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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. For approval of its  
restructuring plan under Section 2806 of the  
Public Utility Code. Further Hearing.

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Philadelphia, Pennsylvania  
October 15, 1997

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Pages 667 to 942, inclusive

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1           JUDGE RAINEY: Good morning. My name is  
2 Charles Rainey, and along with me is Marlane  
3 Chestnut. We are the Administrative Law Judges who  
4 have been assigned to this case, and this is the  
5 case of Pennsylvania Public Utility Commission  
6 versus PECO Energy Company at Docket Number  
7 R-00933953, R-00973953C0001 through C0007.

8           I note for the record the appearances of  
9 William T. Hawke and Janet Miller on behalf of Mid-  
10 Atlantic Power Supply Association; Bernard Ryan on  
11 behalf of the Office of Small Business Advocate;  
12 Noel Trask, Paul Bonney and Ward Smith on behalf of  
13 PECO Energy Company; Steven Steinmetz on behalf of  
14 the Office of Consumer Advocate; Joelle Ogg on  
15 behalf of Duke Energy Electric Clearinghouse and  
16 NorAm Energy Management; Kenneth Mickens on behalf  
17 of the Office of Trial Staff; Paul Nordstrom on  
18 behalf of Allegheny Power; Dan Clearfield and Gerald  
19 Gornish on behalf of Enron; Craig Doll on behalf of  
20 Conectiv Energy; David Kleppinger on behalf of  
21 Philadelphia Area Industrial Energy Users Group; Joe  
22 Dworetzky on behalf of New Energy Ventures; and Lisa  
23 Helpert on behalf of PP&L, Incorporated.

24           Today marks the second evidentiary hearing in  
25 this case. Yesterday we heard from four witnesses,

1 and four witnesses are scheduled to present  
2 testimony today. The first witness is  
3 Mr. Johnstone.

4 Mr. Johnstone, would you stand and raise your  
5 right hand, please.

6 DONALD E. JOHNSTONE, called as a witness,  
7 having been duly sworn, was examined and testified  
8 as follows:

9 JUDGE RAINEY: Please be seated. Give your  
10 full name and address for the record.

11 THE WITNESS: My name is Donald E. Johnstone.  
12 My address is 1215 Fern Ridge Parkway, St. Louis,  
13 Missouri.

14 JUDGE RAINEY: Thank you. Counsel please  
15 proceed.

16 MR. HAWKE: Yes, Your Honor. Mr. Johnstone  
17 has before him three statements, which have been  
18 previously distributed to the parties, and two have  
19 been given to the reporter today. The statements  
20 have been designated Numbers 1, 1-R, and 1-S.

21 Statement 1 has one appendix designated  
22 Appendix A and two exhibits designated DEJ-1 and  
23 DEJ-2. There are no exhibits for Statement 1-R.  
24 There are two exhibits for Statement 1-S: DEJ-1S  
25 and DEJ-2S.

DIRECT EXAMINATION

1  
2 BY MR. HAWKE:

3 Q. Mr. Johnstone, do you have those  
4 statements and exhibits before you?

5 A. Yes, I do.

6 Q. And these statements contain a series of  
7 Qs and As. If I were to ask you the Qs and the As  
8 today, would your answers as reflected on those  
9 statements be the same?

10 A. Yes, they would.

11 Q. Do you have any corrections or additions?

12 A. No.

13 MR. HAWKE: With that, Your Honor, I would  
14 offer them into the record subject to cross-  
15 examination.

16 JUDGE RAINEY: Any objections?

17 (No audible response)

18 JUDGE RAINEY: So admitted.

19 (MAPSA Statement Numbers 1, 1-R, and 1-S were  
20 produced, marked, and admitted into  
evidence.)

21 JUDGE RAINEY: Cross-examination.

22 MR. TRASK: Yes, Your Honor.

23 JUDGE RAINEY: Please proceed.

CROSS-EXAMINATION

24  
25 BY MR. TRASK:

1 Q. Good morning, Mr. Johnstone. I'm Noel  
2 Trask, and I'm one of PECO's attorneys.

3 A. Good morning.

4 Q. Mr. Johnstone, you are an electrical  
5 engineer by training?

6 A. Yes, sir.

7 Q. At the beginning of your career, you  
8 worked for a utility for a few years?

9 A. That's correct.

10 Q. And at that utility you did load  
11 forecasting and planning?

12 A. That's correct.

13 Q. How long ago was that?

14 A. From 1973 through 1981. Approximately  
15 seven years.

16 Q. And since then you've been a consultant  
17 with Drazen-Brubaker and then after that Brubaker  
18 and Associates?

19 A. That's correct.

20 Q. Would it be correct to say that your work  
21 has primarily been cost of service and cost  
22 allocation in traditional regulated rate cases?

23 A. That's been a good part of the work.  
24 There have been dockets dealing with policy issues.  
25 There have been projects for clients dealing with

1 energy costs associated with various location, plant  
2 location type studies. That would be the general  
3 character of it.

4 Q. So it would be correct to say that a  
5 significant amount of the work you've done in your--  
6 What is it?--16 years as a consultant has had to do  
7 with cost of service and cost allocation in  
8 traditional rate cases?

9 A. Yes.

10 Q. Is it correct to assume that, while at  
11 Drazen-Brubaker or Brubaker and Associates, your job  
12 responsibilities did not include the purchase or  
13 sale of electric energy and/or capacity?

14 A. That's correct.

15 Q. Is that also true of the utility you  
16 worked for before Brubaker?

17 A. In the sense of dealing with the market  
18 on a day-to-day basis, that's certainly true.

19 Q. Do you have any formal undergraduate or  
20 graduate degree in the field of economics?

21 A. My undergraduate degree is in electric  
22 engineering. My master's degree is in business  
23 administration.

24 Q. So you don't have any formal degree in  
25 economics?

1 A. That's correct.

2 Q. Do you consider yourself to be an expert  
3 in economics or in antitrust analysis?

4 A. I suppose it depends on your definition  
5 of expert. I don't know what the definition is in  
6 this jurisdiction. But certainly an above-average  
7 knowledge of those fields.

8 Q. Based on your definition of an expert,  
9 would you consider yourself an expert in economics  
10 or antitrust analysis?

11 A. Most often I have found the term expert  
12 to be defined as somebody with an above-average  
13 knowledge, and certainly with that definition I  
14 would consider myself expert.

15 Q. Do you know what discipline within the  
16 field of economics is concerned with the study of  
17 market performance and competition?

18 A. You're talking about -- I'm not sure  
19 that I follow your question.

20 Q. What is the discipline called within the  
21 field of economics that is concerned with the study  
22 of market performance and competition?

23 A. I don't know.

24 Q. Have you performed any independent  
25 analyses to project the wholesale price of energy

1 and capacity in the PJM area during the period of  
2 time encompassed by the partial settlement?

3 A. No, I have not.

4 Q. Are you aware of any such analyses  
5 performed by any MAPSA member?

6 A. I am not aware of any.

7 Q. Did you ask any MAPSA member if they had  
8 conducted any such analyses?

9 A. No.

10 Q. By the way, do you know who the members  
11 of MAPSA are? Can you tell us now who the members  
12 of MAPSA are?

13 A. I understand that they're a group of  
14 suppliers and marketers. I do not have a list of  
15 all the members with me.

16 Q. Do you know who any of them are?

17 A. Yes.

18 Q. Can you list the ones that you're aware  
19 of?

20 A. The ones that I'm aware of would be  
21 Du Pont Power Marketing, Enron. Who else? Eastern  
22 Associates, CNG Energy.

23 Q. As you prepared your testimony or for  
24 these hearings, did you talk with any people who  
25 work for any of the companies you just listed?

1 A. Yes.

2 Q. Who did you talk to?

3 A. I talked with all four of those with  
4 respect to the direct testimony. With respect to  
5 the additional, Enron did not participate in the  
6 conversations. And I do not believe -- I'm trying  
7 to recall. The parties were provided a copy of the  
8 draft rebuttal, and I don't recall which of them  
9 might have been on call to discuss that.

10 Q. Did you ask any of them what costs they  
11 anticipate having to incur to serve retail  
12 customers?

13 A. That is a topic that we discussed, yes.

14 Q. Did you ask any of them what profit  
15 margins they are anticipating?

16 A. The discussions went to what might be  
17 what I've characterized in my testimony as retail  
18 business costs. Inasmuch as these people are  
19 competitors with one another, they did not provide  
20 me with that information. So I asked the questions.  
21 We discussed the issue, but there were no specific  
22 answers forthcoming.

23 Q. Did you ask them for information  
24 regarding what offers they made to customers or they  
25 have made to customers for service during the

1 Pennsylvania pilots?

2 A. I did not.

3 Q. How about offers for service after the  
4 pilots during the transition period? Did you ask  
5 them about offers they made for service during that  
6 period?

7 A. I did not.

8 Q. Did you ask any of them whether they  
9 would be willing to or whether they expect to sell  
10 power to a residential customer for 4.38 cents per  
11 kilowatt hour during 1999?

12 A. I did not.

13 Q. Have you undertaken any study for MAPSA  
14 members to identify the financial impact on any of  
15 them of the proposals you've made through your  
16 additional testimony, in particular?

17 A. No.

18 Q. How about the partial settlement? Have  
19 you undertaken any study for MAPSA members to  
20 identify the financial impact on them of that?

21 A. I have not.

22 Q. In your conversations with the MAPSA  
23 members that you spoke with, did you ask any of them  
24 what other services or products they intend to offer  
25 with their energy sales?

1 A. No.

2 Q. So you didn't have any opportunity to ask  
3 them how much money they might intend to make on  
4 such sales since you didn't talk to them?

5 A. That's correct.

6 Q. I'd like to ask you a few questions about  
7 one of the exhibits to your additional testimony,  
8 and that would be DEJ-2S, Exhibit DEJ-2S.

9 MR. HAWKE: Your Honor, before we proceed,  
10 the last line of questions concerning the  
11 conversations with individual MAPSA members, I think  
12 it's appropriate for the record to reflect that  
13 MAPSA is a corporation and the members are board  
14 members. As long as the record reflects that, I  
15 don't have any objection to the particular  
16 questions.

17 JUDGE RAINEY: Thank you for that  
18 clarification, Mr. Hawke.

19 BY MR. TRASK:

20 Q. Mr. Johnstone, I'm going to ask you some  
21 questions about Exhibit DEJ-2S. Is this your workup  
22 of a generation rate for a residential customer for  
23 the year 1999?

24 A. Yes, it is.

25 Q. Are you participating in other

1 Pennsylvania restructuring proceedings?

2 A. Yes.

3 Q. Could you identify the proceedings in  
4 which you're participating?

5 A. Pennsylvania Power & Light.

6 Q. Are you aware of any witness in this or  
7 any other restructuring proceeding in Pennsylvania  
8 who has calculated a generation rate that even  
9 approaches 4.38 cents for 1999?

10 A. I have not looked at that. I think most  
11 of the testimony has been in the context of the  
12 system average or the wholesale market cost. So,  
13 really, the bulk of the numbers go to that point,  
14 and there has not been a lot on the particular  
15 residential rate.

16 Q. Does that mean that your answer is that  
17 you are not aware of anybody who has calculated a  
18 generation rate component that approaches 4.38 cents  
19 for a residential customer for 1999?

20 A. I don't know about approaching it. I  
21 think the others are all lower.

22 Q. All right. On DEJ-2S, your Line 6, you  
23 have the market cost of capacity as \$42.

24 A. That's the market cost of new capacity.

25 Q. Market cost of new capacity. \$42 is \$42

1 a kilowatt year?

2 A. Yes, it is.

3 Q. Is your basis for this number the  
4 carrying cost of a new combustion turbine?

5 A. Yes, it is.

6 Q. Is it your testimony that MAPSA members  
7 will charge retail customers \$42 a kilowatt year for  
8 capacity in 1999?

9 A. It's my testimony that, if the excess  
10 capacity that is currently forecast were not to  
11 exist, then this would represent something like the  
12 market price at that point in time. So it depends  
13 on the market conditions in 1999. It very well  
14 could be the price; but based on the current  
15 forecasts, to the extent that they play out, the  
16 market price would be less.

17 Q. Have you asked any of the MAPSA members  
18 with whom you spoke whether they have offered to  
19 sell capacity in 1999 and, if so, at what price?

20 A. I did not ask them that.

21 Q. Have you performed any independent  
22 analysis of projected loads and resources in the PJM  
23 system to determine whether or not the market will  
24 be in equilibrium in 1999?

25 A. I have reviewed the various testimonies,

1 but I have prepared no independent forecast.

2 Q. Getting back to the exhibit, if you look  
3 at Line 14, there you have an item called retail  
4 business costs, and I think you have .48 cents.

5 A. Yes.

6 Q. That's .48 cents per kilowatt hour?

7 A. That's correct.

8 Q. On Page 7 of the testimony -- Strike  
9 that. Are these costs that you believe suppliers  
10 will have to incur to serve retail load?

11 A. Yes.

12 Q. On Page 7 of your testimony, you list  
13 some of them, do you not?

14 A. Yes.

15 Q. And they include things like marketing  
16 costs, the costs associated with the back-office  
17 operations that you have to do, like energy  
18 purchasing and scheduling; is that correct?

19 A. Yes.

20 Q. Incidentally, does this .48-cent figure  
21 include any profit margin?

22 A. No.

23 Q. So does that mean that you don't think a  
24 MAPSA member could make a profit even if they sell  
25 energy at 4.38 cents a kilowatt hour in 1999 to a

1 residential customer?

2 A. That depends entirely on the market at  
3 that point in time and on the actual level of cost  
4 incurred by an individual company that's in that  
5 market.

6 Q. Does that mean that you don't necessarily  
7 think that this is what a supplier is going to have  
8 to charge a residential customer, 4.38 cents, in  
9 1999?

10 A. That's correct.

11 Q. Am I correct that the .48-cent figure for  
12 retail business costs, was that derived exclusively  
13 from your review of 1996 data for PECO Energy  
14 Company?

15 A. Yes. That's correct.

16 Q. Did you make any inquiry of the MAPSA  
17 members with whom you spoke to determine what they  
18 thought their level of retail business costs would  
19 be?

20 A. We talked about that; and as I mentioned  
21 earlier, inasmuch as they're competitors, the  
22 thought was we really could not have substantive  
23 comments and discussions on what their costs would  
24 be.

25 So we discussed the subject, but under the

1 conditions, it was felt that the best that I could  
2 do would be to develop an independent estimate. In  
3 order to do that, I went to the company's '96 study,  
4 as you pointed out.

5 Q. Wouldn't you agree that it would be  
6 better to use costs that competitive suppliers  
7 estimate that they will incur to serve retail load  
8 if you could get that information from them or some  
9 other source?

10 A. Yes.

11 Q. I'd like to ask you a few questions about  
12 the first schedule in your additional testimony. I  
13 think you call this DEJ-1S, Schedule A. Is that  
14 correct?

15 A. It's simply DEJ-1S.

16 Q. Okay. Referring to Schedule A of that  
17 exhibit -- Schedule A is part of that exhibit?

18 A. Yes, it is.

19 Q. This is your recommended replacement for  
20 Table A as it appears in the partial settlement?

21 A. This is MAPSA's counterproposal to that  
22 Table A in the partial settlement.

23 Q. The column entitled Standard Offer, is  
24 that the price each year that PECO would charge  
25 customers for energy if they didn't get their energy

1 and capacity from a competitive supplier?

2 A. That's my understanding.

3 Q. And, conversely, if a customer obtained  
4 energy from a competitive supplier, the customer  
5 would not pay PECO that amount?

6 A. Yes.

7 Q. These numbers that you list under the  
8 Standard Offer, these aren't based on any  
9 calculations or projections of retail market prices  
10 for energy and capacity that you made; is that  
11 correct?

12 A. That's correct.

13 Q. Just so that I understand, what you did  
14 to develop this schedule, you took the total credit  
15 that the Commission approved for PECO's pilot  
16 program and escalated that total credit by three  
17 percent per year for inflation?

18 A. That's correct.

19 Q. Do you understand that the Commission  
20 ordered PECO to create two different credits from  
21 its rates?

22 A. Yes.

23 Q. And one was the market generation credit?

24 A. Yes.

25 Q. That was an amount that the Commission

1 thought represented the full commodity costs that  
2 suppliers will have to incur to be able to serve  
3 retail load?

4 A. Yes.

5 Q. In addition to that credit, there was  
6 also something called the customer participation  
7 credit?

8 A. Yes.

9 Q. Just so we understand, you added those  
10 two credits together--the market generation credit  
11 and the customer participation credit; and that's  
12 what you used to develop the standard offer on  
13 Schedule A?

14 A. The only qualification I would give you  
15 is this. This is a counterproposal prepared by  
16 MAPSA and proffered by them which I have put in the  
17 record for this testimony. So I would not tell you  
18 that I made that calculation in the first place, but  
19 I can tell you that what you've described is my  
20 understanding of how this was derived, and that's  
21 what this table represents.

22 Q. So you didn't prepare this? This was  
23 given to you by someone else?

24 A. Yes, sir.

25 Q. But you're here to sponsor this today; is

1 that correct?

2 A. That's correct.

3 Q. Now, is it your understanding that the  
4 Commission developed the market generation credit  
5 using its adopted projections for the pilot period  
6 of energy and capacity prices?

7 A. That's correct.

8 Q. So would it be correct to say that, by  
9 escalating the total pilot credit by three percent,  
10 there's an assumption that the underlying price of  
11 energy will escalate by three percent per year for  
12 10 years as well?

13 A. I think what you have here is a number  
14 that is very much results oriented. You could look  
15 at it that way. The various pieces could change. I  
16 don't think there is any need for those two to be  
17 absolutely tied to the same growth.

18 Q. If you were to take out a calculator and check  
19 these numbers, would they escalate by three percent  
20 per year? I guess the answer to that would be yes.  
21 You said that before.

22 A. Yes.

23 Q. Let me ask this then. To test the  
24 reasonableness of this standard offer, you didn't  
25 prepare any forecast prices for energy and then run

1       them through an analysis to see whether this  
2       standard offer makes any sense for those particular  
3       years?

4               A.   I think that what you have here is a  
5       starting point, which is tested by the computations  
6       I've made, and the three-percent escalation.  Most  
7       of the forecasts in this proceeding, after the first  
8       couple of years, get to the cost of new capacity as  
9       driving the capacity cost; and they have inflation  
10      driving the energy and the capacity costs that are  
11      forecast.

12              So what I will tell you is that the concept  
13      of having it driven by the inflation rate seems to  
14      me to be quite consistent with the type of analysis  
15      that's driving most of the other forecasts in this  
16      proceeding.

17              Q.   Let's try to separate that out.  So are  
18      you now saying that, all other things being equal,  
19      if we hold the other elements of your generation  
20      rate workup constant, that this standard offer would  
21      reflect approximately a three-percent-per-year  
22      escalation of the energy price?

23              A.   I think that I would say this.  The most  
24      significant difference in my approach that I  
25      recommend in my direct and as reflected in Exhibit

1 DEJ-2S in the early years would be the use of the  
2 market price of new capacity, as opposed to a market  
3 price for capacity being bought and sold. After the  
4 first couple of years, those converge on one  
5 another.

6 This would, in my opinion, be more consistent  
7 with my proposals both in my original direct and in  
8 the additional as reflected in Exhibit 2S. The  
9 point being that you've got an underlying energy  
10 component of --

11 MR. HAWKE: Excuse me. Did you mean 1S, just  
12 for the record?

13 MR. TRASK: Why don't we let the witness  
14 answer the question.

15 MR. HAWKE: I think he had a confused  
16 exhibit.

17 MR. TRASK: If he has a question about my  
18 question, I'll be happy to answer it.

19 MR. HAWKE: I was just trying to clarify the  
20 record.

21 JUDGE RAINEY: Okay. I think we can do  
22 without the colloquy. Certainly clarifications are  
23 appreciated.

24 MR. TRASK: Very well, Your Honor.

25 BY MR. TRASK:

1 Q. Is there something about my question that  
2 you don't understand, Mr. Johnstone?

3 A. No. I have no problem with your  
4 question. I was just about to it.

5 What I was referring to, just to make the  
6 record clear, was Exhibit DEJ-2 and Exhibit DEJ-2S.

7 Now, your point was, Is the energy going up  
8 at inflation? You have movement in the energy which  
9 is not precisely equal to inflation. It generally  
10 goes up with that. You have a capacity component  
11 which in the early years, if you look at the market  
12 price, rises rapidly. Then after it gets to the  
13 cost of new generation, it continues to escalate at  
14 roughly the inflation rate.

15 So there is some play in the first two years  
16 where things, I would have to tell you, are not  
17 moving at equal percentages if you look at the  
18 market prices. They go up faster. But after you  
19 get past that, these things do generally move at the  
20 inflation rate.

21 In effect, this offer starts at that higher  
22 level consistent with the cost of new capacity, as I  
23 have recommended, and then it goes at the inflation  
24 rate for energy, capacity, et cetera.

25 Q. When you said these things generally go

1 at the inflation rate, you meant energy and  
2 capacity?

3 A. Yes, sir.

4 Q. Let me just try to understand this a  
5 little better. You're saying that there are retail  
6 business costs; there is capacity cost; and there's  
7 energy cost. That's correct; right?

8 A. Yes.

9 Q. And you don't know how much each of these  
10 elements is going to vary over time? They may go up  
11 or down at different rates?

12 A. That's correct.

13 Q. But you do know that they're all going to  
14 go up or down at different rates and the end result  
15 every year is going to be a three-percent increase?

16 A. You make a very interesting point,  
17 because one of the difficulties, in my opinion, with  
18 this docket is the long time period. Given the long  
19 time period, there is substantial uncertainty on a  
20 year-to-year basis and over a period of time as to  
21 the movement in capacity, energy.

22 The question really is, In the context of all  
23 of that, what makes the most sense as a number to  
24 put in this proposal in the record for the  
25 Commission to decide, really? I think that in that

1 context this approach with the three-percent  
2 escalation represents an appropriate thing to do.

3 Q. Why don't we talk a little bit about that  
4 uncertainty, Mr. Johnstone. Aren't there many  
5 factors that will have an impact on what the price  
6 of energy will be during the period encompassed by  
7 the partial settlement?

8 A. Yes.

9 Q. Fuel prices--that's coal, oil, natural  
10 gas, uranium--would that be one important factor?

11 A. Yes, it would.

12 Q. How about unit availability? Do you know  
13 what unit availability is?

14 A. I do.

15 Q. Would that be an important factor?

16 A. That would be a more important factor  
17 with respect to cost, as opposed to price, for an  
18 individual supplier, yes.

19 Q. What about the capacity factor of  
20 generating units in the PJM system? Would that be  
21 an important factor?

22 A. Yes.

23 Q. Customer load or customer demand during  
24 the period encompassed by the settlement, isn't that  
25 another important factor that will have an impact on

1 the energy price?

2 A. It will. If load growth is high, you'll  
3 have a greater risk that you'll have a tight market,  
4 which means prices will be higher. Likewise, if  
5 there is low growth, you'd have a greater likelihood  
6 of excess capacity and lower prices.

7 Q. What about the heat rates of units in the  
8 PJM system, would that -- Well, first of all, do  
9 you know what a heat rate is?

10 A. Yes, sir.

11 Q. Would that be another factor in what the  
12 market price of energy is likely to be during this  
13 lengthy period of time?

14 A. These are all considerations that -- I  
15 have some hesitation, and it is simply this. We're  
16 moving from an environment wherein we added up the  
17 costs and that became the price to one which is  
18 going to be market driven.

19 Now, taken as a whole these types of costs  
20 for all the suppliers will certainly have something  
21 to do with the price at which suppliers are willing  
22 to sell. But it will not be the kind of direct  
23 linkage that we've had in the past. It certainly is  
24 an influence, but it's not the whole answer.

25 Q. So the answer to the question I had was

1 that a heat rate would be another important factor  
2 that would have an impact on the energy prices --

3 A. Yes, sir.

4 Q. -- during the period that we're talking  
5 about here, which is 1999 through 2008?

6 A. Yes.

7 Q. You haven't done any studies, however, to  
8 try to project or figure out how these various  
9 factors that we just went through will affect the  
10 market price of energy during that period of time,  
11 have you?

12 A. No. My recommendation has been that one  
13 of the forecasts that has been submitted by the  
14 parties be adopted by the Commission and then apply  
15 the method which I've outlined here to get to the  
16 prices. That would be my main recommendation from  
17 my testimony. There is the alternative that's put  
18 in here in the context of the MAPSA counterproposal.

19 Q. I would like to ask you a couple of  
20 questions about a response that MAPSA provided to an  
21 interrogatory.

22 MR. TRASK: My problem, Your Honor, is that  
23 this came in a couple days ago. It was on time and  
24 appropriate. But I didn't realize until about 20  
25 minutes before the hearing that I was going to ask

1 questions about this.

2           What I would like to try to do is ask  
3 questions about this and not have the need that  
4 there be a break and make 35 copies and have PECO  
5 cross-examination exhibits. If, however, you would  
6 prefer, we can take five minutes to make a bunch of  
7 copies of this document.

8           Do you have a preference?

9           JUDGE RAINEY: Do all the parties have the  
10 document?

11           MR. TRASK: I don't know who you served this  
12 interrogatory on, Bill. This came from Janet on  
13 October 10th. It was faxed to us. It's a response  
14 to PECO Energy Company's Interrogatory Number 3, Set  
15 IV.

16           MS. MILLER: It was served on all the active  
17 parties.

18           MR. TRASK: It was served on all the active  
19 parties?

20           MS. MILLER: Yes.

21 BY MR. TRASK:

22           Q. Do you have a copy of that interrogatory  
23 with you, Mr. Johnstone?

24           A. I'm not sure that I have the final, quite  
25 frankly. Set IV?

1 Q. Yes. I thought I had an extra copy, but  
2 --

3 A. I have got everything other than Number 3  
4 here, it seems.

5 Q. This one was served later than the other  
6 interrogatory responses from that set, if that  
7 helps.

8 A. Yes, I have that.

9 MR. TRASK: Shall we try this without a cross  
10 exhibit, Your Honor?

11 What would you prefer? Do you have any  
12 objection?

13 MR. HAWKE: Not at this time.

14 JUDGE RAINEY: Please proceed.

15 I'm sorry. Counsel, do you have a copy for  
16 the judges?

17 MR. TRASK: Yes.

18 BY MR. TRASK:

19 Q. Mr. Johnstone, the question that PECO  
20 propounded on MAPSA asked MAPSA to explain the basis  
21 for the load growth forecast of two percent per year  
22 that's reflected in your Exhibit DEJ-1S.

23 A. Yes.

24 Q. There's a response provided to that  
25 answer here. Are you responsible for preparing that

1 response?

2 A. I have reviewed this response. I did not  
3 personally prepare it.

4 Q. Did people under your direction and  
5 control prepare it?

6 A. It was prepared in conjunction with my  
7 attorney and with a gentleman from Enron who had, in  
8 fact, prepared the forecast.

9 Q. There are two sources of information  
10 here. One is on all utilities. I don't know if  
11 it's in the United States or just a region of the  
12 United States. Is that correct? That's one source?

13 A. Yes.

14 Q. The other source is data that you have --  
15 Actually, I guess there are three sources. Two of  
16 them are for all utilities, the first two listed in  
17 this response; is that correct?

18 A. Yes.

19 Q. And then the third one -- Excuse me. I  
20 guess there are three sources. And then you say, in  
21 addition, information published in Electric Sales  
22 Overview for PECO Energy. So there's one that  
23 purports to be PECO specific; is that correct?

24 A. That's correct.

25 Q. Why don't we take a look at that last

1 one.

2 MR. TRASK: I don't know what page number to  
3 refer folks to. But toward the end of this sheet of  
4 documents, on the top of the page it says Electric  
5 Sales Overview (PECO Energy Co., Utilities):1. Then  
6 there's a table.

7 BY MR. TRASK:

8 Q. Do you have that?

9 A. Yes. It says 1994.

10 Q. There's a series of them that all look  
11 the same. The first one I believe is -- It's hard  
12 to read, but I think it's 1998. Is that correct?

13 A. The first one, I believe, is 1988.

14 Q. 1988. Thank you. I'm sorry for that.

15 If you take a look at the column -- First of  
16 all, is there a column on each one of these sheets  
17 called Retail Totals?

18 A. I don't find a Retail Totals column on  
19 1988.

20 Q. Do you mind if I come over and look to  
21 see whether you're looking at the right page and I  
22 can point to you what I'm looking at?

23 A. I'm sorry. I see a row.

24 Q. You see a row. Did I say column? I mean  
25 row. Excuse me. Do you see a row?

1 A. Yes.

2 Q. There's a number under sales in megawatt  
3 hours that's 31 -- I guess that 31 million. What is  
4 that? 31 billion, 31.6 billion, about?

5 A. 31.6 million megawatt hours. At the top  
6 is megawatts hours.

7 Q. Below that there's another row called  
8 Total Sales?

9 A. Yes.

10 Q. On this page for 1988, the total sales is  
11 greater than the retail sales; is that correct?

12 A. That's correct.

13 Q. Do you understand that this total sales  
14 is greater than retail sales because it includes  
15 PECO wholesale sales?

16 A. That would be my understanding.

17 Q. The average load growth of 5.5 percent  
18 for PECO that you compute, that's in the  
19 interrogatory response?

20 A. Yes.

21 Q. Do you understand that to be a growth  
22 rate based on the Retail Totals column or the Total  
23 Sales column?

24 A. It appears to be total sales.

25 Q. Okay. I'd just like to ask you a couple

1 of questions about transmission and distribution  
2 allocations, Mr. Johnstone.

3 MR. HAWKE: Your Honor, I would like that  
4 exhibit marked for the record.

5 MR. TRASK: Very well. At the break we can  
6 -- Is there a xerox machine that we could use?

7 JUDGE RAINEY: There is a xerox machine that  
8 could be used.

9 MR. HAWKE: I have no objection to bringing  
10 it back at some other point this week.

11 MR. TRASK: Do you have there, Your Honor,  
12 what number we are on?

13 JUDGE CHESTNUT: You are on Number 8,  
14 Cross-Examination Exhibit 8.

15 MR. TRASK: This response to Interrogatory  
16 Number 3 of PECO's Set IV to MAPSA will be marked as  
17 PECO Cross-Examination Exhibit Number 8.

18 JUDGE RAINEY: So marked.

19 (PECO Cross-Examination Exhibit Number 8 was  
20 produced and marked for identification.)

21 MR. TRASK: I guess I'll move it into the  
22 record later at some other time, or should I move it  
23 into the record at the close of this testimony and  
24 then we'll just assume that that's appropriate?

25 JUDGE RAINEY: Why don't you do it then so

1 that you can keep track of everything admitted into  
2 evidence.

3 BY MR. TRASK:

4 Q. Mr. Johnstone, you criticized PECO's  
5 transmission and distribution rates, have you not,  
6 because you contend that they include too much  
7 administrative and general costs?

8 A. Yes, sir.

9 Q. Have you conducted any analyses or  
10 investigation of PECO's A & G functions and  
11 activities to determine which of these functions and  
12 activities will continue or the extent to which  
13 they'll continue when all customers can choose their  
14 electric generation supplier?

15 A. My analysis I guess would consist of  
16 simply looking at what constitutes A & G, the kind  
17 of allocation procedures that have been followed in  
18 the past and what's been proposed in this  
19 proceeding.

20 Q. I guess my question was, Have you  
21 conducted any studies or analyses of PECO's  
22 administrative and general costs or the functions  
23 underlying those costs to see whether or not or to  
24 try to determine whether or not the function will  
25 still need to be carried out and, therefore, the

1 costs will still need to be incurred after everyone  
2 has their choice of generation supplier?

3 A. If I understand your question, it's  
4 essentially whether I have independently gone and  
5 looked at the functions and the costs associated  
6 with them. The answer in that context is no.

7 Q. You have a similar criticism, do you not,  
8 of the T & D rates with respect to customer accounts  
9 and sales expense and I think customer service  
10 expenses as well?

11 A. Yes, sir.

12 Q. Have you conducted any studies of those  
13 functions to see whether or not PECO will continue  
14 to carry out those functions at the same level or at  
15 a different level once everyone has their choice of  
16 generation supplier?

17 A. Some of the things like billing I think  
18 will obviously absolutely have to be continued.  
19 Things like sales expense certainly expect to be  
20 continued. So I don't think there's a lot of  
21 analysis involved to determine that these costs just  
22 have to be a part of the environment that we're  
23 moving into now.

24 The separate question is whether there's an  
25 independent analysis of the particular level, and

1 the answer is no. We're dealing with the 1996 cost  
2 study here.

3 Q. So you never did any analysis of these  
4 functions to determine whether or not the costs  
5 would continue to be incurred at the same or a  
6 different level following full customer choice?

7 A. No. I'm using these cost levels that  
8 were embedded in the '96 study as an approximation  
9 of what we'll see going forward.

10 Q. I'm sorry to belabor this. I just want  
11 to make sure I understand, because you said no and  
12 then you qualified it, which is appropriate.

13 Just to clarify the record, you didn't do any  
14 studies of these expenses or functions to determine  
15 whether or not they will continue to be needed once  
16 customers have choice of their generation supplier?

17 A. I think if you take my response as a  
18 whole starting with this line what I said was some  
19 of them are so obvious that they really don't need  
20 independent study. Beyond that, the answer is no.

21 Q. The ones that are obvious and don't need  
22 independent study are the ones that we would  
23 continue to incur, or PECO would continue to incur;  
24 is that correct?

25 A. Yes.

1 MR. TRASK: If I may have a moment, Your  
2 Honor.

3 (Pause)

4 MR. TRASK: Your Honor, I have nothing  
5 further.

6 JUDGE RAINEY: Thank you.

7 Further cross-examination. Mr. Kleppinger.

8 MR. KLEPPINGER: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. KLEPPINGER:

11 Q. Good morning, Mr. Johnstone.

12 A. Good morning.

13 Q. Welcome to Pennsylvania.

14 A. Nice to be here.

15 Q. Are you sure you shouldn't be in West  
16 Virginia today?

17 A. I'm sure I should be right here today.

18 Q. Just a few follow-up questions here. If  
19 you could turn to Exhibit DEJ-2S, I think Mr. Trask  
20 had asked you a few questions regarding the capacity  
21 component in this calculation. I'd like to focus at  
22 Line 7, the reserve requirement of 18 percent. Am I  
23 correct that that \$7.56 number is also a per kW year  
24 number?

25 A. That's correct.

1 Q. That was just derived by taking 18  
2 percent of the \$42 per kW per year number above it?

3 A. That's correct.

4 Q. So, if capacity is available in 1999 at  
5 less than \$42 per kW year, it would affect not only  
6 Line 6 but also Line 7 in this calculation?

7 A. That's correct.

8 Q. Do you consider this a capacity cost  
9 estimate for the PJM region or PECO specifically, or  
10 are they one and the same in your mind?

11 A. This is the cost of new capacity. Based  
12 on the materials that I have reviewed, there is a  
13 relatively tight band. I think that it's very  
14 close. I'm not sure that there wouldn't be some  
15 difference, but not a lot.

16 Q. I don't believe Mr. Trask asked the question  
17 as to whether or not you had conducted a study that  
18 examined the load versus the capacity that's  
19 available in PJM to determine whether or not in 1999  
20 new capacity would be necessary to be constructed to  
21 meet the load in the region.

22 A. Based on the materials that I have  
23 reviewed, they would indicate that based on present  
24 forecasts and current capacity projections that  
25 there will not need to be new capacity in '99.

1 Q. In your review of those forecasts, if you  
2 recall, what year was new capacity going to be  
3 necessary?

4 A. 2001.

5 Q. Turning to Page 3 of Statement 1S, Lines  
6 9 through 11, you make the point that competition  
7 must evolve to the point that it will be adequate to  
8 regulate the price of electricity by the end of the  
9 transition period. Do you define the transition  
10 period to be through 2008, consistent with the  
11 Schedule A to Exhibit 1S?

12 A. The transition period, I think the  
13 working definition probably ought to be the period  
14 of the rate caps. So, as long as you're talking in  
15 the context of the settlements where they've been  
16 extended, that would be the transition period.  
17 Otherwise, it would drop back to 2005.

18 Q. So, under the joint petition for  
19 settlement as well as the MAPSA proposal that's  
20 reflected on Schedule A, the transition period, in  
21 your mind, is through December 31, 2008?

22 A. Yes.

23 Q. Do you have with you the joint petition  
24 for partial settlement or at least Table A from that  
25 settlement?

1 A. I have it.

2 Q. If I understand Schedule A correctly, in  
3 order to compare it with Table A of the joint  
4 petition for settlement, at least in terms of market  
5 prices and CTC recovery, we would need to look at  
6 the column on Table A of the joint petition for  
7 settlement that's labeled CTC or ITC and compare  
8 that to the column labeled CTC on MAPSA's Schedule  
9 A. Is that right?

10 A. Yes.

11 Q. Then for the energy and capacity cap on  
12 Table A of the joint petition for settlement, we  
13 would compare the column that's labeled Standard  
14 Offer on Schedule A of the MAPSA proposal; is that  
15 right?

16 A. Yes. That's what -- Oh, I'm sorry.  
17 Column 4, energy and capacity cap?

18 Q. Right.

19 A. I don't think that's a cap, but that's  
20 simply a derived number. It is what it is.

21 Q. The labeling on the column in Table A of  
22 the joint petition is energy and capacity cap?

23 A. Yes.

24 Q. Would you agree with me that the standard  
25 offer contained in Schedule A of the MAPSA proposal

1 is a flatter projection of standard offers than the  
2 projection in the energy and capacity cap column of  
3 Table A?

4 A. Yes, it's flatter. What that means is it  
5 starts at a higher level but does not increase as  
6 rapidly, so it ultimately actually ends up at a  
7 lower level.

8 Q. And for the CTC column, at least  
9 generally speaking, the Schedule A of the MAPSA  
10 proposal starts with lower CTCs in the early years  
11 and escalates those throughout the term of the  
12 transition?

13 A. Yes.

14 Q. Whereas, on Table A of the joint petition  
15 for settlement, there is a flatter or declining CTC,  
16 with the exception of 2000 and 2001 where there is  
17 the initial increase?

18 A. So it goes up, and then it goes down.  
19 That would be Table A of the partial settlement.

20 Q. Right.

21 A. Yes.

22 Q. Now, when we look at the end of the  
23 transition period, if we look at the final two  
24 years, the energy and capacity cap in Table A of the  
25 joint petition exceeds the standard offer in

1 Schedule A of MAPSA; correct?

2 A. That's correct.

3 Q. Now, at least in that year, would I be  
4 correct that there is then more room for competitors  
5 to enter the market under Table A of the joint  
6 petition than Schedule A of the MAPSA proposal?

7 A. Yes.

8 Q. And the same would be true for 2008?

9 A. Yes.

10 Q. Correspondingly, in those two years, the  
11 customer, who is going to have the ability to access  
12 the market at that point, will still be paying a CTC  
13 under either proposal?

14 A. That's correct.

15 Q. And the CTCs in the two years that we've  
16 been discussing are lower in the Table A of the  
17 joint petition than in Schedule A of the MAPSA  
18 proposal?

19 A. That's correct.

20 Q. I think that might be it, Mr. Johnstone.

21 One final area. I believe you mentioned to  
22 Mr. Trask that your understanding of the derivation  
23 of the Standard Offer column on Schedule A began  
24 with the credits that the Commission has ordered in  
25 the pilot programs--the energy and capacity credit

1 plus the customer participation credit; right?

2 A. That's correct.

3 Q. Those credits are off of rates that are  
4 currently in effect for all utilities in  
5 Pennsylvania today, including PECO?

6 A. That's correct.

7 Q. So, at least in the PECO pilot, those  
8 pilot credits would not include the 10-percent  
9 reduction across the board that's contemplated in  
10 the joint petition for settlement?

11 A. I think I agree with you. Give me that  
12 one more time, please.

13 Q. The derivation of the credits in the  
14 pilot as well as the standard offer in Schedule A of  
15 the MAPSA proposal does not include the 10-percent  
16 across-the-board reduction that will occur in rates  
17 on September 1, 1998 under the joint petition for  
18 partial settlement?

19 A. It could not possibly do that because it  
20 preceded it in time.

21 Q. So, without the 10-percent reduction on  
22 Table A of the joint petition for partial  
23 settlement, the total bill cap rate would be a penny  
24 higher, would it not?

25 A. Yes.

1 Q. And that penny could be part of the  
2 energy and capacity cap, absent the 10-percent  
3 reduction?

4 A. I can't see where there's a relationship  
5 between the penny which comes off the total rate,  
6 including all the uneconomic costs, or stranded  
7 costs, if you will, and what's been labeled in this  
8 table as the energy and capacity cap. Understand  
9 what we're talking about here are numbers derived  
10 from the market. I think they're unrelated.

11 Q. Let me try it this way. If there's no  
12 across-the-board rate reduction, the total cap in  
13 PECO's rates would be rates in effect January 1,  
14 1997; correct?

15 A. Yes.

16 Q. And the average system rate would be in  
17 the range of 9.95 cents; correct?

18 A. Yes.

19 Q. So, in terms of Table A, absent the 10-  
20 percent reduction, where do you believe that extra  
21 penny would be?

22 A. It would be in the CTC/ITC column, Column  
23 3.

24 Q. Which would then provide --

25 A. It would be in a couple of places.

1 That's one of the places it would be. It would be  
2 in the total bill rate cap column as well.

3 Q. At least under your testimony, it  
4 definitely wouldn't be in the T & D rate because you  
5 believe those are higher than they should be  
6 already; correct?

7 A. That's correct.

8 Q. Columns 1 and 2 of Table A, it definitely  
9 would not be there?

10 A. That's correct.

11 Q. At least in the make-up columns to get to  
12 the 9.95, there would be only two columns left to  
13 put it in. Either the CTC or the energy and  
14 capacity cap columns; correct?

15 A. That's correct.

16 Q. Are you saying that it would all be in  
17 the CTC column?

18 A. In my mind, that's where I would put it  
19 because I would suggest that the energy and capacity  
20 cap, what's labeled as the cap, ought to reflect the  
21 price against which all participants in the supply  
22 market will be offering or trying to beat. That's  
23 the bogey that they're trying to beat, if you will.  
24 So I can't see that that's affected by whether that  
25 initial rate is higher or lower.

1 Q. But then, Mr. Johnstone, if we add that  
2 to the CTC column, PECO would collect more than 5.46  
3 billion in stranded costs; right?

4 A. Well, that's correct. So the CTC would  
5 stop sooner. You would get the 5.4 billion paid off  
6 sooner if you did it that way, which I think would  
7 be a good thing.

8 Q. But that wouldn't change, would it, one  
9 of the criticisms of MAPSA, which is that the energy  
10 and capacity cap is too low for market entry in  
11 those years?

12 A. I'm just trying to make sure that I have  
13 your question in mind. "That," give me what I'm  
14 referring to with "that."

15 Q. If we take the penny that we're talking  
16 about in 1999 and add it to the CTC of 4.04 and  
17 leave the energy and capacity cap at 2.8, the MAPSA  
18 criticism that the 2.8 is too low to allow for  
19 sufficient competitive markets to develop doesn't  
20 change. The MAPSA members will be in no better  
21 position to compete than they would be with the CTC  
22 at 3.04 cents, would they?

23 A. I mean that is the point, yes.

24 Q. Now, if we were to take the penny that's  
25 evolved with the rate reduction and add it to the

1 energy and capacity cap, would not that be closer to  
2 the standard offer that MAPSA is proposing on  
3 Schedule A?

4 A. The math works out that way.

5 MR. KLEPPINGER: Thank you. That's all I  
6 have.

7 JUDGE RAINEY: Thank you, Mr. Kleppinger.

8 Mr. Trask, so that we don't lose track of  
9 your exhibits, maybe this would be a good time to  
10 move for admission of Cross-Examination Exhibit  
11 Number 8.

12 MR. TRASK: Very well, Your Honor. I move  
13 for the admission into evidence of PECO Cross-  
14 Examination Exhibit Number 8.

15 JUDGE RAINEY: Any objections?

16 (No audible response.)

17 JUDGE RAINEY: Hearing none, so admitted.

18 Mr. Ryan.

19 MR. RYAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. RYAN:

22 Q. Mr. Johnstone, I'm Bernard Ryan with the  
23 Office of Small Business Advocate.

24 My questions will all--and there are only a  
25 few--make you compare Table A on the joint petition,

1 which I think you had out for Mr. Kleppinger's  
2 questions, and your Schedule A of Exhibit DEJ-1S,  
3 which you also have out.

4 A. Yes, sir.

5 Q. On Page 4 of your Statement 1S--and it's  
6 Lines 14 and 15--you indicate that the MAPSA  
7 counteroffer preserves the partial settlement's rate  
8 caps in future years. Do you see that?

9 A. Yes.

10 Q. Now, if you look at your Exhibit DEJ-S  
11 and look at the generation rate caps that you show  
12 -- I'm sorry, on Schedule A, that you show for the  
13 years 2004 and 2005, aren't they 7.25 cents and 7.30  
14 cents, respectively?

15 A. Yes.

16 Q. Now, take a look at Table A of the joint  
17 petition. What's the generation rate cap for years  
18 2000 and 2005 under the joint petition schedule?

19 A. 6.84.

20 Q. So, therefore, the MAPSA counteroffer  
21 really doesn't preserve the rate caps for those two  
22 future years, does it?

23 A. That's correct.

24 Q. On Page 12 of your Statement 1S, Lines 18  
25 to 20, you say that if a customer chooses generation

1 service from PECO that customer will pay the same  
2 total generation rate under either the partial  
3 settlement or MAPSA's proposal. Do you agree? Do  
4 you see that?

5 A. I do. Thank you. Yes.

6 Q. For the years 2004 and 2005, that  
7 statement is not correct, is it?

8 A. That's right.

9 Q. On Page 13 of your additional testimony,  
10 Lines 3 to 6, you say that MAPSA's proposed  
11 generation components, or what I think you called  
12 the standard offer on your schedule A, is higher in  
13 each year than that contained in the partial  
14 settlement.

15 A. Just let me have the line number, please.

16 Q. I have Lines 3 to 6, Page 13. I think  
17 it's in the parentheses there beginning at Page 13.

18 A. Yes.

19 Q. What is the standard offer on Schedule A  
20 of your exhibit for the years 2007 and 2008?

21 A. This is the point I think we just  
22 clarified with Mr. Kleppinger; that, in fact, the  
23 MAPSA standard offer is lower in 2007 and 2008 than  
24 that which appears in Table A.

25 Q. So the statement on Page 13 that I just

1 referred you to would not be correct for those two  
2 years?

3 A. It would need to be modified for the last  
4 two years. Yes, sir.

5 MR. RYAN: Given all the other cross, that's  
6 all I have, Your Honor.

7 JUDGE RAINEY: Thank you, Mr. Ryan.

8 Any other cross?

9 Yes, Mr. Steinmetz.

10 MR. STEINMETZ: I just have a couple of  
11 questions. Most of these gentlemen have already  
12 asked most of my questions.

13 CROSS-EXAMINATION

14 BY MR. STEINMETZ:

15 Q. Good morning, Mr. Johnstone. My name is  
16 Steve Steinmetz, and I'm with the Pennsylvania  
17 Office of Consumer Advocate.

18 A. Good morning.

19 Q. I would just like to follow up a bit on  
20 Mr. Ryan's last bit of cross and take you to your  
21 Schedule A.

22 A. Yes.

23 Q. Specifically, 2003 where you have the  
24 9.95 bill cap, which approximates the current class-  
25 wide average of PECO. Is that correct?

1 A. Yes.

2 Q. If we look at your T & D comments in  
3 relationship to the bill cap, we see that the  
4 generation cap is 7.2; is that correct?

5 A. That's correct.

6 Q. So the 7.2 generation cap would be PECO's  
7 generation portion currently? Would you agree?

8 A. I don't know about the currently.

9 Q. Well, if 9.95 is the current systemwide  
10 average and your combined T & D is 2.75, it yields  
11 the 7.20.

12 A. I understand. Yes, sir.

13 Q. Okay. And due to the increases in --  
14 Well, when we see your 4.51 standard offer rate go  
15 to 4.64 and then 4.78, we also see your generation  
16 cap going to 7.25 and 7.30; correct?

17 A. That's correct.

18 Q. Are you familiar with the rate cap  
19 provisions of the act?

20 A. I am.

21 Q. Would you agree, therefore, that your  
22 movement from 7.20 to 7.25 and then 7.30 violates  
23 the generation rate cap?

24 A. Yes. That need to be lowered to the 7.20  
25 to be consistent with the act.

1 MR. STEINMETZ: Thank you.

2 That's all I have, Your Honor.

3 JUDGE RAINEY: Thank you, Mr. Steinmetz.

4 Any further cross-examination?

5 (No audible response.)

6 JUDGE RAINEY: Redirect?

7 MR. HAWKE: Could I have a few minutes, Your  
8 Honor?

9 JUDGE RAINEY: Yes.

10 JUDGE CHESTNUT: We'll go off the record for  
11 a second.

12 (Discussion off the record.)

13 (Recess taken.)

14 JUDGE RAINEY: Any redirect, Mr. Hawke?

15 MR. HAWKE: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. HAWKE:

18 Q. Mr. Johnstone, would you please state for  
19 the record your reasons why you believe you're  
20 qualified to present the testimony you presented?

21 A. First starting with the formal education,  
22 certainly macroeconomics, the theory of monopoly,  
23 oligopoly, and so forth is all part of the MBA  
24 training.

25 Secondly, while at Union Electric, I was in

1 the corporate planning function dealing with load  
2 forecasting a good bit of the time, the price of  
3 energy. Forecasts of prices and consumption were an  
4 important part of that work for several years.

5 Since that time, I have been involved in, of  
6 course, cost of service work, as was pointed out. I  
7 would tell you that a good part of that deals with  
8 the reaction of the customers to the prices that are  
9 being offered. There is very much a market element  
10 to that. Of course, one of the purposes of  
11 regulation is to operate as a surrogate for  
12 competition.

13 Then, finally, I have been involved in  
14 several of the states with respect to the  
15 development of the retail generation market. At  
16 this point in history, there is not much of a retail  
17 generation market but for a few pilot programs. So  
18 there is precious little actual market information  
19 to know.

20 But from the history of the industry and from  
21 the various discussions that have been had around  
22 the country, I think those are the types of things  
23 that lead me to make the recommendations set forth  
24 in my testimony.

25 Q. Mr. Trask also asked you some questions

1 in your testimony concerning retail business costs.  
2 Exactly what can be said about the retail business  
3 costs of providing service in the future, in your  
4 view?

5 A. Well, certainly that is an important  
6 question. These costs will exist. There is no  
7 question that these costs will exist. Since we  
8 don't have a retail market right now, I don't think  
9 we can say with any certainty what they will be.  
10 The best we can do is look to some indications of  
11 the possibilities.

12 By relying on the current PECO cost, there  
13 are some things that go with that. First is they've  
14 had the benefit, of course, of the monopoly position  
15 and economies of scale. The other side of that is  
16 there have not been the same types of pressures that  
17 you would have in a competitive environment to hold  
18 those costs as well as other generation costs to the  
19 minimum level.

20 Given all of that, I think what I have here  
21 is a reasonable approach to estimate the potential  
22 costs, the very real costs that will be there, but a  
23 reasonable estimate of the level of those retail  
24 business costs.

25 Q. Now, it's your understanding that the

1 Mid-Atlantic Power Supply Association's proposal  
2 indeed was, as the name reflects, a counteroffer to  
3 an offer that had been given to MAPSA by PECO; is  
4 that correct?

5 A. Yes. That's correct.

6 MR. HAWKE: Your Honor, that's all I have.

7 JUDGE RAINEY: Thank you.

8 Any recross on the redirect?

9 (No audible response.)

10 JUDGE RAINEY: Hearing none, thank you,

11 Mr. Johnstone. You may stand.

12 MR. TRASK: Your Honor, if I may have a  
13 moment, I may have a couple of questions. I'd like  
14 to confer with my colleague for a second, if I may.

15 JUDGE RAINEY: One second.

16 (Pause.)

17 MR. TRASK: Your Honor, I do have just a few  
18 questions on recross, if I may.

19 JUDGE RAINEY: Please proceed.

20 REXCROSS EXAMINATION

21 BY MR. TRASK:

22 Q. Mr. Johnstone, the few questions I have  
23 have to do with the retail business costs. I'd like  
24 to discuss the costs that you relied on that were in  
25 PECO's accounts. These were costs in PECO's

1 accounts for 1996; is that correct?

2 A. Yes, sir.

3 Q. You also testified that there isn't much  
4 of a retail generation market yet; is that correct?

5 A. That's correct.

6 Q. Would any of the costs in the accounts  
7 that you looked at and relied on include the cost of  
8 marketing competitive energy?

9 A. They would not. So that would lead me to  
10 think that they would be an underestimate of the  
11 retail business costs to the extent I relied on  
12 that.

13 Q. Would they be an estimate at all of the  
14 retail business costs associated with marketing  
15 competitive supply since they have nothing to do  
16 with competitive supply marketing?

17 A. Well, that's a fair point that you make. Of  
18 course, there is nowhere any cost associated with  
19 this retail business cost. That market is not there  
20 today. So the question is, Where do we go for a  
21 reasonable starting point? My testimony, I guess,  
22 speaks to that point.

23 Q. Would determination of aggregated retail  
24 load to be served competitively, would the cost of  
25 conducting that activity be in any of the accounts

1 that you looked at to project retail business costs?

2 A. No, it would not.

3 Q. How about reconciliation work  
4 necessitated by competitive supply operations?

5 A. Those are the types of costs that would  
6 be incurred in the future that are not in those  
7 estimates.

8 Q. Not in the accounts. What about the  
9 scheduling for retail purposes?

10 A. Again, that's an additional cost. I will  
11 tell you that I have got -- Of course, in addition  
12 to those costs which I derived from your accounts,  
13 there is one mill which I characterized as dealing  
14 with the imbalances. There's not a lot of science  
15 to that, but I will tell you that a lot of these  
16 types of costs that we're talking about here could  
17 appropriately be viewed as a part of that one mill.

18 Q. You base that estimate on activities that  
19 PECO conducted during 1996 when it was a regulated  
20 public utility before the Competition Act was  
21 passed?

22 A. That particular one mill is based on an  
23 estimate of five percent of market price of energy.  
24 It came up, as I recall, to about 1.3 cents; and I  
25 rounded it down to be conservative.

1 Q. Is the answer to the question that I  
2 asked you before yes? The question that I asked you  
3 before is --

4 A. You asked me a lot of questions.

5 Q. The question that I just asked you was,  
6 You base that number on accounts or data in accounts  
7 from 1996 for PECO Energy Company?

8 A. Yes.

9 Q. Yes?

10 A. This is an important clarification. The  
11 3.8 mills was from those accounts. In addition to  
12 that, there is an additional one mill, and that is  
13 not based on those accounts. So the total of 4.8 is  
14 largely based on the accounts, but there is one mill  
15 of that which is not.

16 MR. TRASK: I have no further questions, Your  
17 Honor.

18 JUDGE RAINEY: Thank you, Mr. Trask.

19 Mr. Johnstone, you may stand down.

20 THE WITNESS: Thank you.

21 JUDGE RAINEY: The next scheduled witness is  
22 Dr. Hieronymus.

23 Dr. Hieronymus, would you stand and raise  
24 your right hand, please.

25 WILLIAM H. HIERONYMUS, called as a witness,

1 having been duly sworn, was examined and testified  
2 as follows:

3 JUDGE RAINEY: Please be seated and give your  
4 full name and address for the record.

5 THE WITNESS: My name is William H.  
6 Hieronymus. My address is Putnam, Hayes and  
7 Bartlett, 1 Memorial Drive, Cambridge,  
8 Massachusetts.

9 JUDGE RAINEY: Thank you.  
10 Please proceed, Mr. Bonney.

11 MR. BONNEY: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. BONNEY:

14 Q. Dr. Hieronymus, by whom are you employed  
15 and in what capacity?

16 A. I'm a managing director of Putnam, Hayes  
17 and Bartlett.

18 MR. BONNEY: Your Honor, we have previously  
19 distributed three pieces of testimony by  
20 Dr. Hieronymus--PECO Statement Number 6, PECO  
21 Statement 6-R, which is the rebuttal testimony of  
22 Dr. Hieronymus, and most recently PECO Statement  
23 Number 6-RJ, the rejoinder testimony of William  
24 Hieronymus. Attached to those statements are nine  
25 exhibits, Exhibits WHH-1 through 9.

1 BY MR. BONNEY:

2 Q. Dr. Hieronymus, were these documents  
3 prepared by you or under your direction and  
4 supervision?

5 A. Yes, they were.

6 MR. BONNEY: Your Honor, we would ask that  
7 these documents be admitted into the record subject  
8 to cross-examination.

9 JUDGE RAINEY: So admitted with those  
10 conditions.

11 (PECO Statement Numbers 6, 6-R, and 6-RJ were  
12 produced, marked and admitted into evidence.)

13 MR. BONNEY: The witness is available for  
14 cross-examination.

15 JUDGE RAINEY: Thank you.

16 Any cross-examination?

17 MR. DOLL: I will begin the cross-  
18 examination.

19 CROSS-EXAMINATION

20 BY MR. DOLL:

21 Q. Good morning, Dr. Hieronymus. My name is  
22 Craig Doll, and I represent Conectiv Energy.

23 A. Good morning, Mr. Doll.

24 Q. Doctor, I'm going to go through a little  
25 learning process for me here. Are you familiar,

1 generally, with PECO's rate classifications?

2 A. Not specifically with PECO's. I'm  
3 generally familiar with utility rate  
4 classifications. The acronyms tend to be about the  
5 same. But PECO specifically, no.

6 Q. But if I asked you about PECO's  
7 classifications of LILR, EER, and I believe it's  
8 their Rule 4.6 customers, would you have a general  
9 idea about who those customers might be?

10 A. I believe so.

11 Q. Okay. Thank you. Would you agree with  
12 me that those customers--the LILR, EER, and Rule 4.6  
13 customers--are generally high load factor customers?

14 A. In most cases, yes.

15 Q. Now, isn't it true that in doing a load  
16 factor calculation that if you take those customers  
17 away from a system average load factor calculation  
18 that, in fact, that would tend to decrease your load  
19 factor?

20 A. I don't know specifically. But on the  
21 presumption that that group of customers had above-  
22 average load factor, it would follow that taking  
23 them out would reduce the load factor.

24 Q. Just so I understand that, when you did  
25 your load factor calculation -- When you speak of

1 load factor, you talk about a 65-percent load  
2 factor; is that correct?

3 A. That's correct, yes.

4 Q. Okay. I'm sorry. I found the reference.  
5 On Page 6, Line 20, you talk about a 65-percent load  
6 factor.

7 JUDGE RAINEY: I'm sorry. Mr. Doll, what  
8 statement are you referring to?

9 MR. DOLL: Statement 6-RJ.

10 JUDGE RAINEY: Thank you.

11 BY MR. DOLL:

12 Q. Now, with regard to that 65-percent load  
13 factor, did you calculate that load factor?

14 A. No. As it says here, I was informed by  
15 PECO that that was the load factor.

16 Q. Have you seen any documents that would  
17 relate or approximate the 65-percent load factor?

18 A. I've seen no documents to give me PECO's  
19 load factor, period.

20 Q. So someone at PECO just came and told you  
21 that's what the load factor is?

22 A. I asked them on a conference call, and  
23 that's what they said.

24 MR. DOLL: May I approach the witness, Your  
25 Honor?

1 JUDGE RAINEY: Yes.

2 MR. DOLL: Mr. Bonney, I'm going to show the  
3 witness Conectiv Cross-Examination Exhibit Number 2,  
4 which is the 1997 resource plan.

5 MR. BONNEY: Okay.

6 MR. DOLL: And, in particular, the data form.  
7 In particular, the sheet which is Appendix A-4, the  
8 historical and peak load, megawatts, load growth  
9 scenario base.

10 BY MR. DOLL:

11 Q. Dr. Hieronymus, would you look at the  
12 load factor there for 1996.

13 JUDGE CHESTNUT: Excuse me. What was that  
14 reference to that document?

15 MR. DOLL: The document was --

16 JUDGE CHESTNUT: I have the document. But  
17 what page?

18 MR. DOLL: I believe it's Page -- On the  
19 data sheets, at the lower right-hand corner, it's  
20 marked 1997 ARPR, Appendix A-4. At the top it's  
21 marked PECO Energy Base.

22 A. The answer to your question is 62.51  
23 percent.

24 BY MR. DOLL:

25 Q. Looking at the historical pattern

1 beginning in 1991, is that 62.91 percent higher,  
2 lower, about the same as the historical pattern on  
3 that document?

4 A. It's higher.

5 Q. If we were doing an average, would you  
6 agree with me to get an appropriate average that you  
7 would eliminate abnormalities?

8 A. No.

9 Q. Would you agree with me that the previous  
10 years' load factors were approximately 58 percent,  
11 in that general range?

12 A. Yes.

13 Q. Now, I'm not quite sure how this works.  
14 But could you explain to me how you would calculate  
15 an average energy price?

16 A. I'm sorry. I need more of a -- I need  
17 more of a predicate than that. There are averages  
18 for hours. There are averages for load. There's  
19 averages for retail. There's averages for  
20 wholesale. There's averages for different classes.  
21 It depends.

22 Q. Well, let's look at your Exhibit WHH-9,  
23 for example. That 2.8 cents for 1999, is that a  
24 simple average or is it a weighted average?

25 A. I'm confused. The 2.8 is not an energy

1 price at all. It's the ECC out of the Appendix A of  
2 the settlement.

3 Q. Let's try it a little bit differently.

4 MR. DOLL: May I approach again, Your Honor?

5 JUDGE RAINEY: Yes.

6 MR. DOLL: Mr. Bonney, I'm showing the  
7 witness PECO Statement Number 4-R, the rebuttal  
8 testimony of Mr. John Bustard. Is that correct?

9 MR. BONNEY: That's correct, yes.

10 MR. DOLL: Primarily the exhibits that are  
11 attached to his testimony, which I believe -- And  
12 Your Honors can correct me. If it hasn't been  
13 admitted into the record, I think it probably will  
14 be by the end of this proceeding. It was on the  
15 list.

16 JUDGE RAINEY: That's correct. It hasn't  
17 been admitted. That's correct.

18 JUDGE CHESTNUT: I'm sorry. What exhibit are  
19 you looking at?

20 MR. DOLL: Exhibit JFB-13.

21 BY MR. DOLL:

22 Q. Am I correct, sir, that the PHB numbers  
23 that are in that testimony were numbers that were  
24 given by you to Mr. Bustard for the purposes of  
25 preparing his testimony?

1           A. I assume so. I believe at one time I  
2 checked, and I think they were, yes.

3           Q. Now, on this table, those PHB numbers for  
4 the various years, is that an average number? By  
5 that I mean did you just take a sum of numbers and  
6 divide by the total of numbers to come up with a  
7 simple average?

8           A. The actual number here is the price at  
9 the Limerick bus when Limerick is running. Since  
10 Limerick is a base load plant, that's at least  
11 approximately an all-hours average price.

12          Q. When you say all-hours average, in other  
13 words, you took all the hours that it was running  
14 and you just totaled it all up and divided by how  
15 many numbers you had there, a simple mathematical  
16 average; is that correct?

17          A. Well, it was actually times the weighted  
18 average of Limerick generation. But since Limerick  
19 runs flat-out, it has the same effect as what you've  
20 suggested.

21          Q. You mentioned a weighted average. How  
22 would you calculate a weighted average?

23          A. It depends on what I'm weighting for.

24          Q. Would you look at Exhibit JFB Number 15,  
25 I believe. I believe, if I have my exhibits right,

1 that talks about a weighted energy price. Is that  
2 correct?

3 A. Yes.

4 Q. How did you calculate a weighted -- Let  
5 me back up to lay a little foundation. Were those  
6 the numbers that you provided to Mr. Bustard for the  
7 purposes of preparing his testimony, those PHB  
8 numbers?

9 A. If you'll give me a moment, I'll check  
10 it.

11 Q. Sure.

12 (Pause.)

13 A. At least approximately, yes. There would  
14 be some minor discrepancies.

15 Q. We've established that you've given him  
16 -- You gave him those numbers; is that correct?

17 A. As I say, I looked at the source numbers  
18 in my table in my Exhibit WHH-6, and with minor  
19 deviations, they match.

20 Q. Let me ask you. Did you perform the  
21 weighted -- Did you perform the calculation to  
22 arrive at the weighted energy price, or is the  
23 deviation between those numbers because someone else  
24 did that weighted average?

25 A. Between my exhibit and his exhibit? Is

1 that the question?

2 Q. Yes.

3 A. Well, I prepared my exhibit. He prepared  
4 his exhibit.

5 Q. So that, in other words, you did not do  
6 the weighted average calculation that appears there?

7 A. I don't know the reason for the minor  
8 differences between the numbers. I prepared my  
9 exhibit. I provided numbers to him on the basis of  
10 which he prepared his exhibit.

11 Q. If we can maybe make this simpler,  
12 Doctor, did you calculate any weighted energy  
13 prices?

14 A. Yes. In the sense that we're talking  
15 about here, I prepared a generation weighted average  
16 revenue per kilowatt hour produced by PECO.

17 Q. A generation. Now, would that include  
18 both energy and capacity?

19 A. Yes.

20 Q. You say those calculations are contained  
21 in your initial exhibit?

22 A. Yes, in Exhibit WHH-6, Page 10 of 18.

23 Q. If I could retrieve my document.

24 Now, Doctor, have you reviewed Mr. Mitnick's  
25 weighted energy prices?

1 A. Yes.

2 Q. And did you review Mr. Mitnick's  
3 calculations to arrive at that weighted average?

4 A. Insofar as I could.

5 Q. You said insofar as you could. Was there  
6 data that you were missing?

7 A. Well, the source for some of the  
8 adjustments at the time, at least at the time I  
9 filed my testimony, was a mystery. Since we're  
10 focusing on weighted versus level hourly, there is  
11 an adjustment he made of 8.8 percent as the  
12 difference between those two. And on the face of  
13 his testimony, he gave no explanation for that.

14 Q. Did you speak with counsel to propound  
15 interrogatories to find out where that --

16 MR. BONNEY: Objection, Your Honor.  
17 Relevance and privilege.

18 JUDGE RAINEY: Do you have a response,  
19 Mr. Doll?

20 MR. DOLL: I'll withdraw the question.

21 BY MR. DOLL:

22 Q. Did you try to find out what the, I  
23 believe you said it was eight-percent mystery was or  
24 figure that you didn't know what that represented?

25 A. At the time I had nothing to work with

1       except this testimony. As you recall, this was a  
2       very compressed schedule.

3               Q. I realize that, but --

4               A. And there was nothing in his schedule  
5       that told me anything. There was no way to find  
6       out.

7               Q. You made no other attempt to find out?  
8       Is that your testimony?

9               A. There was no other possible way to find  
10       out at that time.

11              Q. Doctor, in your testimony you speak  
12       about, I believe on Page 6 --

13              JUDGE RAINEY: I'm sorry. Mr. Doll, which  
14       testimony are you referring to?

15              MR. DOLL: 6-RJ, which I seem to have  
16       misplaced.

17       BY MR. DOLL:

18              Q. Lines 17 through 22, you talk about  
19       cherry-picking of high load factor customers; is  
20       that correct?

21              A. Among other things, yes.

22              Q. Would you consider an HT customer a high  
23       load factor customer, generally?

24              A. I don't really know whether their HT  
25       customers are high load factor customers or not. I

1 simply don't know. But that wasn't the point. The  
2 point I was talking about here was cherry-picking  
3 within a class, rather than among classes.

4 MR. DOLL: May I approach the witness?

5 JUDGE RAINEY: Yes.

6 BY MR. DOLL:

7 Q. Dr. Hieronymus, I would like to show you  
8 what is the HT, high tension, tariff page from  
9 Tariff Electric Delivery PA PUC Number 1, original  
10 page, and there's two Xs. It's from Appendix C.  
11 It's the rate HT, high tension power. Are you  
12 familiar with that at all?

13 A. I presume it's in the package of tariffs  
14 that were attached to the settlement, but I've not  
15 looked at them.

16 Q. You didn't have anything to -- You  
17 didn't prepare that exhibit?

18 A. No.

19 Q. Would you just keep that there for  
20 reference, sir. I'd like to run you through a  
21 hypothetical.

22 MR. KLEPPINGER: Mr. Doll, if you're going to  
23 pursue this line, what year is that tariff for?

24 MR. DOLL: I'm sorry. 1999. Thank you for  
25 bringing that up. I do want to check to make sure

1 my hypothetical does have the right numbers in it.

2 BY MR. DOLL:

3 Q. Now, Dr. Hieronymus, let's assume a  
4 customer that has a 143 kilowatt billing demand and  
5 he uses 72,000 kilowatt hours in a month and that  
6 customer is a 70-percent load factor customer. Now,  
7 bear with me. If we run that customer through that  
8 rate schedule, would you agree with me that you  
9 would take the 143 billing demand times \$2.94?

10 A. Yes.

11 Q. And then you would run that customer  
12 through the second block, which the calculation  
13 would be 2.96 cents times 150, I believe is the  
14 second block, also times 143?

15 A. I'm sorry. I was trying to read. If you  
16 would re-ask it.

17 Q. And then you would run him through the  
18 third block, and finally your last number would be  
19 1.68 cents times 29,100. Would you accept those  
20 subject to check?

21 A. Yes. Just to note, I didn't write them  
22 down, so I'll have to wait for the transcript to  
23 check them.

24 Q. I can give them to you, sir, if you want  
25 to do it.

1 A. If you don't mind.

2 Q. The second block would be 2.96 cents  
3 times 150 times 143. The third block would be --  
4 Tell me if I'm going too fast for you.

5 A. No. That's fine.

6 Q. 2.31 cents times 150 times 143. Then the  
7 final or tail block would be 1.68 cents times  
8 29,100.

9 A. All right. I'll accept that subject to  
10 check.

11 Q. Subject to check, would you agree that  
12 that would come out to -- if you added up all the  
13 numbers, the number you would add up would be 2,039?

14 A. As in \$2,039?

15 Q. That's what I'm trying to figure out. My  
16 decimal point on my copy disappeared.

17 A. I think your decimal point is in the  
18 right place. It's the right order of magnitude.

19 Q. Okay. Then if you divided that by the  
20 72,000 kilowatt hours that we use to get an average  
21 kWh price, it would come to approximately 2.83 cents  
22 per kilowatt hour?

23 A. If you're asking me to accept that  
24 subject to check, I'll accept it subject to check.

25 Q. If we took a similar customer with 100 kW

1 billing demand again using 72,000 kWh a month but  
2 he's 100-percent load factor, would you accept,  
3 subject to check, running him through the same rate  
4 blocks that we did that the price per kilowatt hour,  
5 the final bottom-line number would be approximately  
6 2.49 cents per kilowatt hour?

7 A. Sure.

8 Q. So, if you look at those two examples, we  
9 have a 70-percent load factor customer whose price  
10 an alternate supplier would have to beat would be  
11 2.83 cents, and yet a 100-percent load factor  
12 customer, the price we would have to beat would be  
13 2.49 cents?

14 A. That's what you've asked me to accept  
15 subject to check.

16 Q. Yes, of course. How does that comport or  
17 how would it be possible then or why would we  
18 cherry-pick a 100-percent load factor customer when  
19 we're competing against the lower price?

20 MR. BONNEY: Your Honor, objection to the  
21 form of the question. Implicit in the question is  
22 that the two hypotheticals are identical except for  
23 the load factor, and that's not accurate.

24 JUDGE RAINEY: Mr. Doll.

25 MR. DOLL: If I could explain, in order to

1 get that customer to a 100-percent load factor, the  
2 identical customer, you must decrease the billing  
3 demand. That's how you would calculate your load  
4 factor. So your load factor would have to go from  
5 143 to 100. They are not identical. The kWh  
6 billing demand is not identical, but they can't be  
7 if you were to take the same usage and consumption  
8 and change the load factor.

9 MR. BONNEY: Precisely, Your Honor.  
10 Therefore, they're not comparable, and the question  
11 that he's posing is not proper.

12 JUDGE RAINEY: I'll direct the witness to  
13 answer the question. He can make any clarifications  
14 with respect to that after he has responded to the  
15 question.

16 A. In any event, I'm very confused by the  
17 question. Is your question why would I choose to go  
18 after the latter rather than the former customer?

19 BY MR. DOLL:

20 Q. If in fact the price we have to compete  
21 against for a 100-percent load factor customer is  
22 below that price for a 70-percent load factor  
23 customer, why would a marketer, in your words,  
24 cherry-pick the higher load factor customer?

25 A. Well, the question is whether -- It is

1 the relationship between what that customer pays  
2 under the tariff to the market price. I made the  
3 calculation as to what the market price would be for  
4 that customer.

5 You raised the intriguing possibility that  
6 the customers that would be most advantageous may  
7 not be the higher load factor customers. They may,  
8 in fact, be the lower load factor customers in the  
9 class. I don't know. I haven't made the  
10 calculation.

11 But, in any event, there are some customers  
12 within a class that would be more advantageous than  
13 others.

14 Q. Your reference here to cherry-picking is  
15 not an all-inclusive type of statement? You do  
16 acknowledge there may be cases where it would be  
17 more advantageous to go after a lower load factor  
18 customer?

19 A. I'm saying it's fact specific, and I  
20 don't know the answer to the facts.

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

23 JUDGE RAINEY: Yes.

24 MR. BONNEY: Your Honor, I want to clarify  
25 one thing with respect to the hypothetical. I

1 believe Mr. Doll framed the question as these are  
2 the prices that marketers would be competing  
3 against. I believe the prices that he's referring  
4 to in the Appendix C are price caps, not market  
5 prices that would be charged to customers.

6 JUDGE RAINEY: Thank you for the  
7 clarification.

8 MR. BONNEY: Thank you, Your Honor.

9 MR. DOLL: Thank you, Your Honor, for letting  
10 me have two minutes so that I don't expend 30.

11 Thank you very much. I have no further  
12 cross-examination.

13 JUDGE RAINEY: Further cross-examination?

14 MR. CLEARFIELD: Yes, Your Honor. I have a  
15 few questions.

16 CROSS-EXAMINATION

17 BY MR. CLEARFIELD:

18 Q. Dr. Hieronymus, on Page 7 of your  
19 rejoinder testimony -- And I'll be referring  
20 exclusively to your rejoinder testimony during my  
21 cross-examination.

22 A. Very well, Mr. Clearfield.

23 Q. At the top of the page, you discuss the  
24 fact that, based on your analysis--I'm quoting from  
25 the question, but you answered in the affirmative--

1 there's little, if any, head room between the market  
2 generation costs and the ECC during the first  
3 several years of the transition. Do you see that?

4 A. Subject to the fact that it says ECC,  
5 yes.

6 Q. I'm sorry. ECC. Thank you.

7 If, in fact, there were circumstances in  
8 which there was negative head room, if you will,  
9 that is in which the market generation costs, as you  
10 believe them to be or as they occur, are actually  
11 below the ECC, would you agree that, all other  
12 things being equal, that situation is going to  
13 retard competition as compared to the situation in  
14 which there's at least some head room?

15 A. Well, I think in general people are going  
16 to be more eager to compete in the market the more  
17 potential margin they have. So, without regard for  
18 the absolute relationship of it to anything, if they  
19 have more, they'll be more eager to file into the  
20 market than if they have less.

21 Q. In a situation, though, where the market  
22 generation of delivered power is actually below the  
23 generation cap that's offered by an EDC, for  
24 example, PECO, that's going to be a situation in  
25 which the supplier would actually lose money in

1 attempting to sell power into that market to  
2 customers of that EDC; isn't that right?

3 A. No, not necessarily.

4 Q. Well, certainly if they have to pay the  
5 market price of generation that you've calculated  
6 and the ECC is higher, they're going to start with a  
7 cost that's actually higher than the credit that the  
8 customer would receive. In that situation, they're  
9 going to lose money if they sell to that customer,  
10 aren't they?

11 A. No. They're going to lose money if they  
12 sell to the customer at that price. They're going  
13 to have to provide value added to customers to  
14 entice the customer to be willing to pay a higher  
15 price. Otherwise, I would agree with you. They  
16 would lose money.

17 Q. So an unbundling of other services?

18 A. Yes. The company you represent is in the  
19 business of finding lots of ways to add real or  
20 apparent value added. I won't --

21 Q. Is that one of them?

22 A. Bundling in other services, is that what  
23 you're saying?

24 Q. I said unbundling or offering in a  
25 competitive way non-wire services--metering and

1 billing.

2 A. I suppose that's theoretically one  
3 possibility. That isn't what I had in mind. I had  
4 more in mind bundling in other services than  
5 unbundling electricity services.

6 Q. They're going to have to do something  
7 else to make up the loss that they would incur by  
8 buying that power?

9 A. That's right.

10 Q. Would you agree, again, all other things  
11 being equal, that the best way to produce prices in  
12 the market that reflect the actual market price of  
13 power is to have as vigorous and competitive market  
14 as possible?

15 A. Well, here I think we need to distinguish  
16 between where we're talking about competition. The  
17 presumption that underlies my price forecast is that  
18 we have a vigorously competitive market. It's the  
19 market in which those prices are formed, which is  
20 the wholesale market. It has nothing to do, in  
21 short, with the retail market.

22 Q. I guess my question was, All other things  
23 being equal, as an economist isn't it just sort of a  
24 truism that a vigorous competitive market is the one  
25 in which you will most likely see prices in the

1 market approximate the incremental cost or the  
2 market clearing prices for the product that's being  
3 sold?

4 A. Sure. The point I was trying to make in  
5 response to your question is that the competition  
6 that matters is the competition in the market that  
7 produces the product, which in this case is bulk  
8 electricity.

9 Q. You don't believe the market in this  
10 instance that we should be examining is the retail  
11 market for electric generation?

12 A. I think you were asking me about the  
13 market that forms the prices. The prices I thought  
14 we were talking about were the bulk power prices  
15 that are being compared to the ECC. Those prices  
16 are formed in the bulk power market in competition  
17 among generators.

18 Q. Is it your testimony that the way in  
19 which one would attempt to determine the  
20 reasonableness of the ECC in this case is to examine  
21 the bulk power or the wholesale prices that are  
22 likely to exist or available for --

23 A. No. It's my testimony that it's your  
24 witness's position that that's the case.

25 Q. That's your understanding of our --

1 Whose witness are you speaking of?

2 A. Mr. Mitnick, among others.

3 Q. On Page 9 of your testimony -- I'm  
4 sorry. Let me just ask another question. With  
5 respect to restricting market power, again, would  
6 you agree that generally, all other things being  
7 equal, the best way to prevent an incumbent that has  
8 market power from exercising that market power and  
9 being able to realize monopoly profits is by having  
10 as vigorous a competitive market as possible?

11 A. Well, your question is a non sequitur.

12 Q. How is that?

13 A. Because you've hypothesized that the  
14 incumbent has market power and he has it by virtue  
15 of the fact that you don't have a competitive  
16 market.

17 Q. All right. Let's change it. How about  
18 dissipating market power?

19 A. Well, there are two ways to control  
20 market power. There's regulation, and there's  
21 competition. Those are the only two ways there are.

22 Q. What's the best way, as an economist? I  
23 just want to remind you.

24 A. As an economist --

25 MR. BONNEY: As compared to what, if I might

1 ask, all things equal?

2 JUDGE RAINEY: Excuse me. So that we don't  
3 get into this kind of banter, what we'll do is, if  
4 there's an objection to be made, make the objection.  
5 Otherwise, don't make any snide remarks.

6 I'll also caution counsel with regard to  
7 testifying. Allow the witnesses to testify. If you  
8 have something that you want the witness to bring  
9 out that you think was confused in cross-  
10 examination, please bring it up in redirect  
11 examination.

12 But we'll try to move this along, and we  
13 won't be able to do that if we have the kind of  
14 disrespect that I see taking place right now.

15 Please proceed.

16 MR. CLEARFIELD: I apologize if in any way my  
17 comments were considered to be disrespectful to  
18 anyone.

19 JUDGE RAINEY: I'm not directing it to any  
20 particular counsel right now.

21 Please proceed.

22 A. I have the question. Generally speaking,  
23 economists of the Western tradition, at any rate,  
24 tend to act on the assumption that competition is  
25 preferable to regulation in general circumstances

1 but with rather substantial exceptions to those  
2 circumstances.

3 BY MR. CLEARFIELD:

4 Q. Do you characterize yourself as an  
5 economist in the Western tradition?

6 A. Yes. When we're talking about whether to  
7 introduce competition into something, as we have in  
8 deregulation of electric utilities, it seems to me  
9 that the test we ought apply is whether introducing  
10 a layer of competition where none previously existed  
11 provides benefits to the public, principally in the  
12 form of lower prices or better quality products,  
13 that countervail any costs that are added by  
14 introducing a layer of activity.

15 At the end, it is a cost benefit calculus.  
16 We have a cultural presumption that that calculus  
17 will come up positively, but clearly that's not the  
18 case in all instances.

19 Q. Generally, if you had to choose between  
20 one or the other, it would be your opinion that the  
21 development of a competitive market would be the --  
22 the use of competition to restrain prices would  
23 produce the most societal benefits? Let's put it  
24 that way.

25 A. As I say, in most instances.

1 Fortunately, we don't have to make that judgment  
2 generally. We can make it specific.

3 Q. On Page 9 of your rejoinder, Doctor, on  
4 Lines 8 through 20, you're discussing Mr. Mitnick's  
5 testimony with regard to what you characterized as  
6 selling general and administrative costs. You say  
7 on Line 18 that you find it remarkable that  
8 proponents of retail access contend that customers  
9 should pay higher prices as a result of the  
10 introduction of retail competition. Do you see  
11 that?

12 A. Yes, I do.

13 Q. Do you have a reference to Mr. Mitnick's  
14 testimony where he has proposed that customers pay a  
15 higher overall rate for electric service from PECO  
16 as a result of this restructuring?

17 A. I'm afraid I don't have Mr. Mitnick's  
18 testimony in front of me, but my recollection is and  
19 what I'm referring to here is the statement--and I,  
20 frankly, don't remember whether it's in Mitnick; it  
21 certainly is Mr. Johnstone's testimony; it's in  
22 Ms. Hull's testimony--that the ECC has to be high  
23 enough to cover the retail selling cost of entrant  
24 retailers. That's what I was referring to.

25 Q. So you were not considering whether a

1 customer on an overall basis would be paying more  
2 for power if this reallocation occurred, were you?

3 A. If the generation component of prices has  
4 to be higher to cover an added cost, it has to be  
5 higher to cover an added cost. I don't understand  
6 the question.

7 Q. You're assuming if you increase the  
8 generation cap you would increase the overall charge  
9 to customers?

10 A. Unless you took it out of PECO's  
11 shareholders' hides, sure. That's true by  
12 definition.

13 Q. If in fact the overall charge to  
14 customers was at the same level as proposed by PECO  
15 or lower, then this statement would not be true,  
16 would it?

17 A. The statement that I'm making is true;  
18 that if you say that the costs have to cover the  
19 added cost of a retailing layer, they will be higher  
20 than they would be if you did not have prices that  
21 would do that.

22 If you're offsetting that by some reduction  
23 in something else, whether it's the reduction in the  
24 CTC or getting the legislature to get rid of the  
25 GRT, you can have retail prices not be any

1 different, but I don't see any relevance to that.

2 Q. It's the overall rate that determines  
3 whether customers actually pay more if these costs  
4 are acknowledged. Isn't that fair?

5 A. It is the effect of the acknowledgement  
6 of those costs on what the customer pays that  
7 affects what the customer pays, and if for unrelated  
8 reasons you're changing something else, then you may  
9 offset it. But that has nothing to do with what I'm  
10 talking about here.

11 Q. Did you examine the specific proposals  
12 that Mr. Mitnick made on behalf of the Pennsylvania  
13 Electric Competition Coalition with respect to the  
14 overall rates that customers would be paying before  
15 you made this statement in your testimony?

16 A. Yes. And the statement that I made in my  
17 testimony still is absolutely true.

18 Q. Is it true if in fact Mr. Mitnick's  
19 proposal not only doesn't increase the overall rate  
20 that a customer would pay but actually decreases it,  
21 so the customers at the end of the day would  
22 actually be paying less than under the partial  
23 settlement in a particular year? Does that affect  
24 your opinion?

25 A. No, it doesn't at all, because what we're

1 talking about here is where the alleged overcharge  
2 of CTC and T & D that Mr. Mitnick asserts took place  
3 goes.

4 Q. Well, no.

5 A. Just a moment, if I can finish my answer.

6 Q. I'm sorry.

7 A. If we say that it has to go to cover the  
8 retail selling cost of competitors rather than to  
9 reduce the overall price cap, customers are worse  
10 off.

11 Q. Even if they don't pay any more?

12 A. They are paying more.

13 Q. Under Mr. Mitnick's proposal?

14 A. No. They are paying more under  
15 Mr. Mitnick's proposal if it goes to cover the  
16 retail selling cost of competitors as opposed to  
17 reducing the overall price cap.

18 Q. You have to agree, don't you, that if  
19 Mr. Mitnick's proposal does not include a suggestion  
20 that customers on an overall basis pay more as a  
21 result of this reallocation, then your statement --  
22 that customers, in fact, aren't being asked to pay  
23 higher prices to cover the suppliers' A & G costs?  
24 I mean that's just a truism, isn't it?

25 A. The question is, Where does the money go?

1 Mr. Mitnick says that there's money that should go  
2 to someone. He has a table in the exhibits you're  
3 going to present that you handed out yesterday that  
4 says where he thinks it should go.

5 My point is, quite simply, if the standard  
6 that is being applied is that the ECC has to be high  
7 enough to cover additional retail selling costs by  
8 reason of having brought in retail competitors, then  
9 it absolutely must follow that it does not go to  
10 someone else.

11 He's proposing that it be taken away from  
12 PECO shareholders. He's proposing that it go to  
13 cover these costs. The alternative, if you're going  
14 to take it away from PECO shareholders, obviously  
15 would be to give it to customers, because that's the  
16 only people left.

17 Q. I think I understand. You're really  
18 saying it's not that they would pay more. It's that  
19 they aren't being given under Mr. Mitnick's proposal  
20 an opportunity to pay even less or be charged even  
21 less?

22 A. They're not being given the opportunity  
23 to pay less than they would if they weren't having  
24 to cover those costs.

25 Q. I understand. On Page 10 of your

1 testimony, you talk about -- Let me see if I can  
2 give you a line reference.

3 MR. CLEARFIELD: I'm going to stop at this  
4 point. That's all the questions I have. Thank you.

5 JUDGE RAINEY: Further cross-examination?

6 Mr. Dworetzky.

7 MR. DWORETZKY: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. DWORETZKY:

10 Q. Let me refer you, Mr. Hieronymus, to your  
11 rejoinder testimony at Page 2. Actually, let's look  
12 at Page 3, Line 1. You say, "It is axiomatic in  
13 economics that there is no such thing as a free  
14 lunch."

15 A. Yes.

16 Q. Let me make sure I understand what you're  
17 saying there. You're saying that under the  
18 settlement agreement there are a number of different  
19 components. You identified the overall cap on  
20 rates; the CTC recovery; the generation credit, or  
21 the ECC; and what we've been calling the T & D,  
22 transmission and distribution. Is that correct?

23 A. Yes, it is.

24 Q. And that there's a relationship between  
25 the values given to each of those?

1           A. In the sense that three of them have to  
2 add up to the fourth.

3           Q. What you mean by a free lunch is that if  
4 you take something from one column you have to add  
5 it back in another column in order for that  
6 relationship to remain mathematically true?

7           A. Or else to decrease the fourth column,  
8 which is the sum of the other three.

9           Q. So you have several moving parts, but in  
10 the end, they all have to add up to the same number  
11 you started with; correct?

12           A. Well, they don't have to.

13           JUDGE RAINEY: Let me direct the witness. If  
14 you can, answer yes or no, and then if any further  
15 clarification --

16           A. No, they don't have to, Your Honor.

17 BY MR. DWORETZKY:

18           Q. I think that I do understand what you're  
19 saying, and I think that I'd like to ask you about  
20 an example. Suppose that I were to tell you and you  
21 were to assume for purposes of this question that  
22 there had been a mistake in the calculation of one  
23 of these components that you identified. Are you  
24 with me?

25           A. Yes.

1 Q. And the effect of that mistake was that  
2 there was \$50 which was misaccounted for in drawing  
3 up the initial relationship between these different  
4 components. Are you with me?

5 A. I am.

6 Q. Now, your principle that there's no such  
7 thing as a free lunch, how would that apply in that  
8 context?

9 A. I'm sorry. I'm not following.

10 Q. What would become of the \$50 to be true  
11 to the principle, the economic principle, that we  
12 started with?

13 A. I would have to either reduce the sum of  
14 the components by \$50, leave it where it was despite  
15 that it was miscalculated, or move it someplace  
16 else.

17 Q. And that would be true if the \$50 was as  
18 a result of a misjudgment as well as a mistake?

19 A. Well, I'm talking about the simple  
20 mathematics of it. It doesn't matter. If I change  
21 one number, I have to change another one.

22 MR. DWORETZKY: I think that's all I have.  
23 Thank you, Your Honor.

24 JUDGE RAINEY: Any further cross-examination?

25 MR. HAWKE: Yes, Your Honor. I have a few

1 questions.

2 JUDGE RAINEY: Mr. Hawke.

3 CROSS-EXAMINATION

4 BY MR. HAWKE:

5 Q. Dr. Hieronymus, do you know what the  
6 average load factor is for residential customers on  
7 PECO's system on rate schedules R and RH?

8 A. No, not specifically.

9 Q. In your testimony you've testified--and  
10 this is a follow-up question to one of  
11 Mr. Clearfield's--that there will be little, if any,  
12 head room between the market generation costs and  
13 the ECC during the first few years of the transition  
14 to competition. Would you please define your use of  
15 the word head room?

16 A. That's simply the difference between the  
17 two numbers.

18 Q. The entire amount of the difference?

19 A. I'm sorry.

20 Q. The entire amount of the difference  
21 between the generation cost, the market generation  
22 cost, and the ECC? So that's what you --

23 A. No. The comparison I actually had in  
24 mind was between what I referred to as wholesale  
25 prices adjusted to average retail, the delivered

1 cost of bulk power, and the ECC.

2 Q. Okay. Thank you. Now, while there will  
3 be a little head room in the joint settlement  
4 proposal, you also believe that that's necessary in  
5 order to protect customers from over-recovery of the  
6 CTC; is that correct?

7 A. Well, I wasn't party to the negotiation  
8 of the settlement. I'm noting that that is a  
9 consequence of it and that if you did not have a  
10 tight cap you would not have that same protection.

11 Q. And you're assuming, are you not, that  
12 there will be no adjustment to the CTC over the  
13 years of the joint settlement?

14 A. Do you mean there will be no change from  
15 what is presently proposed?

16 Q. That's correct.

17 A. I certainly wasn't assuming the contrary.  
18 So I guess, yes, I was assuming that.

19 MR. HAWKE: Thank you. That's all I have,  
20 Your Honor.

21 JUDGE RAINEY: Anyone else, cross-  
22 examination?

23 (No audible response.)

24 JUDGE RAINEY: Redirect, Mr. Bonney?

25 MR. BONNEY: None, Your Honor.

1 JUDGE RAINEY: Thank you very much. If there  
2 is nothing further, this witness may stand down.

3 The next witness we have scheduled is  
4 Ms. Jeanine Hull.

5 MR. CLEARFIELD: Your Honor, off the record.

6 JUDGE RAINEY: Yes.

7 (Discussion off the record.)

8 JUDGE RAINEY: Let's take a five-minute  
9 break.

10 (Recess taken.)

11 JUDGE RAINEY: Ms. Hull, would you stand and  
12 raise your right hand, please.

13 B. JEANINE HULL, called as a witness, having  
14 been duly sworn, was examined and testified as  
15 follows:

16 JUDGE RAINEY: Please be seated. Give your  
17 full name and address for the record.

18 THE WITNESS: My name is Jeanine Hull.  
19 Strategic Energy Advisors, 1350 New York Avenue,  
20 11th Floor, Washington, D.C.

21 MR. CLEARFIELD: Your Honor, we have  
22 previously distributed to all parties and provided  
23 to the court reporter this morning copies of a  
24 statement which has been marked as PECC Statement 2,  
25 entitled the Supplemental Testimony of B. Jeanine

1 Hull on Behalf of The Pennsylvania Electric  
2 Competition Coalition. It consists of 18 pages of  
3 questions and answers. There are no exhibits. I'd  
4 ask that the statement be marked for identification.

5 JUDGE RAINEY: So marked for identification  
6 purposes.

7 (PECC Statement Number 2 was produced and  
8 marked for identification.)

9 DIRECT EXAMINATION

10 BY MR. CLEARFIELD:

11 Q. Ms. Hull, do you have before you what  
12 we've just marked for identification as PECC  
13 Statement 2, your supplemental testimony of B.  
14 Jeanine Hull?

15 A. Yes, I do.

16 Q. Was that prepared by you or under your  
17 supervision and direction?

18 A. Yes, it was.

19 Q. Ms. Hull, do you have any additions or  
20 corrections you wish to make at this time?

21 A. Yes. There are five corrections.

22 Q. Proceed with them, please.

23 A. Page 9, Line 4.

24 Q. You'll probably want to go slowly.

25 A. The reference to 89 cents should be 89

1 mills.

2 On Line 12 of that page, the answer should  
3 begin with "if," the word "if."

4 On Page 12, Line 1, the word "will" should be  
5 inserted before the word "complete" at the end of  
6 Line 1.

7 On Page 13, Line 4, the column entitled  
8 Working Capital at 10 Percent, the 10 percent should  
9 be seven percent.

10 On Page 14, Line 15, \$2 per kilowatt hour  
11 should be two cents per kilowatt hour.

12 Q. Thank you. Are there any other  
13 corrections you wish to make at this time?

14 A. No.

15 Q. With those corrections, is your testimony  
16 true and correct to the best of your information,  
17 knowledge and belief?

18 A. Yes, it is.

19 Q. If I asked you the questions that are  
20 contained therein today, would your answers be the  
21 same?

22 A. They would be.

23 MR. CLEARFIELD: Your Honor, Ms. Hull is  
24 available for cross-examination.

25 JUDGE RAINEY: Thank you.

1 Cross-examination.

2 JUDGE CHESTNUT: Did you move it in?

3 MR. CLEARFIELD: I did not move it in. I was  
4 planning to move it in at the conclusion.

5 JUDGE RAINEY: Move it in now.

6 MR. CLEARFIELD: I move the testimony of  
7 Statement 2 into the record subject to any  
8 appropriate motions to strike that may be raised.

9 JUDGE RAINEY: Any objections?

10 (No audible response.)

11 JUDGE RAINEY: So admitted with that caveat.

12 Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q. Ms. Hull, we've met before. I'm Ward  
16 Smith, an attorney for PECO Energy Company. How are  
17 you today?

18 A. Fine.

19 Q. Do you have a copy of your testimony in  
20 front of you?

21 A. Yes, I do.

22 Q. Could you please flip to Page 13 of that  
23 testimony. There you have a table labeled Table  
24 One.

25 A. Correct.

1 Q. I'd like to spend, I think, the bulk of  
2 the time that we'll be talking today on this table,  
3 although I will take you to a few other places in  
4 your testimony.

5 Now, I want to just start by getting an  
6 overview understanding of this table. It takes us  
7 through a period of years, 1999 to 2003. The first  
8 column after the years describes the credit that is  
9 set forth in the joint petition for partial  
10 settlement for those years, the energy and capacity  
11 credit; is that correct?

12 A. That's correct.

13 Q. Then the next column is Market Price.  
14 That is your estimate of market price for those  
15 years?

16 A. Correct, for the type of supply that I  
17 have described in my testimony.

18 Q. And then the column after that, Line  
19 Loss, Taxes and Penalties, again, is your estimate  
20 of what those amounts would be for the years  
21 indicated in the table?

22 A. Well, some of them aren't estimates. The  
23 taxes are pretty clear. But yes.

24 Q. The administrative costs, again, your  
25 estimate of the administrative costs for those

1 years?

2 A. That's correct.

3 Q. The column after that which indicates  
4 Loss is then the Market Price column, the Line Loss,  
5 Taxes and Penalties column and the Administrative  
6 Costs column minus the PECO Credit column; correct?

7 A. Correct.

8 Q. After that we then have Working Capital  
9 at Seven Percent. That's basically an indication of  
10 an additional cost that you believe suppliers would  
11 incur, a cost of capital that was not reflected in  
12 your previous numbers? Let's just put it that way.

13 A. That's the cost of capital of carrying  
14 the loss.

15 Q. So you then add that on to create the  
16 Loss Per Year, which is the addition of Loss and  
17 Working Capital at Seven Percent columns?

18 A. That's right.

19 Q. And then the Total Loss column at the  
20 end, that's the cumulative each year of the Loss Per  
21 Year column added to the total from the previous  
22 year. Is that how that works?

23 A. That's correct.

24 Q. You said a moment ago that the numbers in  
25 the market price column deal with the kind of

1 service that you had described elsewhere in your  
2 testimony. Do you recall that?

3 A. Right.

4 Q. That basically refers to the price that a  
5 supplier would have to pay on the marketplace in  
6 order to get a four- to five-year full-requirements  
7 contract for capacity and energy. Is there anything  
8 else that goes into that bundle of things that the  
9 supplier would be buying, in the assumptions on this  
10 table?

11 A. I didn't specify full requirements.  
12 Those are yours.

13 Q. I'm sorry. Then my question had an  
14 incorrect assumption. In that situation you should  
15 correct me. Let me just ask it as an open-ended  
16 question then.

17 What are the assumptions on what kind of  
18 product the suppliers would be buying that is  
19 reflected in the Market Price column in your Table  
20 One?

21 A. It's a long-term fixed price firm supply.

22 Q. Long term meaning four to five years, I  
23 think. Is that correct?

24 A. Correct.

25 Q. Fixed price, skip over that, I think.

1 And firm means what exactly?

2 A. The obligation to provide energy and the  
3 capacity to back that up.

4 Q. So both energy and capacity?

5 A. Correct.

6 Q. Thank you very much. You were deposed  
7 about a week or two ago; right?

8 A. About a week or two ago, that's correct.

9 Q. During that deposition Mr. Bonney and  
10 you, actually, discussed -- Well, you were using  
11 some car analogies to refer to some of these  
12 products. I want to recall that with you and just  
13 get a characterization on the record here.

14 The service that utilities are providing  
15 right now to their customers, at one point you  
16 referred to that as a platinum service, and at  
17 another point you referred to that as Cadillac  
18 service. Is that a fair characterization of your  
19 previous deposition testimony?

20 A. And at another point I referred to it as  
21 the Henry Ford you can have any color you want so  
22 long as it's black.

23 Q. No differentiation?

24 A. No differentiation.

25 Q. When you are talking about the market

1 price in the table on Table One, that is also for  
2 full Cadillac, undifferentiated, black-only product;  
3 right?

4 A. That's correct.

5 Q. You do mention market price at a number  
6 of other places in your testimony. One example of  
7 that, if you could flip to Page 5, Lines 14 through  
8 15 of your testimony. You say, "The current market  
9 price for electricity in and around PECO's territory  
10 for delivery during 1999 and 2000 is materially  
11 higher than 2.80 cents per kilowatt hour."

12 A. Correct.

13 Q. Now, I just want to make sure. At this  
14 and the other places in your testimony where we'll  
15 go in just a second where you talk about market  
16 price, these are really talking about exactly the  
17 same issue as is dealt with in your Table One under  
18 the column Market Price?

19 A. That's correct.

20 Q. I want to make sure. This is kind of a  
21 housekeeping thing. Page 4, Lines 13 through 15 of  
22 your testimony, the question that I asked a few  
23 moments ago about whether it's the same issue, is  
24 that true for this piece of testimony on market  
25 price at that place in your testimony?

1 A. I'm sorry. We're on Page 4?

2 Q. Page 4, Lines 13 through 15. I better go  
3 there in case I have a typo. "It is highly unlikely  
4 that competing energy suppliers will be able to  
5 acquire and resell generation in PECO's territory  
6 for less than the generation credit of 2.80 cents  
7 per kWh."

8 A. In that context, it is not only the  
9 commodity price but also the infrastructure, the  
10 cost to acquire, to be able to be in a position to  
11 offer those services.

12 Q. So, when we look at your table, your  
13 Table One under the heading Market Price, we're  
14 going to be talking about the cost to acquire  
15 energy, for suppliers to acquire energy on the  
16 wholesale marketplace?

17 A. That's correct.

18 Q. And to the extent that this testimony on  
19 Page 4, Lines 13 through 15, deals with the  
20 acquisition of energy, it's the same issue as is  
21 dealt with on your table?

22 A. That's correct.

23 Q. There's three more of these, and I  
24 apologize. This is kind of grueling.

25 Page 6, Lines 11 through 14, you say, "Based

1 on data and information available in the marketplace  
2 today from participants (both buyers and sellers)  
3 and current price quotations, the current price for  
4 power to be delivered in 1999 through 2003 is higher  
5 than the credit proposed" in, I guess, "the PECO  
6 Proposal." They're talking, also, about the same  
7 acquisition cost issue that is in your table?

8 A. That's correct.

9 Q. Page 9, Lines 14 through 18, same  
10 question.

11 A. That's correct.

12 Q. Finally, Page 12, Lines 12 through 16,  
13 same question.

14 A. Page 12?

15 Q. Yes. Lines 12 through 16.

16 A. That's correct.

17 Q. So then let's go back to the table on  
18 Page 13. Now, you have a number in 1999 indicating  
19 a market price of 3.40 cents per kilowatt hour;  
20 correct?

21 A. That's correct.

22 Q. Now, this price for the product that  
23 suppliers are going to be going out and buying has a  
24 number of component parts that make up the 3.4  
25 cents?

1 A. Yes.

2 Q. Including -- And this is from your depo,  
3 but you can still correct me if I've got it wrong.  
4 Including spot energy, capacity, a reserve  
5 requirement, load factor, line losses, long-term  
6 premium, and a bump for the fact that you were  
7 basing it on 1997 prices and this is a 1999 table?

8 A. The bump is inflation, yes.

9 Q. So that's what goes into making up the  
10 3.4 cents?

11 A. That's correct.

12 Q. In discovery you were asked if you had  
13 any work papers to support your development of that  
14 3.4-cent figure; and you responded, I believe, in  
15 discovery that there were no work papers that were  
16 created, although there were some documents that you  
17 looked at. Is that correct?

18 A. That's right.

19 Q. The documents that you provided in the  
20 deposition -- Strike that. Give me just a second  
21 to craft a little better question.

22 You provided a total of six documents in the  
23 deposition as things that formed the basis for your  
24 opinion of how that 3.4 cents was created?

25 A. No, that's not exactly right. The basis

1 of my opinion is -- The basis of my opinion is my  
2 experience and long-term participation in this  
3 market and discussing with others these issues and  
4 getting a sense of the price at which electricity is  
5 likely to be moving.

6 Q. Thank you. My question was very  
7 awkwardly worded. I do intend to ask you about that  
8 experience later. Right now I'm trying to figure  
9 out which documents. I understand my question was  
10 very poorly worded.

11 There were six documents, and that was all of  
12 the documents that you provided; correct?

13 A. That's correct.

14 Q. The first of those documents was PECO  
15 Energy's 1996 annual report; right?

16 A. That's correct.

17 Q. I don't have copies of that, but we'll  
18 come back to that later. I just want to identify  
19 these six for everyone.

20 The second of the documents that you  
21 identified I'm going to have marked as PECO  
22 Cross-Examination Exhibit Number 8 and ask you if  
23 you recognize this document which I've marked as  
24 PECO 8.

25 MR. CLEARFIELD: Could I see it before we --

1 MR. SMITH: Before I ask another question, I  
2 will get you one.

3 MR. KLEPPINGER: It should be Nine.

4 JUDGE RAINEY: We previously have a PECO  
5 Cross-Examination Exhibit Number 8. So will this be  
6 Number 9?

7 JUDGE CHESTNUT: Is it a new one?

8 MR. SMITH: It is. It is a new one. I  
9 apologize. I have a series that are then mismarked.  
10 If this, Your Honors, will not cause too much  
11 confusion, I already have 9, 10, 11 and 12 marked.  
12 Can I make this 13 so we only have to re-mark one of  
13 them?

14 JUDGE CHESTNUT: Yes.

15 MR. SMITH: Let's make this 13.

16 (PECO Cross-Examination Exhibit Number 13 was  
17 produced and marked for identification.)

18 BY MR. SMITH:

19 Q. Ms. Hull, have you seen this document  
20 before?

21 A. Yes, I have.

22 Q. Is it a document that you provided to us  
23 in the deposition as one of the documents that  
24 formed the basis for your opinion?

25 A. Yes.

1 Q. It says at the top DowJones Wholesale  
2 Electricity Price Indexes; is that correct?

3 A. Right.

4 Q. I'm just trying to get these things  
5 identified so we can talk about them more easily  
6 later.

7 Now I'm going to give you a series of--I'll  
8 do these all at once--a series of four documents  
9 which I will then ask you whether you've seen them  
10 before.

11 MR. SMITH: These have been marked for  
12 identification as PECO 9, 10, 11 and 12.

13 JUDGE RAINEY: So marked for identification  
14 purposes.

15 (PECO Cross-Examination Exhibit Numbers 9,  
16 10, 11 and 12 were produced and marked for  
identification.)

17 BY MR. SMITH:

18 Q. Ms. Hull, in sum, then, these five  
19 documents which were just handed out comprising  
20 PECO's Cross Exhibits 9 through 13 and, in addition  
21 to that, PECO Energy's 1996 annual report are the  
22 universe of documents that you gave to us at the  
23 deposition as being the documentary basis for your  
24 opinions?

25 A. That's correct.

1 Q. The PECO Energy Company annual report,  
2 let's deal with that quickly. The data from that --

3 MR. CLEARFIELD: May I approach and look over  
4 her shoulder at her copy?

5 MR. SMITH: Oh, absolutely.

6 MR. CLEARFIELD: That was directed to you,  
7 Your Honor. I'm sorry.

8 JUDGE RAINEY: Please proceed.

9 BY MR. SMITH:

10 Q. For shortcut, ultimately, the data that  
11 you looked at in the PECO Energy annual report, you  
12 told us in the deposition, was all of the sales, the  
13 wholesale, bulk power sales, made by PECO Energy in  
14 that year which had an average price of 2.46 cents  
15 per kilowatt hour; is that correct?

16 A. Yes, and the exchange sales of 2.78.

17 Q. Thank you. I think that's all we'll need  
18 on the annual report.

19 Now, if you can take a look at what has been  
20 marked as PECO Cross Exhibit Number 13, the Dow  
21 Jones piece. This has a number of pages of text at  
22 the front of it kind of describing some of the data,  
23 and then about five or six pages back it begins to  
24 have some tables that report numbers associated with  
25 certain types of transactions.

1 A. Yes.

2 Q. Those tables in the back of this, pretty  
3 much what they report is the price for the spot  
4 prices for sales made on the PJM system for that  
5 day; and it is limited to those sales which were  
6 voluntarily reported by the participants, generally  
7 limited to sales of one-day energy; and, by and  
8 large, these sales prices contain little or no  
9 capacity. Is that a fair characterization of what  
10 we have here?

11 A. That's my understanding.

12 Q. The first page of data, there's a column  
13 indicating Firm On-Peak, and underneath that there's  
14 a series of numbers beginning with five or six days  
15 of zeros. Does that indicate that nobody  
16 voluntarily reported any trades for that day?

17 A. That would be my expectation.

18 Q. Then under that there's 19.36.

19 JUDGE RAINEY: What are you referring to,  
20 Mr. Smith?

21 MR. SMITH: I apologize, Your Honor. In PECO  
22 Cross-Examination Exhibit Number 13, this is the --

23 JUDGE RAINEY: Page 1 under PJM Sheet DJ-PJM  
24 in the left-hand corner?

25 MR. SMITH: Yes, Your Honor.

1 JUDGE RAINEY: I have it now. Please  
2 proceed.

3 BY MR. SMITH:

4 Q. Ms. Hull, in this column labeled Firm On-  
5 Peak for the row labeled 25 September 1997, there's  
6 the number 19.36. What does that represent?

7 A. The price of the megawatt.

8 Q. If we translate that to kilowatt hour, it  
9 would be that that energy was sold that day for  
10 1.936 cents?

11 A. That's correct.

12 Q. Similarly, all the way down this column  
13 and onto the next page running --

14 A. Well, assuming 100-percent delivery.  
15 That's the price of the megawatt.

16 Q. Similarly, for all of the numbers in that  
17 column, those are prices for the sale, and we can  
18 convert them to kilowatt hours using the same ratio  
19 that we just discussed?

20 A. You can have a rough estimate. It  
21 doesn't tell you exactly what the exact price is,  
22 but you can come close.

23 Q. Now, the document which was labeled as  
24 PECO Cross Exhibit Number 9, could you take a look  
25 at that, please. It says Cambridge Energy Research

1 Associates at the top.

2 A. Right.

3 Q. You also used this document as a basis  
4 for your opinion of the 3.4-cent market price in  
5 your table?

6 A. Yes.

7 Q. There are four charts or graphs on this  
8 table. The one in the upper left is labeled  
9 Northeast Market. Now real quickly, the others are  
10 Southern Market, Midwest Market, and Western Market.  
11 I take it that those are not the ones that you  
12 referred to in forming a basis for your opinion.

13 A. That's correct.

14 Q. So it was the Northeast Market one. This  
15 contains, nominally, graph lines that indicate the  
16 price in cents per kilowatt hour for spot  
17 electricity prices made in the -- Go ahead.

18 A. Weekly average prices. So I assume that  
19 they're spot, but I don't know.

20 Q. It says On-peak Spot Electricity Prices.

21 A. Okay.

22 Q. So they are spot electricity prices.

23 A. Okay.

24 Q. For the Northeast, what is that an  
25 indication of on this? The Northeast, what are

1 those designations?

2 A. Regional markets within the Northeast.

3 Q. One for the Northeast, or is that the  
4 total of all of them? Do you know? I'm sorry.  
5 There's a list here. It says Northeast, NEPOOL,  
6 NYPP. I'm just wondering if the first on that list  
7 that says Northeast, is that a separate market or is  
8 that the conglomeration of all of them?

9 A. I would guess that that's a separate  
10 market. I assumed it was Northeast Utilities, but  
11 --

12 Q. Then we have NEPOOL, N-E-P-O-O-L. What  
13 is that?

14 A. The New England power pool.

15 Q. Below that, NYPP, which is what?

16 A. The New York power pool.

17 Q. And then PJM, and below that East New  
18 York, and below that West New York. Now, this  
19 document that we have in front of us, can you  
20 discern of the six or so lines that are all jointly  
21 represented on this graph -- from the quality, the  
22 copy quality of this document, are you able to sort  
23 out which one is which?

24 A. No, but that's not what it's used for.  
25 It's used to show that generally the energy prices

1 are in the low twos.

2 Q. I just want to be clear. We had a best  
3 evidence issue yesterday. When you were looking at  
4 this document to prepare your testimony, it was of  
5 about this copy quality?

6 A. Yes.

7 Q. How would you characterize the graph  
8 lines in that graph in the upper left quadrant of  
9 this page?

10 A. They show that the on-peak spot energy  
11 electricity prices in the Northeast Markets  
12 generally tracked and generally tracked in the lower  
13 two-cent range.

14 Q. Now, we have talked about three of the  
15 documentary pieces of support for your opinion. I  
16 just want to review real quickly. The annual report  
17 numbers, is it your understanding that those prices  
18 included sales of capacity as well or only of  
19 energy?

20 A. It wasn't clear what they included.

21 Q. PECO Cross Exhibit 13 specifically is  
22 only energy? That's the Dow.

23 A. Yes. Well, yes, firm energy, whatever  
24 that is.

25 Q. The one that we just looked at, Cambridge

1 Energy Research Associates, again, is specifically  
2 only the energy and not the capacity?

3 A. Yes.

4 Q. At the time that you wrote your testimony  
5 and that you put these prices into the table on Page  
6 13, those were the only documents that you actually  
7 had in front of you; correct? You had not yet  
8 created or seen PECO Cross-Examination Exhibits 10,  
9 11 or 12?

10 A. That's correct.

11 Q. So, at that point in time, the documents  
12 that you had seen to support your prices did not  
13 include any market data indicating what the price of  
14 capacity sales is?

15 A. Did I have any documents?

16 Q. Documents.

17 A. In front of me at the time? No.

18 Q. Any documents that you relied upon.

19 A. No.

20 Q. Thank you.

21 A. Documents are not -- Documentary prices  
22 are not easily available in this industry.

23 Q. Now, PECO 10, 11, and 12 collectively  
24 comprise some handwritten notes of telephone calls;  
25 correct?

1 A. Yes.

2 Q. These are not your notes, I take it from  
3 our previous discussion. They are the notes of your  
4 associate Fred Potter?

5 A. That's correct.

6 Q. You, nonetheless, relied upon them? I  
7 just have to ask that to make sure before we can go  
8 on.

9 A. Yes.

10 Q. PECO Number 10 is a discussion with whom?

11 A. Jim Potter.

12 Q. Who works where?

13 A. LG&E Energy Marketing.

14 Q. That's the company you worked at for  
15 quite a number of years before you began your  
16 consultancy a few months ago?

17 A. That's correct.

18 Q. Under capacity in 1998, there's an  
19 indication here in quotes in the handwritten notes.  
20 As high as \$4 per kilowatt month and as low as \$2  
21 per kilowatt month. What does that indicate?

22 A. The market range of prices for capacity  
23 in PJM in 1998.

24 Q. Did you or Fred ask Mr. Potter whether he  
25 had any specific transactions in mind when he gave

1 you those numbers?

2 A. I don't know exactly what questions were  
3 asked, but Fred was asked to understand what prices  
4 were available in the market today, which was  
5 September 29th.

6 Q. Just to be clear, that's the day you  
7 filed your testimony?

8 A. Correct.

9 Q. And this call was made at 1:45 that  
10 afternoon?

11 A. Right.

12 Q. I better make sure. \$2 per kilowatt  
13 month translates to what per kilowatt year?

14 A. Well, multiply it by -- It's 24.

15 Q. \$24 per kilowatt year?

16 A. Yes.

17 Q. PECO 11 appears to be notes of a  
18 telephone conversation held a little later that  
19 afternoon between Fred Potter and Craig Baker of  
20 AEP.

21 A. Correct.

22 Q. What is AEP?

23 A. American Electric Power.

24 Q. Is that a PJM located entity?

25 A. No. It's an ECAR entity.

1 Q. We talked about this particular phrasing  
2 in the deposition. It appears to say--and I think  
3 you agreed that this is what it did say--"Read Craig  
4 Baker following 'all in' prices," and there's a  
5 table of prices which are the same as the prices  
6 that are in your table on Page 13.

7 Then there is a nominal quote from Craig.  
8 "Depends on when you ask--varies a great deal  
9 depending on perceptions regarding demand and  
10 available capacity. Some would say you are high,  
11 and some would say you are low."

12 Is that what you understand to have happened  
13 on this telephone call?

14 A. That's what it says. Yes, it is my  
15 understanding.

16 Q. To your knowledge, was Mr. Baker asked  
17 what the basis was for the opinions indicated here?

18 A. Well, the basis is his understanding and  
19 his company's regular attempts to sell into the PJM  
20 market.

21 Q. He did not give you any prices himself on  
22 this call, did he?

23 A. He was apparently not asked for prices  
24 from AEP.

25 Q. PECO Exhibit Number 11 is also

1 handwritten notes of a call which -- Did I just do  
2 11? I'm sorry.

3 PECO 12, also handwritten notes. This call  
4 actually took place the day after you filed your  
5 testimony, or a couple of days after on October 1st  
6 at about 1 o'clock?

7 A. Yes.

8 Q. Again, these are handwritten notes by  
9 your associate Fred Potter?

10 A. That's correct.

11 Q. Who was he speaking to this time?

12 A. Rob Coulton.

13 Q. Of the Natural Resources Group?

14 A. Correct.

15 Q. And what is that?

16 A. An electricity marketer and broker.

17 Q. Based in New York City it says.

18 A. That's correct.

19 Q. He gave a series of prices to you over  
20 the 1999-2003 time range. Is it your understanding  
21 that these are his estimates of -- Let's say of  
22 what.

23 A. Energy.

24 Q. Energy-only prices?

25 A. I believe so.

1 Q. So he estimates that if we translate this  
2 into kilowatt -- He estimates that a megawatt hour  
3 of energy in 1999 will cost between 26.40 and 26.70?

4 A. Well, no. They're bids and asks. If he  
5 were buying power, he would buy at 26.40, and if he  
6 were selling power, he would sell at 26.70.

7 Q. Do you know the basis of these numbers,  
8 how he developed these numbers?

9 A. He was asked for energy prices that he  
10 would be willing to sell, the price at which he  
11 would be willing to sell energy in those years.

12 Q. Ms. Hull, in your deposition that exact  
13 same question was asked of you--whether you know the  
14 basis for his numbers. I would like to refresh your  
15 recollection, if that's all right. Would you, just  
16 to yourself, read this portion of the transcript and  
17 whatever other portion you would like to look at.

18 MR. CLEARFIELD: Would you mind telling me  
19 what page you're referring to?

20 A. Page 54.

21 MR. SMITH: Near the bottom of the page.

22 MR. CLEARFIELD: Before you read it in --  
23 Did you ask her to read it in?

24 MR. SMITH: Silently.

25 (Pause.)

1 THE WITNESS: Yes.

2 BY MR. SMITH:

3 Q. Having reviewed that, I'll ask you again.  
4 Do you know the basis for his numbers?

5 A. These were sales that he was willing to  
6 make. That's exactly what I said. No. He's a  
7 marketer. I don't know where he gets his supply.

8 Q. That was unclear to me, and I apologize.  
9 Did you mean to say that you do or you do not know  
10 the basis for his numbers?

11 A. He is in the market to sell power. When  
12 we asked him for the price at which he would sell  
13 power, these were the numbers he gave. Energy.

14 Q. You did not speak to Mr. Coulton?

15 A. No, I didn't.

16 Q. Taken altogether then, we have now  
17 exhausted the documentary evidence that formed the  
18 documentary basis for your opinion of what the  
19 market prices were as you stated them in Table One?

20 A. That's correct.

21 Q. I'd like to -- I apologize. I have a  
22 note here. If we can go back to PECO Exhibit Number  
23 9, the Cambridge Associates exhibit, can you confirm  
24 that all of the handwritten notes that are on this  
25 are yours?

1 A. Yes, they are.

2 Q. Thank you. I want to take a few minutes  
3 to talk about things other than market prices,  
4 please. Could you take a look at Page 8, Lines 17  
5 through 21, of your testimony.

6 A. Page 8, Lines --

7 Q. 17 through 21.

8 A. Yes.

9 Q. At this point in your testimony, you  
10 refer to the amount of discounts that are necessary  
11 in order to induce customers to change from one  
12 supplier to another. Is that a fair  
13 characterization of the subject matter of the  
14 testimony at that point?

15 A. Yes, that's fair.

16 Q. Have you done any studies to support the  
17 assertions, the opinions that you state in your  
18 testimony here regarding the amount of discount that  
19 would be necessary?

20 A. As I stated in my testimony, I'm speaking  
21 from my own experience.

22 Q. I want to be very clear of what that  
23 means, though. Have you done any studies of it?

24 A. No.

25 Q. Have you followed the consumer behavior

1 in the Pennsylvania pilot?

2 A. Well, the pilot is a very, very different  
3 thing than what we're talking about here, which is  
4 long-term competition. A pilot is -- You get  
5 people that may never -- I mean a pilot is all over  
6 the map. It is in no way representative of what I  
7 am talking about here. So, no. I considered it to  
8 be irrelevant.

9 Q. So, whether people decided to switch  
10 suppliers in the Pennsylvania pilot in response to  
11 certain levels of savings is, in your opinion,  
12 irrelevant to the issue addressed in your testimony  
13 of how much of a discount it would take people to  
14 switch?

15 A. Yes.

16 Q. You are not an expert in consumer  
17 behavior?

18 A. No.

19 Q. I think you said in your testimony that  
20 you volunteered, And I am specifically not a PJM  
21 behaviorist. Is that right?

22 A. I probably said that, yes. Everybody  
23 knows the PJM people are different.

24 Q. Competition. Is competition, the  
25 process, what we are aiming to get here; or are we

1 aiming to get to a particular result of lower  
2 prices?

3 A. My understanding of the objective of the  
4 legislation and the restructuring proposal is that  
5 you will get both through the mechanism of  
6 competition and that by promoting genuine  
7 competition in the PECO territory lower prices will  
8 result from the market discipline imposed by  
9 rigorous competition. That is my understanding of  
10 the objective.

11 Q. You testified before Congress on February  
12 1st, 1996?

13 A. Yes, I did.

14 Q. Generally speaking, what was the subject  
15 matter of that testimony?

16 A. The need for federal restructuring  
17 legislation.

18 Q. A copy of that testimony was provided by  
19 PECC in discovery.

20 MR. SMITH: Again, I don't have extra copies  
21 of this. I apologize. Do you have the document you  
22 provided to us?

23 MR. CLEARFIELD: Not readily available.

24 May I approach the witness, Your Honor, and  
25 peek over her shoulder?

1 JUDGE RAINEY: Yes.

2 Do you have another copy of that, Mr. Smith?

3 MR. SMITH: I thought I did.

4 MR. KLEPPINGER: Your Honor, I have one if  
5 you'd like to borrow it.

6 MR. SMITH: Actually, that would be more  
7 helpful.

8 JUDGE RAINEY: You have not marked this as an  
9 exhibit; is that right?

10 MR. SMITH: Correct.

11 BY MR. SMITH:

12 Q. The pages are not numbered here, but the  
13 second page of text at the top of it has the heading  
14 Benefits of PURPA.

15 A. Correct.

16 Q. About two-thirds of the way down that  
17 page is a paragraph that begins, It is important to  
18 focus on the result, not the process, which I have  
19 marked for you.

20 A. Right.

21 Q. Have you had the opportunity to review  
22 that?

23 A. Yes.

24 Q. Does that testimony which you gave before  
25 Congress indicate that at that point in time it was

1 your opinion that it is important to focus on the  
2 result, not the process; the goal is not  
3 competition, but the goal is lower prices?

4 A. Well, that was probably inartfully  
5 worded. Obviously, if you read the entire  
6 testimony, the goal is to create vigorous  
7 competition so that the lower prices could be  
8 achieved, but that competition for competition's  
9 sake was not the point.

10 The point was, What can you get as a benefit  
11 of having competition? And that's what that  
12 sentence goes to.

13 Q. Thank you. In your deposition you were  
14 asked basically the same question. This is at the  
15 bottom of Page 19, top of Page 20. What is the  
16 basic advantage of competition over that which  
17 exists today? Your answer was, Significant price --

18 MR. SMITH: I'm sorry. Go ahead, Dan.

19 MR. CLEARFIELD: I don't believe you've  
20 established that there's an inconsistency or a  
21 contradiction that would justify the use of the  
22 deposition to quote. What page was that, again?

23 MR. SMITH: Bottom of 19, top of Page 20.

24 MR. CLEARFIELD: Well, you can proceed. I  
25 don't believe there's anything inconsistent about

1 that statement.

2 THE WITNESS: I don't either.

3 BY MR. SMITH:

4 Q. Do you have a copy of the deposition in  
5 front of you?

6 A. Yes, I do.

7 Q. What is that answer that you gave to the  
8 question of what is the basic advantage of  
9 competition?

10 A. The basic advantage of competition over  
11 what exists today is significant price reductions to  
12 consumers and to industry.

13 What is the source of those price reductions?

14 Efficiency, which only comes from  
15 competition. That which only comes from  
16 competition.

17 MR. CLEARFIELD: Wait. Just differentiate  
18 what's in the deposition and what you're adding here  
19 today.

20 A. Efficiency. And then what do you explain  
21 -- Efficiency.

22 BY MR. SMITH:

23 Q. Just to make sure, a couple of pages  
24 later in the deposition, on Page 22, you then added  
25 product differentiation.

1 A. That's correct.

2 Q. At several places in your testimony, you  
3 talk about the need to achieve robust competition.

4 A. Correct.

5 Q. We had a discussion in your deposition  
6 about what that term means, robust competition. Do  
7 you recall that?

8 A. Yes.

9 Q. I think you indicated then that having  
10 one healthy competitor would be sufficient, or could  
11 be sufficient to constitute robust competition, in  
12 your opinion.

13 MR. CLEARFIELD: I'm going to object, Your  
14 Honor. I would prefer --

15 MR. SMITH: I wasn't done with the question.

16 MR. CLEARFIELD: I'm sorry.

17 BY MR. SMITH:

18 Q. Is that your opinion today?

19 JUDGE RAINEY: Mr. Clearfield.

20 MR. CLEARFIELD: I withdraw the objection.

21 A. What I was saying in the deposition, as I  
22 recall--and I don't remember what page that's  
23 on--was that the numbers of competitors, per se, was  
24 not critical. What was absolutely critical was that  
25 there was at least another competitor that was

1 capable of preventing the dominant supplier from  
2 being the price setter and was capable of attracting  
3 customers from the dominant supplier. In some  
4 situations and in some markets, one could be enough.  
5 I certainly was not applying that solely to PECO.

6 BY MR. SMITH:

7 Q. I'd like to go back to the table on Page  
8 13, please, and talk for just a moment about the  
9 column headed Administrative Costs.

10 A. Yes.

11 Q. Did you talk to Enron, New Energy  
12 Ventures, or Delmarva about what their level of  
13 administrative cost is before you developed this  
14 number?

15 A. No.

16 Q. Have you done so since your testimony?

17 A. No.

18 Q. Did you consult those entities or any  
19 other entity regarding what their administrative  
20 costs have been in preparing for the Pennsylvania  
21 pilot program?

22 A. No, not for the Pennsylvania pilot  
23 program.

24 Q. Did you talk to any suppliers about what  
25 their administrative costs have been in preparing

1 for retail competition?

2 A. When I was with LG&E Energy, we spent a  
3 lot of time on this very issue. This comes from my  
4 intimate knowledge as a senior executive in that  
5 company of what could possibly be.

6 This, as I said in my deposition testimony,  
7 is very conservative. But it was based on my own  
8 experience, preparing for exactly this type of  
9 market that I have developed the numbers you see  
10 there.

11 Q. Okay. Thank you. I'm coming near the  
12 end. Coming back to the column on market price,  
13 that will be where we'll stay for the rest of this.

14 Still on your Table One on Page 13, we talked  
15 earlier about how that 3.40-cent number was created,  
16 that it had a number of components.

17 A. Correct.

18 Q. Now, the last of those components that we  
19 talked about was a bump or an inflation adjustment  
20 from 1997 to 1999.

21 A. That's correct.

22 Q. What you basically did was get a base  
23 number, which actually turned out, I believe, to be  
24 3.2 percent for 1997.

25 A. That's correct.

1 Q. And you inflated it at three percent per  
2 year to get 3.4?

3 A. That's correct.

4 Q. You would agree that, in actually  
5 determining market prices, the fuel prices that go  
6 into the fuels for the generating plant is, in fact,  
7 an important factor in determining what prices will  
8 be?

9 A. Well, it's an important factor in  
10 determining what the supplier's costs are. I am  
11 assuming a marketplace. And, of course, all  
12 suppliers like to get their costs out. In that  
13 sense, it will be a factor, but this is not a cost  
14 plus industry anymore.

15 Q. Could you take a look at Page 45 of your  
16 deposition. Beginning at around Line 8, you were  
17 asked whether there were a variety of factors that  
18 affect prices in electric markets. You said there  
19 were, and you agreed that fuel prices are one of the  
20 most important factors. Correct?

21 A. Right.

22 MR. CLEARFIELD: Objection, Your Honor. At  
23 this point I'm going to object. A deposition can be  
24 used by a participant for the purpose of  
25 contradicting or impeaching the testimony of a

1 deponent or witness. That's Rule 5.364 of the  
2 rules.

3 This is simply a different way -- Ms. Hull's  
4 answer is in no way contradictory to the answer she  
5 gave in the deposition. It is simply an  
6 elaboration.

7 JUDGE RAINEY: Mr. Smith.

8 MR. SMITH: My response to that, Your Honor,  
9 would be that the witness testified on this  
10 transcript a moment ago that these factors go to  
11 costs and not to prices, and in her deposition she  
12 specifically said that they do affect prices.

13 That is at least arguably contradictory and  
14 enough for me to be able to present to her this  
15 apparently contradictory statement from her  
16 deposition and at least ask her to explain, which  
17 was my next question, whether she meant the same  
18 thing between these two factors, because they seem  
19 to be very contradictory.

20 JUDGE RAINEY: I'm going to allow the  
21 question. However, I would caution you, Mr. Smith,  
22 to be very mindful of the amount of time that you  
23 are using on what's questionably contradiction in  
24 her deposition as compared to what she's saying  
25 right now, because in certain instances it's just

1 not clear that the contradiction is taking place  
2 here, and we're spending a lot of time on this.

3 Please answer the question.

4 A. I am saying that all of these things go  
5 into the supplier's price or setting the price.  
6 Whether the supplier is able to actually extract  
7 that price from the marketplace is a different  
8 question.

9 They're all important. They all are part of  
10 the supplier's price. Whether that's the same thing  
11 as a market price, which is what I was going to, is  
12 not clear, for exactly the reason I said before. We  
13 are no longer in a cost plus environment.

14 BY MR. SMITH:

15 Q. And you took none of these factors into  
16 consideration in constructing the bump in the Market  
17 Price column in Table One?

18 MR. CLEARFIELD: I'm sorry. Objection to the  
19 form of the question. I'm not sure which bump we're  
20 talking about.

21 BY MR. SMITH:

22 Q. In raising the market price in 1997 from  
23 3.2 to 3.4 in 1999 and then escalating it in years  
24 thereafter, you did not take into consideration fuel  
25 prices or the other factors which you have been

1       testifying about for the last few moments?

2               A.   What I took into consideration is an  
3       escalation factor.  The other issues get subsumed  
4       within the market price.  I was testifying from a  
5       market price perspective, not from a dis-  
6       aggregated, separate that price, tear it apart,  
7       figure out all of its component parts.  That's not  
8       what I'm testifying to.

9               Q.   These prices on Table One under Market  
10       Price have not been adjusted for location?

11              A.   For location?

12              Q.   For location of delivery.  I apologize.

13              A.   No.  These are representative prices.  
14       These are not transaction prices.

15              Q.   There are no actual transactions  
16       supporting these prices in Table One; correct?

17              A.   And I wouldn't expect there to be.  As I  
18       said, there is not a long-term supply market now.

19              Q.   In fact, you are not aware of any  
20       transactions at this price; correct?

21              A.   There is not a market that supports this  
22       kind of contract now.

23              Q.   You are not aware of anyone who has  
24       offered to buy at this price?

25              A.   There isn't a market for that now.  The

1 market is for retail supply, and that market does  
2 not exist today.

3 Q. You have not checked with your clients to  
4 determine what arrangements they have made for this  
5 kind of purchase or how much they would buy at this  
6 price?

7 A. That's not what I was asked to do. I was  
8 asked to define a price, to look at the generation  
9 cap that was contained in the proposal, and to  
10 determine what effect that would have on  
11 competition. That's what I was asked to do.

12 Q. Well, let me be sure here. Would knowing  
13 the price at which your clients have actually  
14 contracted to receive supply be meaningful  
15 information in forming such an opinion as you just  
16 described?

17 A. No, because they're not forming a supply  
18 to meet the market that is trying to be created  
19 under this proposal.

20 Q. You have not done any computer modeling  
21 of any prices?

22 A. No. I don't do computer modeling.

23 Q. You did not attempt to make these prices  
24 specific to the PECO Energy service territory?  
25 Rather, these are an attempt to estimate PJM prices?

1           A. These are general PJM prices. That's  
2 correct.

3           Q. You are not aware of any published  
4 figures that match these prices?

5           A. As I said, this is a market that doesn't  
6 exist yet.

7           Q. You formed these opinions by just kind of  
8 calling around?

9           A. No. I formed these opinions from being  
10 in the marketplace and in regular conversation with  
11 people who participate in this marketplace.

12           JUDGE RAINEY: Mr. Smith, I'm going to ask  
13 you if there's another line of questioning that you  
14 want to pursue. I think that we've just about  
15 exhausted how she determined market prices here.  
16 Unless you need clarification from her again of  
17 exactly how she went about that, I think we've spent  
18 enough time in this area.

19           MR. SMITH: There are two other aspects that  
20 we have not explored which were revealed in the  
21 deposition. They will go quickly, and then I'll be  
22 done.

23           JUDGE RAINEY: Please proceed.

24 BY MR. SMITH:

25           Q. In the deposition you also stated that

1 there were two projects that you were aware of that  
2 formed the basis for these market prices in Table  
3 One.

4 A. That's correct.

5 Q. One is the AES Ironwood project?

6 A. Yes.

7 Q. And the second is the LG&E Erie project?

8 A. That's correct.

9 Q. As to the AES Ironwood project, what's  
10 the price information from that project that you  
11 used to support this table?

12 A. That I believed it was at about \$600 a  
13 kW.

14 Q. You don't have and have never seen the  
15 actual contract in that?

16 A. No.

17 Q. You stated that you're pretty confident  
18 that the price is in that range. But you don't  
19 really know?

20 A. That's correct.

21 Q. As to the LG&E Erie project, no price has  
22 yet been set; is that correct?

23 A. The contract is not final.

24 Q. The structure of the deal has not been  
25 determined?

1 A. The structure is not final.

2 Q. The lowest prices that you have heard  
3 when you were talking to people in recent times for  
4 energy and capacity in PJM are energy at .8 cents  
5 per kilowatt hour?

6 A. Right.

7 Q. And capacity at about \$2 per what --

8 A. kW.

9 Q. For what period of time? A month, a  
10 year?

11 A. A month.

12 Q. Which comes to what per kW a year?

13 A. Twenty-four.

14 MR. SMITH: I think that's all, Your Honor.

15 Thank you.

16 JUDGE RAINEY: Thank you, Mr. Smith.

17 Mr. Kleppinger.

18 MR. KLEPPINGER: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. KLEPPINGER:

21 Q. Good afternoon, Ms. Hull. My name is  
22 David Kleppinger, and I represent the Philadelphia  
23 Area Industrial Energy Users Group.

24 I noticed in your resume provided in  
25 discovery that you also have a law degree.

1 A. Yes, I do.

2 Q. Are you currently a practicing lawyer, or  
3 have you switched to become a consultant with better  
4 judgment?

5 A. Unfortunately, I can't claim better  
6 judgment. I am still a hybrid. I am a practicing  
7 lawyer and also a consultant.

8 Q. But you're not here today to offer legal  
9 opinion?

10 A. Absolutely not.

11 Q. That's good. A follow-up on one of your  
12 answers to Mr. Smith related to the pilot. If I  
13 understood your answer--and please correct me if I'm  
14 wrong--when you approached market price estimates,  
15 you did not wish to utilize what the Commission did  
16 in the pilots in terms of establishing a customer  
17 participation credit and an energy credit of some  
18 sort.

19 A. No, nor did I use the prices that they  
20 started with.

21 Q. In one of your answers to Mr. Smith, I  
22 believe you used the word irrelevant to that as a  
23 consideration in your analysis. Correct?

24 A. I can't remember exactly what that was in  
25 reference to. But, generally, I believe pilots are

1 an interesting experiment, but they will have very  
2 little effect on a long-term, permanent retail  
3 competition situation.

4 Q. Would you agree that the Commission's  
5 action on the pilots has established  
6 administratively-determined market prices and  
7 participation credits, as opposed to credits that  
8 you would suggest are generated by market analyses?

9 A. If you're asking -- I'm not sure I  
10 followed your question, so let me restate it the way  
11 I think I heard it.

12 You're saying would I agree that the  
13 Pennsylvania Commission administratively determined  
14 what it thought the market price would be and then  
15 set that in the pilot as an administrative  
16 determination of a market price and then that's what  
17 the competitors compete against. Is that correct?

18 Q. That's partially correct. Plus a  
19 customer participation credit, which is different  
20 than the answer that you gave. I mean in addition  
21 to the answer that you gave.

22 A. I believe that's the case.

23 Q. And to project what you believe market  
24 prices to be in the out-going years, you would not  
25 endorse a concept which just grows those Commission-

1 determined numbers by some percentage?

2 A. No. I wouldn't start with a Commission  
3 determination. I wouldn't start with anybody's  
4 model determination. I would start with market  
5 prices.

6 Q. Just briefly, on Page 7 of your  
7 testimony, Lines 18 through 21.

8 A. Yes.

9 Q. You provide some calculation here as to  
10 the percentage of PECO's costs attributable to  
11 generation. With respect to the settlement, the  
12 joint petition for settlement, you postulate that 31  
13 percent of the total cost of 8.95 is attributable to  
14 generation.

15 A. That's correct.

16 Q. In using that 31 percent, you've excluded  
17 the component that's known as the CTC?

18 A. That's correct.

19 Q. Is it your understanding that the CTC is  
20 the collection of stranded generation costs?

21 A. I think that would generally state my  
22 understanding.

23 Q. If we were to put the --

24 A. Well, wait a minute. Let me --

25 Stranded? No. Excuse me. I just heard the

1 stranded generation costs. I don't know what makes  
2 up PECO's CTC. I don't know what it has in terms of  
3 regulatory assets in that number. So I do not have  
4 any opinion how much of that number is made up of  
5 generating assets.

6 Q. So, in preparing for your testimony, you  
7 didn't review the stranded cost claim as to what the  
8 components are for generation, regulatory assets,  
9 non-utility generation?

10 A. My testimony does not go to stranded  
11 costs at all.

12 Q. In preparation for your testimony today,  
13 did you review the Electric Generation Customer  
14 Choice and Competition Act in Pennsylvania?

15 A. No.

16 Q. So you wouldn't know whether the CTC is  
17 permitted to collect stranded generation, stranded  
18 generation related regulatory assets, non-utility  
19 generation assets and the like?

20 A. My testimony goes to market prices for  
21 real power, not for something that happened in the  
22 past.

23 Q. Well, in calculating the 70 percent on  
24 Line 18, what costs were you using to arrive at the  
25 conclusion that 70 percent of PECO's costs are

1 attributed to generation?

2 A. They were numbers in the annual report.  
3 They were taken out of the annual report.

4 Q. And would those numbers in the annual  
5 report include costs which are now being  
6 characterized as stranded costs, in your judgment?

7 A. I have no idea. I assume that there may  
8 be some, but I don't have any idea.

9 Q. In Line 20 you start with the 2.8 cents.  
10 Is that the number that you took from the joint  
11 petition for settlement for January of 1999 as the  
12 energy and capacity cap?

13 A. Yes, that's what that number is. yes.

14 Q. Would you agree with me that if you take  
15 the 2.8-cent number in your testimony and add the  
16 CTC component for that same year, which is 3.04  
17 cents, that if you then take the sum of those two  
18 numbers as a percentage of 8.95 cents you come up  
19 with a number in the range of 65 percent?

20 A. As a mathematical -- I can't do those  
21 numbers in my head.

22 Q. Will you accept that subject to check?

23 A. Sure. So the number represents what?

24 Q. The total of the energy and capacity cap  
25 plus the CTC as a percentage of the total bill cap.



1 five to 10 percent minimum savings to spur consumers  
2 to change. Is that an accurate characterization?

3 A. Yes.

4 Q. Now, would you agree that the key may not  
5 really be the percentage reduction but the dollar  
6 reduction that a customer sees if they go to an  
7 alternative supplier?

8 A. I don't know that a customer thinks in  
9 terms of percentages. But yes, the dollar, the  
10 percent. Some will think in percentages. Some will  
11 think in dollars.

12 Q. Let's assume, for example, that a  
13 customer thinks they're going to get a two- to  
14 three-percent savings. If that customer is a  
15 residential customer with, let's say, a 500 kWh  
16 consumption in a month, that may not mean much in  
17 dollars. But if it's a small business customer with  
18 3,500 to 4,000 kWh, 3,500 to 4,000 kWh a month, that  
19 might spur consumer action in the form of a change  
20 to an alternative supplier?

21 A. It may be. What I say in my testimony is  
22 it's going to -- The customer is going to weigh the  
23 inconvenience, the uncertainty of a new supplier,  
24 and most importantly giving up its option to get an  
25 even better deal in the future. So it's going to

1 weigh all of those things. As I say, I think  
2 probably you might get a couple that will want to do  
3 that. So, yes.

4 Q. This whole area, you said earlier, was  
5 based on your experience as a consumer. Your  
6 experience as a consumer, I take it, is as a  
7 residential consumer on the more modest levels of  
8 consumption, perhaps, than maybe a business  
9 consumer. Is that correct?

10 A. Well, I'm also a business consumer now,  
11 and I'm paying a lot of attention to this.

12 Q. Very recently. Would two or three  
13 percent be enough to make you switch?

14 A. It depends on what I'd have to give up to  
15 get that.

16 MR. RYAN: That's all I have.

17 JUDGE RAINEY: Thank you, Mr. Ryan.

18 Any further cross-examination?

19 Yes, Mr. Steinmetz.

20 CROSS-EXAMINATION

21 BY MR. STEINMETZ:

22 Q. Good afternoon, Ms. Hull. My name is  
23 Steve Steinmetz. I'm here on behalf of the  
24 Pennsylvania Office of Consumer Advocate. I have a  
25 few brief questions for you.

1           Would it be a fair characterization of your  
2 testimony to say that you would like to see a  
3 generation credit against which customers could shop  
4 set at a level so that alternative suppliers would  
5 have an opportunity to provide savings to  
6 ratepayers?

7           A. Yes.

8           Q. I believe, as you've testified  
9 previously, that you believe in all likelihood  
10 customers would need approximately a five- to 10-  
11 percent area in there in which to entice them to  
12 shop and switch suppliers. Is that correct?

13          A. That's my expectation.

14          Q. You are a PECC witness, so you would  
15 support the generation credits in Mr. Mitnick's  
16 SAM-7, 7A and 8 exhibits.

17          A. Yes.

18          Q. The market prices you recommend for  
19 inclusion as a generation credit provide, under your  
20 estimation, for this 10-percent savings for  
21 customers?

22          A. Well, the 10-percent savings comes off of  
23 the total cost. The generation is only about one-  
24 third of that cost, so it would have to be off the  
25 total cost.

1 Q. I understand. But within the market  
2 generation credits provided in Mr. Mitnick's  
3 testimony, there would be that room for savings, in  
4 your approximation; is that correct?

5 A. Yes, I believe so.

6 Q. Now, that 10-percent savings, it's not  
7 necessarily guaranteed by the marketers; correct? I  
8 mean people could be saving more than 10 percent or  
9 less than 10 percent?

10 A. The point of getting the generation cap  
11 set properly is that you get the competitors to come  
12 in. Perhaps not in the first year but within a very  
13 short time the competitors will be able to move in  
14 that number, so that maybe not the first year but  
15 the second or third or the fourth year you'll start  
16 to see those savings.

17 Q. If customers could only receive, say, a  
18 two-percent savings from shopping, most customers  
19 would probably just remain with their incumbent  
20 supplier?

21 A. That is my expectation. I have no idea  
22 how much customer loyalty PECO has generated.

23 MR. STEINMETZ: That's all I have, Your  
24 Honor.

25 JUDGE RAINEY: Thank you, Mr. Steinmetz.

1 Any other cross-examination?

2 (No audible response.)

3 JUDGE RAINEY: Redirect, Mr. Clearfield?

4 MR. SMITH: Your Honor, perhaps I should move  
5 my exhibits into evidence before redirect.

6 JUDGE RAINEY: That would be fine.

7 MR. SMITH: I, therefore, move the admission  
8 of PECO Cross-Examination Exhibits 9 through 13.

9 JUDGE RAINEY: Any objections?

10 MR. CLEARFIELD: No objections, Your Honor.

11 JUDGE RAINEY: Hearing none, so admitted.

12 Redirect.

13 MR. CLEARFIELD: A moment to confer, or would  
14 you prefer --

15 JUDGE RAINEY: We'll take a couple minutes.

16 (Pause.)

17 JUDGE RAINEY: We're back on the record.

18 Mr. Clearfield.

19 REDIRECT EXAMINATION

20 BY MR. CLEARFIELD:

21 Q. Ms. Hull, I have a few questions. First,  
22 starting with the last part of the cross-examination  
23 of Mr. Steinmetz, Mr. Steinmetz asked you some  
24 questions about Mr. Mitnick's recommendation for a  
25 generation credit and whether that credit, as you

1 understood it, explicitly built in an increment to  
2 provide a five- to 10-percent discount to customers,  
3 that is that generators could offer or suppliers  
4 could offer that discount.

5 Have you had a chance to refresh your  
6 recollection with respect to Mr. Mitnick's  
7 recommendation with respect to a generation credit  
8 for use for PECO in this restructuring proceeding?

9 A. Yes, I have.

10 Q. Does it, in fact, include a five- to 10-  
11 percent discount?

12 A. In the first year, his number is 3.8,  
13 which is the same numbers as I have.

14 Q. You say the same numbers as you have.  
15 What do you mean by that?

16 A. Well, the same delivered cost, the cost  
17 to the supplier. So there is, in fact, no head room  
18 in the first year in my numbers or in Mr. Mitnick's  
19 numbers, although for the first year there is in  
20 Mr. Hieronymus's numbers a little bit of head room.  
21 But even in Mr. Hieronymus's numbers, from the next  
22 year forward, there is no head room. His numbers  
23 are higher than the ECC, electric --

24 Q. Energy and capacity credit.

25 A. Energy and capacity credit, right. So,

1 under the price caps that are in this proposal,  
2 there's no head room ever, other than the first year  
3 in Mr. Hieronymus's numbers.

4 Q. Mr. Ward asked you several questions  
5 about documents that you produced and, in fact,  
6 moved those that you relied on into the record. Why  
7 don't you have more documents to support your  
8 recommendation?

9 A. This is an industry that is not noted for  
10 its transparency of pricing. These are the most  
11 confidential, most proprietary type information of  
12 all participants in this marketplace. These  
13 documents simply don't exist.

14 What I know is I have the benefit of  
15 confidential conversations with people who  
16 participate in this market, both on the buying side  
17 and on the selling side. So I have access to  
18 information that I probably shouldn't have. But,  
19 nonetheless, I don't have documents.

20 MR. CLEARFIELD: That's all the questions I  
21 have. Thank you.

22 JUDGE RAINEY: Any recross on the redirect?

23 MR. SMITH: No.

24 JUDGE RAINEY: Thank you, Ms. Hull. You may  
25 stand down.

1           Maybe this might be a good time for us to  
2           take a lunch break.

3           Yes, Mr. Bonney.

4           MR. BONNEY: Your Honor, Dr. Hieronymus was  
5           asked to accept certain figures subject to check.  
6           He has since had an opportunity to check those  
7           figures and has determined that one of them -- The  
8           hypothetical 100-kilowatt-hour customer, the price  
9           that he was asked to accept subject to check was  
10          2.49 cents. He has calculated that to be 2.66  
11          cents.

12          We can either put him back on the stand to  
13          describe that or stipulate that's the correct  
14          number.

15          JUDGE RAINEY: What is the parties' desire  
16          with regard to either putting Dr. Hieronymus back on  
17          the stand or stipulating to the corrected number?

18          MR. DOLL: Could I take a look at those  
19          numbers and just --

20          JUDGE RAINEY: Let's do that over lunchtime.  
21          Maybe we can do that by stipulation. That might be  
22          the best way to do that.

23          Let's reconvene at 2 o'clock.

24          (Luncheon recess taken 12:55 p.m.)

25          (Hearing reconvened at 2:05 p.m.)

1 JUDGE RAINEY: Prior to taking testimony from  
2 Mr. Mitnick, there are some matters that we need to  
3 address with respect to testimony that was taken  
4 prior to the lunch break.

5 Mr. Doll.

6 MR. DOLL: Yes, Your Honor. Over the lunch  
7 break I had an opportunity to confer with  
8 Mr. Bonney and with Dr. Hieronymus. Dr. Hieronymus  
9 had run the numbers, and we will agree that the  
10 number that I presented into the record was  
11 incorrect for the second example, and that number  
12 should have been 2.66 cents. It doesn't change the  
13 conclusion, but we want to make sure that the  
14 numbers are correct.

15 JUDGE RAINEY: Thank you, Mr. Doll.

16 Any other housekeeping matters prior to  
17 taking the testimony of Mr. Mitnick?

18 (No audible response.)

19 JUDGE RAINEY: If not, I would like to call  
20 Mr. Mitnick to the stand.

21 MR. CLEARFIELD: Thank you, Your Honor. Your  
22 Honor, while Mr. Mitnick is getting situated, I  
23 propose to proceed as follows. I will authenticate  
24 the testimony that was submitted by Mr. Mitnick  
25 earlier, the supplemental testimony that's been

1 distributed to all parties.

2 Then we propose to submit limited surrebuttal  
3 or rejoinder testimony orally this afternoon,  
4 consistent with certain exhibits that have been  
5 distributed to all the parties yesterday. The  
6 surrebuttal or rejoinder would respond to the  
7 testimony that was presented by PECO witnesses Hill,  
8 Cohn, Warren, and Dr. Hieronymus and will, I think,  
9 significantly expedite the overall conclusion of the  
10 proceeding and give us an opportunity to respond to  
11 that testimony.

12 JUDGE RAINEY: Any objection from any of the  
13 parties with regard to the procedure just stated by  
14 Mr. Clearfield?

15 (No audible response.)

16 JUDGE RAINEY: If not, let's proceed.

17 MR. CLEARFIELD: Thank you, Your Honor.

18 JUDGE RAINEY: Would you stand and raise your  
19 right hand, please.

20 STEVEN A. MITNICK, called as a witness, being  
21 duly sworn, was examined and testified as follows:

22 JUDGE RAINEY: Please be seated and give your  
23 full name and address for the record, please.

24 THE WITNESS: My name is Steven, with a V, A.  
25 for Allen, Mitnick, M-I-T-N-I-C-K. My business

1 address is 1530 Wilson Boulevard, Arlington,  
2 Virginia 22209.

3 JUDGE RAINEY: Thank you.

4 Please proceed, Mr. Clearfield.

5 MR. CLEARFIELD: Thank you, Your Honor. I  
6 ask that a document entitled Supplemental Testimony,  
7 Steven A. Mitnick on Behalf of Pennsylvania Electric  
8 Competition Coalition, which has been previously  
9 marked as PECC Statement 1, be so identified for the  
10 record.

11 JUDGE RAINEY: So identified for the record.

12 (PECC Statement 1 was produced and marked for  
13 identification.)

14 MR. CLEARFIELD: Your Honor, this document  
15 has been distributed to all parties, and copies are  
16 being provided to the court reporter.

17 DIRECT EXAMINATION

18 BY MR. CLEARFIELD:

19 Q. Mr. Mitnick, do you have what we have  
20 marked for identification as PECC Statement 1, which  
21 is entitled Supplemental Testimony, Steven A.  
22 Mitnick on Behalf of --

23 A. Yes, I do.

24 Q. -- Pennsylvania Electric Competition  
25 Coalition?

1           Is that your supplemental testimony for  
2 presentation in this proceeding?

3           A.   Yes.

4           Q.   Was it prepared by you or under your  
5 supervision and direction?

6           A.   Yes.

7           Q.   Do you have any corrections or additions  
8 you wish to make at this time?

9           A.   With the exception of submitting the set  
10 of tables, no, I do not.

11          Q.   Is that PECC Statement 1 true and correct  
12 to the best of your information, knowledge, and  
13 belief?

14          A.   Yes, as revised in the tables we  
15 discussed.

16          Q.   We'll get to that.  Mr. Mitnick, the  
17 tables you're referring to are tables that will  
18 accompany your rejoinder or surrebuttal testimony  
19 that you wish to present at this time?

20          A.   Yes.

21          MR. CLEARFIELD:  Let's turn to that at this  
22 point, Your Honor, and then I will -- Well, strike  
23 that.

24                Let me move into evidence PECC Statement 1 so  
25 that I don't forget to do that, and then we'll turn

1 to the surrebuttal or rejoinder, if Your Honor so  
2 pleases.

3 JUDGE RAINEY: Yes. Any objections?

4 (No audible response.)

5 JUDGE RAINEY: Hearing none, so admitted.

6 Let me just ask you at this point,  
7 Mr. Clearfield. Did you move for the admission into  
8 evidence the statement of Ms. Hull and her exhibits?

9 MR. CLEARFIELD: I believe we did, Your  
10 Honor, prior to her cross-examination.

11 JUDGE RAINEY: Very well. Please proceed,  
12 Mr. Clearfield.

13 BY MR. CLEARFIELD:

14 Q. Mr. Mitnick, turning to your rejoinder,  
15 would you please explain the purpose of the  
16 testimony you're going to provide today?

17 A. Yes. On response to my supplemental  
18 testimony, PECC 1, there were a number of questions  
19 and concerns and issues raised by various parties.  
20 So what I've attempted to do in the surrebuttal in  
21 these tables is, as simply and as transparently as I  
22 can think to do, respond to those questions so that  
23 we can see in very simple, comprehensible terms what  
24 we are discussing here; and any elements of  
25 discussion can center on these tables.

1           MR. CLEARFIELD: Your Honor, for the purposes  
2 of this rejoinder, I would like to have marked for  
3 identification a series of schedules, the first of  
4 which is entitled Summary, and in the corner it's  
5 labeled SAM-SR1. For the purposes of presentation,  
6 Your Honor, I would ask that they collectively be  
7 identified as PECC Exhibit 1A.

8           JUDGE RAINEY: So marked for identification  
9 purposes.

10           (PECC Exhibit 1A was produced and marked for  
11 identification.)

12           JUDGE RAINEY: Just for clarification,  
13 Mr. Clearfield, is that just in reference to the  
14 SAM-SR1 packet, as compared to SR2 and SR3, or are  
15 you marking them all as PECC Exhibit 1A?

16           MR. CLEARFIELD: I was proposing to mark the  
17 package as Exhibit 1A, and each of them would be  
18 schedules within that exhibit, if that's acceptable.

19           JUDGE RAINEY: That's fine. Thank you.

20 BY MR. CLEARFIELD:

21           Q. Are there other issues that you wish to  
22 address in your rejoinder testimony that go beyond  
23 the schedules just generally with respect to  
24 Dr. Hieronymus's testimony?

25           A. Yes, there are a couple of questions that

1 I would like to address. Yes.

2 Q. Let's turn to the schedules that are  
3 listed as PECC Exhibit 1A. Would you describe those  
4 schedules generally, please.

5 A. The first packet, which is entitled with  
6 a cover sheet of SAM-SR1--and you'll note I have  
7 following it as backup tables SR1A, two pages, SR1B,  
8 two more pages, and SR1C, two more pages--lays out  
9 as simply as I think I can the discussion that I had  
10 in my supplemental testimony, and in a way that I  
11 think responds well to various questions that were  
12 discussed by other parties, of the substantial over-  
13 recovery embedded within the proposed settlement of  
14 stranded costs.

15 So all that we do in SR1 and the backup  
16 tables is quantify in the most accessible way  
17 possible that under any range, any credible range of  
18 scenarios that in this proposed settlement the  
19 company would not receive a stranded cost recovery  
20 of \$5.461 billion as represented in the agreement  
21 and as discussed in publicity about the agreement  
22 but an amount on the order of \$2 billion in excess  
23 of that.

24 That's all that SR1 does. I could briefly  
25 describe what is on the summary page, and the backup

1 tables just support it.

2 Q. Why don't you try to do that, and try to  
3 be brief.

4 A. Very briefly, there are three columns  
5 and, effectively, four rows in this summary table.  
6 The three columns are simply three different  
7 possible levels of sales of electricity in the PECO  
8 service area.

9 On the no growth, you have a situation where  
10 there's absolutely no growth in sales. To me, it's  
11 not a credible possibility, but it has been brought  
12 up in this case.

13 To the far right-hand column, we have a  
14 situation using the level of sales that are  
15 contained in a statement by the company to the  
16 Commission just five months ago, its integrated  
17 resource plan.

18 We've added here, for clarity and to show the  
19 sensitivity of our results, a middle scenario.  
20 That's something that I did not present before, but  
21 I have here. That shows a middle scenario. It uses  
22 level of sales that are contained in submissions by  
23 the company and PJM to the Federal Energy Regulatory  
24 commission.

25 So three different scenarios of sales, four

1 different rows.

2           The first row, Base Case, is just very simply  
3 doing a net present value using the company's  
4 discount rate. We find that the level of CTC monies  
5 that would come into the company add up to on the  
6 order of \$6.3 billion, already well in excess of the  
7 5.461 number.

8           Q. Is that on a net present value basis?

9           A. Yes.

10          Q. Continue, please.

11          A. The second row simply shows the  
12 additional monies that would come through the CTC to  
13 the company because you would have sales in excess  
14 of zero growth in the middle column and in the far  
15 right-hand column. These are new additional monies  
16 and pushes the total amount of stranded cost  
17 recovery still higher above the 5.461.

18          The third row is the value of securitization,  
19 and this is also something simpler and in response  
20 to comments. Here we have, effectively, taken the  
21 way that PECO looks at the value of securitization,  
22 accepted it as is. We've put aside all the  
23 complexities that one could incorporate into such an  
24 analysis and just used that. So, for simplicity so  
25 we don't have to have a controversy about it, that's

1 what we have here, the value of securitization under  
2 each of the categories.

3 On the fourth row entitled T & D, these are  
4 amounts that are additional monies that PECO would  
5 receive in excess of their reasonable T & D costs.  
6 That is also embedded in the settlement because  
7 there's a fixed cap on T & D.

8 You add that all together, and in either of  
9 the scenarios from 7.7 billion for the left-hand  
10 corner to 8.2 billion, in any case these are amounts  
11 that are approximately or in excess of \$2 billion in  
12 excess of the 5.461 that's advertised within the  
13 agreement.

14 Q. Is there a base case -- Is there a table  
15 which describes in more detail the base case that  
16 you list on your summary schedule?

17 A. Yes. The backup tables just put very  
18 simply, should be very accessible for all, to this  
19 summary table.

20 So, for example, SR1A, that first page  
21 supports that base case NPV of \$6.3 billion, if you  
22 look in the lower right-hand corner. That's where  
23 you see that number. That foots to the first page.  
24 That's where we get that number.

25 Q. Before you go beyond that, at what point

1 are these net present values calculated, from what  
2 point?

3 A. Back to the date of January 1st, 1999.

4 Q. Why didn't you use September 1st, 1998 as  
5 suggested in the testimony of Mr. Cohn and I believe  
6 Mr. Hill?

7 A. Frankly, that would be completely  
8 unsupportable. It violates the fundamental premise  
9 of stranded cost recovery. The fundamental premise  
10 of stranded cost recovery is that we've had a  
11 regulatory compact.

12 The government decided, the governor and the  
13 state legislature and people of Pennsylvania, have  
14 decided to move to competition. That change begins  
15 to be phased in on January 1st, 1999 under this  
16 proposal where some portion, in thirds, of the  
17 monopoly consumers of PECO are put at risk to  
18 choice.

19 The whole point of stranded cost recovery is  
20 to protect the shareholder of the utility from the  
21 potential for lost revenues from competition.  
22 Competition starts January 1st, 1999. That's how  
23 you have to look at the stranded cost recovery.

24 Q. Do you want to continue to quickly  
25 describe the schedules?

1           A. Very quickly, on Page 2 of SR1A, you'll  
2 see two other key numbers that foot to the summary  
3 page--at the bottom of the page, the securitization  
4 NPV of 685 million, to the right the excess T & D  
5 net present value of 678 million, rounded.

6           Notably, in the securitization we are now  
7 reflecting the PECO analysis of the value of  
8 securitization. I have put aside all of the  
9 complexity and all of the possible ways that one  
10 could have looked at the value of securitization.  
11 For simplicity and for the sake of putting aside the  
12 controversy, I'm using the PECO approach.

13           Q. Exactly what level of savings, if you  
14 will, or rate reduction are you implicitly including  
15 in that calculation?

16           A. For simplicity, it's .3 cents per  
17 kilowatt hour.

18           Q. Continue. Do you want to explain the  
19 next column on the right?

20           A. Here we have further responded to  
21 comments, and here we have put a gross receipts tax  
22 against the excess T & D. That's a further  
23 conservatism in favor of the company.

24           As an additional conservatism in favor of the  
25 company, while we have our cap for five years, at

1 the end of the five years, for Years 6 through 10,  
2 we escalate that at the per annum rate of one and a  
3 half percent, allowing for growth. Those are  
4 additional monies for the company. That's another  
5 way that I've responded to the comments.

6           Going ahead on to SR1B, this whole scenario  
7 is new, as I said. In my original supplemental  
8 testimony, I just had the zero sales growth  
9 scenario, which I do not believe is credible, but as  
10 a bottom end. And I had the integrated resource  
11 planning scenario for sales forecast growth, which I  
12 do believe are reasonable numbers to use.

13           But in response to criticism about that, I  
14 have put forth an intermediate scenario, and that's  
15 what's described in SR1B.

16           Q. That's the eight-tenths of one percent  
17 demand growth?

18           A. Right, which reflects the demand growth  
19 that has been submitted under the FERC Form 714 by  
20 PJM and the PJM companies, including PECO. So I  
21 think that's pretty reasonable since they've  
22 submitted it to the FERC.

23           Then SR1C is the very same format. It gives  
24 you the base case. It gives you the effect of  
25 growth in sales. That's what that lower right-hand

1 corner number is at 448 million. On the last page,  
2 again, you have the securitization value, in this  
3 case the 733 million, and the excess T & D value,  
4 the 723 million.

5 So all of these numbers do nothing more than  
6 support. It should be fairly straightforward to  
7 see.

8 Q. Mr. Mitnick, does your over-collection  
9 analysis take into account or include a  
10 quantification of the tax effect, if there is any,  
11 of the write-off of \$2 billion in stranded  
12 investment?

13 A. No.

14 Q. Does it explicitly include the tax  
15 effects of increased interest expense as a result of  
16 securitization?

17 A. No.

18 Q. Does your revised calculation include an  
19 allowance for a return on the unamortized portion of  
20 the stranded investment as Mr. Cohn and Mr. Hill  
21 have alleged should be included in any calculation  
22 of the recovery by PECO of stranded costs?

23 A. Definitely not.

24 Q. Why is that?

25 A. Well, for a number of reasons that I hope

1 should be fairly clear-cut.

2 Jeez, I guess I would start first off with  
3 the agreement, as I read it and using common sense,  
4 says that the stranded cost recovery is \$5.461  
5 billion. The company's press release highlights  
6 that very same number, and all of the publicity and  
7 the discussion of the \$2 billion write-off refers  
8 directly to the number being \$5.461 billion. I mean  
9 if it's really not \$5.461 billion but some greater  
10 amount because of the return on, that's quite  
11 confusing, to say the least.

12 Second of all, for me it would be a gross  
13 violation of the principle that's being applied  
14 nationally on stranded cost recovery. What we have,  
15 again, is where government has decided as a public  
16 policy that a competitive regime for the electric  
17 industry is preferable to a regulatory regime.

18 So it comes to a point in time; and it says,  
19 in effect, to the utility shareholder, We will make  
20 you whole or whole to a part or however the policy  
21 decision is, and then from that point on we move  
22 into a competitive future.

23 So what you do is you look at the difference  
24 between the market value of the assets -- PECO has  
25 done that, and their consultants have done these

1 studies. You look at the market value of the  
2 assets. You compare that to the net book value of  
3 the assets. And the difference is arguably the  
4 range of stranded cost recovery.

5 It doesn't have anything to do with return  
6 on. I was surprised to see that discussion in those  
7 parties' testimony.

8 Q. Does your calculation of over-recovery  
9 include any offsets for the quantification, as PECO  
10 has represented it, for program costs associated  
11 with, for example, certain rate concessions for LILR  
12 and other large industrial customer loads? First  
13 before you answer -- Go ahead. Answer that one.

14 A. Can you repeat the question?

15 Q. Let me ask a precursor question. In your  
16 original testimony and here today, do you have a  
17 position as to whether the provisions of the  
18 settlement that deal with large industrial customer  
19 rate schedules LILR and EER should continue as the  
20 partial settlement proposes them?

21 A. Yes. I need to say that certainly this  
22 is a policy decision on the part of the Commission.  
23 I don't want to prejudge what the Commission would  
24 want to do.

25 In my own opinion, I understand that

1 pragmatically there are many parties to this  
2 agreement. There are many good things in the PECO  
3 proposed settlement agreement, including these  
4 provisions for low income consumers, for the  
5 industrial consumers. And I appreciate that.

6 Fortunately, as you will see in the other  
7 tables, there's enough dollars implied in the  
8 agreement so that those two programs--the industrial  
9 program and the low income program--are easily  
10 includable within my proposed Table A and my overall  
11 proposal.

12 Q. Does your recommendation, your overall  
13 proposal propose that those agreements be adopted by  
14 the Commission or continued by the Commission?

15 A. Personally, yes, I would go with that.

16 Q. Now, have you attempted to offset the  
17 over-recovery that you've calculated with any of the  
18 values quantified by PECO associated with those two  
19 programs that you mentioned, the adjustments for  
20 LILR, EER, or the expansion of universal service  
21 program?

22 MR. KLEPPINGER: Your Honor, I must object to  
23 the form of the question. There are not adjustments  
24 to the LILR, EER, or 4.6 contracts contained in the  
25 joint petition for settlement or concessions, and

1 those are two words that have been used in these  
2 questions.

3 BY MR. CLEARFIELD:

4 Q. Are you familiar with the provisions of  
5 the settlement that deal with LILR, EER, and Rule  
6 4.6?

7 A. Yes.

8 Q. Are you aware that PECO in its rebuttal  
9 testimony has attempted to quantify the cost, if you  
10 will, to PECO of those provisions over the life of  
11 the settlement?

12 A. Yes.

13 Q. Does your analysis that you're presenting  
14 here today include an offset to the over-recovery  
15 conclusions that you've made specifically to account  
16 for these quantifications that PECO has presented in  
17 its rebuttal testimony?

18 A. In this way, Mr. Clearfield. If you  
19 quickly turn to SAM-SR3, the summary table, without  
20 going into its detail too much, let me briefly say  
21 that in these three scenarios the over-recovery  
22 that's effective in the proposed settlement  
23 agreement in the three scenarios varies from, if you  
24 look at the top of the columns; 2.2 billion to 2.8  
25 billion, the exact same numbers as in SR1.

1           Those monies can be utilized, effectively, to  
2 take the generation credit and set it at a level in  
3 which we will have entry and competition. That  
4 meets a primary goal of the legislation.

5           And additional monies are available for  
6 additional rate decreases to consumers beyond the  
7 proposed settlement agreement. So we go beyond that  
8 with additional monies, rate cuts, to the consumer.

9           But the net -- And that's what I want to  
10 show you, is the net. The net amounts at the bottom  
11 of those columns, which vary from 159 million to 392  
12 million, we analyze and feel that those numbers are  
13 sufficient to support both of those programmatic  
14 changes that are suggested, embedded in the  
15 proposal.

16           So we feel that you can meet the triple goals  
17 of the restructuring, which is to promote and allow  
18 competition, to make sure that you have the fair  
19 stranded cost recovery for the company, to provide  
20 guaranteed rate decreases up-front to the consumer,  
21 and still make sure that those additional factors  
22 within the PECO settlement are able to be funded.

23           Q. Let me just ask you this. Those amounts  
24 that you just mentioned which are on the Net line,  
25 do they represent amounts over and above \$5.461

1 billion that PECO would recover even if your  
2 reallocation of over-recovery was adopted?

3 A. Yes. That's a great way to put that. If  
4 we didn't, for example, in our proposal include  
5 these two programs--the programs for the industrials  
6 and for the low income--and just left it there and  
7 stopped, then there would be some over-recovery by  
8 the company on the order of 159 million in a no  
9 growth situation to 392 million in the IRP growth  
10 situation.

11 Q. Are there any other of the programmatic  
12 or settlement concessions that were raised by PECO  
13 witnesses as potential offsets to the alleged over-  
14 recovery on the CTC that you believe should be  
15 considered by the Commission legitimately as offsets  
16 or that the company should be allowed to recover in  
17 some over-recovery of CTC over the 5.461 million?  
18 I'm thinking here about the allegation regarding the  
19 value of extending the transmission and distribution  
20 cap and the early rate reductions in September of  
21 1998.

22 A. Oh, I see. Yes.

23 MR. SMITH: Your Honor, I would object to --  
24 That's two in a row that are really, really, really  
25 leading. It's kind of like object, but if he wants

1 to -- I know that with reasking it at this point in  
2 time he's just going to answer in the same way.

3 JUDGE RAINEY: I just caution counsel to be  
4 careful of his phrasing.

5 MR. CLEARFIELD: I apologize, Your Honor. I  
6 am trying, in the interest of expediting this, move  
7 it along.

8 BY MR. CLEARFIELD:

9 Q. Do you remember the question?

10 A. Yes. First off, in the new tables that I  
11 submitted in the last couple of days, in response,  
12 again, to what other parties have said, we do what  
13 the PECO proposed settlement agreement does and  
14 start off the significant rate decreases for the  
15 consumer not on January 1st, 1999, as I originally  
16 had, but on September 1st, 1998, as the PECO  
17 proposal has.

18 Q. You're talking about the partial  
19 settlement when you say the PECO settlement?

20 A. That's right. So that's a match.  
21 Hopefully, we can take that off the table and not  
22 worry about that. The two proposals--that is the  
23 proposed settlement agreement and the proposal  
24 here--match as far as starting the consumer  
25 discounts on September 1st, 1998.

1 Q. What about the quantification of the  
2 alleged value of extending the transmission and  
3 distribution cap for two years?

4 A. Yes. I must say that PECO and some  
5 witnesses make quite a big thing of this as a great  
6 value for the consumer, and that does not seem  
7 supportable to me.

8 In my practice and in my company's practice,  
9 we're working with utilities around the country.  
10 Around the country in the T & D area, in the  
11 transmission and distribution area, there is  
12 substantial re-engineering, cost cutting, and  
13 productivity improvements that are marked. I  
14 imagine that PECO is enjoying and working on these  
15 changes as well. There's a number of reasons why  
16 these opportunities for improvements are possible,  
17 and utilities around the country are doing these.

18 So, to me, the value of PECO saying, Gee,  
19 we're going to take our current T & D rate, three  
20 point something cents per kilowatt hour, and just  
21 continue that out and not increase it, to me it  
22 would be, Well, how much are you going to decrease  
23 it?

24 So, I do not ascribe a value to the company  
25 saying, We won't increase it even further, in the

1 light of all this cost cutting above the current  
2 level.

3 MR. SMITH: Your Honor, I move to strike the  
4 portion of that answer that directly deals with  
5 Mr. Mitnick's statement that he imagines that PECO  
6 Energy is engaging in certain activities. Without  
7 foundation, at least, that is, obviously, a guess  
8 and speculation and should not be part of this  
9 record. It's one sentence out of that full answer.

10 MR. CLEARFIELD: Your Honor, that can be  
11 explored on cross-examination, and the weight to  
12 which it --

13 JUDGE RAINEY: Why don't you handle it that  
14 way, Mr. Smith.

15 MR. SMITH: Thank you, Your Honor.

16 BY MR. CLEARFIELD:

17 Q. Mr. Mitnick, we left the PECC Exhibit 1A  
18 at a point where we were going to begin describing  
19 the schedules that start with SAM-SR2. Would you  
20 please, again, as briefly as you can, describe  
21 what's shown on SAM-SR2.

22 A. Yes. In SR2 there is a summary page,  
23 again, and then three backup pages. The reason for  
24 there being three backup pages, very simply, is  
25 because, as I've said, I have three scenarios about

1 future sales of electricity in the PECO service  
2 area.

3 So, just doing the backups, the first backup  
4 is for the IRP level of sales. That is the level of  
5 sales that PECO predicted in its submission on May  
6 1st to the Commission.

7 In SR2B we are using the scenario based on  
8 the level of sales that PECO forecasted and used in  
9 its submission to the Federal Energy Regulatory  
10 Commission in Form 714.

11 In SR2C we use the level of sales, which  
12 again I have difficulty thinking that is credible,  
13 but the level of sales as if there were no increases  
14 in sales for the next 10 years from a level that  
15 they project.

16 So that's what those three backups do.

17 Anyway, going to the summary page, what we  
18 show, very importantly, is we have for each of the  
19 years the total cap. That is the maximum rate that  
20 consumers can pay for all of the services for  
21 electric service for PECO, and that's in the second  
22 column under the PECO proposed settlement agreement,  
23 the proposed settlement agreement. It goes from  
24 8.95 to 10.95 over the period.

25 You'll see in the first column PECO's current

1 rates. So there's a rate reduction that's implied,  
2 of course, and this takes directly from the proposed  
3 settlement agreement.

4 Then to the right within the box, for each of  
5 the three scenarios I show our proposed total cap.  
6 That is the maximum that consumers will pay in each  
7 year. Notably, those amounts under any of the  
8 scenarios are never higher than the total amounts  
9 that are in the PECO proposal.

10 For example, this rhetoric about how, in  
11 order to do some things on the gen. cap, we're going  
12 to increase rates for consumers, the total rate cap  
13 is never higher and often lower than in the proposed  
14 settlement agreement. That's what that shows, and  
15 the detail is on SR2A, B, and C.

16 Q. Would you just quickly, for the clarity  
17 of the record, examine the total rate cap for 2005  
18 that you're proposing and compare that to PECO's.

19 A. Okay. Yes. For example, in 2005, taken  
20 from the proposed settlement agreement, PECO states  
21 that if you use current rates the maximum average  
22 rate would be 9.95 cents per kilowatt hour. That's  
23 in the first column.

24 The second column, under the proposed  
25 settlement agreement, there would actually be the

1 same maximum rate. So, in the year 2005, there  
2 would be no reduction, and that's what's shown in  
3 the third column, zero percent.

4 In our box in this year, actually we have  
5 that our maximum level--so I see I must correct what  
6 I said just a second ago--our maximum level in the  
7 year 2005 under the three scenarios would be 10.15,  
8 or two percent above the 9.95. That's what that  
9 illustrates. That shows the total rate cap. A  
10 consumer will not pay more than that in any year  
11 under the PECO proposed settlement agreement or  
12 under this one.

13 Q. Does SR2A show the consumer credits or  
14 the proposed consumer credits that you believe  
15 should be implemented for PECO?

16 A. Yes. Just as an example, if you go to  
17 SR2A, you see, in effect, a reproduction with some  
18 small changes to Table A, the all-important Table A  
19 that is in the proposed settlement agreement.

20 There we see, for example, the T & D,  
21 transmission and distribution rates, the CTC, or  
22 composition transition charge, and, Mr. Clearfield,  
23 in Column 4 the consumer credit. It's been called  
24 variously in this proceeding the generation cap, or  
25 gen. cap, or now in the last couple of days the ECC.

1 In any case, the consumer credit. The amount that  
2 the consumer has to utilize his consumer choice and  
3 to look around for the best supplier for that  
4 consumer is contained in that column.

5 So, for example, in 1999 that amount is 3.80.  
6 That's the monies, in effect, that the consumer can  
7 use to shop for the best supplier, be it PECO, the  
8 incumbent company, or an alternative supplier.

9 Q. How does that consumer credit generally  
10 compare to that which you submitted in your  
11 supplemental testimony?

12 A. There are small changes from year to  
13 year, but they're generally extremely close in all  
14 the scenarios.

15 Let me add, the goal, of course, of the  
16 consumer credit -- It only has one goal of the  
17 consumer credit. It needs to be at a level in which  
18 it's possible for new companies other than PECO to  
19 look at the Philadelphia area and say, Yeah, we  
20 think we can come in here and we think we can  
21 compete.

22 Q. Can you explain Column 5 that's labeled  
23 PECO Securitization Savings?

24 A. Yes. This uses the value of  
25 securitization using the implied approach of PECO,

1 the .3 cents per kilowatt hour, and we put against  
2 it the gross receipts tax. That's why you see .29.

3 Q. Would you explain SAM-SR3 at this point?

4 A. SR3 similarly has a summary table which  
5 is easy to understand and backup tables. We've  
6 talked about SR3 a little bit. But, for simplicity,  
7 let me again note that the top row, the so-called  
8 over-recovery, in the three scenarios matches  
9 exactly the over-recovery amount, the bottom row of  
10 SR1.

11 In effect, we have looked in SR1. We've  
12 said, starting from the proposed settlement  
13 agreement, in Table A in that settlement agreement,  
14 we find in those numbers that PECO would receive  
15 monies well in excess of the \$5.461 billion. That's  
16 what we do in SR1.

17 Then in SR3 we say, okay, if that's the case,  
18 be that 2.2 billion, be that 2.8 billion, how can  
19 we, as an opportunity, utilize those monies to take  
20 this proposed settlement agreement, which has a lot  
21 of good features, and improve it so that, in  
22 particular, you can have competition in this region.  
23 And that's what we do.

24 So, in effect, you take these monies and use  
25 it for adjusting the generation credit, consumer

1 credit, whatever you want to call it. We give some  
2 additional rate decreases, and that's what you have  
3 in SR3.

4 SR3A, two pages, and SR3B are backups. Those  
5 results foot to the first page.

6 Q. Thank you. What conclusion would you  
7 make as a result of this revised analysis in  
8 response to the rebuttal testimony of the PECO  
9 witnesses and other witnesses in the proceeding?

10 A. When I put forth the supplemental  
11 testimony, I made the supposition -- And it almost  
12 perhaps to some parties must have seemed like it was  
13 too good to be true that I was still able to provide  
14 the fair recovery to the company, provide the rate  
15 decreases for consumers, in fact more rate decreases  
16 for consumers, and cap consumer rates, and turn the  
17 generation credit into a situation in which you had  
18 a competitive market. Perhaps to some parties it  
19 seemed like it was too good to be true.

20 Here in these tables I backed down on some  
21 calculations and methods that might have seemed too  
22 complex that may be controversial. I've adopted  
23 everything I could from the company's methodologies.

24 I show in a clearer fashion that, yes, we get  
25 stranded cost recovery of \$5.461 billion. We get a

1 generation cap in which you will have companies  
2 coming in, and PECO will be here too. Hopefully,  
3 they'll all work as hard as possible to minimize  
4 price as much as possible and maximize service to  
5 the consumer. And we get the rate decreases, the  
6 up-front rate decreases and more in this proposal  
7 relative to the settlement agreement.

8 Q. Let me ask you a question with respect to  
9 the allegations that Dr. Hieronymus made in his  
10 testimony that relate to at least one of the  
11 adjustments. I believe Mr. Hill may have made the  
12 same representation.

13 Dr. Hieronymus suggested that, to the extent  
14 that transmission and distribution costs which the  
15 company has allocated to those categories are  
16 determined to be not associated with transmission  
17 and distribution, that those costs should be,  
18 nonetheless, considered to be stranded rather than  
19 added to the generation credit or taken care of in  
20 some other way and that, therefore, if you make that  
21 reallocation it would be appropriate to add to or  
22 increase the company's stranded cost recovery  
23 allowance. Do you recall that testimony?

24 A. Sure.

25 Q. Is Dr. Hieronymus right about his

1 conclusion about how one would treat reallocated  
2 transmission and distribution costs?

3 A. No. I thought that concept was very hard  
4 to grasp. First of all, Mr. Reising has identified  
5 a significant portion of T & D. These are largely  
6 operational costs. There may be some fixed costs or  
7 capital costs in there, but they're largely  
8 operational costs, costs that are avoidable in the  
9 future. And he said that they're stranded.

10 When we talk about stranded costs, we're  
11 normally talking about generation or other assets,  
12 fixed costs that have book value, fixed book value.  
13 And we need to address that need of shareholders to  
14 make them whole in part or however the Commission  
15 decides.

16 So I had a lot of problem for that in one  
17 reason because, at least in large part, these must  
18 be operational costs. They're not fixed costs.

19 Secondly, these costs, in large part, are  
20 probably selling and retail costs, not generation  
21 costs.

22 Thirdly, because these costs are part of the  
23 overhead costs of the current regulated PECO entity,  
24 and we're about to go into a very different world,  
25 and PECO will be unbundling. Some of these costs

1 that are within the current PECO infrastructure are  
2 not supportable in the competitive market. Some of  
3 those costs which are operational, avoidable costs  
4 are just not going to be there.

5 Fourthly, in my experience, when you look at  
6 stranded costs and you do stranded cost analysis of  
7 generation, you put in there overhead costs,  
8 operations and maintenance costs, both fixed and  
9 variable, that are supportable in the competitive  
10 market. To just do a class cost of service  
11 allocation study and assume that all of the costs in  
12 the current PECO entity are going to move to  
13 generation and then you've got to cover those  
14 because those costs will be incurred into perpetuity  
15 doesn't make sense to me.

16 Those are the problems I have with that  
17 concept.

18 MR. CLEARFIELD: Thank you, Mr. Mitnick.

19 That completes our surrebuttal or rejoinder,  
20 Your Honor. I would ask that PECC Exhibit 1A be  
21 moved into the record at this time.

22 JUDGE RAINEY: Any objections?

23 (No audible response.)

24 JUDGE RAINEY: Hearing none, so admitted.

25 Cross-examination. Mr. Mickens.

1 MR. MICKENS: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MICKENS:

4 Q. Good afternoon, Mr. Mitnick.

5 A. Good afternoon.

6 Q. My name is Ken Mickens. I represent the  
7 Office of Trial Staff in this proceeding.

8 My questions will come from your statement  
9 PECC 1. I'm looking at Page 4 of your statement.  
10 Here you indicate that you represent members of  
11 PECC, and they are Conectiv Energy, Enron, and New  
12 Energy Ventures; is that correct?

13 A. I'm testifying on their behalf, yes.

14 Q. You're representing them in this  
15 proceeding?

16 A. Yes. Okay. Yes.

17 Q. Now, if the partial settlement is  
18 approved by this Commission, to your knowledge, will  
19 Conectiv, Enron, and New Energy Ventures pursue  
20 customers in the PECO service area?

21 A. I'm not privy to what they might decide  
22 as their strategy. Although I'd like to add that I  
23 have this principal concern that with the proposed  
24 partial settlement agreement that all or virtually  
25 all companies like NEV, Conectiv, and Enron would

1 pass over the Southeastern Pennsylvania market.

2 Q. You believe there's a possibility that  
3 they may not participate if the partial settlement  
4 were approved?

5 A. Extremely strong possibility.

6 Q. Would you agree that Conectiv is  
7 currently publishing advertisements in the media in  
8 the PECO service territory seeking to have customers  
9 choose them as their generator in the pilot program?  
10 Are you aware of that?

11 A. I wasn't, but I imagine it's the case,  
12 yes.

13 Q. Would that surprise you?

14 A. Not at all. I can come into Philadelphia  
15 and see ads by GPU and all sorts of companies.

16 Q. So, since Conectiv is indicating that it  
17 wants to participate in the pilot program, let's say  
18 it does participate in the pilot program, and let's  
19 say the Commission adopts the partial settlement.  
20 In your view, do you think Conectiv, for example,  
21 would continue to serve customers or they would end  
22 their participation at the conclusion of the pilot  
23 program?

24 A. Let me put it this way. I think this  
25 answers your question well. If I was the strategy

1 consultant for Conectiv on that matter, which I am  
2 not, I would tell them in a minute to pull and look  
3 for other regions in the country in which their  
4 potential for competing is much fairer. I can't be  
5 more blunt than that.

6 Q. Let me ask you this. Has Enron  
7 participated in New Hampshire's electric  
8 restructuring program, to your knowledge?

9 A. I saw their commercial on TV, so I guess  
10 so.

11 Q. You believe that they have?

12 A. Yes.

13 Q. Would you agree with me that Enron has  
14 enrolled customers in the New Hampshire program at  
15 an energy rate that is lower than the rate that  
16 would result from the PECO partial settlement, or  
17 the partial settlement proposed in this proceeding?

18 A. Would you repeat that question?

19 Q. Would you agree with me that Enron has  
20 enrolled customers in the New Hampshire program at  
21 an energy rate that is lower than that which would  
22 result from the partial settlement in this  
23 proceeding?

24 A. I actually don't know any of the details  
25 of their participation, not only sales and prices

1 but also their costs.

2 Q. So you're not aware of that?

3 A. Right.

4 Q. Would you accept that subject to check?

5 A. That they have enrolled customers at  
6 prices below?

7 Q. Yes.

8 A. Sure.

9 Q. Would you refer to Page 6 of your  
10 statement, Lines 10 through 11. Now, you state  
11 there "Approval of PECO's proposal without  
12 modification will destroy the promise of competition  
13 in electric generation in Pennsylvania." Correct?

14 A. Yes. This should mean Southeastern  
15 Pennsylvania. I can't say what will occur in other  
16 service territories.

17 Q. It's interesting that you made that  
18 modification, because I was going to say that's a  
19 fairly strong statement to me. So you've modified  
20 that to Southeastern Pennsylvania?

21 A. Yes. The discussion here only concerns  
22 the PECO service territory.

23 Q. And are you familiar with restructurings  
24 of other electric companies in Pennsylvania?

25 A. Only to the extent of reading the

1 newsletters and web sites and journals, not beyond  
2 that.

3 Q. So you're not aware of the rates that  
4 have been proposed by, for example, Duquesne Light  
5 Company or PP&L at this point?

6 A. No, I'm not.

7 Q. Now, are you aware of whether your client  
8 companies--Conectiv, Enron, New Energy Ventures--  
9 plan or are currently participating in pilot  
10 programs or plan to serve in other electric company  
11 service territories in Pennsylvania; for example,  
12 Duquesne's service territory or PP&L or West Penn?

13 A. Mr. Micken (sic), I am actually not  
14 aware, and I don't know what their plans would be in  
15 that regard.

16 Q. Now, would you refer to Page 8 of your  
17 testimony, Mr. Mitnick. Do you have that?

18 A. Yes, sir.

19 Q. Roughly Lines 7 through 22. Now, here  
20 you purport to identify the highlights of the  
21 partial settlement; is that correct?

22 A. Yes, sir.

23 Q. And over on Page 8 you continue your  
24 discussion at Lines 11 through 13.

25 JUDGE RAINEY: I'm sorry, Mr. Mickens. Are

1 you referring to Page 9? You were just referring to  
2 Page 8.

3 MR. MICKENS: I'm sorry. As a matter of  
4 fact, I'm still on Page 8, specifically Lines 11  
5 through 13 concerning securitization.

6 A. Yes, sir.

7 BY MR. MICKENS:

8 Q. Would you agree with me that PECO has not  
9 yet sought to securitize \$4 billion in stranded  
10 costs?

11 A. Yes.

12 Q. Flip over to Page 9 of your testimony,  
13 roughly Lines 14 through 16. Mr. Mitnick, what are  
14 the legal impediments that would need to exist in  
15 order to allow PECO to reduce the amount of the  
16 reduction from 10 to seven percent which you  
17 referred to?

18 A. Yes, sir. I don't have special knowledge  
19 on the subject beyond what's in the proposed  
20 settlement agreement, Page 10, particularly Footnote  
21 4, where PECO states its limitations and potential  
22 constraints. I don't have any other knowledge on  
23 the subject.

24 Q. And do you know what those impediments  
25 are? What would need to exist? What conditions

1 would need to exist in order for the reduction to go  
2 from 10 percent to seven percent?

3 A. Well, not in special detail, but it is  
4 laid out pretty well in Footnote 4. There are  
5 certain impediments that PECO states if they occur  
6 would cause a reforming of rates and other  
7 impediments in which PECO would take the risk and  
8 wouldn't reform Table A.

9 Q. Those impediments concern appeals in the  
10 court system; is that correct?

11 A. If you want, I could read the -- Should  
12 I read the footnote?

13 Q. No. I'm trying to find out if you know  
14 at all exactly what those are. If you don't, that's  
15 fine.

16 A. I've really not studied it.

17 Q. You also indicate here that PECO may  
18 currently believe that the legal impediments  
19 currently exist. Did you state that in your  
20 testimony?

21 A. Yes, but that's only a -- Yes. It's  
22 only a restatement of this footnote. I could have  
23 quoted the footnote.

24 Q. You believe that the footnote indicates  
25 that PECO currently believes that those legal

1 impediments exist? Is that your testimony?

2 A. Yes. I take the footnote at its word.

3 Q. You're saying that's what the footnote  
4 says?

5 A. I assume that everything they presented  
6 here on Page 10 regarding those legal impediments is  
7 true. I've really not studied it.

8 Q. All right. Thank you. Still on Page 9  
9 at Lines 17 through 20, do you have that?

10 A. Yes, sir.

11 Q. Would you agree with me that PECO cannot  
12 raise its rates above the Competition Act's rate cap  
13 whether the partial settlement is approved or not?

14 A. Could you repeat the question? I want to  
15 make sure I get it right.

16 Q. I'd be happy to. Would you agree with me  
17 that PECO cannot raise its rates above the  
18 Competition Act's rate cap whether the partial  
19 settlement is approved or not?

20 A. I really don't know what is the scenario  
21 in which this agreement is set aside and there's no  
22 agreement that takes place or decision by the  
23 Commission in lieu of it. And I'm not a lawyer.  
24 I've not studied the legal aspects of the act.

25 Q. Okay. The Competition Act is the law in

1 Pennsylvania.

2 A. Yes.

3 Q. So you do understand that if there is a  
4 requirement in the statute a company in Pennsylvania  
5 cannot agree to a settlement which would override  
6 what was in the statute?

7 MR. CLEARFIELD: Your Honor, I don't want to  
8 object, but this really calls for a legal  
9 conclusion. I'm concerned that the record might get  
10 muddled. What does or doesn't control, even in this  
11 context, is really going to be a question of law.

12 JUDGE RAINEY: I think the witness may have  
13 already answered your question when he said he's not  
14 a lawyer and he doesn't appreciate all the legal  
15 implications associated with the act.

16 If there's anything in addition to that that  
17 he can add to the questions, please do so.

18 A. I don't think so. I've certainly read  
19 the act, but I've not done a legal analysis.

20 MR. MICKENS: Your Honor, the question was  
21 geared to respond to the statement. Certain  
22 statements were made which at least indicated to me  
23 that perhaps the witness was not aware that there  
24 were certain limitations in the current law, and  
25 that's all the question was designed to elicit. He

1 has already indicated that he's not aware. I'm  
2 willing to accept that and move on.

3 JUDGE RAINEY: Thank you.

4 BY MR. MICKENS:

5 Q. Would you refer to Page 10 of your  
6 testimony, Mr. Mitnick.

7 A. Yes, sir.

8 Q. Roughly Lines 13 through 14. Here you  
9 refer to the partial settlement as presenting a  
10 take-it-or-leave-it proposition; is that correct?

11 A. Yes, sir.

12 Q. Are you saying that there's something  
13 unusual about this proposition in terms of  
14 settlement proposals in Pennsylvania?

15 A. I didn't say anything about it being  
16 usual or unusual. I just stated, which I think is  
17 factual, that there are statements in here that are  
18 very strong about its take-it-or-leave-it aspects.

19 Q. You're not saying that this is the first  
20 settlement agreement in Pennsylvania to include such  
21 language or that it is not somewhat common -- that  
22 the language is not somewhat common in settlement  
23 agreements filed before the Commission? Are you  
24 saying that?

25 A. No. I haven't been following the other

1 agreements.

2 Q. Okay. Thank you. Would you refer to  
3 Page 14 of your testimony. Near the bottom of the  
4 page, Lines 20 through 22, you talk about the large  
5 capital infusion that PECO will receive, and you  
6 indicate that it will result in a sizable reduction  
7 in risk. Do you see that?

8 A. Yes. Yes, sir.

9 Q. What kind of risk are you referring to  
10 there?

11 A. Well, presumably, the value of  
12 securitization comes from the securitized bonds  
13 being much less risky than the current debt  
14 structure of the company.

15 Q. So you're referring to the overall  
16 investment risk?

17 A. Yes.

18 Q. Just a couple of questions, Mr. Mitnick,  
19 about the integrated resource plan that you referred  
20 to. You referred to some numbers that you took from  
21 the plan which had been submitted by PECO; is that  
22 correct?

23 A. Yes, sir.

24 Q. Are you familiar with the Commission's  
25 requirements as to how a utility must file its

1 integrated resource plan?

2 A. In general. I'm not familiar with all  
3 the details of that.

4 Q. Would you agree with me that PECO files  
5 its estimated sales in the integrated resource plan  
6 on an average, higher than average, and lower than  
7 average basis?

8 A. That comports with what's in that  
9 document in which there's a base case -- I think  
10 the cases are called low, base, and high. That's  
11 pretty common in integrated resource planning  
12 filings around the country.

13 Q. Which basis did you utilize for PECO's  
14 sales numbers in your exhibits and your updates  
15 today?

16 A. The base, the middle.

17 Q. You used the middle?

18 A. Sure.

19 Q. Is that indicated in your footnotes?

20 A. If it wasn't transparent somewhere, I  
21 apologize, but I think the base use is on average.  
22 In the IRP filing, it's around--I hope I'm getting  
23 this right--1.14 percent on average per annum growth  
24 in energy, and we use the base case. The high is  
25 1.7 something. So that would be a case that would

1 be much higher than these.

2 Q. And the low would be lower?

3 A. Right. I think it's around .7 something.  
4 It's probably between .7, .8 percent per annum,  
5 subject to check. It's on that order.

6 Q. All right.

7 Q. But that wasn't included?

8 A. Oh, no. Definitely not. I'm using base.

9 Q. Referring generally to Page 15 of your  
10 testimony, Mr. Mitnick, you talk about barriers to  
11 entry in connection with your discussion of  
12 competition; right?

13 A. Yes.

14 Q. And specifically you talk about the rates  
15 that would be created by the partial settlement and  
16 how that would create a barrier to entry for  
17 competitors; is that correct?

18 A. Yes.

19 Q. What type of pricing -- So we understand  
20 exactly what you mean when you say a barrier to  
21 entry, what type of pricing creates a barrier to  
22 entry, in your mind, in your opinion?

23 A. Well, in the proposed settlement  
24 agreement where you have the gen. cap concept, you  
25 say explicitly to PECO, PECO cannot serve a customer

1 above some very low ceiling. PECO's just not even  
2 permitted to go over that, for example, in the first  
3 year 2.8. So it could price below that, but it  
4 definitely can't go above that.

5 Well, that means -- I think Mr. Hieronymus  
6 referred to this as a tight cap. That could end up  
7 being so tight a cap that entrants couldn't feel  
8 that they could compete with PECO. In fact, I think  
9 that's quite an easily forecastable result.

10 That's all that is. All that means is you  
11 can set the gen. cap so low -- I mean let's take  
12 the extreme. Let's say you set it at one cent per  
13 kilowatt hour; and you said, in effect, PECO, you  
14 can't charge more than one cent a kilowatt hour to  
15 consumers. I hope it's obvious in that case, then,  
16 there would be no competition, no entry. There  
17 would be no competition, and the goal of the act  
18 would be thwarted. That's all.

19 Q. All right. What I'm trying to find out  
20 is a more general definition that you use in order  
21 to determine when a rate is too low. The concept of  
22 variable costs or the company's ability to cover its  
23 variable costs, does that enter into your  
24 determination as to whether a rate presents a  
25 barrier to entry for competitors?

1           A. Yes. As I have done and as other  
2 witnesses in this proceeding have done, they have  
3 tried to forecast the cost for power, and they've  
4 tried to compare it to the gen. cap. We've all  
5 tried to do that.

6           Mr. Micken (sic), if I could just put this in  
7 perspective just very briefly, none of us have a  
8 crystal ball, whether we're using -- PECO had three  
9 consultants. I'm a consultant. Ms. Hull has her  
10 own forecast. None of us have a crystal ball, so we  
11 can't say for certain what market clearing prices  
12 will be.

13           But the lower that gen. cap is, by  
14 definition, the greater the risk is that you'll  
15 force out and choke away competition.

16           Q. You would agree with me that under the  
17 partial settlement the market rate for 1999, for  
18 example, is 2.8 cents per kilowatt hour; is that  
19 correct?

20           A. Yes.

21           Q. For that year, as you sit here now, at  
22 what level would your clients enter the market?

23           A. That's right.

24           Q. Just in terms of trying to give me an  
25 idea of what your thinking is about where the

1 barrier starts.

2 A. If I'm here for any purpose whatsoever,  
3 Mr. Micken (sic), it's to say --

4 Q. If you would just add an S to the end of  
5 that, you would be fine on my name.

6 A. Oh, I'm sorry, Mr. Mickens. Our names  
7 are so similar. You can call me the wrong name too.

8 Mr. Mickens, what I'm saying is, if there's a  
9 single purpose beyond any other for me to be here  
10 and to add any value to this proceeding, it's to say  
11 that with a gen. cap of 2.8 the probability that  
12 there will be no competitive entry and that PECO  
13 will remain the monopolist supplier without  
14 competition into perpetuity, the probability of that  
15 is way too high, too close to 100 percent, in my  
16 estimation.

17 Q. What I'm trying to find out is, Where  
18 does the barrier cease in your mind? We're at 2.8.  
19 That's too low, in your view. Well, at what point  
20 does it stop being too low? Where is it? Where is  
21 the cutoff?

22 A. That's an excellent question.

23 Q. I want an answer to it before tomorrow.

24 A. Well, I can't state with certainty what  
25 that barrier is, that point at which no competition

1 and then you hit that barrier and then above  
2 competition. I can't say with certainty what that  
3 is, nor can any of the consultants of PECO.

4 I have put forth in my proposal a level of  
5 gen. cap that I think fairly safely provides that we  
6 be at that point or enough above so that there would  
7 be entry.

8 In the level that's in my tables, I believe  
9 that we can have with good confidence that there  
10 would be entry, that there would be vigorous  
11 competition, 10, 20, 30 competitors. Hopefully  
12 they're all battling it out. PECO is there too.

13 So what that magic cutoff is, I don't know,  
14 and none of the consultants know. It's a matter of  
15 getting that balance in which you're fairly safe  
16 that the goal of the act will be fulfilled.

17 MR. SMITH: Your Honor, move to strike the  
18 two portions of that answer in which Mr. Mitnick  
19 purports to say what the other consultants do and do  
20 not know.

21 MR. CLEARFIELD: Your Honor, first, this is  
22 cross-examination by Mr. Mickens. Secondly, again,  
23 Mr. Mitnick was expressing his opinion. It was  
24 taken in that context. He wasn't stating as a fact  
25 whether they did or did not know it, but it was an

1 opinion.

2 JUDGE RAINEY: I'll allow the testimony.

3 Please continue.

4 MR. MICKENS: Thank you, Your Honor.

5 BY MR. MICKENS:

6 Q. Mr. Mitnick, Page 16, Lines 4 through 15,  
7 you talk about how PECO is a monopoly supplier at  
8 this point and if the rates proposed in the partial  
9 settlement are approved that it would allow PECO an  
10 eight-year head start. You refer to the fact that  
11 in the telephone industry, long distance, AT&T, it's  
12 taken 10 years for vigorous competition to come to  
13 the floor. Is that what you state there?

14 A. That's generally, yes.

15 Q. Do you believe that PECO's customers  
16 think that they pay high rates?

17 A. I've not done a survey. I've lived in  
18 Philadelphia for a couple of years. I imagine that  
19 some customers feel they pay high rates, and others  
20 probably don't think about it that much.

21 Q. That's what you think about Philadelphia?  
22 I'm not trying to be funny.

23 A. Would you repeat the question? I'm  
24 sorry. Please repeat the question.

25 Q. I just wanted to know whether you think

1 the average Philadelphia PECO ratepayer believes his  
2 or her rates are high.

3 A. I don't know the answer to that. I  
4 haven't seen polls or surveys. I know as a  
5 specialist in the electricity industry that your  
6 rates, unfortunately, are relatively high compared  
7 to other regions in the country, but I don't know  
8 what the average Philadelphian thinks.

9 Q. You realize that PECO is the high-cost  
10 electric company in Pennsylvania? You do realize  
11 that?

12 A. Even higher than Duquesne?

13 Q. Yes.

14 A. I didn't. But, yes, I accept that.

15 MR. MICKENS: I believe that's all I have,  
16 Your Honor.

17 JUDGE RAINEY: Thank you, Mr. Mickens.

18 Mr. Kleppinger.

19 MR. KLEPPINGER: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. KLEPPINGER:

22 Q. Good afternoon, Mr. Mitnick.

23 A. Good afternoon, Mr. Kleppinger.

24 Q. Just quickly, the members of the  
25 coalition, when you list Enron, is that Enron the

1 parent or Enron Power Marketing that's the party in  
2 this docket in the group that you represent?

3 A. I don't think I know.

4 Q. Because there's another Enron entity that  
5 filed a petition with the Commission that  
6 consolidated with this docket. I wondered if you  
7 represent them today as well, Enron Energy Services  
8 Power, Inc.

9 MR. CLEARFIELD: For the record, Your Honor,  
10 it's Enron Power Marketing, Inc. that's  
11 participating in a partial settlement of the case.  
12 The Enron petition to which Mr. Kleppinger referred  
13 was filed by a new supplier called Enron Energy  
14 Services Power, Inc.

15 JUDGE RAINEY: Thank you for the  
16 clarification.

17 MR. KLEPPINGER: On Page 4, Line 21, the  
18 Enron there should read Enron Power Marketing, Inc.  
19 Is that fair?

20 JUDGE RAINEY: Is that Line 21?

21 MR. CLEARFIELD: Yes, Your Honor. That's  
22 correct.

23 BY MR. KLEPPINGER:

24 Q. Now, turning over to Page 6 of your  
25 testimony, Mr. Mitnick, the Lines 10 and 11 that

1 Mr. Mickens already called your attention to, when  
2 you mention PECO's proposal there, are you referring  
3 there to the joint petition for partial settlement?

4 A. Right. This joint petition for partial  
5 settlement of PECO Energy Company's proposed --  
6 Yes.

7 Q. Would your comment there be also true for  
8 PECO's original proposal in this proceeding that was  
9 presented April 1st, 1997?

10 A. I have not studied the original proposal  
11 except to the extent that I probably read it and  
12 also saw summaries of it in newsletters and so  
13 forth. So I've not done a comparison side by side  
14 of the two in any regard.

15 Q. But, as I recall, you didn't submit pre-  
16 filed testimony on the original PECO proposal on  
17 behalf of PECC or Enron Power Marketing, Inc.

18 A. That's correct.

19 Q. Moving over to Page 9 of your testimony,  
20 generally Lines 17 through 23, when you indicate  
21 that PECO's rates would reverse course in 2001 and  
22 2002 under the proposed settlement, which elements  
23 of PECO's rates are you referring to that would  
24 increase at that point in time?

25 A. Well, for example, Mr. Kleppinger, if you

1 look at Page 8, Table A, of the proposed settlement  
2 agreement, starting in January 2001 the total bill  
3 cap, instead of having gone down from current rates,  
4 turns course and starts to go up from 8.95 to 9.475  
5 and then to 9.75 and then to 9.95. So, during that  
6 period of 2000 to 2003, there's actually a  
7 significant increase.

8 Q. My question went to which elements drive  
9 that increase. It's not T & D; correct?

10 A. Correct.

11 Q. And it's only the CTC in one of those  
12 three years?

13 A. Well, the CTC is higher during those  
14 three years. But during those three years, it's  
15 higher at a stable point, if that's what you mean.

16 Q. Correct.

17 A. Yes.

18 Q. I'm trying to focus on this reversion of  
19 course. The course reverses on the CTC from 2000 to  
20 2001 by jumping from 3.04 to 3.14?

21 A. Yes.

22 Q. And that stays constant, then, for three  
23 years?

24 A. Yes.

25 Q. And the other element that is driving the

1 reverse in course is the escalation in the energy  
2 and capacity cap; is that correct?

3 A. Yes.

4 Q. It's that energy and capacity cap that is  
5 the one where customers may or may not pay that cap.  
6 That is the maximum that they would pay to PECO or  
7 any other supplier?

8 A. Right. Hopefully, if there's vigorous  
9 competition, the competition will drive it below  
10 that level. In the previous years if it's  
11 sufficient to have attracted the Enrons, NEVs,  
12 Conectivs and others, then, hopefully, we'll be able  
13 to press that price lower.

14 Q. In following up on Mr. Mickens'  
15 questions, even if there are not market entrants in  
16 1999 and 2000 because of the 2.8 price, perhaps the  
17 3.2-cent energy and capacity cap price is sufficient  
18 for competitors to come in.

19 A. I think that's unlikely, but that  
20 possibility is there.

21 Q. Turning to Page 10 of your testimony, the  
22 Lines 1 through 4, the underlined portion there  
23 addresses the implausibility that December '96 rates  
24 could have been sustained for the next few years.  
25 Do you see that reference?

1           A. Yes, underlined.

2           Q. Emphasized. Absent the passage of the  
3 Electric Generation Customer Choice and Competition  
4 Act, do you have any understanding of what needs to  
5 occur prior to the Pennsylvania Public Utility  
6 Commission reducing Commission-approved rates?

7           A. Do you mean the statutory requirements  
8 and what would cause a general rate case to begin?

9           Q. One that is not voluntarily submitted by  
10 the utility.

11          A. Every state has different rules on that  
12 and rules as to whether the Commission can call in  
13 the company versus the company having to come in  
14 voluntarily. I don't know those rules in detail.

15          Q. Do you know enough that there would have  
16 had to be some external event or external party,  
17 whether it is the Commission or a third party,  
18 demanding a proceeding that PECO's current rates be  
19 examined for their justness and reasonableness?

20          MR. CLEARFIELD: Your Honor, I'm sorry. I'm  
21 going to have to object. I think it calls for a  
22 legal conclusion. I don't know whether that is, in  
23 fact, true or not.

24          MR. KLEPPINGER: I'm asking if he knows. He  
25 said it's implausible that the rates would stay the

1 same, and I'm testing what the implausibility is and  
2 also reference later, I believe, in his testimony to  
3 the body politic not supporting those rates. I'm  
4 just testing how those rates go down.

5 JUDGE RAINEY: The witness can answer if he  
6 knows. If he doesn't know, he can say so.

7 A. Yes. Mr. Kleppinger, as to the legal  
8 procedure, I'm not knowledgeable in detail. I must  
9 point out that my statement here and later on that  
10 you referred to hinges on what to me seems as common  
11 sense.

12 As a specialist in the electric industry and  
13 other specialists all know, costs all the way along  
14 the value chain of electric service are decreasing  
15 because of productivity gains, re-engineering,  
16 process improvements, new technologies, a number of  
17 reasons.

18 In the face of that, for costs to be so  
19 dramatically being cut around the country, for me to  
20 imagine that, under whatever the rules are, that  
21 PECO rates would remain at current levels into  
22 perpetuity, that doesn't make common sense to me.  
23 So I'm just making that in my opinion without regard  
24 to the specific legal procedure.

25 BY MR. KLEPPINGER:

1 Q. One of the predicates to my question was  
2 the absence of the competition act, which means  
3 we're still in a traditional regulatory scheme. I  
4 guess we could debate whether common sense ever  
5 played a role in the traditional regulatory system.

6 MR. CLEARFIELD: Move to strike in the  
7 interest of all those who made comments, Your Honor.

8 BY MR. KLEPPINGER:

9 Q. Turning now to Exhibit SAM-7A, I didn't  
10 quite understand, Mr. Mitnick, if the updated  
11 exhibits that came out today are intended to replace  
12 this or to supplement this.

13 A. Certainly in regard to Exhibit SAM-7A, to  
14 replace.

15 Q. Let's look at SAM-SR3 and go to 3A, which  
16 contains your list of consumer credits.

17 MR. DWORETZKY: What was that reference?

18 MR. KLEPPINGER: SAM-SR3A, Page 1.

19 BY MR. KLEPPINGER:

20 Q. These consumer credits, in your mind,  
21 Mr. Mitnick, do they equate to the prevailing market  
22 prices in these years?

23 A. Almost. You use the term equate, and  
24 that's too strong. These levels are set mindful of  
25 and on the basis of estimates of energy and capacity

1 costs and the costs of delivering energy to the  
2 consumer. They're mindful of and based upon.  
3 They're certainly not necessarily equated.

4 Q. That's fair. Are they regional prices  
5 for PJM?

6 A. Well, again, it's my belief that no  
7 consultant can have perfect knowledge of this. They  
8 are aimed towards delivery of service to PECO,  
9 representing that it is within the PJM  
10 interconnection power pool that there are locational  
11 differences within the power pool but aimed towards  
12 delivery of electric service to the PECO service  
13 territory.

14 Q. On the locational difference issue, is  
15 there anything other than transmission constraints  
16 or are there other locational price differentials  
17 that come into your mind, other than transmission  
18 congestion?

19 A. Well, there can be other locational  
20 issues in other -- Here the only applicable one is  
21 power transfer constraints.

22 Q. Would it be your testimony that whatever  
23 consumer credits, as you've called them, or energy  
24 and capacity caps, as the joint petition calls them,  
25 are ultimately going to be PJM applicable for other

1 Pennsylvania utilities with restructuring plans in  
2 front of this Commission?

3 A. Could you summarize that question again?

4 Q. The basic question is, As we look at your  
5 consumer credits or the energy and capacity caps  
6 that are in the joint petition for settlement, can  
7 we assume that because they are PJM oriented, with  
8 the exception of locational price differentials for  
9 transmission, that those would be the credits or the  
10 caps applicable to a GPU or a PP&L in their  
11 restructuring plans?

12 A. That's interesting. I didn't consider  
13 the role in these rates setting precedence for the  
14 whole state, but when I think about it, I would want  
15 the Commission to understand that there are not  
16 insignificant differences between the companies  
17 because of locational differences.

18 PECO is right up against the transfer  
19 constraints from PJM central west to east. The  
20 Pennsylvania GPU companies are clearly in PJM  
21 central and west and, all things being equal, at  
22 some times of the year have cheaper power.

23 So I wish that if the Commission looked to  
24 these as precedence it should be mindful of some of  
25 these locational differences.

1           Q. Have you seen quantifications of what  
2 those locational transmission congestion costs are  
3 in terms of their impact on the economic dispatch in  
4 the PJM system?

5           A. I've studied issues like that quite a bit  
6 in my career. Yes, I've seen them, developed them,  
7 modeled them.

8           Q. Let me ask you if you're familiar with  
9 the quantification of those specifically for PJM in  
10 the context of the PJM restructuring proceeding  
11 that's pending at the FERC right now.

12          A. I am not involved in those FERC  
13 proceedings and the PJM ISO proposal and the various  
14 disputes including PECO versus the other companies.  
15 I am not involved and have been following it only at  
16 the periphery, reading some testimony from time to  
17 time and summaries of the case.

18          Q. My recollection from your prior work was  
19 that you are not a proponent of the locational  
20 marginal pricing approach to transmission constraint  
21 pricing; is that correct?

22          A. As that is presented, the so-called nodal  
23 pricing approach, that's strictly presented by,  
24 among others, Dr. Hogan of Harvard University.  
25 That's right. I do have problems with that.

1 Q. But you're not aware of what  
2 quantifications of that transmission congestion have  
3 been presented in the FERC proceeding?

4 A. No. Only in the broadest terms. No.

5 Q. Moving to SAM-SR1, a couple of questions  
6 here. The line that's labeled on Page 1, Agreed  
7 Stranded Costs, would you characterize that number  
8 as a book value number?

9 A. No. It's related to the net book value  
10 of various PECO assets, and the net book value is  
11 involved in that calculation of the stranded cost  
12 amounts by PECO. It itself is not a book value.

13 Q. Again, if we could take a step back to  
14 traditional regulation. In order to recover net  
15 book value of a utility's assets, is there typically  
16 a return included in the recovery of that book value  
17 under traditional regulation?

18 A. Yes. Under traditional regulation, there  
19 is a net book asset as approved in the rate base and  
20 is return of and return on. Absolutely.

21 Q. If I understood your earlier testimony,  
22 or I guess it was the rejoinder testimony, you're  
23 advocating in this case that there be no return on  
24 the unamortized balance of the stranded cost  
25 recovery, the way you've calculated it?

1 A. I'm definitely an advocate.

2 Q. I just want to make sure that --

3 A. Absolutely.

4 Q. Is it your testimony that on any stranded  
5 cost recovery there should be no return of or on  
6 that stranded cost asset?

.7 A. That's the general principle that's being  
8 used around the country.

9 Q. That's Enron's and Conectiv's and NEV's  
10 position?

11 A. I'm speaking in my own opinion.

12 Q. But you're here on their behalf, and I'm  
13 trying to nail down whether or not that's their  
14 position in this case.

15 A. Maybe you can ask that question again to  
16 make sure I can understand it and can answer it.

17 Q. As a witness presented today for  
18 Conectiv, NEV, and Enron Power Marketing, Inc., are  
19 you testifying that there should be no return of or  
20 on stranded assets?

21 A. Yes, that's my opinion. Yes.

22 MR. CLEARFIELD: I'm sorry. Your Honor, I --

23 JUDGE RAINEY: Is there an objection?

24 MR. KLEPPINGER: I meant on. I apologize.

25 A. Yes. It is my opinion that --

1 MR. KLEPPINGER: It's not that bad. No  
2 return whatsoever.

3 MR. CLEARFIELD: No return whatsoever. That  
4 was facetious, just for the record.

5 BY MR. KLEPPINGER:

6 Q. Just so the record is clear, I meant no  
7 return on the asset.

8 A. Right. It's my opinion that that's  
9 inappropriate.

10 Q. Now, in the line on this exhibit labeled  
11 Base Case -- And let's just use the no growth  
12 scenario. We're at \$6.3 billion. Does that line  
13 include what PECO would recover for income taxes  
14 associated with this revenue stream?

15 A. No. As you'll see, it's laid out very  
16 clearly on the next page. There's no income tax  
17 analysis whatsoever, with the exception of the gross  
18 receipts tax. This spreadsheet could not be more  
19 straightforward.

20 Q. Will PECO be paying income taxes on that  
21 \$6.3 billion number?

22 A. In the analysis in the next page, there's  
23 no income tax analysis.

24 Q. You haven't included it in your analysis.  
25 I guess the next question is, As PECO begins to

1 receive this revenue stream that's producing \$6.3  
2 billion, will they be paying income tax on that  
3 revenue stream?

4 A. The company may or may not have income  
5 taxes based on its tax books and how it times  
6 various things. I'm not addressing that issue. I  
7 think it's pretty straightforward.

8 Q. Well, then, I'm dense. I'm sorry. Have  
9 you excluded income taxes from this analysis?

10 A. Yes. I have not -- Okay.

11 JUDGE CHESTNUT: Just to clarify, when you  
12 say exclude, you didn't mean take out? You mean  
13 didn't consider?

14 A. Yes, Your Honor. I did not consider  
15 income tax, federal income tax, at any point within  
16 this analysis. Thank you.

17 MR. KLEPPINGER: Thank you, Your Honor.  
18 You're always more thorough.

19 BY MR. KLEPPINGER:

20 Q. Let's move to SAM-SR2. In the PECO's  
21 Proposed Rates column -- And these are the proposed  
22 rates under the joint petition for settlement;  
23 correct?

24 A. Yes, sir.

25 Q. When we get to the 9.95 level in 2003,

1 it's your understanding that that rate level is the  
2 companywide average rate level as of January 1,  
3 1997; is that correct?

4 A. As of January 1, 1997, yes, sir.

5 Q. The current total rate cap, in other  
6 words?

7 A. Yes. Yes.

8 Q. Now, under the scenarios that you've laid  
9 out to the right, that number gets exceeded in the  
10 year 2005, is that right, to 10.15?

11 A. Yes, starting in 2005. That's correct.

12 Q. And have you reviewed the rate cap  
13 provisions of the Electric Generation Customer  
14 Choice and Competition Act to test whether or not  
15 you are permitted statutorily to exceed 9.95 in  
16 2005?

17 A. It would surprise me if that was a  
18 violation of the statute. Although, since you can  
19 see that that's the only year in which I'm higher  
20 than PECO's proposed rates--and just by a little--it  
21 would not be hard to time the dollars slightly  
22 differently so that in every year, and not in nine  
23 of the 10 years, I was below PECO's levels. It  
24 would not be hard to do that.

25 Q. And this is the total rate cap? I mean

1 we're talking about a total rate here, as opposed to  
2 just the generation rate cap, on this page at least?

3 A. That's correct.

4 Q. Now let's turn over to SR2A, Page 1. To  
5 preface this, I would like for you to take a moment,  
6 Mr. Mitnick, and review the Electric Generation  
7 Customer Choice and Competition Act, Section  
8 2804(4)(ii). I will mark the concluding phrase of  
9 that portion of the statute so that's what you can  
10 focus on.

11 MR. KLEPPINGER: With Your Honors'  
12 permission.

13 JUDGE RAINEY: Yes. Mr. Kleppinger, that was  
14 Section 2804. And what was the rest of that?

15 MR. KLEPPINGER: Sub 4(ii).

16 JUDGE RAINEY: Maybe we should just take a  
17 brief break now. Off the record.

18 (Discussion off the record.)

19 (Recess taken.)

20 JUDGE RAINEY: I believe, Mr. Mitnick, a  
21 question has been posed to you by Mr. Kleppinger.  
22 Are you prepared to answer it now?

23 MR. KLEPPINGER: I don't think --

24 MR. CLEARFIELD: Your Honor, we didn't get to  
25 the question yet.

1 MR. KLEPPINGER: I think he was just  
2 reviewing the statute. We haven't posed a question,  
3 but he's anxiously waiting.

4 JUDGE RAINEY: I'm sure he has some idea what  
5 the question would be.

6 BY MR. KLEPPINGER:

7 Q. Mr. Mitnick, the portion of the statute  
8 that I had you read concludes with the phrase "shall  
9 not exceed the generation component charged to the  
10 customers that has been approved by the Commission  
11 for such service as of the effective date of this  
12 chapter." Do you see that final phrase of the  
13 section I had you read?

14 A. Yes.

15 Q. And do you know, as you sit here today,  
16 what generation component charge to customers in  
17 PECO's service territory on a companywide average  
18 basis was in effect as of the effective date of this  
19 act, which, subject to check, was January 1, 1997?

20 A. I don't know that, and I don't know to  
21 what extent or if the Commission has approved any  
22 such quantity.

23 Q. Do you agree that that is the test,  
24 however, of whether or not the generation cap,  
25 consisting of the CTC or ITC charge and the energy

1 and capacity price cap or credit, must not exceed?

2 A. It's obviously a statutory test that all  
3 proposals must meet.

4 Q. Now, when we unbundle PECO's rates into  
5 transmission, distribution, and generation  
6 components, would you agree that what that  
7 generation component is becomes the generation cap?

8 A. I can't say that I really understand this  
9 in detail. For example, it does say approved by the  
10 Commission. I don't know if there has to be some  
11 sort of judgment made by the Commission or some sort  
12 of remeasurement.

13 It's obviously a test that has to be met. I  
14 assume it is met in the PECO proposed settlement  
15 agreement. I've said that we have the ability to  
16 move dollars temporally from one year to the next.  
17 I presented three possible proposals. There are  
18 variations, obviously. I would think that we could  
19 meet a variety of reasonable tests.

20 Q. If you presume that the joint petition  
21 for settlement meets the test of the generation cap,  
22 could you turn, then, to Table A of the joint  
23 petition, Page 8.

24 A. Yes, sir.

25 Q. The last column in that table is labeled

1 Generation Rate Cap. Do you see that?

2 A. Yes.

3 Q. Now, in the year when the total bill rate  
4 cap gets back to the January 1, 1997 level that you  
5 and I had agreed upon earlier as 9.95 cents, what is  
6 the generation rate cap component of that bill?

7 A. That's 6.84 cents.

8 Q. Now, in your analyses on Exhibit  
9 SAM-SR2A, don't you begin to exceed 6.84 cents as  
10 the generation cap when we add Column 3, CTC, and  
11 Column 4, Consumer Credit, as early as 2001?

12 A. Mr. Kleppinger, I really don't know the  
13 legal implications of this test, so I can't comment  
14 on that. All I can say is, for example, in the year  
15 2003, which you've cited --

16 Q. I think I said 2001. I'm sorry.

17 A. Well, we were looking at 2003, which is  
18 the point where -- Do you want to go back to 2001?

19 Q. I focused on 2003 on Table A because  
20 that's the highest the generation rate cap can be  
21 under any set of circumstances according to the  
22 joint petition for settlement.

23 A. Okay. In 2001 to create this generation  
24 rate cap -- Again, it's ambiguous to me what is the  
25 legal meaning of this and to what extent there has

1 to be a determination of what this amount is and  
2 what that would be in this proposal, as opposed to  
3 the PECO proposal.

4 But that notwithstanding, in 2001 I add 2.58  
5 and 4.41, the two numbers in my table. That gets  
6 out to 6.99. I subtract .29, and I get 6.7, and  
7 it's below the 6.84.

8 Q. So you took off your securitization  
9 savings, assuming that occurs. If securitization  
10 doesn't occur, then you exceed 6.84 as early as  
11 2001?

12 A. On the order of .15 cent. I would submit  
13 that it would not be hard for me to come up with a  
14 variation of this table that would take care of  
15 that. That's a fairly small amount of .15 cent.

16 Q. In each of the years, will you agree with  
17 me for 2001 through 2005, excluding securitization,  
18 that your CTC and consumer credit columns exceed,  
19 when you sum them, 6.84 cents?

20 A. Yes, it exceeds 6.84 cents.

21 Q. In some of those years, without going  
22 through the calculations on the record--we can do  
23 that at another time--even if you take  
24 securitization savings off, at least in the years  
25 2003, 2004, and 2005, and you sum your Columns 3, 4,

1 and 5, you still exceed 6.84 cents?

2 A. In this table as stands without any  
3 variation?

4 Q. Yes. You agree with that?

5 A. Yes.

6 Q. Turning to SR2B, I believe the CTCs and  
7 the consumer credits in the years that we were  
8 looking at, 2001 through 2005, are identical to what  
9 they are in SR2A; is that right?

10 A. Yes, sir.

11 Q. So, in terms of what does or does not  
12 exceed 6.84 cents, your answers would be the same as  
13 you gave me on SR2A?

14 A. Yes.

15 Q. Now let's look at SR2C. I believe there  
16 are some slight variations here between Columns 3  
17 and 4 from the prior exhibit. Would you agree that  
18 in 2001 without securitization the 6.84 would be  
19 exceeded?

20 A. You have to give me just a moment to --  
21 Could you repeat your question, please.

22 Q. In the year 2001 would the combined  
23 effect of your CTC and consumer credit without  
24 securitization exceed the 6.84-cent cap?

25 A. Again, it returns. 6.99 before

1 securitization and 6.70 after securitization,  
2 exactly as before.

3 Q. And 2002, the CTC and consumer credit  
4 would exceed 6.84 and even with securitization would  
5 be slightly in excess of 6.84; is that correct?

6 A. By .05 cent, yes, sir.

7 Q. I said slight. In 2003 through 2005,  
8 with or without securitization, it's safe to  
9 conclude that your CTC and consumer credit would  
10 exceed 6.84 cents; is that correct?

11 A. Yes.

12 MR. KLEPPINGER: Thank you, Mr. Mitnick.

13 I have no further questions, Your Honor.

14 JUDGE RAINEY: Thank you, Mr. Kleppinger.

15 Mr. Ryan.

16 MR. RYAN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. RYAN:

19 Q. Good afternoon, Mr. Mitnick. I'm Bernard  
20 Ryan from the Office of Small Business Advocate. I  
21 have a couple of questions I'd like to ask you first  
22 from the things you've said on cross or in the  
23 rejoinder testimony, and then I'll get to what's  
24 still left of my prepared questions after all that  
25 my colleagues have done, and I think there may be a

1 few left.

2 You have referred several times--and I think  
3 earlier witnesses did too--to the 2.8-cent figure,  
4 the cap that's provided in the partial settlement in  
5 1999. There was some talk about not much head room  
6 and things like that.' Would you agree that the 2.8-  
7 cent figure we're talking about is an average across  
8 the system for PECO?

9 A. Yes, sir.

10 Q. And that for certain rate schedules that  
11 cap is actually higher? That figure would be  
12 higher?

13 A. By definition, higher for some and lower  
14 for others.

15 Q. I represent the GS customers. Would it  
16 surprise you to learn that it's probably higher for  
17 the GS customers, GS1; or will you accept subject to  
18 check that it is, if you're not familiar with it?

19 A. GS is small commercial?

20 Q. Small commercial.

21 A. Yes, I would think so. Yes.

22 Q. Well, then would you agree that there may  
23 be more head room for some classes of customers to  
24 be served than for others?

25 A. No.

1 Q. You wouldn't?

2 A. No, I would not.

3 Q. Why not?

4 A. Because this is an average analysis. For  
5 your consumers, the small commercial consumers, the  
6 energy and capacity cap, the ECC, would be higher  
7 than 2.8. But the cost for any marketer to serve  
8 them would be similarly higher. So it's not at all  
9 implicit that there would be more head room. There  
10 could be less head room.

11 I think that generally under the 2.8 or how  
12 it breaks out for each rate class there would be  
13 very little head room. Even Dr. Hieronymus had said  
14 that this is a tight cap.

15 Q. I don't doubt that. Maybe we have a  
16 little difference on what head room means. Let's  
17 move on to something else.

18 I'd like to have you look at your Schedule  
19 SAM-SR3 and the summary sheet, the first sheet of  
20 the schedules you put in today. If I understand it,  
21 this schedule at the beginning at the top shows what  
22 PECC calculates to be the over-recoveries of  
23 stranded costs as you figure them out under the  
24 three different scenarios of no growth, small  
25 growth, what I'll call FERC growth, and then the IRP

1 growth; is that right?

2 A. Yes, sir.

3 Q. Those figures range from \$2.2 billion of  
4 alleged over-recoveries to 2.7, almost 2.8?

5 A. Yes, sir.

6 Q. On that schedule, if I understand the  
7 next two lines, you're showing what PECC says could  
8 be done with those over-recoveries, how they could  
9 be distributed or reallocated; is that correct?

10 A. Yes.

11 Q. When you look at that bottom line, it  
12 seems to me that's showing the additional rate  
13 decreases that could be passed on to customers from  
14 that under your proposals, and they range from about  
15 \$258 million that could be passed directly to  
16 customers to 278 million under the three scenarios.  
17 Are they the proposals that are made and shown on  
18 the third line on that summary sheet?

19 A. Yes.

20 Q. So about 10 percent of these alleged  
21 over-recoveries you're proposing should go directly  
22 to the customers, and then the rest would go to  
23 increase the generation credit to give your clients  
24 more room to charge higher prices; is that correct?

25 A. That's really not correct.

1 Q. What do you want to do? What does it  
2 mean by adjusted generation credit? What do you  
3 want to do? You want to raise the generation  
4 credit, don't you?

5 A. Yes. Let me re-explain briefly that the  
6 generation credit just has to be high enough so that  
7 this area will attract competitors of all sorts, not  
8 just the three that I represent but, hopefully,  
9 dozens of others. Once it's at that level, then you  
10 will have vigorous competition, and price will be  
11 driven down to its lowest possible level.

12 Q. So what you're saying is --

13 MR. CLEARFIELD: Your Honor, I don't think he  
14 was finished.

15 MR. RYAN: Oh, I'm sorry. I thought he was.

16 THE WITNESS: Actually so, yes.

17 MR. RYAN: I was looking at him, Dan, and I  
18 thought he was.

19 THE WITNESS: I was succinct, as usual.

20 JUDGE RAINEY: Please continue.

21 MR. CLEARFIELD: Maybe that's why I thought  
22 he wasn't finished.

23 MR. RYAN: You said it. I didn't.

24 BY MR. RYAN:

25 Q. But what you're saying is with a higher

1 generation credit you may attract more competitors  
2 in, so maybe they'll have more vigorous or more  
3 robust, I think is a word we love in Pennsylvania,  
4 competition with that scenario, so there might be  
5 some more savings.

6 But the guaranteed savings, if I can use that  
7 term, the part you're going to make sure goes  
8 directly to the customers, that's that third line,  
9 the Additional Rates Decreases. You're saying  
10 that's how much more you're willing to allocate to  
11 the customers than the partial settlement gives them  
12 guaranteed; is that correct?

13 A. Yes.

14 Q. Okay. That's the only point I'm trying  
15 to make. Now let's see what's left of my own  
16 questions before we started this.

17 On Page 9 of your testimony on Lines 17 to  
18 23, you summarized the guaranteed discounts under  
19 the partial settlement for the years 1998 to 2003.  
20 Then you say that, remarkably, the rates will return  
21 to their December 1996 level in January of 2003; is  
22 that correct?

23 A. I'm sure I say that somewhere.

24 Q. The very last lines, 22 and 23, of Page  
25 9.

1 A. Oh, Page 9.

2 Q. I'm sorry. Page 9.

3 A. Yes, sir.

4 Q. Now, for the rates to return in 2003 to  
5 their 1996 levels, the market price for electricity  
6 would have to meet or exceed the average of 3.7  
7 cents per kilowatt hour; is that right?

8 A. Yes.

9 Q. To the extent that the market price of  
10 electricity is less than 3.7 in the year 2003--and I  
11 agree with you that none of us can say with  
12 precision what it will be--ratepayers would have an  
13 opportunity to save money compared to the total  
14 rates in effect at December '96, wouldn't they?

15 A. With a single exception. Yes, generally  
16 speaking. But a fear that I do have is that if the  
17 ECC cap overall is too low then PECO will remain the  
18 monopolist and in the absence of competition, even  
19 if market prices are, say, below 3.7, would be able  
20 to charge up to the 3.7.

21 Q. Do you mean because they don't attract  
22 enough competition into the area to compete?

23 A. Yes. If competitors are squeezed out or  
24 discouraged until that time and then let's say in  
25 that year market prices go to 3.5 or 3.6, just

1 below, I don't think we can assume that PECO, the  
2 incumbent monopolist and now the monopolist for  
3 several more years, would price down to the market  
4 level.

5 Entry would have to re-begin then at that  
6 point. So it's a technical point that I'm making.  
7 Generally, you're right.

8 Q. Let's go back to the more general point.  
9 To the extent that the market prices exceeded 3.7  
10 cents a kilowatt hour in 2003, wouldn't the  
11 customers be protected from an increase that would  
12 otherwise cause the total price of electricity to  
13 exceed the 1996 levels because of the partial  
14 settlement's extension of the rate cap a couple of  
15 more years?

16 A. Yes, Mr. Ryan. As in the proposal I've  
17 put forth, there is an overall rate cap that  
18 protects the customer against high prices, and our  
19 rate caps are generally lower.

20 Q. Would you agree that the competition act  
21 provides for a total price cap up until June 30th of  
22 2001 but not longer? That's the end of the rate  
23 caps, isn't it, absent, I think, securitization,  
24 ITC?

25 A. Subject to check. I didn't know that for

1 a fact.

2 Q. Can you think of very many products that  
3 are available where you could say right now there's  
4 a guarantee that they're not going to cost any more  
5 in January of 2003 than they did in December of  
6 1996?

7 A. Could you repeat that question.

8 Q. Well, I'm just saying isn't this a rather  
9 unusual situation? We have by statute and actually  
10 extended under the partial agreement, if it were to  
11 be approved, a cap that guarantees that the product,  
12 in this case electric service of PECO, will cost no  
13 more and may cost less in January of the year 2003  
14 than it did in December of 1996, the day before this  
15 act took effect.

16 A. Right. Recognizing that value to  
17 consumers, in the PECC proposal as well there is  
18 such a cap on the same order of magnitude and even  
19 slightly lower, so even more protective of  
20 consumers' upward price risk.

21 MR. RYAN: Thank you very much. I don't have  
22 any more.

23 JUDGE RAINEY: Thank you, Mr. Ryan.

24 Mr. Hershey.

25 MR. HERSHEY: Thank you, Your Honor.

CROSS-EXAMINATION

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BY MR. HERSHEY:

Q. Mr. Mitnick, am I correct that you have no degree in political science?

A. No. I do have a degree in political science.

Q. Which is not listed in your testimony?

A. No. I imagine it is. It's certainly in my resume. I have a bachelor of science in political science from Rensselaer Polytechnic Institute, 1974.

Q. Did you ever work for a legislative body?

A. No.

Q. Have you ever been employed by the Pennsylvania government?

MR. CLEARFIELD: I'm going to object, Your Honor. I don't see the relevance of that question.

JUDGE RAINEY: I'm not sure where you're going with this.

MR. HERSHEY: There's some testimony as to what would happen with the body politic. It seems to me that we have a right to probe his understanding of the body politic, and we'll get there a little later in the cross. But much of his testimony is based on what would happen in

1 alternative scenarios.

2 JUDGE RAINEY: The witness will answer the  
3 question.

4 THE WITNESS: Sir, could you repeat the  
5 question.

6 BY MR. HERSHEY:

7 Q. Have you ever been employed by the  
8 Pennsylvania government?

9 A. No, I have not.

10 Q. Have you ever conducted a study of  
11 Pennsylvania politics?

12 A. No, I have not.

13 Q. Have you ever been employed by a  
14 regulatory Commission?

15 A. As a consultant, yes, I have.

16 Q. But as a staff person?

17 A. No.

18 Q. I believe your testimony indicated that  
19 you worked for the navy after you completed your  
20 education.

21 A. As a consultant. I was a consultant to  
22 the U.S. Navy. I was also an employee of the  
23 federal government, the Department of Defense.

24 Q. In what capacity were you hired as a  
25 consultant for the navy?

1           A. Well, initially when I was a graduate  
2 student at The Wharton School, University of  
3 Pennsylvania. The Wharton School had a contract  
4 with the U.S. Navy, and I worked on that contract.  
5 That was my first work for the U.S. Navy.

6           Q. What was the subject of that contract?  
7 Did it have anything to do with rates or regulatory  
8 matters involving utilities?

9           A. No. It had to do with the costs of jet  
10 aircraft, fighter jet aircraft.

11          Q. Am I correct that you have never as a  
12 consultant represented residential consumers?

13          A. Well, I have been a consultant to public  
14 service commissions and have testified on behalf of  
15 the staffs of public service commissions, and I've  
16 also been a consultant to the consumer advocate in  
17 the state of New Jersey in rate proceedings.

18          Q. You're familiar with the rate cap  
19 provisions in the settlement?

20          A. Generally so.

21          Q. I'm sorry. The cap rate provisions.

22          A. Could you repeat the question.

23          Q. Are you familiar with the cap rate  
24 provisions in the settlement agreement?

25          A. I'm generally familiar with the proposed

1 settlement agreement.

2 Q. Do you know what I'm referring to when I  
3 ask the question cap rate?

4 A. No. Could you be more specific?

5 Q. That's the provision that has to do with  
6 extension of universal service for low income  
7 customers.

8 A. Oh, yes, sir.

9 Q. Have you calculated the cost of the  
10 expansion of that program?

11 A. No, I've not.

12 Q. You'd agree that that provides  
13 significant benefits to consumers?

14 A. I have not analyzed that matter.

15 Q. Now, at several points in your testimony,  
16 you refer to the PECO proposal. I believe you  
17 testified earlier that you're referring there to the  
18 joint petition for approval of the settlement.

19 A. Yes.

20 Q. And you'd agree that, in fact, that's not  
21 a PECO proposal, is it? It's a settlement agreement  
22 among the consumers and PECO in this proceeding;  
23 isn't that right?

24 A. It seems like I used it as a convenient  
25 shorthand. However --

1 Q. But it's not accurate, is it?

2 A. I see in this proceeding my proposal as  
3 being referred to as the Enron proposal. I didn't  
4 even know what entity Enron --

5 JUDGE RAINEY: I don't we need to belabor the  
6 point. I think everyone understands that the joint  
7 settlement petition includes a number of parties.  
8 Please move on.

9 MR. HERSHEY: Well, that is of some  
10 significance here.

11 BY MR. HERSHEY:

12 Q. You would agree that it represents a  
13 settlement among various parties, doesn't it?

14 A. Among various parties, yes.

15 Q. And that's very different from a  
16 proposal, is it not?

17 MR. CLEARFIELD: Your Honor, for the record,  
18 it's a proposal until it's accepted by the  
19 Commission.

20 I would object to this line of questioning  
21 because it's totally irrelevant as to whether it's a  
22 PECO proposal or characterized in some other way.  
23 Let's call it a banana. I don't see how it affects  
24 the substance of the testimony we submitted here.

25 JUDGE RAINEY: Let's move on. Are you going

1 to move to another line?

2 MR. HERSHEY: No, I'm not. I have only  
3 touched the beginning of that. I'm actually getting  
4 to something which I think --

5 JUDGE RAINEY: I think we can all agree as to  
6 what the joint settlement petition is. Let's move  
7 on.

8 BY MR. HERSHEY:

9 Q. Have you ever participated in the  
10 negotiation of a utility case?

11 MR. CLEARFIELD: Objection, Your Honor.  
12 Relevance.

13 JUDGE RAINEY: Mr. Hershey.

14 MR. HERSHEY: It goes specifically to the  
15 comparison between an agreement settling substantial  
16 issues in a case like this as compared to how  
17 realistic is a proposal that has not met certain  
18 tests among the parties.

19 MR. CLEARFIELD: Your Honor, that is  
20 argument. If Mr. Hershey or his clients wish to  
21 raise that, they can --

22 JUDGE RAINEY: I'm not sure where we're going  
23 with this so that it presents the Commission with  
24 something that it can use in order to make the  
25 decision that it needs to make with regard to this

1 particular case, Mr. Hershey.

2 MR. HERSHEY: Your Honor, I think the point  
3 here is that with the joint petition there's been a  
4 negotiation process which has been participated in  
5 by a number of parties who have evaluated the  
6 various costs, and the fact that they've signed on  
7 has some weight in the Commission's consideration of  
8 what is just and reasonable for the various parties.  
9 On the other hand, we have a unilateral proposal  
10 which has not gone through that process.

11 JUDGE RAINEY: I'm having problems with the  
12 back and forth about what a proposal is and what an  
13 agreement is and your definition. If you want to  
14 define what you mean and then ask questions on that,  
15 that's fine. But I don't want to get into a back-  
16 and-forth about what Webster says or what Funk and  
17 Wagnalls says. Let's move on, please.

18 MR. CLEARFIELD: Your Honor, I'm going to  
19 renew my objection, however. The material on which  
20 Mr. Hershey is interrogating the witness is  
21 argument. It has to do with its position that it  
22 would advance to the Commission. It's not designed  
23 nor will it elicit relevant and material evidence  
24 from this witness.

25 This witness presented testimony on the

1 technical aspects of the plan and changes that  
2 needed to be made to make it more pro consumer.  
3 Beyond that, Mr. Hershey's statements should be  
4 directed to the Commission in his brief.

5 MR. HERSHEY: Your Honor, a number of times  
6 during his testimony on cross Mr. Mitnick referred  
7 to "our proposal." He specifically used that term.  
8 That's a very important use, because it is in fact a  
9 unilateral proposal, and he's attempting to compare  
10 that with a document which is anything but a  
11 proposal.

12 JUDGE RAINEY: Again, to the extent that  
13 we're getting into argument about definitions, I  
14 don't think that we are at all moving this process  
15 forward. I would ask you to move on. I'm going to  
16 sustain the objection and ask you to move on,  
17 Mr. Hershey.

18 BY MR. HERSHEY:

19 Q. Mr. Mitnick, at Page 9 of your testimony,  
20 you refer to various legal impediments that might  
21 erode the rate reductions. Do you have that?

22 A. Yes, sir.

23 Q. If those legal impediments existed, the  
24 rate reductions would erode from 10 percent to seven  
25 percent; is that right?

1           A.    Certain legal impediments would do so,  
2           yes, according to Page 10 of the settlement.

3           Q.    And you'd agree with me that at Page 10  
4           of the settlement document, among other legal  
5           impediments, are included court cases that would  
6           prevent securitization; isn't that right?

7           A.    I'm not a lawyer, and I can only -- I  
8           can quote this footnote.

9           Q.    If you understand, is it your  
10          understanding that included in those legal  
11          impediments are court cases that would prevent  
12          securitization?

13          A.    It says, Such legal impediments shall  
14          include statutory changes and state or federal court  
15          actions or decisions that preclude securitization.

16          Q.    Fine.  So you would agree with me that  
17          court actions could prevent securitization and be  
18          such a legal impediment?

19          A.    Makes sense.

20          Q.    Are you aware of any pending legal  
21          actions today that could prevent securitization?

22          A.    I have not studied that subject.

23          Q.    But you did indicate in your prior  
24          testimony that PECO believes that there are  
25          currently legal impediments that would prevent

1 securitization, didn't you?

2 A. I made that statement purely based on  
3 this footnote, which I take at face value. I have  
4 no other information on the subject.

5 Q. Will you accept subject to check that  
6 such appeals, court actions are currently pending  
7 and they have been a matter of record before this  
8 Commission?

9 MR. CLEARFIELD: Your Honor, I'm going to  
10 object. This is not something that Mr. Mitnick can  
11 check. It may call for a legal conclusion. If they  
12 exist, they exist.

13 MR. HERSHEY: Mr. Clearfield, would you  
14 stipulate --

15 JUDGE RAINEY: Just a moment, please. If the  
16 witness knows, he can say he does. If he doesn't  
17 know -- We need to just move forward and stop with  
18 all the bickering going back and forth.

19 MR. CLEARFIELD: I'm not trying to bicker,  
20 Your Honor. Frankly, Your Honor, I'm just not in a  
21 position to make a determination today as to whether  
22 there are legal impediments or not.

23 I will say that I believe Mr. Mitchell in a  
24 deposition did say that PECO believed there was a  
25 legal impediment.

1 JUDGE RAINEY: I don't want attorneys  
2 testifying. The witness can testify with regards to  
3 whether or not he knows the answer to that question.

4 THE WITNESS: Basically, Mr. Hershey, I don't  
5 know about this subject, and I'm not a lawyer.

6 BY MR. HERSHEY:

7 Q. If there were legal impediments that  
8 prevented PECO's securitization, is it possible--I'm  
9 not asking you for a legal opinion--is it possible  
10 that such legal impediments to PECO's securitization  
11 might also prevent the securitization under your or  
12 any other proposal?

13 A. I really can't say.

14 Q. If securitization could not proceed under  
15 your proposal or any other proposal, what would be  
16 the impact on the rate reductions for consumers  
17 under your proposal?

18 A. That's something I can answer. In that  
19 case, the value of securitization would be absent.  
20 I think, if I understand this Page 10, PECO in this  
21 settlement agreement would have to back down on its  
22 up-front discounts, temporary rate discounts to  
23 consumers, by about three percent; for example, from  
24 10 to seven. Similarly, here we would have to back  
25 down in this proposal on the same order of magnitude

1 of three percent. If we had 14, we'd have to go to  
2 11.

3 The settlement agreement, as you prefer to  
4 call it, is 10 to seven. We would go from 14 to 11.  
5 Yes, I imagine that's the way it would work.

6 Q. Did you participate at all in the  
7 preparation of the Enron proposal which has been  
8 filed with this Commission?

9 A. No.

10 Q. You've had substantial experience in  
11 regulatory matters related to utility cases, have  
12 you not?

13 A. Yes.

14 Q. And has it been your experience that  
15 Commission decisions are frequently appealed to the  
16 courts?

17 A. There's a certain percentage of matters  
18 that are appealed to the courts, yes. It depends on  
19 the jurisdiction, very much.

20 Q. Have you made any such study of the  
21 Commission decisions in Pennsylvania which have been  
22 appealed?

23 A. Not specifically. I know there's at  
24 least one case in Pennsylvania that was a Supreme  
25 Court decision. It's happened at least once.

1 Q. On Page 13, Line 10, of your testimony,  
2 you make reference to the body politic. Do you see  
3 that reference?

4 A. Yes, sir.

5 Q. What did you mean by that term?

6 A. Just the phrase body politic?

7 Q. Yes.

8 A. The government of the Commonwealth of  
9 Pennsylvania and the people of Pennsylvania.

10 Q. Acting together in whatever legal means  
11 are available to them?

12 A. Sure.

13 Q. And it's that body politic which you  
14 believe will produce fairer rates than the proposed  
15 settlement agreement; is that right?

16 A. Actually, that was not my point. If I  
17 can just briefly elaborate, it is not credible to  
18 assume that in the absence of this joint petition  
19 that rates would stay at their current levels into  
20 perpetuity and to measure the benefits of this  
21 document relative to rates staying as they currently  
22 are into perpetuity. That's not a reasonable case.  
23 That's all. It's a simple point.

24 Q. Aside from the fact that perpetuity is a  
25 very long time --

1 JUDGE CHESTNUT: And there's a rule against  
2 it.

3 MR. RYAN: Which none of us can remember.

4 MR. HERSHEY: There are many rules against  
5 it.

6 BY MR. HERSHEY:

7 Q. Wouldn't you agree with me that it's that  
8 very body politic which you describe that got us  
9 into this mess?

10 A. Would you repeat your question?

11 Q. Would you agree with me that it's that  
12 body politic that you're referring to that created  
13 the situation that brought us into this hearing  
14 room? Well, let me rephrase the question. Is it  
15 that body politic that produced PECO rates as they  
16 currently are?

17 A. Yes.

18 Q. Would you label those rates as a success  
19 for consumers?

20 A. No.

21 Q. In your oral surrebuttal testimony today,  
22 you stated that government nationally has decided  
23 that competition is preferable. Do you recall that  
24 statement?

25 A. I don't know if that was a direct quote,

1 but that's probably close enough.

2 Q. It's the best I could come. You would  
3 agree with that statement?

4 A. The federal government through the  
5 Federal Energy Regulatory Commission and many state  
6 governments in various forms have decided and taken  
7 action on the premise that a competitive system is  
8 superior to the rate base regulation system.

9 Q. When you say many state governments, how  
10 many, if you know?

11 A. Subject to check, but certainly at least  
12 20 to 25 state governments in various forms have  
13 taken a number of actions that move utility  
14 regulation from its traditional form to a much more  
15 competitive model.

16 Q. Have you performed any study of the  
17 economy in the PECO service territory?

18 A. Not the general economy, no.

19 Q. Are you familiar with the economic  
20 activity in the service territory that's  
21 particularly sensitive to the price of electricity?

22 A. Well, I lived in Philadelphia for a  
23 couple of years. I live an hour and a half train  
24 ride from here. I've worked off and on in  
25 Pennsylvania for Pennsylvania utilities many times

1 in my career. I think I have a general  
2 understanding that very high electric rates can be  
3 injurious to the economy as well as individual  
4 families and businesses.

5 Q. But beyond that general understanding  
6 that anyone with a good education might have, have  
7 you performed any kind of analysis to show what  
8 industry, what commerce is here that might do better  
9 if the price of electricity were lower or is  
10 particularly sensitive in any way to the price of  
11 electricity?

12 A. It's an interesting question. I've not  
13 done such a study.

14 Q. Let's go back for a minute to a question  
15 that Mr. Mickens asked. He asked you if you could  
16 indicate at what point do the floodgates open. Do  
17 you recall that question?

18 A. More or less, yes.

19 Q. You said you didn't really know. It's  
20 just that at the levels proposed it won't work, but  
21 you don't know where you'd draw the line when it  
22 will work?

23 A. Well, I didn't say that I did not know.  
24 What I said--and let me say it more clearly--is that  
25 it's a truism that as that cap, as that ECC is

1 raised the probability that entrants will be  
2 attracted and you'll have sufficient competition in  
3 this area is increased.

4 Various experts can speculate as to that  
5 probability function, where it passes 50 percent  
6 probable, 75 percent. The experts can argue about  
7 it, but it's not an either/or with certainty. It  
8 would be a probability.

9 At the levels that we have here of the 2.8.,  
10 I would feel strongly that the probability that  
11 there will be entrant attraction and vigorous  
12 competition is unacceptably low.

13 Q. Yet, picking up on Mr. Ryan's question  
14 with regard to SAM-SR3, you're only willing to give  
15 the consumers 10 percent of the over-recovery that  
16 you've identified in the settlement document; is  
17 that right?

18 A. I would answer that by saying this. I  
19 offer here three proposals, or a proposal in which  
20 this is the mix of additional rate decreases to  
21 consumers beyond this document versus the gen.  
22 credit. There are numerous variations.  
23 Fortunately, there's enough dollars within the total  
24 pie so that this Commission can make policy  
25 determinations as to how to split the pie.

1 Q. But you're recommending that consumers  
2 get only 10 percent?

3 A. Well, it seems to be somewhere between 10  
4 and 15 percent, but whatever it is. 2.58 relative  
5 to -- It's over 10 percent in every case, but just  
6 a little over.

7 Q. Just a little over?

8 A. Right. And you could do it differently.

9 Q. Sure.

10 MR. HERSHEY: Thank you, Your Honor. That's  
11 all I have.

12 JUDGE RAINEY: Thank you.

13 Mr. Smith.

14 MR. SMITH: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q. Mr. Mitnick, earlier you testified that  
18 you did not find it credible that there would be a  
19 situation where sales growth would not increase. Do  
20 you recall that testimony?

21 A. Oh, yes.

22 Q. I'd like you to assume a hypothetical for  
23 me. I would like you to assume that in fact sales  
24 growth has remained flat for 10 years in this  
25 service territory. Would that in any way affect

1 your conclusion about whether it's credible to  
2 assume that sales growth would continue to remain  
3 flat?

4 A. Actually, Mr. Smith, I've studied  
5 carefully the sales growth for this 10-year period.  
6 That information is provided in a number of forms,  
7 including in your integrated resource plan filed  
8 just five months ago.

9 You'll note that there has been vigorous  
10 growth in your company's service territory in the  
11 residential and commercial sectors, particularly  
12 commercial. Now, there has been some drop-off in  
13 industrial, particularly in the last reporting year.  
14 I imagine part of that is ascribable to the  
15 Philadelphia navy yard.

16 So I think when you look at the last 10 years  
17 and you make a gross statement that sales growth has  
18 been flat at the same time as your company has put  
19 in a forecast to the Commission just five months ago  
20 that the base case is 1.14 percent per annum and  
21 forecasted to the FERC just a little while ago that  
22 it would be approximately .8 percent, I think that's  
23 a simplification.

24 Q. It's what we call fighting a  
25 hypothetical. I'm asking you to assume that it has

1       been flat for 10 years and to then answer would that  
2       change your opinion about whether it is credible to  
3       have a going-forward assumption of flat growth.

4             A.   Okay.   Good.   I accept the hypothetical,  
5       and it would not change my belief that the no sales  
6       growth is incredible.   I can't imagine that an  
7       expert in the field would come forth here before the  
8       Commission and maintain that there would be no sales  
9       growth in this area over the next 10 years.

10            Your company has retained consultants by --  
11       has had ICF.   ICF has a forecast for PJM-wide growth  
12       per annum that's well over two percent.   I just  
13       can't imagine it.

14            Q.   So your answer then--I want to make sure  
15       I understand this--is that, on the assumption that  
16       growth has been flat for 10 years, it would still be  
17       incredible to you to think that it would continue to  
18       be flat?

19            A.   Yes, if only because through this process  
20       we are lowering rates one way or the other.   Under  
21       your company's proposal, this proposal, some other  
22       process, rates are going to go down.   I cannot  
23       believe that in an environment of lower rates that  
24       there's not going to be any sales growth.   It's not  
25       credible.

1           Q. The last statement is based on price  
2 elasticity of electricity?

3           A. Yes, the long-term price elasticity.

4           Q. You testified verbally, orally, a little  
5 while ago that you imagine that PECO is doing some  
6 things to improve its overhead in T & D. Do you  
7 recall that?

8           A. Yes.

9           Q. Have you done any review of PECO's  
10 capital budgets over the past years and to date to  
11 determine whether they have already undertaken such  
12 efforts?

13          A. I've not studied the capital budgets of  
14 PECO.

15          Q. Do you know whether the things to improve  
16 its overhead to which you were referring have  
17 already been accomplished by PECO Energy over the  
18 past years?

19          A. I'm sure that your company has made great  
20 strides. For example, PECO is one of the leaders  
21 industrywide in the decrease of its work force.  
22 There's hardly any company in the country that's  
23 slashed its overall total work force as much as your  
24 company. So I imagine that you've already been  
25 making great strides. But, again, beyond that I

1 have no detailed knowledge.

2 Q. You have not done a study of capital  
3 budgets, early retirement, O & M, or anything else  
4 to determine whether there are additional savings  
5 that could be accrued?

6 A. Correct.

7 Q. Have you done any analysis of trends of  
8 T & D costs, of PECO Energy's T & D costs?

9 A. I have of companies nationally, although  
10 not of PECO specifically in detail.

11 Q. Have you looked at PECO's A & G functions  
12 to determine if and to what extent they would still  
13 be carried out under the settlement?

14 A. No. I've made no specific -- Again,  
15 maybe this will be helpful. I've made no specific  
16 studies of -- I've not been hired as a consultant  
17 to your company, and I've made no specific studies  
18 of the degree to which you have re-engineered or  
19 there is potential for further re-engineering.

20 Q. Would you go to Exhibit SAM-SR1 that was  
21 handed out today. How much securitization do you  
22 assume in these exhibits? How many billions of  
23 dollars do you assume has been securitized in each  
24 of these exhibits?

25 A. I do it more simply. If you look on to

1 SR1A, Page 2, I simply assume that there's a value  
2 of securitization of .3 cents per kilowatt hour,  
3 period. I don't do any further detailed analysis.  
4 I take at face value your company's own analysis  
5 that with versus without securitization that would  
6 be the change in value.

7 Q. It may be simpler to you, but what I'm  
8 asking is, the joint petition for partial settlement  
9 says that PECO would have the option of securitizing  
10 up to \$4 billion. Your tables, what level did you  
11 assume that they would securitize? If the answer is  
12 I don't know, then that's fine.

13 A. No, it's not even an I don't know. It  
14 wasn't a consideration. Your company sent a very  
15 strong signal and has indicated that the value of  
16 securitization is .3 cents per kilowatt hour, so I  
17 use that number as is.

18 Perhaps as you developed that number you took  
19 into account that you would securitize four billion  
20 or 3.5 billion. Perhaps you made an assumption of  
21 how much would go to long-term debt versus preferred  
22 debt versus common. I don't know that. I don't  
23 know how you came up to that number. All I know is  
24 you came up to that number and I took it.

25 MR. SMITH: Your Honor, I would request that

1 the witness be directed to either say that he has a  
2 number in mind for the amount of securitization that  
3 is included in these tables or that he doesn't.

4 JUDGE RAINEY: I believe the witness said he  
5 didn't consider that in his calculations.

6 Is that what you're saying, Mr. Mitnick?

7 THE WITNESS: Yes. I took PECO's methodology  
8 as is.

9 BY MR. SMITH:

10 Q. Under the settlement what is your  
11 understanding of the date on which the company  
12 begins to provide discounts and lost revenues?

13 A. The date on which your discounts start,  
14 your temporary 28-month 10 percent, starts September  
15 1st, 1998.

16 Q. Speaking as an economist and looking at  
17 the question of net present values, do you normally  
18 determine the date against which to set net present  
19 values by reference to economic events or legal  
20 statutes? If that was unclear, then I can rephrase.

21 A. Could you rephrase it.

22 Q. When you are setting net present value,  
23 the date against which you do the present valuing  
24 affects the outcome; correct?

25 A. It can.

1 Q. As a general matter in economic theory,  
2 how does one choose that date for net present  
3 valuing purposes?

4 A. It's pretty specific to the circumstances  
5 of the problem. Here the problem is -- I won't say  
6 any more. You can ask the question.

7 Q. There is no general principle of which  
8 you're aware?

9 A. Well, one principle is you want to be  
10 consistent so you're always comparing apples to  
11 apples. If you're net present valuing one thing and  
12 another thing, you would want to look at it the  
13 same. There are a number of principles of fairness  
14 and objectivity that you would want to employ.

15 Q. I think I'll leave it at that. If you  
16 would, turn to the last page of SAM-SR1, which I  
17 guess becomes SAM-SR1C, Page 2. Are you there, sir?

18 A. Yes.

19 Q. It indicates at the bottom of that page  
20 securitization NPV about 733 million. I think you  
21 described this before. But could you just briefly  
22 describe again what that number is intended to  
23 represent?

24 A. Simply, it's the value of securitization  
25 to PECO using the methodology of the company itself,

1 of .3 cents per kilowatt hour, period.

2 MR. SMITH: I'm trying to cut out some stuff.

3 JUDGE RAINEY: Thank you.

4 JUDGE CHESTNUT: Keep trying.

5 BY MR. SMITH:

6 Q. In your testimony--and I apologize that I  
7 don't have a page and line reference--you basically  
8 stated that each \$1 billion in securitization would  
9 reduce PECO's cost by approximately one percent, or  
10 the rates by about one percent.

11 A. Right. I make reference to that, yes.

12 Q. What is the basis for that conclusion or  
13 for that statement?

14 A. I don't recall the reference. I didn't  
15 generate that myself through my own analysis, so I  
16 think I took that from another source. I could  
17 research that and provide that.

18 But I want to say, again, that's not the  
19 methodology that I've used here. I've used the PECO  
20 method, the .3 cents per kilowatt hour, period.

21 Q. Thanks. In your testimony on Page 16,  
22 you used the long-distance telephone market as a  
23 comparison here to illustrate the value of  
24 incumbency in retail markets. Have you conducted  
25 any analyses of the value of incumbency in telephone

1 markets?

2 A. I've not, but those studies are very well  
3 known and read by economists such as myself pretty  
4 well.

5 Q. Have you ever testified on the subject?

6 A. No.

7 Q. Would you take a look at Page 18 of your  
8 testimony, Line 17. It says a discount rate of 7.15  
9 percent, as recommended by the Commission in its  
10 order. That's a typo; right? It's supposed to be  
11 7.53 percent?

12 MR. CLEARFIELD: I'm sorry.

13 MR. SMITH: On Line 17.

14 BY MR. SMITH:

15 Q. A discount rate of 7.15. That's a typo?

16 A. I believe so, subject to check. We don't  
17 use this number in any regard outside of this  
18 rhetoric. So we never used this number.

19 Q. Have you prepared your own calculations  
20 of discount rate for this case?

21 A. No. We fully adopted your company's,  
22 8.71 percent.

23 Q. Have you prepared an assessment of future  
24 market prices for this case, you personally?

25 A. No. I adopted without question your

1 company's consultant's forecasts of market prices.

2 Q. On Page 20 of your testimony, Lines 11  
3 through 13, you say, "PECO plans to recover funds  
4 through transmission and distribution, and has made  
5 the generation cap as low as possible to block  
6 competition." Do you mean to say that you have  
7 evidence that PECO intended to do these things? Is  
8 that your testimony?

9 A. I don't think I have evidence that your  
10 management made a conscious decision to have a  
11 proposal that's predatory. The effect is certainly  
12 that, but --

13 Q. That's what I want to be clear of here,  
14 because there is a difference between testimony that  
15 PECO has made a conscious decision to do something  
16 and that you think in your opinion effects can only  
17 be interpreted in a single way. It's the latter  
18 that you're testifying to?

19 A. Yes. Thank you. I apologize if I have  
20 implied in any way that I know that there has been a  
21 conscious decision by PECO management to be  
22 predatory.

23 Q. Page 21, Lines 18 through 19, similarly,  
24 you have said, "PECO's strategy is to maximize the  
25 extent to which it can shield its operations from

1 this discipline" of the marketplace. Same question:  
2 Do you have any knowledge that this is something  
3 that PECO is intending to do?

4 A. I don't have knowledge that PECO's senior  
5 management said, Our strategy is to quash any entry.  
6 I don't know one way or the other. The effect of  
7 the proposal is clearly that.

8 Q. Would it be a fair statement that in your  
9 testimony where you have made statements--and I  
10 think there are more than this--where you implied  
11 that PECO intends to do something or that PECO has a  
12 certain strategy that, generally speaking, you did  
13 not intend to say that you had knowledge of the  
14 thought process or a decision that had been made by  
15 PECO Energy; but, rather, what you were saying was  
16 in your opinion the proposal could only have one  
17 outcome, and that was really what you intended to  
18 say?

19 A. I'd like to say that's a much better way  
20 of saying it. You say it much better there.

21 Q. Thank you. Page 21, Lines 5 through 9,  
22 -- No. I think we already answered that one.

23 Page 22, you talk about predatory pricing.  
24 Predatory pricing generally means pricing below cost  
25 in order to drive others out of the market and then

1 later raising your prices to above what the  
2 marketplace would otherwise have allowed and  
3 recovering your costs down the line in a monopoly  
4 fashion; right? Eventually --

5 MR. CLEARFIELD: Wait a minute. Did you say  
6 yes, Mr. Mitnick?

7 THE WITNESS: I'm sorry. Could you repeat --

8 JUDGE CHESTNUT: Mr. Smith, where is the  
9 reference to predatory pricing on Page 22?

10 MR. SMITH: Lines 7 through 10, according to  
11 my notes.

12 BY MR. SMITH:

13 Q. Do you recall the definition of predatory  
14 pricing I gave a moment ago and asking if you agreed  
15 with that definition, or do I have to restate it?

16 A. The legal definition of predatory pricing  
17 is you have to have, One, pricing below cost and  
18 exercised by a company with market power. Then once  
19 competition is knocked out or weakened, then that  
20 market leader raises prices above its costs for  
21 excess profits.

22 There's a whole body of law around that. I'm  
23 not an antitrust attorney, so I'm only speaking in  
24 general terms.

25 Q. Speaking as an economist who has

1 testified about predatory pricing in this  
2 proceeding, the second half of that equation where  
3 the prices go up at some point in the future and the  
4 predatory pricer recovers at above market, is that  
5 an important part of the definition of predatory  
6 pricing?

7 A. It's part of it.

8 Q. Is it an important part of it?

9 A. They're all important. Okay. It's  
10 important.

11 Q. Let's put it this way. In the absence of  
12 that thing, if all you ever had was lower prices,  
13 even below cost prices, and you never ended up with  
14 a situation at the other end of that where prices  
15 then went up above and became monopoly prices, you  
16 wouldn't actually have predatory pricing; right?

17 A. Not in antitrust law, yes.

18 Q. On Page 23 of your testimony, Lines 21  
19 through 22, you state--I'm talking about A & G costs  
20 here-- that the distribution function could only  
21 have the same level of A & G after competition if it  
22 maintained a 100-percent market share. Do you see  
23 that testimony?

24 A. Yes.

25 Q. How much of the market share for

1 distribution functions do you expect PECO Energy to  
2 maintain after competition begins?

3 A. That's actually a bit more complicated a  
4 question than I think you were thinking, and it's  
5 because of this. Currently in your distribution  
6 costs and function you play several roles, part of  
7 which will remain a monopoly, regulated natural  
8 monopoly. I think that PECO will have a 100-percent  
9 market share of, for example, line maintenance or  
10 low-voltage line maintenance in this area.

11 However, part of what's in your distribution  
12 function now, which is meter reading, customer  
13 service, various bundled services to the customer,  
14 call centers, and so forth, much of that is not a  
15 natural monopoly, and you will not have a 100-  
16 percent share, I would think, sometime into the  
17 future.

18 Q. Those things which you just described as  
19 potentially being unbundled in the future, they are  
20 included at a 100-percent level in PECO Energy's  
21 rates under the settlement proposal?

22 A. Was that a question?

23 Q. Yes. I'm asking you. I'm sorry that I  
24 didn't have the rising inflection.

25 A. Could you repeat the question.

1 Q. Under the settlement proposal, would PECO  
2 Energy maintain a 100-percent market in the services  
3 and functions that you described a moment ago?

4 A. Actually, I thought -- I could be  
5 reading this wrong. I thought those were among  
6 these unsettled issues. There are these various  
7 unsettled issues that aren't within your petition.  
8 I think that would, in part, relate to whether you  
9 continue to do all billing, all customer service,  
10 that kind of a thing.

11 Q. I think I misspoke. That's fine.

12 You are not suggesting that PECO Energy be  
13 denied stranded investment recovery, are you?

14 A. Certainly not.

15 Q. You testified earlier that you were  
16 saying that PECO Energy should be denied a return on  
17 its stranded investment; correct?

18 A. Yes.

19 Q. You said that position had been adopted  
20 around the country?

21 A. That's the common way of doing it.

22 Q. Where has that position been adopted?

23 A. If necessary, I would provide -- I've  
24 not done the research. Subject to check, I'd be  
25 happy to -- It would be very easy to document that

1 information.

2 Q. I would like one example now.

3 A. Okay. Actually, I would think that in  
4 all of the states that I know of--such as  
5 California, Massachusetts, New York, which is going  
6 through this process, New Hampshire, Rhode Island,  
7 there would be other states--I actually don't know  
8 of a case -- And I was very surprised when I saw  
9 your rhetoric about return on. I don't know of a  
10 case in which stranded cost recovery includes this  
11 return on function.

12 The calculation is simply you look at your  
13 market value, you subtract your net book value, and  
14 the difference is the full stranded cost amount.

15 MR. SMITH: Your Honor, a moment ago the  
16 witness testified that it would be very easy to put  
17 together a full list of these examples, and I would  
18 like to make an on-the-record data request that that  
19 be provided.

20 JUDGE RAINEY: Any problem with that,  
21 Mr. Clearfield?

22 MR. CLEARFIELD: No.

23 JUDGE RAINEY: The record will note the on-  
24 the-record data request.

25 MR. SMITH: If I can have just about two

1 minutes, I can knock most of the rest of this out.

2 JUDGE RAINEY: Yes.

3 (Pause)

4 MR. SMITH: I have no further questions, Your  
5 Honor.

6 JUDGE RAINEY: Thank you, Mr. Smith.

7 Any further cross-examination?

8 Yes, Mr. Steinmetz.

9 CROSS-EXAMINATION

10 BY MR. STEINMETZ:

11 Q. Good afternoon, Mr. Mitnick. My name is  
12 Steve Steinmetz. I'm here on behalf of the  
13 Pennsylvania Office of Consumer Advocate. I will be  
14 brief.

15 Is SAM 8 still relevant, or has it been  
16 replaced by SR2A, B and C?

17 A. It's been replaced.

18 Q. It has been replaced?

19 A. Right.

20 Q. Just a few questions on securitization.

21 On Page 14 of your testimony, Line 3, you state that  
22 under its plan PECO keeps the benefits of the  
23 revenue requirements reduction due to  
24 securitization. Do you see that?

25 A. Yes.

1 Q. Are you aware that there are certain  
2 costs associated with securitization, such as call,  
3 tender offer premiums, retired debt, tender offer  
4 premium expenses, commissions associated with  
5 retiring of common equity?

6 A. Makes sense.

7 Q. Would you agree that the level of these  
8 expenses has a direct impact on the level of savings  
9 achievable through securitization?

10 A. Yes.

11 Q. Would you agree that the risks associated  
12 with any increase or decrease in any projections  
13 concerning the amount of these costs remains with  
14 the company under the partial settlement?

15 A. Yes. It's for that reason and those  
16 complexities that, rather than doing an independent  
17 calculation, which is what we were doing at first,  
18 we just adopted as-is the .3 cents from the company,  
19 figuring that they would know better than anyone,  
20 taking into account all of those complexities, what  
21 the value is. That's why we used the .3 cents.

22 Q. You would agree that there are risks that  
23 the costs could increase or decrease over the  
24 projections that even PECO used to calculate that  
25 level of savings and that does remain with the

1 company under this proposal?

2 A. Both up and down?

3 Q. Yes.

4 A. Sure.

5 MR. STEINMETZ: That's all I have, Your  
6 Honor.

7 JUDGE RAINEY: Thank you.

8 Any redirect?

9 MR. CLEARFIELD: Just a couple of clarifying  
10 questions.

11 REDIRECT EXAMINATION

12 BY MR. CLEARFIELD:

13 Q. Mr. Mitnick, on SAM-SR2C is it your  
14 understanding that the column marked PECO  
15 Securitization Savings would be utilized in all  
16 events other than when there is a determination that  
17 there's a legal impediment to securitization?

18 A. Yes.

19 Q. You were asked several questions about  
20 the point at which a market would be open to  
21 competition vis-a-vis gen. credits. You stated that  
22 you couldn't really provide a specific point.

23 If you have to be below the midpoint or above  
24 the midpoint in terms of promoting competition,  
25 where, in your view, should the balance be struck?

1           A. I've said that in my tables in my  
2 proposal. I've set a level of consumer credit, gen.  
3 cap, ECC, whatever, that I think is a safe level so  
4 that we can safely assume that there will be entry  
5 attraction. There will be a robust number of  
6 competitors, and we will have vigorous competition.  
7 Then let them fight it out and provide the best  
8 service and the lowest price to consumers.

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

11           JUDGE RAINEY: Thank you, Mr. Clearfield.

12           Any recross on the redirect?

13           (No audible response.)

14           JUDGE RAINEY: Thank you. You may stand  
15 down, Mr. Mitnick.

16           I believe that completes the witness list for  
17 today. Let's go off the record.

18           (Discussion off the record.)

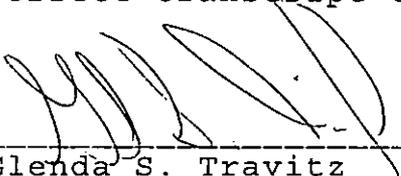
19           JUDGE RAINEY: There was a brief discussion  
20 off the record with regard to tomorrow's hearing,  
21 and it was decided that we will start at 9:30  
22 tomorrow.

23           If there is nothing further that needs to be  
24 taken up here today, this hearing is adjourned.

25           (Whereupon, the hearing adjourned at 5:10  
p.m.)

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

5  
6 October 19, 1997  
7 Date

  
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8 Glenda S. Travitz  
9 Reporter  
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