potential
5 appellate proceedings. If you want to file something, you
6 can file it.

7 MR. HAVER: Thank you, Your Honor.

8 JUDGE CHESTNUT: I can't say that it's going to be
9 granted or anything.

10 MR. HAVER: I certainly understand that.

11 JUDGE CHESTNUT: If you want to file something, file
12 it, give the company a chance to respond or not and the
13 other parties, and we'll address it.

14 MR. HAVER: Is there a proceedings present where I
15 would be able to have that decided pending the rest of the
16 case?

17 JUDGE CHESTNUT: Mr. Haver, I suggest you talk to a
18 lawyer, that we are not permitted to, and it's not
19 appropriate for us to act as anybody's attorney here or
20 give legal advice. I think you can look at the regulations
21 either yourself, or get a determination as to what you can
22 do in the protest of this proceeding.

23 That's the end of our list of issues. Does
24 anybody have anything else they wish to bring up? Why
25 don't we just say generally that if somebody has a better

1 idea for a procedure, we are more than willing to listen to
2 it. We want everybody to feel comfortable that this
3 proceeding was conducted with respect to all parties.

4 Anything else?

5 (No response.)

6 JUDGE CHESTNUT: Then this prehearing conference is
7 adjourned. Thank you all for appearing.

8 MR. BONNEY: Thank you, Your Honor.

9 MS. MCCLOSKEY: Thank you, Your Honor.

10 MR. MICKENS: Thank you, Your Honor.

11 MR. RUSSELL: Thank you, Your Honor.

12 (Whereupon, at 11:45 a.m., the prehearing conference
13 recessed.)

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1 I hereby certify that the evidence and
2 proceedings are contained fully and accurately in the notes
3 taken by me during the hearing of the within cause, and
4 that this is a true and correct transcript of the same.

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