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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**DOCKETED**  
SEP 17 1997

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Harrisburg, Pennsylvania  
September 10, 1997

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Pages 89 to 171, 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. Further Prehearing Conference.

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Stenographic report of hearing held in Hearing Room 1, North Office Building, Harrisburg, Pennsylvania,

Wednesday,  
September 10, 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  
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WARD L. SMITH, ESQUIRE  
PAUL R. BONNEY, ESQUIRE  
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Appearing on behalf of PECO Energy Company

DANIEL CLEARFIELD, ESQUIRE  
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Appearing on behalf of Enron Corp.

## 1 APPEARANCES: (Continued)

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5 Philadelphia, Pennsylvania 19102  
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7 Long, Jr.

8 CHRISTOPHER B. CRAIG, ESQUIRE  
9 Room 545 Main Capitol Building  
10 Harrisburg, Pennsylvania 17120  
11 Appearing on behalf of Senator Vincent J.  
12 Fumo

13 KAREN OILL MOURY, ESQUIRE  
14 Suite 1102, 300 North Second Street  
15 Harrisburg, Pennsylvania 17101  
16 Appearing on behalf of Office of Small  
17 Business Advocate

18 WALTER W. COHEN, ESQUIRE  
19 OBERMAYER, LEBMANN, MAXWELL & HIPPEL  
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21 Harrisburg, Pennsylvania 17101  
22 AND  
23 MICHAEL G. BANTA, ESQUIRE  
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19 WILLIAM T. HAWKE, ESQUIRE  
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24 Appearing on behalf of Mid-Atlantic Power  
25 Supply Association

23 ROBERT A. WEISHOUR, JR., ESQUIRE  
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## 1 APPEARANCES: (Continued)

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5 AND  
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15 AND  
16 ROGER E. CLARK, ESQUIRE  
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20 STEVEN STEINMETZ, ESQUIRE  
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23 Appearing on behalf of Office of Consumer  
24 Advocate

25 JOEL D. NEWTON, ESQUIRE  
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## 1 APPEARANCES: (Continued)

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7 Group

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13 JOSEPH A. DVORETZKY, ESQUIRE  
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18 AUDREY VAN DYKE, ESQUIRE  
19 Washington Navy Yard Building 218  
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21 Appearing on behalf of Navy

22 USHER FOGEL, ESQUIRE  
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Plumbing, Heating and Cooling Contractors

GORDON J. SMITH, ESQUIRE  
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Management, Inc., Duke Energy Trading &  
Marketing, Inc., Electric Clearinghouse,  
Inc, Vector Power Marketing, Inc.

LANCE HAVER  
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1 JUDGE CHESTNUT: Is everybody ready to start? Good  
2 morning, everyone. Thank you for being here at the third  
3 prehearing conference in this case. This is the matter  
4 involving the restructuring application of PECO Energy  
5 company, docket number R-00973953.

6 For the record, let me state I am Administrative Law  
7 Judge Marlane R. Chestnut. With me is Administrative Law  
8 Judge Charles E. Rainey, Jr. As the appearance sheet is  
9 making its way, perhaps the parties can identify themselves  
10 for the record, starting over here, please.

11 MR. COHEN: Your Honor, good morning. I am Walter  
12 Cohen, counsel in Pennsylvania for Indianapolis Power and  
13 Light. Also appearing with me are Michael G. Banta,  
14 assistant general counsel and Dan McGill, Indianapolis  
15 counsel with IPL. I also have, in addition to a prehearing  
16 memo, filed a motion for admission pro hoc vice for Mr.  
17 Banta and Mr. McGill.

18 JUDGE CHESTNUT: Did you say you filed a prehearing  
19 memo?

20 MR. COHEN: Yes.

21 JUDGE CHESTNUT: On behalf of who? Is that part of  
22 the coalition? Or is it a separate one?

23 MR. COHEN: No, separate.

24 JUDGE CHESTNUT: I didn't get that. Is there  
25 anything we should be looking at, Mr. Cohen?

1 MR. COHEN: Anything in particular?

2 JUDGE CHESTNUT: Anything unusual?

3 MR. COHEN: There will be something unusual to look  
4 at a little bit later on.

5 JUDGE CHESTNUT: Cash?

6 (Laughter.)

7 MR. DVORETZKY: Joe Dvoretzky for New Energy  
8 Ventures.

9 MR. OCHSENHIRT: Fred Ochsenhirt for AARP.

10 MS. HARRIS: Lillian Smith Harris for Municipal  
11 Intervenors Group and I handed out the prehearing memo to  
12 those present. If you do not have a copy of it, please ask  
13 me. I have brought copies for all of you.

14 MR. MICKENS: Good morning, Your Honor. Ken Mickens  
15 for the Office of Trial Staff.

16 MR. CLEARFIELD: Dan Clearfield representing Enron.

17 MS. MOURY: Karen Oill Moury for the Office of Small  
18 Business Advocate.

19 MR. BONNEY: Good Morning, Your Honors. Paul Bonney  
20 for PECO Energy and with me is Ward Smith.

21 MR. WEISHOUR: Bob Weishour on behalf of  
22 Philadelphia Area Industrial Energy Users Group.

23 MR. DOLL: Craig Doll on behalf of Conectiv Energy.

24 MR. CLARK: Roger Clark. I am here with the  
25 Environmentalists with Alan Barak.

1 MR. HAWKE: Bill Hawke on behalf of the Mid-Atlantic  
2 Power Supply Association.

3 MR. STEINMETZ: Steven Steinmetz on behalf of the  
4 Office of Consumer Advocate.

5 MR. FOGEL: Usher Fogel on behalf of the  
6 Pennsylvania Petroleum Association, Pennsylvania  
7 Association of Plumbing, Heating and Cooling Contractors.

8 JUDGE CHESTNUT: Thank you.

9 MR. FITZPATRICK: Terrance Fitzpatrick on behalf of  
10 GPU Energy.

11 MR. GORDON SMITH: Gordon Smith with the law firm of  
12 John and Hangerer in Washington. I am here today on behalf  
13 of Northern Energy Management, Inc., Electric  
14 Clearinghouse, Inc., Vector Power Marketing and Duke Energy  
15 Trading.

16 MR. HAVER: Lance Haver. I am representing myself.

17 MR. HERSHEY: Steve Hershey. I represent CEPA,  
18 ACORN, TAG and John W. Long, Jr. We have filed a statement  
19 in support of the settlement. We have not filed a  
20 prehearing memo. Anybody who does not have our statement  
21 in support, please let me know. I have extra copies.

22 MR. NEWTON: Joel Newton on behalf of Allegheny  
23 Power. We are filing a prehearing memorandum today on  
24 issues that we believe are outstanding and I have copies of  
25 them for you, if I may approach. We'll also be filing

1 comments in the next day or so on the settlement, itself.

2 MR. RUSSELL: Good morning, Your Honors. My name is  
3 Paul Russell and I represent Pennsylvania Power and Light  
4 Company. With me is Donald Kaplan.

5 JUDGE CHESTNUT: Anybody else?

6 MR. CRAIG: Christopher Craig for State Senator  
7 Vincent Fumo.

8 JUDGE CHESTNUT: Thank you, Mr. Craig. Anybody else  
9 willing to identify themselves publicly?

10 (Laughter.)

11 JUDGE CHESTNUT: Okay. Let me just state that the  
12 prehearing memoranda that I have received and Judge Rainey  
13 has received are those from OTS, OCA, AARP, the  
14 Environmentalists, PECO Municipal Intervenors Group,  
15 Mid-Atlantic Power Supply Association, Pennsylvania  
16 Electric Company Pennsylvania Association of Plumbing,  
17 Heating and Cooling Contractors, OSBA, IPL and Allegheny  
18 Power. Is there anyone else who has a prehearing memo?

19 MR. STEINMETZ: I believe I filed a prehearing  
20 memo.

21 JUDGE CHESTNUT: You're talking about the letter?

22 MR. STEINMETZ: Yes.

23 MR. WEISHOUR: Philadelphia Area Industrial Energy  
24 Users Group filed a prehearing memo. I faxed it to Your  
25 Honor.

1 JUDGE CHESTNUT: Anybody else?

2 MR. GORDON SMITH: Yes, Your Honor. We faxed a  
3 prehearing memo on behalf of the marketing group,  
4 prehearing memorandum directly to your offices last night.  
5 I'll give you copies now. If anybody else didn't get them,  
6 I have got 20.

7 MR. COHEN: Your Honor, if I may just preliminarily  
8 quickly request that everybody mail the prehearing memo to  
9 the service list because some people on the service -- we  
10 haven't gotten everybody's, and rather than disrupt the  
11 proceedings, we plan to do that and I think that's normally  
12 the procedure.

13 JUDGE CHESTNUT: I would imagine that everybody has  
14 done that. But that's something you can address.

15 In terms of housekeeping, then, I have the  
16 application of the Action Alliance of Senior Citizens for  
17 leave to withdraw. Any objection to that co-application?

18 (No response.)

19 JUDGE CHESTNUT: Application is granted, and the  
20 complaint at Docket Number R-0093953C0004 is to be  
21 withdrawn. Now, turning to the joint petition for partial  
22 settlement, we have received statements in support from  
23 PECO, OTS, OCA, OSBA, AARP and CLS on behalf of its various  
24 clients. Has anybody else filed a statement in support  
25 that we have not received?

1 MR. HAVER: Your Honor, I have a statement with me  
2 today. I have not filed it yet. I was planning to file it  
3 after today's meeting.

4 JUDGE CHESTNUT: You can pass it out now.

5 MR. HAVER: I can give it to the parties. If you  
6 would like, I can give you copies.

7 JUDGE CHESTNUT: If you want to do that, that will  
8 be fine. Instead of waiting for the filing. We have also  
9 received a letter dated August 28, 1997 from the  
10 Pennsylvania Petroleum Association and the Association of  
11 Plumbing Heating and Cooling Contractors, Inc. stating that  
12 they would not oppose the settlement and a letter dated  
13 December 8, 1997 from the Pennsylvania Retailers  
14 Association showing support for the settlement.

15 Is there anything further in terms of documents  
16 relating to the settlement that we have not received?

17 MR. BONNEY: We have not received the document I  
18 think you have just referenced.

19 JUDGE CHESTNUT: Okay.

20 MR. BONNEY: Did you say there was a letter  
21 withdrawing their support?

22 JUDGE CHESTNUT: Yes.

23 MR. BONNEY: In our view that is invalid. They are  
24 a signatory for the settlement.

25 JUDGE CHESTNUT: Regardless, I am stating for the

1 record we have received it. It looks like it was served on  
2 all the parties to the proceeding.

3 MR. HAVER: I have not received a copy of that,  
4 either.

5 JUDGE CHESTNUT: I think you probably will.

6 MR. HAVER: I would hope so.

7 JUDGE CHESTNUT: But if you want to look at my copy  
8 during the break, that's fine.

9 MR. HAVER: Thank you, Your Honor.

10 JUDGE CHESTNUT: Then I think the next issue to  
11 address is the schedule with respect to the remainder of  
12 this proceeding. I note in PECO's prehearing memorandum it  
13 indicates that various parties will be filing two petitions  
14 today; one to address the issues that are not encompassed  
15 within the scope of the joint petition of partial  
16 settlement and the other to address the procedural conduct  
17 of the case after the hearings. Do you wish to address --  
18 does anybody wish to address that?

19 (No response.)

20 JUDGE CHESTNUT: Mr. Clearfield, did you say  
21 something? You look eager.

22 MR. CLEARFIELD: Your Honor, I would make this  
23 comment. I think the most important issue that we have to  
24 decide today is a schedule that will allow the parties that  
25 have not signed on to the partial settlement and have

1 objections to provisions, be able to present their case and  
2 at this point we have not seen the petition but with  
3 respect to the representations, our goal would be to create  
4 a schedule that would potentially accommodate the  
5 Commission's determination in that regard and still give  
6 all the parties an opportunity to, fair opportunity to put  
7 their testimony on in respect to the settlement.

8           Perhaps it would be best to discuss the various  
9 scheduling proposals.

10           JUDGE CHESTNUT: Let me just state we do intend that  
11 this be a fair and open proceeding, that all parties have a  
12 reasonable opportunity to express their case. That doesn't  
13 mean, however, that we'll drag it out. But on the other  
14 hand, everybody should have a fair opportunity to say what  
15 they have to say.

16           JUDGE RAINEY: Certainly, I am in full agreement  
17 with those comments.

18           JUDGE CHESTNUT: All right. Let's look at the  
19 schedules that were attached to the various signatory  
20 parties' prehearing memos of PECO and the one that was  
21 contained in the prehearing memorandum of the PECC. They  
22 are the only two schedules that anybody has presented.  
23 Isn't that correct?

24           MR. CLARK: Your Honor, before we begin talking  
25 about dates I think it might be helpful to address and

1 discuss a few preliminary issues that I think have a great  
2 impact on those dates. In our prehearing memo I addressed  
3 those and one of them, and the very first one, and a very  
4 sticky wicket in this case is the issue of the "take it or  
5 leave it, no changes allowed" provisions to the settlement  
6 agreement and how that should be treated by us and the  
7 Commission.

8 In the PECO schedule, what I interpreted in that was  
9 a concept of let's very quickly present the settlement  
10 agreement on an up or down vote to the Commission. If they  
11 don't accept it as is, then let's go a second round and  
12 hold more hearings.

13 The problem with that, in our mind, is that it's a  
14 duplicative and maybe unnecessarily expensive to all the  
15 parties to first sort of question or present evidence about  
16 the settlement and to show why it's not in the public  
17 interest and then come back in a second round and said what  
18 would be in the public interest.

19 And what we are suggesting in our memo and the idea  
20 I want to throw out is that issue of take it or leave it,  
21 all or none might be most economically handled if we simply  
22 certify that question to the Commission. Are they willing  
23 to accept this in that kind of way? In the pilot program,  
24 they very definitely came out and said we reserve the right  
25 to change these things, to modify them. And if that's

1 their policy, I think it would be helpful for us to simply  
2 know that very quickly right now and move on. That's my  
3 first point.

4 The second point is one of the burden of proof issue  
5 and who has the burden here and how do we address that. I  
6 think both of those have great impact on what the date and  
7 schedule should be. Mr. Cohen, did you want to address --  
8 Mr. Bonney?

9 MR. BONNEY: Yes, Your Honor. Mr. Clark's correct  
10 that the settlement agreement does contain a provision that  
11 if the Commission does not approve the agreement in full,  
12 that it is terminated automatically. I am not sure that it  
13 would save any time to certify that question to the  
14 Commission as a provision that's not uncommon in  
15 settlements that go to the Commission and I think the  
16 settlement.

17 Provisions in the pilot were different than that. I  
18 think the faster course is to allow the parties to have  
19 adequate opportunity to express their objections as Mr.  
20 Clearfield was saying and to submit the settlement to the  
21 Commission for determination including a determination with  
22 respect to that.

23 MR. HERSHEY: Your Honor, the other, there are a  
24 couple other points to be made here and that is that it's  
25 in the very nature of settlement that compromises are made

1 by the parties, all the parties signing. Everybody gives  
2 up something in order to get something. And make judgments  
3 that having signed the settlement, they'd be better off  
4 with that package. And that was a judgment made by  
5 everybody that signed the agreement.

6 I don't see that it will save any time that it will  
7 be any more efficient to certify anything. What will save  
8 time -- and our intention is to find out whether the  
9 Commission will approve the settlement for being in the  
10 best interests of the public and various parties. It is  
11 not our intention to foreclose any party that wants to  
12 object to do so.

13 What we would like to do is establish some degree of  
14 certainty as to where we stand on the settlement because  
15 that tells us where we are on all the other issues. And I  
16 think that's the reasoning behind the fast track, if you  
17 will, for the settlement as distinct from the other  
18 issues.

19 If that settlement is rejected, then we are all  
20 going back to litigate, to a litigation posture on all the  
21 issues that we care about. If it's approved, then we know  
22 that there are certain issues we don't deal with and other  
23 issues that have to be dealt with. And dealt with in one  
24 manner or another, and there will be a number of proposals  
25 made there but that's the rationale behind our proposal.

1 JUDGE CHESTNUT: Thank you. Mr. Clearfield?

2 MR. CLEARFIELD: Your Honor, if I could address  
3 quickly, I think I speak for several other nonsignatories.  
4 First, I think it's in our view, the Commission has an  
5 inherent obligation to determine whether what comes out of  
6 this proceeding is consistent with the electric competition  
7 act in the public interest and parties can't restrain the  
8 Commission's authority or ability to do that.

9 If the Commission's going to have to make a  
10 determination it's going to have to make it on substantial  
11 evidence at the conclusion of this process.

12 In a real way the parties that sign the settlement  
13 are at risk that the Commission will make a determination  
14 and change certain provisions and accept others. If they  
15 are inclined to do that and there's evidence to do that, I  
16 think the issue we have today that needs to be decided is  
17 how can we craft a schedule that permits a fair opportunity  
18 to present evidence by the parties that are objecting and  
19 to cross examine witnesses and investigate this proposed  
20 schedule and bring that record to the Commission so that it  
21 can make a determination.

22 Now, it has a variety of options. We can't preclude  
23 those. As we all know, they are up the food chain. They  
24 can accept the settlement in its entirety. They can object  
25 and send the entire matter back to hearings. They could

1 accept part of it and reject other parts and simply issue a  
2 filing here and say we are satisfied and everyone's rights  
3 have been maintained or they could issue a tentative order  
4 or some other interim procedure and determine that  
5 additional hearings are maintained.

6 We share the view that a schedule should be crafted  
7 to allow the Commission to make that determination in  
8 sufficient time so that there has to be some additional  
9 procedures that can be done before the 1/1/99 date, but at  
10 the same time, I think it's crucial that a time period be  
11 established that allows a fair opportunity for us to  
12 respond to this, what amounts to a new restructuring plan.

13 And we have proposed, as I am sure you know, two  
14 schedules, the first would extend the PUC order date to  
15 March 22nd. I wanted to just note that that would give us,  
16 I think, adequate time to submit our case.

17 Another possibility, to sort of merge the ideas in  
18 the spirit of compromise is if the ALJ's recommended  
19 decision -- if the Commission determined to eliminate that,  
20 one could have -- one could utilize that initial schedule  
21 and still have the Commission review the partial  
22 settlement, by mid January, make a determination that in  
23 our view would be sufficient time for additional  
24 proceedings if those were necessary.

25 JUDGE CHESTNUT: Thank you, Mr. Clearfield. I don't

1 think it's necessary to have further discussion on this.  
2 This language is standard in every settlement petition that  
3 I have seen. It's always ignored because of course, the  
4 parties can't bind the Commission to any type of decision.  
5 The Commission is free to accept it, reject it or modify  
6 any part they decide, whether or not they'll choose to  
7 continue with their settlement posture.

8           Just like settlements also have effective dates,  
9 they also cannot bind the Commission, so I don't think it's  
10 necessary to bring this to the Commission's attention in  
11 the form that you have requested, Mr. Clark.

12           With respect to your second item, that is the burden  
13 of proof, I don't think there's any doubt that the burden  
14 of proof remains on PECO in this proceeding, to prove the  
15 justness and reasonableness of its plan and the backup and  
16 the second thing is if the signatory fails to prove the  
17 justness and reasonableness of the settlement provisions,  
18 people don't have to show why the settlement should not be  
19 accepted by the Commission. The burden of proof remains  
20 with the proponent of the Commission order. Mr. Banta?

21           MR. BANTA: Thank you, Your Honor. In the spirit of  
22 preliminary matters and sticky wickets, let me get one out  
23 of the way that I think Walter promised that there would be  
24 something of more interest. As you may know, our company  
25 participated in the securitization proceeding and currently

1 has the securitization order on appeal.

2 We intend to pursue the issue of whether the present  
3 provisions of the act and the securitization order, which  
4 provide for stranded costs are required and securitization  
5 are unconstitutional and conflict with the Commerce Clause  
6 and argue that those provisions are severable from the  
7 remainder of the Act.

8 Obviously, depending on how the joint settlement  
9 unfolds, we intend to preserve those same issues in the  
10 current proceeding and yet in the spirit of not trying to  
11 hold things up, we have entered into some discussions with  
12 PECO and have provided the other parties with a proposal  
13 that would allow us to avoid participation in cross  
14 examination of a member of PECO's witness on stranded cost  
15 recovery based upon a stipulation between ourselves and  
16 PECO that the record in the securitization proceeding would  
17 control the outcome of this proceeding on those same  
18 Constitutional issues and that our appeal would proceed.

19 One of the reasons we brought this out today is  
20 obviously that only works if there are no objections by the  
21 other parties to that procedure. We believe it will  
22 facilitate a resolution of an issue that is not going to go  
23 ahead and that it will facilitate the resolution of that  
24 issue approximately six to nine months earlier than it  
25 would otherwise which we believe in the best interests of

1 everyone else.

2 I have a copy of that and I have given it to the  
3 parties. Unless and until we can reach some sort of  
4 agreement that is of record we will need a substantial  
5 amount of time, not excessive, but a substantial amount of  
6 time with reference to any record that would be developed  
7 on those issues in this proceeding to preserve, obviously,  
8 our rights on appeal.

9 JUDGE CHESTNUT: Thank you. Does anybody have any  
10 other general issues they wish to raise before we talk  
11 about a specific schedule?

12 MR. BONNEY: Your Honor, I'd just like to respond to  
13 Mr. Clearfield's argument regarding the burden of proof and  
14 while I am not arguing with your statement about PECO and  
15 the other signatories retaining the burden of proof, this  
16 is in the public interest. I think it's a different  
17 schedule with respect to the schedule as to who should go  
18 first.

19 In our view, we have already put on sufficient  
20 evidence in our prefiled testimony as well as the  
21 settlement, itself and statements in support to sustain  
22 that burden and that it's now time for the opposing parties  
23 to come forward. I'd also submit that that's going to be  
24 more expeditious as far as resolution of those objections.

25 JUDGE CHESTNUT: Thank you.

1 MR. CLEARFIELD: Could I quickly respond?

2 JUDGE CHESTNUT: No. I don't think it's necessary.

3 MR. BANTA: Your Honor, can I ask a question?

4 JUDGE CHESTNUT: Sure.

5 MR. BANTA: With the exception of the portions in  
6 the securitization proceeding that are incorporated in this  
7 record, I -- maybe I missed a hearing. I didn't know of  
8 any evidence that's in the record.

9 JUDGE CHESTNUT: You are right. At this point there  
10 is no evidence of record. Testimony and statements have  
11 been filed. They have not been made part of the record  
12 yet. Of course, they will be at some point.

13 MR. BANTA: Thank you.

14 Okay. Let's talk about the schedule, itself, then.  
15 Again, I am looking at the two schedules that were signed  
16 by the parties in the prehearing memo and PECC schedule.  
17 First off, we are not going to look at your extended  
18 schedule. We don't see any basis for that. So we are  
19 going to look at your alternative which is at page 12. Mr.  
20 Haver, did you want to say something?

21 MR. HAVER: Your Honor, I just want to speak in  
22 favor of as early and quick a schedule as possible. It's  
23 my feeling that any delay actually allows PECO to continue  
24 to overcharge and over-collect and that I am not in favor  
25 of seeing this extended in any way and it's in the

1 company's interest and the public interest to have as fast  
2 a resolution on settlement as possible and if for some  
3 reason, then for us to quickly as possible to be allowed to  
4 file for an immediate rate decrease. Any delay means not  
5 paying for a longer period of time and I am opposed to  
6 that.

7 JUDGE CHESTNUT: Thank you. These schedules track  
8 pretty well except for the filing of surrebuttal, which is  
9 in the PECC proposal that has supporting testimony being  
10 filed September 17. On the other one it has, I guess you  
11 have waived that. If you consider your statements in  
12 support to be your direct testimony, don't you, Mr. Bonney  
13 or whoever?

14 MR. BONNEY: Yes, we do, Your Honor. I think  
15 there's one clarification with respect to PECC proposed  
16 scheduled. I have representations from counsel that what  
17 this envisions, while not stating it, is if the settlement  
18 is disapproved that there will be full litigation with  
19 respect to the underlying issues and this proposed schedule  
20 doesn't envision full litigation of the existing issues but  
21 rather an examination of whether the settlement is in the  
22 public interest as to the settled issues.

23 MR. CLEARFIELD: Perhaps I can state our position to  
24 make sure it's clear. This settlement obviously does not  
25 preclude the Commission from ordering additional procedures

1 after the end of this process. We did not suggest  
2 necessarily that that would have to be full litigation of  
3 the issues. That's up to the Commission to decide, in our  
4 view.

5           It does assume at this point that the open issues,  
6 the issues that were not resolved, would be considered in  
7 the context of this schedule and that the other issue would  
8 be is the proposed restructuring as set forth in the  
9 partial settlement consistent with the act in the public  
10 interest.

11           So those would be, in essence, the two groups of  
12 issues. Should the settlement be approved or  
13 modifications, and how do we resolve the open issues.

14           JUDGE CHESTNUT: Okay. Well, it seems to me that  
15 the petition that some unknown parties are going to file  
16 today concerning these issues will address that separate  
17 issue in terms of the issues that are not expressly  
18 addressed in the settlement. I assume the Commission will  
19 address that, how it sees fit in terms of where it directs  
20 those issues be received. Mr. Banta?

21           MR. BANTA: Yes. With reference to the schedule  
22 that's identified here on page 12, is the October 13  
23 through 17 hearing dates which is really all we are  
24 concerned about, designed to address the issues that have  
25 been resolved by the settlement?

1           For example, if PECO is actually planning on  
2 wholesale dumping into the record their prefiled case in  
3 chief and this is for those issues and the issues that  
4 aren't resolved by the settlement agreement also, then  
5 depending on how the treatment of our stipulation with PECO  
6 works out, I cannot assure you that that would be  
7 sufficient time, assuming this was designed to deal with  
8 Mr. Clearfield's issues that are not resolved by the  
9 settlement agreement.

10           MR. CLEARFIELD: Our view in proposing this was that  
11 those hearings would be directed at testimony with respect  
12 to the settlement and modifications and the unresolved  
13 issues. And there are a handful. In terms of testimony  
14 submitted into the record, it would be our view that  
15 testimony that was specifically relevant to the partial  
16 settlement would be of one quality.

17           Other testimony would presumably be irrelevant. If  
18 it's about this partial settlement, then obviously it would  
19 continue to be relevant to this proceeding. That may be a  
20 procedural issue that would have to be resolved.

21           JUDGE CHESTNUT: I think that's something you can  
22 work out yourself, Mr. Banta. In terms of dealing with Mr.  
23 Bonney, determining how and what he's going to submit into  
24 the record, any testimony he sees fit.

25           MR. BANTA: I want to make it clear, Your Honor, we

1 would hope to be able to do it within the time constraints  
2 identified here, but there are certain issues outstanding.  
3 One of the witnesses they prefiled, we have delayed a  
4 deposition pending resolution of certain issues if they are  
5 going to submit this testimony. I can't tell you how long  
6 it's going to take because I haven't deposed the witness.

7 JUDGE CHESTNUT: That's the risk you took in  
8 determining how you desire to conduct your case. Hearings  
9 were scheduled in August. You should have been ready in  
10 August. Now it's September. I would think you are in  
11 pretty good shape.

12 MR. BANTA: That was an agreement with PECO. They  
13 will provide me with the opportunity to do that. What I am  
14 saying to you is I can't tell you how long cross  
15 examination will take at this point so we would hope that a  
16 schedule like this would accommodate our needs. I can't  
17 give you an assurance that our due process would be  
18 satisfied within those constraints, not knowing the  
19 questioning that others may have. And again, it may not be  
20 an issue.

21 JUDGE CHESTNUT: I can't say that I can do anything  
22 about that, Mr. Banta, at this point. You have to do what  
23 you see fit. We don't want to deny anybody's request in  
24 this proceeding. But on the other hand, this case has been  
25 ongoing. There's been certain actions taken by certain

1 parties, and that's what we are here to address.

2           The fact is there was a settlement reached and that  
3 really is going to be the subject, I assume, of the  
4 hearings we are going to be holding sometime in the  
5 future. I don't think at this point we are going to be  
6 litigating the whole -- we are not going to go back to  
7 square one to relitigate the case. I think that's  
8 inappropriate at this point.

9           So let's talk about, again, get back to this. The  
10 schedules are pretty similar, as I indicated except for the  
11 surrebuttal testimony. If we take that out, then they  
12 track pretty well.

13           MR. CLEARFIELD: I am sorry, Your Honor. What would  
14 you propose with respect to surrebuttal?

15           JUDGE CHESTNUT: I would suggest that there not be  
16 surrebuttal. I don't think it's necessary. I think if  
17 everybody has a round of testimony that should be  
18 sufficient. If the signatory parties, in fact, are going  
19 to stand on their statements in support, you have already  
20 had that. And then if you file testimony addressing that  
21 significantly, I think that should be sufficient.

22           MR. BONNEY: With respect to -- if indeed we do have  
23 the burden of proof, then the technical rule is that the  
24 party with the burden of proof can go last, and this  
25 schedule doesn't provide an opportunity for any responsive

1 testimony.

2 Our due process rights would be violated if we were  
3 not permitted to respond to the issues. We have seen a  
4 brief summary of them in the prehearing conference memos.  
5 That's all we will have seen before the close of the record  
6 unless we have an opportunity to have responsive  
7 testimonies.

8 JUDGE CHESTNUT: Well, in your schedule you give  
9 yourself basically a week between the receipt of objections  
10 and then you do want to file surrebuttal testimony.

11 MR. BONNEY: Yes, Your Honor.

12 JUDGE CHESTNUT: Okay.

13 MR. BONNEY: I am not sure what the surrebuttal  
14 testimony refers to here. This is on the non-settled  
15 issues? If it is, then I think we can move that date up  
16 quickly but the parties were prepared to file that a day or  
17 two after we suspend.

18 On the other hand, we are amenable to a separate  
19 track for the unsettled issues and if it's the parties'  
20 desire to do that, in a different time frame not to  
21 conflict with this, that's okay from our perspective.

22 JUDGE CHESTNUT: What I was going to suggest is that  
23 we take a break and see if you can work it out. I think  
24 it's pretty clear which direction we are heading. We'd  
25 like to have that matter wrapped up but not rushed through

1 and we don't have a problem with the schedule here.

2           Given the fact that somebody -- again, I don't know  
3 who or how -- are going to be filing a petition asking the  
4 Commission to address this without the necessity of the  
5 recommended decision. I think Mr. Bonney put in his  
6 prehearing memo we can add that on to the schedule three  
7 days after the reply brief. Why don't we do that, and I  
8 think you can work out some essential schedule.

9           MR. CLEARFIELD: Before we do break, I think it is a  
10 good idea. I want to raise with you potentially  
11 establishing a schedule today that would presume that the  
12 ALJ recommended decision would be eliminated if the  
13 Commission chose to.

14           JUDGE CHESTNUT: We are not doing that. If I said  
15 that, I misspoke myself.

16           MR. CLEARFIELD: No. Maybe it would be better  
17 characterized as a request that you reconsider that, in our  
18 view. And that is if we are going to do that, I would ask  
19 that we try to build in some more time up front and for the  
20 parties responding to our testimony so that we are not so  
21 pressed. This schedule is extremely --

22           JUDGE CHESTNUT: Let me state generally I don't  
23 think I need up front filing. This case has been scheduled  
24 for a while now. The parties don't need to file --  
25 everybody's filed their own direct testimony. Settlement

1 has been out and available since August 27th, which is a  
2 couple weeks.

3 So I would expect that people would be ready to act  
4 expeditiously on it. I don't know in terms of discovery if  
5 there's discovery outstanding or how extensive you expect  
6 testimony to be. Why don't you talk about it and see if  
7 you can work something out. Okay?

8 (Whereupon, a brief recess was taken.)

9 JUDGE RAINEY: Before everyone breaks, I wanted to  
10 say you should be clear in putting together your schedule  
11 whether or not you are addressing the settlement and/or the  
12 outstanding issues.

13 We need to be clear with regard to what type of time  
14 we need for that as well. It's my understanding that the  
15 petition that will be filed will be addressing whether or  
16 not we need to file a recommended decision as well as those  
17 outstanding issues going elsewhere.

18 However, if we are going to have a schedule that may  
19 contemplate that the Commission, quote, says that the ALJs  
20 must do a recommended decision it also requires that we  
21 address those outstanding issues, we need to have a  
22 schedule that reflects that. So in your discussions,  
23 please address that. Thank you.

24 MR. NEWTON: One clarification. Allegheny Power, at  
25 this point, has received filing comments but not testimony

1 regarding the settlement. In order to have the issues on  
2 the record, is it necessary to file the testimony if you  
3 are not necessarily opposing the settlement but would like  
4 comments before the Commission?

5 JUDGE CHESTNUT: I don't think the comments have any  
6 probative weight whatsoever. It's up to you to decide how  
7 you want to handle that.

8 (Whereupon, a brief recess was taken.)

9 JUDGE CHESTNUT: Can we get started here, please.  
10 Does somebody want to start off?

11 MR. CLEARFIELD: Your Honor, I don't believe that we  
12 have been able to reach agreement on schedules. Mr. Bonney  
13 can correct me. We have had an extensive discussion about  
14 the proposed schedule that we submitted that proposes that  
15 the party objecting to settlement or portions thereof file  
16 testimony on September 29 with the PUC, polling on January  
17 8th and we were not able to obtain a consensus on that.

18 Being able to file testimony on September 29 is  
19 crucial to our ability to put on our case and we need to  
20 have that time. Obviously, we want to give the other  
21 parties adequate time to respond and therefore, the rest of  
22 the schedule, you know, falls out from there.

23 Now, before those comments in response, we could try  
24 to take some time off of main briefs and reply briefs to  
25 some extent, if that seemed to be prudent to try to give

1 the Commission an opportunity to review this at an earlier  
2 time. As long as there's a recommended decision, then this  
3 is the best that we believe we can manage under the  
4 circumstances.

5 JUDGE CHESTNUT: Well, actually, maybe we didn't  
6 express ourselves clearly but that's a side issue in terms  
7 of briefing I wanted you to get to the hearing, testimony,  
8 hearing part of the schedule and then the rest of it falls  
9 out by itself.

10 MR. CLEARFIELD: Yes.

11 JUDGE CHESTNUT: Are you saying you cannot have your  
12 testimony filed sooner than September 29th?

13 MR. CLEARFIELD: At this point the answer is, that  
14 is the best that we can do. Obviously, if you ask me if we  
15 could file it a day before, we could try to accommodate  
16 that, but this is a new filing, Your Honor.

17 There is a variety of issues that were never  
18 presented in the original filing and we issued extensive  
19 discovery on many of those new issues and we are simply  
20 asking for adequate time to examine those data and to  
21 present our own case. We think that's eminently fair.

22 We have created a schedule which we think that's  
23 extremely forcing to attempt to accommodate the concerns we  
24 believe the Commission would have to try to review this  
25 matter as quickly as possible.

1 MR. BONNEY: Your Honor, if I may, a couple of  
2 thoughts. One thing I think we have reached some agreement  
3 with respect to the issues not covered by the settlement  
4 and while you asked us to focus on the second of the two  
5 alternatives that Mr. Clearfield put forward, we requested,  
6 and it's acceptable to PECO, at least, that we track  
7 something more like the two month extension scheduled for  
8 the unsettled issues, code of conduct, competitive metering  
9 and billing, et cetera. And that would allow us to focus  
10 first on the review of the settlement.

11 MR. CLEARFIELD: And that is acceptable to Enron and  
12 I believe several of the other competitors, Your Honor. I  
13 think we did discuss the possibility of filing surrebuttal  
14 testimony somewhat earlier than the October 27th date  
15 that's listed there and I think we mentioned the 10th and  
16 that's acceptable to us, as well.

17 JUDGE CHESTNUT: I am sorry. What was that last  
18 change that you made?

19 MR. CLEARFIELD: If you examine the schedule that  
20 would end March 5, the first filing would be October 10,  
21 1997, I think.

22 MR. BONNEY: And you can describe the first items so  
23 that the first filing would be surrebuttal testimony on  
24 unsettled issues. In other words, we'll be picking up  
25 where we left off in the litigation of those issues.

1 JUDGE CHESTNUT: And that would be October 10 rather  
2 than October 27.

3 MR. CLEARFIELD: Yes.

4 MR. BONNEY: Right.

5 MR. CLEARFIELD: Then this schedule would provide as  
6 it's proposed there, for the unresolved issues.

7 MR. BONNEY: We still intend, I believe, to file a  
8 request that the Commission consider putting these in a  
9 generic statewide consideration but we want to establish a  
10 schedule in case the Commission declines that request, and  
11 I am not sure what position the other parties might take on  
12 this. They haven't seen our petition, yet, of course.

13 On the schedule to review the settlement, a couple  
14 of -- I have a couple of remarks in response to what Mr.  
15 Clearfield has said.

16 First we disagree that it's a new filing. This is a  
17 settlement of the existing issues and the settlement  
18 addresses the positions that have been in issue in the case  
19 since April 1st when we filed.

20 Secondly, September 29 would be 33 days after we  
21 filed the petition, some six weeks after the marketers have  
22 first seen the settlement document. So in our view, that's  
23 really excessive time to produce testimony on issues that  
24 have already been presented in the case. Under our  
25 schedule, which has testimony being filed on the 17th, that

1 would be 21 days after the joint petition was filed and we  
2 think that's sufficient time. The issue really falls out  
3 of when is that first testimony filed, as you pointed out,  
4 and where do we go from there.

5 JUDGE CHESTNUT: Why. I'd have to say I agree  
6 somewhat with both of you, of course, maybe a little bit  
7 more with Mr. Bonney because this isn't new and I think you  
8 should have been -- I am sure you weren't. I don't mean to  
9 imply that you were not diligent, but I --

10 MR. CLEARFIELD: If I could just point out a few  
11 things. That proposal --

12 JUDGE CHESTNUT: Let me ask you a question. Do you  
13 have discovery outstanding?

14 MR. CLEARFIELD: Yes. We understand there's been a  
15 representation that the answers are prepared. But as of  
16 the point that I sit here, I have not seen the answers.

17 MR. BONNEY: We received 45 questions Friday and I  
18 think over, well over a hundred questions with subparts,  
19 and we have planned as of today we'd be delivering them.

20 JUDGE CHESTNUT: All right. Discovery doesn't --  
21 obviously, you need a chance to review that.

22 MR. CLEARFIELD: If there's additional questions,  
23 and we can commit to presenting our expert testimony by the  
24 29th under that schedule, there are several parties, I  
25 believe, that wish to submit testimony and I am concerned

1 that even if we were able to represent that our witnesses  
2 could be ready, I am not so certain with those other  
3 witnesses we already have a schedule. I guess what I would  
4 ask is why would it be necessary to push us so hard,  
5 especially in light of the fact that we don't know what the  
6 company may be submitting or suggesting in support of this  
7 -- of the settlement or in response to our responsive  
8 testimony.

9 We have tried, really, to be as reasonable as we  
10 could be. And this gives the Commission adequate time to  
11 take whatever action it determines it needs to talk and  
12 still go forward and have a restructuring plan in place by  
13 1/15/99. Having it done a month sooner is going to do  
14 nothing but rob us of our due process rights, and I don't  
15 understand the --

16 JUDGE CHESTNUT: Thank you, Mr. Clearfield. Mr.  
17 Haver, I think I know your position in terms of --

18 MR. HAVER: I'd just like to make it as clear as I  
19 can that I am somewhat incredulous when I hear Enron say  
20 it's crucial to them to have that time. The fact remains  
21 if this settlement is approved, 60,000 additional low  
22 income families will have the benefit of heat this winter.  
23 That is really -- Enron can simply hire additional staff.  
24 They have no limitations on what they can spend on that.  
25 They can do this.

1           They are trying to prohibit people from getting the  
2 benefit of the settlement. That's their role here, and  
3 that should not be allowed. The Commission should make as  
4 quick a determination as possible so that no low income  
5 people, who would be eligible to be in the CAP program are  
6 denied life services.

7           JUDGE CHESTNUT: Mr. Hershey?

8           MR. HERSHEY: Your Honor, just to make that clear,  
9 the benefits to low income customers flow only after  
10 approval by the Commission of the settlement. So on that  
11 point. Second, as to the need for discovery, I should  
12 point out that the parties in this case have always been  
13 willing and PECO has been willing, particularly, to provide  
14 informal discovery on an expedited basis and in the process  
15 of circulating the proposed settlement to the various  
16 parties, some of which ultimately signed but were initially  
17 opposed, there was an expedited and informal schedule to  
18 provide them with the information reassurance that they  
19 needed to understand the elements of the settlement and  
20 that happened faster than what Mr. Clearfield is proposing  
21 here.

22           MR. CLEARFIELD: And it's significant, Your Honor,  
23 that the competitors were excluded from that proposal. We  
24 received it a little --

25           MR. HERSHEY: Well --

1 MR. CLEARFIELD: Just let me finish. On the day it  
2 was filed. Before that these were proposals and we had an  
3 obligation and we did, immediately begin our examination  
4 and review of that settlement but to come in here and to  
5 suggest that we should be able to submit testimony  
6 basically in a week or five days simply so that this  
7 settlement can be pushed to the Commission faster I think  
8 is unreasonable.

9 We are doing everything we can to respond to this  
10 settlement but I have yet to hear a good reason as to why  
11 we can't, that we can't have adequate time to present our  
12 direct case.

13 JUDGE CHESTNUT: I think there's been testimony as  
14 to how certain parties would like to be handled. I don't  
15 think it's necessary to go into that further. Let's leave  
16 it at that, that there are some parties who feel that it's  
17 in the public interest that we address the expediting --  
18 there were some parties that did not see the need for  
19 that. Let's take that as our starting point.

20 Secondly, to take the second point you have been  
21 working with counsel since you got the settlement on  
22 October 27 (sic). That too --

23 MR. CLEARFIELD: We should expect to be able to do  
24 whatever we feel is necessary to do with respect to that.  
25 When I knew what the actual --

1 JUDGE CHESTNUT: Let's talk about to October 27.

2 MR. CLEARFIELD: You mean August.

3 MR. HERSHEY: To clarify, they didn't have that deal  
4 before August 27th. They had drafts which were almost  
5 identical to the final version.

6 JUDGE CHESTNUT: I understand that, Mr. Hershey, but  
7 I am just saying that certainly as of August 27th. I  
8 didn't mean to stimulate a lot of discussion.

9 MR. DOLL: If I may make one comment, you are well  
10 aware of the position of Conectiv that we feel and we did  
11 he fail he regard to and I quote, it's totally economic.

12 JUDGE CHESTNUT: Mr. Clark?

13 MR. CLARK: The environmentalists understand the  
14 importance of providing the benefits of the settlement, if  
15 it's approved by the Commission, to the low income citizens  
16 of the Philadelphia area. We, in the break made a  
17 suggestion that we felt would solve the problem and at one  
18 point a lot of people were saying yes, but we haven't heard  
19 it yet.

20 Our suggestion was we, on an emergency basis, at  
21 tomorrow's Commission meeting, present a motion that all of  
22 us think could stipulate to that we forego the recommended  
23 decision. I hated to deprive Your Honor of that joy but  
24 you would be able to do it on the unsettled issues  
25 instead.

1           What that would allow is essentially to track Mr.  
2 Clearfield's schedule, we might even shave a couple days  
3 here and there off of the hearing and briefs, so that what  
4 we have on Mr. Clearfield's schedule, the one on page 12  
5 and 13 of his memo, we have the reply briefs due November  
6 5th and as I said, I bet we could probably shave that off  
7 to the very first of November and get a Commission decision  
8 based on that record not with the recommended decision by  
9 November and so we meet the low income issues that we all  
10 have.

11           If that doesn't happen, if the Commission tomorrow  
12 is not willing to agree to our settlement, then we can talk  
13 tomorrow night.

14           JUDGE CHESTNUT: Mr. Clark, I don't think you  
15 understand. We are not concerned about the backdown of the  
16 schedule, whether it is a recommended decision or not. The  
17 point is let's talk about the front end of the schedule  
18 because the back end is going to fall out however the  
19 Commission decides it could.

20           MR. CLARK: I can agree that the low income  
21 customers wanted settlement approved earlier, not later.  
22 That's a problem of the schedule.

23           JUDGE CHESTNUT: That's the point of that petition  
24 that's being installed and that's fine. I mean does  
25 anybody want to pose that petition? Maybe it's not fair to

1 ask you since you haven't seen it yet, but on the other  
2 hand, I think everybody knows jointly what's going to be  
3 asked. Is anybody willing to pose that?

4 MR. CLEARFIELD: Your Honor, with respect to the  
5 elimination of the recommended decision, we do not intend  
6 to oppose that. If it provides for more time and at the  
7 same time allows for an expeditious resolution by the  
8 Commission, then it seems that that would be a fair way to  
9 proceed.

10 JUDGE CHESTNUT: Right. So that's taken care of.  
11 Basically. I am sure that that won't be a problem but my  
12 concern is let's set up the front part of the schedule.  
13 And that's what we are talking about that, so. Since you  
14 are at October 29 and the other schedule is -- I'm sorry,  
15 September 29. The other one is September 17.

16 Let's just split the difference and say September  
17 24th. So if we can't agree on it, then everyone is equal.  
18 Is that all right, with you, Mr. -- Okay, Mr. Clearfield?

19 MR. CLEARFIELD: I am not -- I don't like it, but.

20 JUDGE CHESTNUT: Can you live with that?

21 MR. CLEARFIELD: It's your decision, Your Honor.

22 JUDGE CHESTNUT: Okay. Let's talk about surrebuttal  
23 testimony, then. Although it seems to me there's been much  
24 disagreement in terms of once we set the stage, there that  
25 it should all kind of fall out. We'll say October 2nd for

1 surrebuttal. Everybody take a minute here and try to work  
2 this out.

3 MR. BONNEY: We were just commenting that I guess  
4 the evening of the 1st and the 2nd is Rosh Hashanah.

5 JUDGE CHESTNUT: Is it the 1st? I just have the  
6 2nd.

7 MR. CLEARFIELD: It's the 1st.

8 JUDGE CHESTNUT: I thought it was the evening of the  
9 2nd.

10 MR. BONNEY: Is the 3rd more appropriate, in light  
11 of that?

12 JUDGE CHESTNUT: Sure. I was trying to avoid it,  
13 actually, so we'll say October 3rd, then.

14 MR. CLEARFIELD: Are we going to try to move the  
15 hearing dates? The 2nd.

16 MR. GORNISH: The 3rd is Rosh Hashanah.

17 JUDGE CHESTNUT: The big day is the first day. I  
18 don't want to get into this. We'll say October 3rd because  
19 that's just filing of testimony. It does not require a  
20 hearing or anything. So then hearings would be the next  
21 thing, right?

22 MR. HERSHEY: I didn't hear.

23 JUDGE CHESTNUT: At this point we have September 24  
24 for opposition testimony. October 3rd responses to  
25 rebuttal testimony. We have hearings, then, which would be

1 October --

2 MR. CLEARFIELD: Could we consider keeping the  
3 hearings that same week?

4 JUDGE CHESTNUT: That would be the week of the  
5 13th?

6 MR. MICKENS: The 13th is a holiday, I believe.

7 JUDGE CHESTNUT: Yes, it would have to be the 14th  
8 through the 17th.

9 MR. BANTA: Your Honor?

10 JUDGE CHESTNUT: Yes.

11 MR. BANTA: If we may, if it's possible to have  
12 hearing days reserved in the prior week also, depending  
13 upon I don't know what all everybody is going to file but  
14 if we were looking from what I heard, everybody that's  
15 settled is going to go ahead and file prefiled testimony.

16 Maybe PECO's going to try to submit their rebuttal  
17 and then there may be all these additional filings just  
18 saying it would be good to have as many days reserved as  
19 possible because we, too would like to get this over with  
20 and we may disappear and not be a problem.

21 JUDGE CHESTNUT: I don't know what you mean by all  
22 kinds of filings because we are only talking about  
23 preliminary filings here.

24 MR. BANTA: We are talking about a lot of testimony,  
25 a lot of testimony.

1 JUDGE CHESTNUT: Maybe, maybe not. I am hoping  
2 not.

3 MR. BANTA: What PECO's already prefiled is a lot of  
4 testimony.

5 JUDGE CHESTNUT: We are not talking about that at  
6 this point. Like I said, Mr. Banta and you can talk about  
7 that. My understanding is the signatory parties are not  
8 intending to file additional testimony in support of the  
9 settlement. Is that correct? That stands on their  
10 statements in support?

11 MR. BARAK: Could you so rule because it seems to me  
12 that that's the assumption of the schedule that you are  
13 laying out and I am looking at that and saying well,  
14 September 24th it's a lot of work call counsel right now  
15 and tell them that's the date they are going to have to  
16 file but with what we are going to see in a week or two is  
17 a service of filings by other parties, then that makes  
18 things very, very complicated.

19 JUDGE CHESTNUT: Okay. Is anybody intending to file  
20 testimony in support of the settlement?

21 MR. HERSHEY: Yes.

22 JUDGE CHESTNUT: Then I'll put that in the  
23 schedule. Is it -- are you talking about in addition to  
24 your statement?

25 MR. HERSHEY: That's responsive testimony.

1 JUDGE CHESTNUT: I am not talking about the  
2 responsive testimony.

3 MR. HERSHEY: No.

4 JUDGE CHESTNUT: That's responsive to the opposition  
5 testimony.

6 MR. HERSHEY: That's correct.

7 MR. BANTA: No, no, Your Honor.

8 JUDGE CHESTNUT: I am talking about --

9 MR. BANTA: Careful when you say statement in  
10 support. They filed a little statement in support of the  
11 settlement when they filed their settlement agreement. My  
12 understanding is that in addition to that as evidence, they  
13 are planning on putting on their entire cases in chief and  
14 responsive cases and rebuttal cases from the main case and  
15 put that into evidence is my understanding with -- why I am  
16 over here screaming about hearing time.

17 JUDGE CHESTNUT: I assume that everybody is going to  
18 introduce the testimony that they have already filed.

19 MR. BONNEY: Yes, Your Honor, as a basis for the  
20 compromise on which the settlement was made. Whatever  
21 cross examination the parties feel is appropriate with  
22 respect to that we are amenable to that.

23 MR. BANTA: Fine.

24 MR. BONNEY: With the understanding that we are  
25 trying to work out an agreement with Mr. Banta.

1 MR. BANTA: That was my entire point, is if you can  
2 get more than four hearing days I think it would be  
3 advisable.

4 MR. BONNEY: Your Honor, with that in mind, the  
5 issue to be addressed is whether the settlement is in the  
6 public interest; not the underlying litigation of the case,  
7 of the testimony that we submitted and positions we took in  
8 testimony are the basis upon which the compromises were  
9 made and as a consequence, they support the settlement.

10 JUDGE CHESTNUT: You are not presenting your  
11 position in this case in that direct --

12 MR. BONNEY: That's right, Your Honor. If the  
13 Commission were to reject the settlement or to modify it so  
14 that settlement would terminate, we would then go back to  
15 those litigation positions and then parties would have then  
16 an opportunity to cross examine.

17 MR. DVORETZKY: I want to say that Mr. Bonney said  
18 that before. That's not our view what the law is. The  
19 Commission has the power to modify the settlement. It's up  
20 to the Commission to decide what to do. It doesn't give  
21 Mr. Bonney the right to go back to square one, in our  
22 view.

23 MR. BANTA: I just heard something different, which  
24 is if you are submitting your prefiled testimony not for  
25 the truth of the matter asserted therein, but merely for

1 the fact that it exists as a basis for the settlement, that  
2 then that clears up a whole lot of things.

3 MR. CLEARFIELD: Is that what you -- may I ask?

4 MR. BONNEY: I don't understand the distinction, Mr.  
5 Banta.

6 MR. BANTA: Hearsay really is based on everything  
7 else. I would like outlined clearly to me whether I have  
8 got to cross examine your witness to preserve my appellate  
9 rights, if it's just submitted for the purposes that it  
10 exists, not for the truth of the matter of anything that  
11 they are saying. I have got a different perspective on it.

12 JUDGE CHESTNUT: Mr. Banta, I think you ought to  
13 protect your rights. That may be used to support a  
14 different position which, in fact, probably might be within  
15 the ambit of the general testimony. How far you want to  
16 take that is up to you. I am not going to tell you how to  
17 do your case.

18 On the other hand, we are not going to expand the  
19 cost of things. I am not going to elucidate upon the basis  
20 of the position that it's been abandoned by a party if, in  
21 fact, that's what the party has done.

22 MR. BANTA: That's clear, Your Honor. The parties  
23 have not abandoned the recovery of stranded costs or  
24 securitization. They have merely limited the amount. So  
25 all of the cross examination related thereto would still be

1 relevant, with the exception of it being a difference and  
2 that's my only point.

3 JUDGE CHESTNUT: Mr. Barak?

4 MR. BARAK: Thank you. What I hear you saying,  
5 sounds like Evidence 101. The material proposition of the  
6 case as you see it is, and I don't mean to misstate what  
7 was said before, whether the settlement is just and  
8 reasonable and in the public interest and complies with the  
9 competition end.

10 That's the material proposition we are going forward  
11 on as opposed to whether PECO's initial application should  
12 be granted. That's my analysis of where we are there.  
13 That's what I heard you say.

14 JUDGE CHESTNUT: That's my understanding of what the  
15 party intends.

16 MR. BARAK: Then the question becomes what is  
17 relevant to that and what are the parties intending to  
18 submit as, quote, relevant and competent, substantial  
19 evidence, unquote. And where I am confused and I have  
20 listened to Mr. Bonney very carefully and where I am  
21 confused is whether, when we go to hearing on October 14th,  
22 counsel for PECO will lock in or bring in a bus, if you  
23 will, with their 20 odd witnesses and they will be  
24 presenting them, A, for that material proposition that I  
25 don't think is relevant here before us anymore, or B, for

1 the other one, that has to do with the settlement and if  
2 so, then going to sort Mr. Banta's concerns, in terms of  
3 those hundreds of thousands of pages presentation, what is  
4 relevant to that material proposition.

5 So I don't know what they are going to present and  
6 how we are going to winnow out the broader application-  
7 based testimony from the settlement-based testimony.

8 JUDGE CHESTNUT: Well, it seems to me that -- and  
9 maybe I am wrong, maybe Mr. Bonney can correct me -- is  
10 that PECO has modified its position with respect to the  
11 amount of stranded cost recovery it's seeking in this  
12 case.

13 MR. BONNEY: That's not correct. We have agreed to  
14 settlement. That does modify that. If that settlement is  
15 approved we can accept that as a modification of our  
16 position. If the settlement is not approved, we can't  
17 accept that modification and we intend to fully claim the  
18 amount that we have claimed. And it would violate our due  
19 process rights to not permit us to follow litigation and  
20 make that claim.

21 JUDGE CHESTNUT: How do you anticipate that that  
22 would be litigated?

23 MR. BONNEY: We would go back to square one where we  
24 were. That's one of the major reasons we want to get a  
25 prompt decision from the Commission about whether the

1 settlement is accepted and so that we could fully litigate  
2 stranded investments under hypothetical and other issues in  
3 the case.

4 JUDGE CHESTNUT: You would see picking up the  
5 process back where we left it prior to settlement.

6 MR. BONNEY: Yet. And notwithstanding what Mr.  
7 Dvoretzky --

8 JUDGE CHESTNUT: It seems to me that would address  
9 your concerns.

10 MR. BANTA: We are just on the opposite end of that  
11 mirror which is obviously if the Commission approves it  
12 with the stranded cost recovery that has been our only due  
13 process rights to litigate the stranded cost issue so we  
14 need the same level of assurance that we are going to have  
15 adequate time for hearing, again.

16 JUDGE CHESTNUT: I guess I don't understand that,  
17 Mr. Banta that, because you a chance to litigate the  
18 settlement stranded cost level and if for some reason the  
19 settlement is not accepted, and PECO chooses to resume its  
20 request for the additional stranded cost, you would have an  
21 opportunity to litigate it there.

22 MR. BANTA: Yes. And I am sorry.

23 JUDGE CHESTNUT: Is that correct? Am I stating that  
24 correctly, Mr. Bonney?

25 MR. BONNEY: Yes.

1 JUDGE CHESTNUT: Isn't that how you understand the  
2 process will proceed?

3 MR. BANTA: And in terms of first bite at the apple,  
4 that they are going to get on stranded cost if the  
5 settlement agreement is approved, that is my only bite of  
6 the apple. I want to make sure there's adequate time.

7 JUDGE CHESTNUT: That depends on how good you are.  
8 Mr. Banta, excuse me. You have seen this case. This case  
9 has not been a secret to anybody and how you have conducted  
10 it is certainly within your --

11 MR. BANTA: By adequate time, Your Honor, when Mr.  
12 Bonney poses a schedule with two days of hearing, that's  
13 not adequate time.

14 JUDGE CHESTNUT: We are certainly not intending to  
15 inhibit you, but on the other hand, we certainly will not  
16 allow any party to misuse the schedule for their own  
17 purposes. Mr. Clearfield, did you want to say something?

18 MR. CLEARFIELD: I want to seek a clarification.  
19 Mr. Barak, I think, stated the issue appropriately but I  
20 wasn't sure that we came to a resolution, that is the  
21 testimony that would be submitted would be testimony, if  
22 it's supplied by PECO would be testimony in support of the  
23 settlement or testimony that would be surrebuttal, or that  
24 is in response to issues or testimony that was raised by  
25 parties on September now 24, in opposition to provisions of

1 the settlement. Those are the two opportunities.

2 JUDGE CHESTNUT: Are you talking the October 3rd  
3 testimony or the underlying direct case testimony?

4 MR. CLEARFIELD: The underlying direct case  
5 testimony is, in my view, not as admissible at that point  
6 unless it fits into one of those two categories. I wanted  
7 to make sure we have an understanding that either has  
8 somebody puts forth their position therefore in support of  
9 the settlement or it has to be submitted in some way on  
10 October 3rd as surrebuttal testimony to some position that  
11 the party would take, and it would have to be properly  
12 surrebuttal. Is that a fair -- do you is understand the  
13 process correctly at this point, Your Honor.

14 JUDGE CHESTNUT: I think that is a reasonable  
15 statement, isn't it, Mr. Bonney?

16 MR. BONNEY: Yes, Your Honor.

17 JUDGE RAINEY: I want to be clear, what we are  
18 saying is we are dispensing with the need for testimony in  
19 support of the settlement because that has been provided by  
20 way of statements in support of the settlement. We are  
21 then proceeding to responsive testimony on the part of the  
22 opponents of the settlement and subsequently, those who are  
23 signatories to the settlement will have an opportunity to  
24 respond to that.

25 MR. BONNEY: The only caveat I have to that, excuse

1 me, Mr. Hershey, is that we do intend that the testimony  
2 that we previously submitted on April 1st and in June, be  
3 submitted as testimony in support of the settlement.

4 JUDGE RAINEY: You will submit that in support of  
5 the settlement, stranded cost figure of \$5.5 billion as  
6 compared to the \$7.5 billion which you originally claimed?

7 MR. BONNEY: It is the position on which we, from  
8 which we compromised and as a consequence, provide  
9 substantive evidence that supports that compromise.

10 MR. HERSHEY: The only point, I think, is important  
11 not to lose sight of, and that is statements in support of  
12 the settlement are not evidence. They are not testimony.  
13 They are signed by the lawyers.

14 JUDGE CHESTNUT: Right.

15 MR. CLEARFIELD: Your Honor, we know that but it was  
16 the position of the signatory that they wished to rely on  
17 those statements.

18 JUDGE CHESTNUT: That's your choice.

19 MR. CLEARFIELD: You're not going to object to  
20 that. We would object to the wholesale admission of the  
21 company's case, we don't believe that this settlement, this  
22 schedule will allow for adequate time to consider that, if  
23 that's going to happen. We would have to note our  
24 objection to that.

25 We simply can't have it both ways. We can't have

1 all the testimony that was submitted that PECO submitted  
2 initially, put into the record at this point. We need -- I  
3 think we have a right, a very clear right to at this point,  
4 conduct discovery and cross examination on that testimony.

5         It's a new filing and that testimony we should have  
6 a right to cross examine all of that testimony. So that  
7 it's clear if it's going to go on the record we haven't had  
8 that right and we can't have that right under this  
9 schedule.

10         JUDGE CHESTNUT: Okay. We have talked about this.  
11 We have come to a decision and I know that these are  
12 important issues at stake here. And I don't mean to  
13 minimize them. But on the other hand, this is not an  
14 especially unequal, unusual proceeding. It's a  
15 restructuring, obviously regulation is a new type of issue,  
16 but you are all very experienced and this is not an unusual  
17 type of information here. The filing has been available.  
18 It's been the subject of extensive discovery.

19         People have filed testimony with respect to that.  
20 The settlement is not enlarging this case. The settlement  
21 is designed to narrow the issues in this case. And I would  
22 hope that people understand that. Now, given that, we are  
23 going to go ahead and set a schedule here and expect people  
24 to comply with that schedule the best that they can.

25         And in a good faith effort to comply with the

1 schedule we'll deal with things that come up as they come  
2 up at the appropriate time. We are not going to talk now  
3 about what testimony's going to be admitted, except  
4 insofar as it reflects on the amount of hearing time that  
5 may be necessary.

6 Obviously, nobody's moved to admit anything right  
7 now, so we are not going to talk about that. But on the  
8 other hand, given that I do think that schedule, set for  
9 the 14th to the 17th is sufficient time in this case to  
10 have hearings. Now, we talked a little bit about whether  
11 party who signed the agreement would feel comfortable  
12 relying on their statements in support as instead, in lieu  
13 of testimony, and that's their decision.

14 I don't know if we should go ahead and set a date  
15 from which they could file testimony supporting it if they  
16 wish or if they simply would like to note portions of the  
17 prefiled testimony that address the concerns that are  
18 satisfied by the settlement.

19 I mean, there's another issue, too. There's a  
20 lot of testimony that's already been filed and hopefully we  
21 don't have to start from scratch on it. Mr. Mickens?

22 MR. MICKENS: Yes, Your Honor. I would think that  
23 all of the signatory parties should be afforded the  
24 opportunity to file their testimony the same way that PECO  
25 plans to do and under the same requirements of the

1 evaluation of that testimony.

2 JUDGE CHESTNUT: I am not sure. Is any party  
3 planning on filing testimony? Does any party plan to? If  
4 you do, then we'll reflect it in the record. I don't want  
5 to have a date here that nobody's going to need.

6 MR. BONNEY: PECO plans to do that.

7 JUDGE CHESTNUT: As long as there's one, that's  
8 all.

9 MR. MICKENS: If PECO files, then the other  
10 signatories obviously are going to need to file their  
11 testimony.

12 JUDGE CHESTNUT: Okay. Then let's go back and start  
13 the schedule from that basis. That there will be filing of  
14 testimony supporting the partial settlement agreement.  
15 Okay?

16 MR. CLEARFIELD: We have a date of September 17th,  
17 Your Honor, which --

18 JUDGE CHESTNUT: Can we move that up?

19 MR. CLEARFIELD: It's testimony that's already been  
20 submitted. We need to know what that testimony is so that  
21 we can understand what --

22 JUDGE CHESTNUT: So it's already been submitted. I  
23 think that's --

24 MR. BONNEY: We are talking about previously  
25 submitted testimony.

1 JUDGE CHESTNUT: You're talking about all of it.

2 MR. BONNEY: That was our intention, all of it with  
3 respect to the settled issues.

4 JUDGE CHESTNUT: I seem to remember that attached to  
5 your settlement you had a list of settlement issues with a  
6 designation of testimony.

7 MR. BONNEY: Yes.

8 JUDGE CHESTNUT: It was addressed to each. I think  
9 that would be sufficient. That's what you are intending to  
10 do.

11 MR. BONNEY: Yes, Your Honor. That's not with  
12 respect to unsettled issues, which are also issues that  
13 were appended to the settlement would be addressed in  
14 another schedule.

15 JUDGE CHESTNUT: Let's talk about the settlement  
16 schedule at this point. So you have your testimony.

17 MR. CLEARFIELD: Yes, Your Honor.

18 JUDGE CHESTNUT: You know what particular portions  
19 of it they are intending to apply directly to the  
20 settlement so that is not a problem for you, now.

21 MR. CLEARFIELD: That I don't believe we know. We  
22 don't know what --

23 MR. BANTA: Appendix H.

24 JUDGE RAINEY: Based on Appendix H.

25 MR. CLEARFIELD: That's the problem. There is an

1 ambiguity.

2 JUDGE RAINEY: I think that it would be appropriate  
3 for you to kind of pick and choose and try to figure out  
4 those topics that relate. They have designated -- that  
5 should be sufficient for you. Haven't they --

6 MR. BANTA: And basically it's all of their direct  
7 and all of their rebuttal.

8 JUDGE CHESTNUT: That's all right. You knew. You  
9 knew as of August 27.

10 MR. CLEARFIELD: If that's the representation then  
11 we have to -- we'll have to go forward on that basis. That  
12 was not my understanding. My understanding was that there  
13 would be, assume there would be portions of this testimony  
14 that would be relevant. If you are saying it's all there  
15 and we have to deal with that and that means that all of  
16 the testimony is at issue and we go back to my earlier  
17 comment that the time -- I want to understand, and I am not  
18 asking for additional comments, but I just note --

19 JUDGE CHESTNUT: I don't want to put any party in an  
20 unfair position here in terms of having to respond to  
21 something that's too -- Mr. Barak?

22 MR. BARAK: Sorry to raise the term relevance. What  
23 I anticipate happening, in view of the breadth of the  
24 testimony the company filed you are going to have to -- the  
25 attorneys probably stayed up all night crossing out the

1 portions we think aren't relevant and material to the  
2 settlement and you are going to have those kinds of oral  
3 motions alternative, you'll demand that we put that in  
4 writing, that will shift the burden to us to decide how  
5 they are making this deal. That's the difference.

6 JUDGE CHESTNUT: Don't anticipate what we are  
7 looking to. What I would like to do would have PECO  
8 designate which portions of its case as opposed to its  
9 general case, supports components of the settlement. I  
10 don't think that should be a problem. Is it, Mr. Bonney?

11 MR. CLEARFIELD: I would ask all the parties be  
12 requested to do that.

13 MR. BONNEY: All the signatories have done that.  
14 That's what's set forth in Appendix H of the settlement.

15 MS. MOURY: If I could just point out, Your Honor,  
16 that all of the parties here had the opportunity to file  
17 rebuttal testimony to PECO's direct case and all -- that is  
18 really all we are seeking to have put into the record. We  
19 are seeking to have our direct testimony, which was in  
20 response to PECO's and then our rebuttal in response to  
21 maybe other parties, what we'll be seeking to admit.

22 It's already been prepared and filed and all the  
23 parties at the table have had that same opportunity, and I  
24 would think everyone could move for admission of their  
25 testimony that they filed in response to PECO's direct

1 case.

2 JUDGE CHESTNUT: I think that makes a lot of sense,  
3 Ms. Moury.

4 MR. CLEARFIELD: I have the hearings would still be  
5 October 14 through 17. Is that how you established it?

6 JUDGE CHESTNUT: Well, you know, I don't want to get  
7 hung up here. I do want to come up with some kind of  
8 practical schedule. I would hope you would have been able  
9 to do it yourselves, but since you can't, do you want  
10 another opportunity to talk about it for a few minutes? Or  
11 is that a waste of time, again.

12 MR. BANTA: I think it would be helpful because  
13 there are, for example, some things we could resolve here.  
14 A lot of the testimony that appears on appendix H is very  
15 similar to the testimony of, virtually identical to the  
16 testimony that many of us spent two weeks in here cross  
17 examining in the securitization case. So maybe we can use  
18 some of that and expedite these hearings.

19 JUDGE CHESTNUT: Well, whatever. As far as  
20 testimony that's been filed, everybody has had a chance to  
21 respond to it. So there isn't any PECO direct testimony  
22 that has not been the subject of responsive testimony.

23 What we are talking about is through here is the  
24 settlement, and I think the parties who oppose it should  
25 have a chance to explain the basis for their opposition

1 just as the parties who support should have a chance to  
2 explain the basis for their position, too. I mean, we are  
3 talking -- isn't that really what we are talking about  
4 here?

5 MR. BONNEY: Yes.

6 MR. BANTA: And my only issue is cross examination,  
7 testing the credibility of the witnesses that are  
8 submitting this testimony.

9 JUDGE CHESTNUT: So where are we on this?

10 MR. CLEARFIELD: Your Honor, if you are going to  
11 keep the schedule, the hearings October 14 through 17, then  
12 we have briefs established for October 29, reply briefs  
13 November 5th. And as you said, you are not concerned about  
14 the rest of the schedule.

15 JUDGE CHESTNUT: That's right.

16 MR. CLEARFIELD: So that's the schedule.

17 JUDGE CHESTNUT: I missed your beginning. Where are  
18 we at the beginning of the schedule, just going back to  
19 your schedule on page 12?

20 MR. CLEARFIELD: I believe we have been looking at  
21 the schedule that was in our prehearing on page 12 and we  
22 have changed, you have changed the dates for our responsive  
23 testimony which is now September 24. Based on the  
24 colloquy, I believe what's occurred in terms of testimony  
25 in support of the settlement is that what signatories are

1 still going to rely on their statements and that the  
2 testimony that they have already submitted will be  
3 submitted into the record at this point and that that  
4 testimony is as listed on appendix H. That was my  
5 understanding.

6 JUDGE CHESTNUT: Is it possible for you to do a  
7 stipulation, Mr. Bonney, stating that the purpose or  
8 actually everybody, stating that the purpose of the  
9 introduction of your case in chief is to support the  
10 settlement?

11 MR. BONNEY: Yes, Your Honor.

12 JUDGE CHESTNUT: And that should the Commission  
13 reject the settlement and it's necessary to litigate, there  
14 shall be further hearings set. Would that satisfy  
15 everybody?

16 MR. BONNEY: I would hope that would limit the cross  
17 examination.

18 MR. CLEARFIELD: The only part I can't agree to is  
19 to state that's what the Commission would or would have to  
20 do if they took an action. I don't think they have --

21 JUDGE CHESTNUT: If settlement is not approved or I  
22 don't want to talk about approved but I think we all know  
23 what I am talking about here, which is to say the  
24 Commission acts on the signatory parties do not necessarily  
25 have to withdraw from the settlement. They may choose to

1 go ahead with it. And the settlement would still be  
2 effective. You could work out the wording and I think that  
3 would take care of a lot of concerns about the testimony  
4 being as it is. Any other comments on that?

5 MR. BONNEY: I was going to comment on timing of the  
6 schedule. We would hope that we move more quickly in the  
7 schedule that Mr. Clearfield put forward as far as the  
8 briefing and the reply briefing and the recommended  
9 decision if there is to be one. Perhaps we could even move  
10 the hearing to the week earlier if that would give us more  
11 time in briefing.

12 MR. CLEARFIELD: I am sorry, but we oppose that.

13 JUDGE CHESTNUT: I don't see that as being  
14 possible. I mean, I don't think Mr. Clearfield sees that  
15 as being possible, do you?

16 MR. CLEARFIELD: I am sorry. I am  
17 hyperventilating. We are going to receive surrebuttal from  
18 the signatory parties or PECO, I suppose, and we need to  
19 have adequate time to be able to examine that and respond,  
20 prepare for hearings on October 14.

21 JUDGE CHESTNUT: I don't see how you can move. If  
22 you are going to get surrebuttal testimony on the 12th I  
23 don't see how you can have hearings set on the 14th. Off  
24 the record.

25 (Discussion off the record.)

1 MR. CLEARFIELD: At this point we will not see any  
2 testimony specifically directed to issues in the settlement  
3 until that October 3rd date. The only thing we are going  
4 to be seeing prior to that is a representation that a 50  
5 page piece of testimony by a party supports --

6 JUDGE CHESTNUT: Mr. Clearfield, let's not be  
7 disingenuous. People are being patient. I know what's  
8 being said here, why it's been said, what the basis for it  
9 is, so.

10 MR. CLEARFIELD: I am not trying to be  
11 disingenuous. I apologize if it appeared that way. We  
12 have already established that we can look at this. There  
13 is no reason to change this and it would at this point, we  
14 squeezed every possible day out of this and I would ask  
15 that we resolve this issue by establishing this as the  
16 schedule.

17 JUDGE CHESTNUT: This still gets to the Commission  
18 early November.

19 MR. CLEARFIELD: That's correct. Before the --  
20 before Thanksgiving, no less.

21 JUDGE CHESTNUT: I'm not sure what relevance  
22 Thanksgiving is to this.

23 MR. BONNEY: That has to do with the recommended  
24 decision, unless I misread that.

25 MR. CLEARFIELD: I'm just presupposing that the

1 recommended decision would be eliminated because the  
2 Commission would accept the collective petition to --

3 JUDGE CHESTNUT: If nobody's going to oppose the  
4 elimination, the Commission is interested in what is --

5 MR. CLEARFIELD: I am sure that's not the case.

6 JUDGE CHESTNUT: I ask that that be done.

7 MR. BARAK: Since there are so many parties, could  
8 you just ask us here whether anybody opposes eliminating  
9 the recommended decision?

10 JUDGE CHESTNUT: I did that already.

11 MR. BARAK: I remember you talking about a  
12 petition. I wasn't clear what you were asking about. So  
13 we should have said our peace if we opposed that.

14 JUDGE CHESTNUT: Yes.

15 MR. BARAK: Thank you.

16 JUDGE CHESTNUT: Are you planning to oppose?

17 MR. BARAK: No.

18 JUDGE CHESTNUT: Yes.

19 MR. STEINMETZ: Your Honor, one point of  
20 clarification, the October 3rd surrebuttal, it's my  
21 understanding that that's basically responsive testimony of  
22 the signatories.

23 JUDGE CHESTNUT: Forget that, now. We are going  
24 back to the original schedule here, the way I understand.

25 MR. STEINMETZ: My concern is the administrative

1 schedule was submitted prior to our filing the  
2 surrebuttal.

3 JUDGE CHESTNUT: I know that.

4 MR. STEINMETZ: So at what point would we be filing  
5 that, if at all?

6 JUDGE CHESTNUT: Well, you wouldn't be. That's what  
7 we talked about. If for some reason the settlement does  
8 not become effective either because the Commission does not  
9 approve it or the Commission modifies it so that parties  
10 withdraw from it, then there would be no schedule set that  
11 would encompass the filing of the testimony that would have  
12 been filed had this schedule not be suspended and  
13 subsequent hearings on that.

14 Is everybody clear on that? Okay? Does that answer  
15 your question, Mr. Steinmetz?

16 MR. STEINMETZ: Yes, but at same time that the  
17 original direct and rebuttal would be admitted into the  
18 record --

19 JUDGE CHESTNUT: For the purpose we talked about,  
20 for the limited purpose that we talked about. So now, are  
21 we back to the schedule that's on page 12 of PECC or are we  
22 talking about --

23 MR. BONNEY: My point would be that we move it up  
24 and we adjust the date at the front to permit us to do  
25 that, make the hearing earlier than the 13th through the

1 17th.

2 MR. CLEARFIELD: And Your Honor, I would oppose  
3 that. I see no reason to do that and I would ask that we  
4 go back to the date that we originally proposed, September  
5 29, October 8 and hearings October 14 through 17th. That  
6 gives the Commission this case on November 5th, assuming  
7 they eliminate the recommended decision.

8 MR. BONNEY: Perhaps, Your Honor, the 8th through  
9 the 10th and a hearing over to the 13th if necessary.

10 MR. CLEARFIELD: There's no reason for that other  
11 than to try to eliminate our ability to respond to the  
12 settlement. I think there's absolutely no reason. I  
13 haven't heard a reason.

14 MR. BONNEY: Our reason just to --

15 MR. HAVER: I resent what Mr. Clearfield continues  
16 to say, there's no interest.

17 JUDGE CHESTNUT: I understand Mr. Haver. But please  
18 --

19 MR. HAVER: I'd like him to refrain from this. I  
20 have to be honest. This is ridiculous. Poor people have  
21 an interest in this settlement being done as quickly as  
22 possible. And for him to suggest otherwise is just  
23 downright wrong.

24 JUDGE CHESTNUT: Thank you. It's not just poor  
25 people. I think all PECO customers would like to see this

1 resolved some way.

2 MR. CLEARFIELD: The basis for any statement was  
3 that regardless of whether we change the dates, the  
4 decision would be before the Commission at the same time,  
5 which is early November, assuming they accepted the -- it  
6 accepted the motion to eliminate the recommended decision.

7 So that is why it makes sense to afford the parties  
8 adequate opportunity to respond to the testimony. It  
9 doesn't delay in any way the ultimate resolution of the  
10 case by the Commission.

11 JUDGE CHESTNUT: All right. I think we have talked  
12 enough about this. Here is the way that it's going to be.  
13 We are going to go back to Mr. Clearfield's schedule.

14 We are going to look at September 17th if signatory  
15 parties wish to file testimony specifically addressed to  
16 the settlement or to designate portions of their prefiled  
17 testimony that they feel is specifically addressed to the  
18 testimony, they must file that on or before September  
19 17th. Okay? Then if there's testimony specifically  
20 opposing the settlement or there is parties wish to  
21 designate prefiled testimony which they feel opposes the  
22 specific settlement that would be filed on or before  
23 September 29th.

24 Now, surrebuttal testimony will be filed, will be  
25 directed only to the settlement. Will be filed October

1 8th. And then hearings would be October 14th through  
2 17th. Briefs as indicated in the settlement, main briefs  
3 October 29th, reply briefs, November 5th. Okay.

4 Now unless somebody has a real, real problem, if  
5 somebody has a real date that now that hasn't been already  
6 addressed, hasn't been already raised?

7 (No response.)

8 JUDGE CHESTNUT: That's the schedule we are going to  
9 go with, with respect to settlement.

10 MR. GORDON SMITH: Your Honor, the testimony dates,  
11 are those in-hand dates?

12 JUDGE CHESTNUT: They are in-hand dates, yes. And I  
13 should add that the hearings will be in Philadelphia as per  
14 the original schedule. Does anybody have a comment on that  
15 that's an appropriate comment and not a --

16 MR. BARAK: Not an argument? We just request if  
17 there is a way we can exchange testimony and exhibits, all  
18 that sort of thing, interrogatories, electronically, that  
19 could be in real time and very effective, I think we have  
20 already experienced that.

21 JUDGE CHESTNUT: You can talk to each other and  
22 arrange that. I certainly would not disapprove of any  
23 efficiency on parties' part.

24 MR. BONNEY: As indicated in our prehearing  
25 conference memo, we asked parties to reply or make best

1 efforts to reply in five days, in light of the schedule.

2 Otherwise --

3 MR. CLEARFIELD: We'll endeavor to do that.

4 JUDGE CHESTNUT: Pardon?

5 MR. CLEARFIELD: We'll endeavor to do that.

6 JUDGE CHESTNUT: I do expect everybody to do their  
7 best efforts in regard to the schedule. I recognize that  
8 it's not that tight, but it's not a liberal schedule,  
9 either. Now, that takes care of the settlement.

10 Can we all agree on the non-settled issues, I guess  
11 the expectation is that the Commission will address that  
12 when it addresses the petition that will be filed. Right?  
13 That does address all the issues? All the outstanding  
14 issues?

15 MR. CLEARFIELD: Your Honor, I would prefer if we  
16 established the schedule assuming those issues would be --

17 JUDGE CHESTNUT: Sure, we'll do that, recognizing  
18 the Commission has the ultimate say over how any issue is  
19 addressed. Also that would supercede anything we do here.

20 MR. CLEARFIELD: Absolutely.

21 MR. BONNEY: Your Honor, did you want to schedule  
22 public input hearings in connection.

23 JUDGE CHESTNUT: We'll talk about that once we get  
24 this settlement because, of course, we have some public  
25 inputs. Now, I guess is everybody in agreement that we

1 would follow the schedule on page 11 of PECC's memorandum  
2 for the outstanding issues?

3 MR. BONNEY: With the caveats that we expressed  
4 before, Your Honor, elimination of the first two items and  
5 changing October 27th to the 10th.

6 JUDGE CHESTNUT: Anybody have a problem with that?

7 MR. CLEARFIELD: That's fine.

8 MR. GORDON SMITH: Repeat the changes to the  
9 schedule.

10 JUDGE CHESTNUT: Sure. If you look at schedule page  
11 11 -- do you have that?

12 MR. GORDON SMITH: I don't have it.

13 JUDGE CHESTNUT: I would suggest you get a copy from  
14 Mr. Clearfield.

15 JUDGE CHESTNUT: We have dropped the first two items  
16 because they are related to the settlement we have changed  
17 filing dates for surrebuttal testimony on unsettled issues  
18 to October 10. And I think we just continue with the rest  
19 of the schedule. Okay?

20 MR. NEWTON: I am sorry, Your Honor. I didn't hear  
21 what the change was that you just made.

22 JUDGE CHESTNUT: I was -- we dropped the first two  
23 items. September 22nd and October 20th and we changed the  
24 third item from October 27th to October 10th which is the  
25 filing date for the surrebuttal testimony on the unsettled

1 issues, not all. Any other questions on this part of the  
2 scheduling process?

3 (No response.)

4 JUDGE CHESTNUT: Okay. Then let's talk about public  
5 inputs. When do you want to have them? Given the schedule  
6 that we have just adopted here, I know your proposed  
7 schedule had a date time. I am sorry, Mr. Clearfield.

8 MR. CLEARFIELD: I'm sorry. Your Honor. I don't  
9 think any of us noticed this, other than Mr. Gornish, my  
10 colleague, if we examine the two schedules we have now put  
11 together, hearings are from the third -- Mr. Gornish, why  
12 don't you just --

13 MR. GORNISH: The way we have it is the second case  
14 the hearings are the 3rd to the 8th, whereas the reply  
15 briefs are due on the 5th in the first case. It would seem  
16 that in the middle of the hearing we have a problem.

17 JUDGE CHESTNUT: I guess you have got to write  
18 fast.

19 MR. GORNISH: Well. I think it might make sense  
20 just to move the hearing to the next week or --

21 JUDGE CHESTNUT: Do we really need a full week of  
22 hearings?

23 MR. GORNISH: I don't know if you need a full week.  
24 The week that was proposed, assuming we were having  
25 everything --

1 JUDGE CHESTNUT: I don't want to move it back to the  
2 next week?

3 MR. CLEARFIELD: If we could, Your Honor.

4 JUDGE CHESTNUT: Why can't we have it from the 12th  
5 to the 14th? Would that be --

6 MR. CLEARFIELD: You want to just leave the  
7 remaining replies that way? Otherwise we. That still give  
8 us plenty of time to file our main briefs on December 5.  
9 More than enough time if we do have to file them.

10 JUDGE CHESTNUT: Everything straight, then. Then  
11 the next issue, the question of public input hearings. In  
12 the signatories' proposed schedule there was a daytime in  
13 Philadelphia and then an afternoon the same day in Media.  
14 Does anybody have a problem with having a public input  
15 hearing in Philadelphia and Media?

16 We have not had requests from any place or anybody  
17 to have them any place else. So that's okay with us. In  
18 terms of the schedule now that we have adopted, since you  
19 people are the ones, you know, really most affected, do you  
20 have a particular time and date that you'd like to have  
21 that?

22 Let me add that Senator Bell has indicated that  
23 because of the Legislative schedule, he would prefer them  
24 on a Wednesday, Thursday or Friday. But of course,  
25 Commissioner Brownell has also expressed interest in

1 attending and Thursdays are a problem for her.

2 MR. CLEARFIELD: As well as Wednesday.

3 MR. CLARK: Your Honor, as my clients, in the past,  
4 had trouble attending only daytime hearings, could we have  
5 a evening scheduled hearing.

6 JUDGE CHESTNUT: Okay. Like where?

7 MR. CLARK: The places are fine. It's not that.  
8 I'm saying we could do maybe an afternoon and evening  
9 session.

10 JUDGE CHESTNUT: We are not going to have an  
11 afternoon at both. I don't think that's necessary, now. I  
12 certainly think it's appropriate to have an evening public  
13 input, though.

14 MR. CLARK: That's my only point.

15 MR. HAVER: Your Honor in the past, if I may, in the  
16 past what I think the Commission has done is scheduled late  
17 afternoon, early evening so it's not too much of a drain on  
18 the staff of the Commission but it also gives people who  
19 are coming after work an opportunity. I don't know if  
20 that's something you want to consider.

21 JUDGE CHESTNUT: I thought four o'clock was actually  
22 a good time. It is dinner time, but it does take that in  
23 daytime plus early evening.

24 MR. HAVER: If it were set for a set time and people  
25 weren't there continuously, that it stayed open so people

1 wanting to come in the afternoon could come and people who  
2 wanted to come in the evening could come.

3 JUDGE CHESTNUT: We are not going to have an all day  
4 public input.

5 MR. CLARK: Four to seven.

6 MS. HARRIS: I was not suggesting all day. I was  
7 suggesting four to seven, four to seven thirty, either make  
8 one or the other place, when you put an extended -- when  
9 you say like four to seven because what if two people show  
10 up and it's over at 4:20. Then folks say well, you said  
11 four to seven. I think we should have a specific time that  
12 it starts. Whoever is there, they speak and it lasts for  
13 as long as the folks are there.

14 MR. HAVER: I don't want to belabor it. The only  
15 reason for doing it to get people who are not working make  
16 it safe for them to come during the daylight hours. The  
17 evening people who are working and cannot attend during the  
18 daytime. That's the only reason. I certainly recognize  
19 the difficulty that sometimes it's four to five people are  
20 there and five to six, no one's there. People start coming  
21 at 6:30. I recognize the difficulty. I don't know how  
22 else you address.

23 JUDGE CHESTNUT: I think if you schedule them for  
24 four and seven, people can use their down time more  
25 productively, rather than sitting, waiting for someone who

1 may or may not show up. I appreciate your bringing it to  
2 our attention. I have spent many evenings in a lot of fire  
3 halls sitting there until 10:30.

4 Does anybody have a specific proposal in terms of  
5 when and where and how and who?

6 MR. MICKENS: Your Honor, is the proposal for  
7 October 6, is that out now because of the request?

8 JUDGE CHESTNUT: Maybe not.

9 MR. COHEN: Actually Wednesday is the 8th. October  
10 6th is a Monday.

11 MR. CLEARFIELD: How about Wednesday the 8th?

12 JUDGE CHESTNUT: That --

13 MR. HERSHEY: Your Honor, the other --

14 MR. BONNEY: How about the 22nd, Your Honor?

15 JUDGE CHESTNUT: I'm sorry, Mr. Hershey. Did you  
16 want to say --

17 MR. HERSHEY: The only point I want to make is the  
18 one principal is in order for the public to be fully  
19 informed at least through the Media as to what the  
20 positions of the parties are, the idea would be to have the  
21 public hearings after the principal filings and  
22 articulation of positions.

23 So that they can hear at least the coverage of the  
24 formal filings. I think Mr. Bonney's suggestion of the  
25 22nd would suit that.

1 JUDGE CHESTNUT: You are talking about October  
2 22nd?

3 MR. HERSHEY: Yes.

4 MR. HERSHEY: I want to note that I also concur in  
5 the 22nd.

6 JUDGE CHESTNUT: What are we talking about having on  
7 the 22nd, same type of Media -- Philadelphia at eleven or  
8 Media at four or are we talking about additional ones?

9 MR. BONNEY: What you have just described is okay  
10 with us.

11 JUDGE CHESTNUT: Nobody has a problem --

12 MR. CLARK: Your Honor, we --

13 JUDGE CHESTNUT: That addresses Senator Bell's  
14 accommodation, the Wednesday, Thursday or Friday. And also  
15 addresses maybe Commissioner Brownell could make it.

16 MR. CLARK: I like Mr. Haver's view of leaving it  
17 open from four to seven. If that's a problem, why don't we  
18 sit at four and at seven so that we can then get those  
19 later evening people after dinner.

20 JUDGE CHESTNUT: We won't do it continuously from  
21 four to seven.

22 MR. CLARK: I am saying if it's set for four to five  
23 we could go and come back at 7:00.

24 JUDGE CHESTNUT: Have it in Philadelphia at eleven,  
25 one at four and one in Media at seven?

1 MR. CLARK: Yes.

2 JUDGE CHESTNUT: We --

3 MR. HAVER: If I may, could we just flip that  
4 because right now for the other counties, it would be  
5 easier to come into Philadelphia than it would to go to  
6 Media so if we could -- if we were to look through the  
7 people who attend the public hearings in Media a number of  
8 them were retired.

9 It would be easier for them to attend the day and if  
10 we were to have the afternoon and evening hearing in  
11 Philadelphia it would be make it easier for people to get  
12 from Bucks, Montgomery, and Chester County to get into  
13 Philadelphia.

14 JUDGE CHESTNUT: I think people from other areas  
15 would be less likely to go to Philadelphia at night than  
16 they would be to Media.

17 MR. HERSHEY: It might be, if they drive.

18 JUDGE CHESTNUT: I think most of them would drive.

19 MR HAVER: It's certainly your call. I am just  
20 suggesting that you look at the testimony of people who are  
21 at the Media hearing I think you would see that the  
22 majority of them testified that they were retired and that  
23 people who tend to come in the evening tend to be people  
24 who are working you will find the broad generalization is  
25 true. But that would be the way it came out.

1 JUDGE CHESTNUT: So it would be necessary, then -- I  
2 don't think it would be nice to have two in Philadelphia,  
3 then. I think seven should accommodate Philadelphia. If  
4 we have in Media at 11 and 7:00 o'clock I think is probably  
5 early enough for people in Philadelphia to come, isn't it?  
6 As well as people at -- I would think one and four and  
7 seven is almost overkill.

8 MR. HERSHEY: Seniors won't come out in the evening.

9 MR. CLEARFIELD: Media at eleven and Media at  
10 seven?

11 JUDGE CHESTNUT: I think Mr. Hershey was saying  
12 there should be a daytime one in Philadelphia. Are you  
13 saying seven is too late?

14 MR. HERSHEY: For seniors, yes.

15 MR. BANTA: The original schedule that was proposed  
16 by the parties had the public input in Philadelphia at  
17 11:00 and Media at 4:00 p.m. and I assumed that was agreed  
18 upon.

19 MR. MICKENS: That's right. It was.

20 MR. STEINMETZ: That's correct.

21 MR. HAVER: I would certainly withdraw my  
22 objections, just say seven o'clock at Philadelphia and  
23 we'll do the best to get people there. There does have to  
24 be some opportunity for people who are working to be able  
25 to attend. If you feel it's safe for people coming from

1 Media, although I don't share that belief.

2 JUDGE CHESTNUT: I am not talking about beliefs. I  
3 am talking about conceptions.

4 MR. HAVER: I think it's better for people to come  
5 to Philadelphia. But that being the case it's easy for  
6 them to get to the train station. People can use SEPTA and  
7 maybe use them and say that they saved money by having  
8 lower fares.

9 JUDGE CHESTNUT: Let's go with what you agreed to.  
10 Let's flip them as Mr. Haver suggested, which is we'll go  
11 with eleven and seven on October 22nd. The 11:00 o'clock  
12 in Media, the 7:00 o'clock in Philadelphia. And that  
13 should be sufficient time to get notice out concerning  
14 them.

15 MR. CLARK: Your Honor, that issue public notice at  
16 the beginning of this case, the company was very  
17 cooperative in working together with the other parties in  
18 the drafting of that notice so I would hope that that would  
19 happen again.

20 JUDGE CHESTNUT: I am sure that they will.

21 MR. BONNEY: Yes.

22 JUDGE CHESTNUT: Mr. Haver?

23 MR. HAVER: I have one more point. If the  
24 Commission wants to hold the public hearings in the State  
25 Office Building, I would like to call your attention to the

1 fact that the elevator, there are only two elevators that  
2 go to the penthouse to the hearing --

3 JUDGE CHESTNUT: We'll do the best we can, Mr.  
4 Haver, in terms of accommodating people.

5 MR. HAVER: The point I was trying to make, Your  
6 Honor, is there is no sign in the lobby that tells people  
7 that and the staff of the office building has said --

8 JUDGE CHESTNUT: We'll take care of that, Mr.  
9 Haver. Thank you.

10 JUDGE CHESTNUT: Anything further, then, before this  
11 prehearing is adjourned?

12 (No response.)

13 MR. BONNEY: Only thing, Your Honor not to belabor  
14 this, but I understood that no one objected to the petition  
15 that would be filed regarding the foregoing of the  
16 recommended decision and I was just going to add that as a  
17 representation that it was discussed at the prehearing  
18 conference and no party objected. I just wanted to make  
19 sure no one is surprised when they see it.

20 JUDGE RAINEY: Their petition was both dispense with  
21 the recommended decision as well as dealing with the  
22 outstanding issues in other proceedings.

23 MR. BONNEY: Two different petitions.

24 MR. BONNEY: Yes. And only with the recommended  
25 decision that I understand we have that eliminated.

1 JUDGE CHESTNUT: Anything further? Mr. Haver.

2 MR. HAVER: I have had a couple questions about how  
3 you want information on the internet sited. For instance,  
4 Enron's posting on the internet electricity they are  
5 selling one to two cents a kilowatt. What's the correct  
6 cite for that?

7 JUDGE CHESTNUT: I have no idea.

8 MR. HAVER: Will you take disks as part of the  
9 filing?

10 JUDGE CHESTNUT: I don't understand your question.  
11 You would submit testimony stating on X date and X time on  
12 their web site at they are proposing electricity prices.

13 MR. HAVER: That would be --

14 JUDGE CHESTNUT: I don't need it put on the site.

15 MR. HERSHEY: Just to make sure, let's follow up  
16 with the second petition. Does anybody object to the  
17 second petition that will be filed with the Commission?

18 MR. CLEARFIELD: Yes. At this point we do object.

19 MR. HERSHEY: So we cannot represent there is no  
20 objection on the second but we can on the first.

21 MR. CLEARFIELD: The second petition being  
22 generically --

23 MR. HERSHEY: Yes. That's right.

24 JUDGE CHESTNUT: Does anybody have any --

25 MR. HERSHEY: You only object to the generic part.

1 You do not object to foregoing the recommended decision?

2 MR. CLEARFIELD: That's right.

3 JUDGE CHESTNUT: Does anybody have any further  
4 issues before this prehearing conference is adjourned?

5 (No response.)

6 JUDGE CHESTNUT: Thank you very much.

7 (Whereupon, at 12:20 p.m., the prehearing conference  
8 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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