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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Philadelphia, Pennsylvania

October 16, 1997

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DOCUMENT
FOLDER

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Approval of a Restructuring Plan and
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Stenographic report of hearing held in
Hearing Room 1, State Office Building,
Philadelphia, Pennsylvania,

Thursday,
October 16, 1997
at 9:30 o'clock AM

BEFORE

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

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INDEX OF WITNESSESON BEHALF OF PECO ENERGY:

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
ALAN COHN	952	956 (Dworetzky)	1007	1012 (Dworetzky)
		990 (Clearfield)		1016 (Clearfield)
		1005 (Doll)		
ROBERT CLEMMER	1041	1045 (Clearfield)		
		1102 (Doll)		
		1103 (Miller)		
MICHAEL FREEMAN	1134	1136 (Miller)		
		1138 (Dworetzky)		
		1159 (Clearfield)		

ON BEHALF OF ENRON:

PAUL REISING	1109	1124 (Trask)		
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ON BEHALF OF PAIEUG:

Stephen Baron	1018	1022 (Clearfield)		
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FOR PECO ENERGY:

MARKED

ADMITTED

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1 JUDGE CHESTNUT: Good morning, everybody.
2 This is an administrative hearing in the matter
3 involving Pennsylvania Public Utility Commission
4 versus PECO Energy Company at Docket Number
5 R-00973953, as well as the associated complaints.

6 For the record, I am Administrative Law Judge
7 Marlane Chestnut.

8 With me is Administrative Law Judge Charles
9 E. Rainey, Jr.

10 I would like the counsel present to identify
11 themselves for the record, stating on whose behalf
12 they are appearing, starting with Mr. Shields.

13 MR. SHIELDS: Certainly, Your Honor. Charles
14 Daniel Shields, along with Kenneth Mickens,
15 representing the Office of Trial Staff.

16 JUDGE CHESTNUT: Thank you. Mr. Kleppinger?

17 MR. KLEPPINGER: Good morning, Your Honor.
18 Dave Kleppinger, of the law firm of McNeese, Wallace
19 & Nurick, representing the Philadelphia Area
20 Industrial Energy Users Group.

21 JUDGE CHESTNUT: Okay. Instead of going
22 physically, I am going to go in order of the
23 appearance sheet, so you are not next, Mr. Bonney.

24 MR. STEINMETZ: Good morning, Your Honor.
25 This is Steven Steinmetz, on behalf of the

1 Pennsylvania Office of Consumer Advocate.

2 JUDGE CHESTNUT: Thank you. Miss Helpert?

3 MS. HELPERT: Good morning, Your Honor. Lisa
4 Helpert of Preston Gates on behalf of PP&L, Inc.

5 JUDGE CHESTNUT: Thank you.

6 Mr. Ryan?

7 MR. RYAN: Good morning. Bernard Ryan from
8 the Office of Small Business Advocate, sitting in
9 for Karen Moury, whose case this is.

10 JUDGE CHESTNUT: Miss Swanstrom?

11 MS. SWANSTROM: Good morning, Your Honor. I
12 am Deborah Swanstrom. I am representing Allegheny
13 Power.

14 JUDGE CHESTNUT: Thank you. Mr. Bonney?

15 MR. BONNEY: Good morning, Your Honor. Paul
16 Bonney for PECO Energy, and with me today is Noel
17 Trask.

18 JUDGE CHESTNUT: Mr. Clearfield?

19 MR. CLEARFIELD: Daniel Clearfield for ENRON
20 Power Marketing, Inc. Thank you, Your Honor.

21 JUDGE CHESTNUT: Miss Miller?

22 MS. MILLER: Thank you, Your Honor. Janet
23 Miller, Malatesta, Hawke & McKeon, on behalf of
24 Mid-Atlantic Power Supply Association.

25 JUDGE CHESTNUT: Thank you.

1 Mr. Doll?

2 MR. DOLL: Thank you, Your Honor. Craig
3 Doll, on behalf of Conectiv Energy.

4 JUDGE CHESTNUT: Is there anyone present who
5 did not sign the appearance sheet?

6 MR. DWORETZKY: Guilty. Joe Dworetzky, on
7 behalf of New Energy Ventures.

8 JUDGE CHESTNUT: Thank you.

9 MR. DWORETZKY: My apologies.

10 JUDGE CHESTNUT: That's all right. Just
11 embarrass yourself in front of your colleagues.

12 MR. DWORETZKY: What's new about that?

13 JUDGE CHESTNUT: Are there any preliminary
14 matters before we get to the first witness listed
15 for today's hearing?

16 (No response.)

17 JUDGE CHESTNUT: Hearing none, then I guess
18 the first witness is Mr. Cohn.

19 Would you stand, please? Raise your right
20 hand.

21 (Witness sworn.)

22 JUDGE CHESTNUT: Listen, we are going to have
23 to a short break.

24 (Recess taken.)

25 JUDGE CHESTNUT: Mr. Bonney, go ahead.

1 MR. BONNEY: Thank you, Your Honor.

2 ALAN B. COHN, called as a witness, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BONNEY:

6 Q Mr. Cohn, would you state by whom you are
7 employed, and in what capacity?

8 A By PECO Energy Company, as manager of
9 business analysis and support and rates.

10 MR. BONNEY: Your Honor, we previously
11 submitted to you and to the other parties three
12 pieces of testimony by Mr. Cohn, his direct,
13 rebuttal and rejoinder testimony, and they have
14 been labeled as PECO Statements No. 3, 3R and 3RJ.

15 JUDGE CHESTNUT: They will be so marked.

16 MR. BONNEY: Thank you.

17 (Thereupon, PECO Statements 3, 3R and 3RJ
18 were marked for identification.)

19 BY MR. BONNEY:

20 Q Mr. Cohn, were these statements prepared
21 by you, or under your direction and supervision?

22 A Yes, they were.

23 MR. BONNEY: Your Honor, also attached to the
24 testimony are 13 exhibits sponsored by Mr. Cohn,
25 Exhibits ABC 1 through 13.

1 (Thereupon, Exhibits ABC 1 through 13
2 was marked for identification.)

3 BY MR. BONNEY:

4 Q Were these exhibits prepared by you or
5 under your direction and supervision?

6 A Yes, they were.

7 Q Do you have any corrections to your
8 testimony?

9 A None at this time.

10 MR. BONNEY: Your Honor, before I turn the
11 witness over for cross examination --

12 JUDGE CHESTNUT: Excuse me. Before you
13 continue, could you tell me where ABC 10 is? Maybe
14 it is on here, and I missed it, because I had 11 as
15 being the start of the exhibits with 3-RJ --

16 THE WITNESS: Right.

17 JUDGE CHESTNUT: -- and I have his rebuttal
18 going up to nine.

19 THE WITNESS: It is right on the very last
20 page, in the rebuttal.

21 JUDGE CHESTNUT: Oh, did I miss it? I have 9
22 as being your last page.

23 Oh, I'm sorry. It is on the other side of
24 it.

25 THE WITNESS: It is a two-sided page.

1 JUDGE CHESTNUT: Oh, I beg your pardon.

2 MR. BONNEY: Okay?

3 JUDGE CHESTNUT: All right. So 1 to 10 is
4 associated with statement three, and then 11
5 through 13 is with three RJ?

6 MR. BONNEY: Yes. I believe some of the
7 exhibits are associated with 3-R.

8 JUDGE CHESTNUT: I'm sorry. I said it --

9 THE WITNESS: Yes.

10 MR. BONNEY: Okay. Thank you, Your Honor.

11 JUDGE CHESTNUT: R instead of 3.

12 MR. BONNEY: Your Honor, before I turn the
13 witness over for cross examination, I had one
14 question in the nature of oral sur-rejoinder, I
15 guess it would be called, in response to Mr.
16 Mitnick's testimony yesterday.

17 JUDGE CHESTNUT: Okay.

18 BY MR. BONNEY:

19 Q Mr. Cohn, yesterday, Mr. Mitnick testified
20 that in calculating stranded investment, in his
21 opinion there should be no return on assets
22 allowed.

23 Do you have any comment with respect to
24 that?

25 A Yes, I do. I find no basis for that.

1 I mean, if you start looking at what different
2 companies have done, and you go to ENRON in Oregon,
3 you know, for Portland General Electric, you are
4 asking for a full return of and on stranded
5 investment.

6 Delmarva -- that's the Delaware Commission
7 on Industry Restructuring -- wants a full return of
8 and on stranded investment.

9 PECO, in its initial filing, a full return
10 of and on, PP&L, a full return of and on, you know,
11 Penn Power, a full return of and on.

12 All the Pennsylvania companies essentially
13 want a full return of an on stranded investment.

14 In this proceeding, you know, no parties
15 have challenged the fact that the return on
16 investment is part of stranded cost.

17 The QRO issued by the Commission earlier
18 this year for PECO also, you know, contemplates a
19 return on stranded investment.

20 There would be no benefit to
21 securitization if there were no return on stranded
22 investment, and in that case, the Commission
23 specifically went to assets that were earning a
24 return on them and did not discount them, and so
25 that they are the ones that you should get

1 securitization for, so implied in that is that,
2 accepting a return on stranded investment.

3 And additionally, if you look on a national
4 basis, the FERC, also, its policy is effectively
5 recovery of and on stranded investment.

6 MR. BONNEY: The witness is available for
7 cross examination, Your Honor.

8 JUDGE CHESTNUT: Did you move in his
9 statements and exhibits? I'm not sure.

10 MR. BONNEY: No, I have not, but thank you,
11 Your Honor. I will do so at this time.

12 JUDGE CHESTNUT: Is there any objection?

13 (No response.)

14 JUDGE CHESTNUT: The documents are admitted.
15 Is there any cross examination for Mr. Cohn?

16 MR. DWORETZKY: Yes, Your Honor. Thank you.

17 JUDGE CHESTNUT: Mr. Dworetzky?

18 CROSS EXAMINATION

19 BY MR. DWORETZKY:

20 Q Mr. Cohn, you were not in court yesterday?

21 A That is correct.

22 Q And where were you?

23 A I had other business to tend to.

24 Q Where was that business? Was it in
25 Philadelphia?

1 A It was in Philadelphia, yes.

2 Q And were you in your office yesterday?

3 A A small part of the time.

4 Q And where were you otherwise?

5 A Different places, the library, working and
6 prepping for today, things of that sort.

7 MR. DWORETZKY: Your Honor, I would like to
8 move to strike the testimony of this witness.

9 During the course of scheduling the witnesses
10 for testimony today, I had a number of discussions
11 with the company about the sequence and order of
12 the witnesses, and I urged that the company present
13 their witnesses first so that we could have our
14 witnesses follow them and hear their testimony.

15 I was told that Mr. Cohn was unavailable for
16 testimony yesterday.

17 I asked Mr. Bonney and Mr. Hill on two
18 different occasions to see if they couldn't
19 possibly arrange Mr. Cohn so that he could be here
20 and testify before Mr. Mitnick, who was dealing
21 with some of the similar issues that he had, and I
22 was told by Mr. Bonney and by Mr. Hill that Mr.
23 Cohn was unable yesterday and could not be made
24 available for testimony, and I am very disappointed
25 to learn that he was in his office and preparing

1 for this, and he could have come over and been
2 available to testify.

3 JUDGE CHESTNUT: So you are asking that his
4 oral sur-rejoinder be stricken, or that his entire
5 testimony be stricken?

6 MR. DWORETZKY: His entire testimony.

7 JUDGE CHESTNUT: Mr. Bonney?

8 MR. BONNEY: Your Honor, I was instructed --
9 when asked by Mr. Dworetzky, I asked Mr. Cohn and
10 Mr. Hill, and I was told that Mr. Cohn was
11 unavailable yesterday, and I think his testimony
12 here indicates that he was unavailable.

13 Beyond that, Your Honor, I'm not sure that it
14 is relevant.

15 We have a witness lineup, and Mr. Cohn is
16 here and available for cross examination.

17 I'm not sure why it is inappropriate to cross
18 examine him now, and I don't see any basis for
19 striking his testimony.

20 JUDGE CHESTNUT: I am not going to allow --
21 I am not going to grant the motion. I mean, if it
22 was a subterfuge or a legal stratagem, then that's
23 just something that happens in terms of each party
24 trying to gain an advantage for itself, and I don't
25 actually see anything wrong with his sur-rejoinder

1 testimony, since the party with the burden of proof
2 does open and close in terms of testimony, but
3 actually, Mr. Dworetzky, I share your concern about
4 unprofessional behavior, if in fact it happened.

5 MR. BONNEY: Your Honor, I would note --

6 JUDGE CHESTNUT: If counsel can't rely on
7 another counsel's representations, I think that's a
8 difficult position to be in, but I don't think it
9 serves anything to go further into that now.

10 MR. BONNEY: I just wanted to note, Your
11 Honor, that we did substantially change the
12 proposed schedule to accommodate Mr. Dworetzky and
13 Mr. Clearfield, to the extent that we moved Mr.
14 Mitnick, we moved Mr. Clemmer from Friday to
15 Thursday, before Mr. Reising for similar concerns,
16 so we did try to accommodate it to the extent that
17 we have.

18 JUDGE CHESTNUT: Do you feel that you have
19 been very disadvantaged by this, Mr. Dworetzky?

20 MR. DWORETZKY: Well, Your Honor, I don't
21 have Mr. Mitnick here to hear his testimony, and I
22 think that is a disadvantage, but I accept your
23 ruling, and I am prepared to proceed.

24 JUDGE CHESTNUT: Okay. Thank you.

25 MR. BONNEY: Your Honor, let me just as

1 perhaps as a courtesy, if Mr. Mitnick has a
2 response to Mr. Cohn, and in fact he said yesterday
3 that he was going to provide as an answer to an
4 on-the-record data request a response on this
5 question, indicating the basis for his opinion, if
6 he wants to present that, or if there is additional
7 testimony that he wants to present on this point, I
8 would take a serious look at that and consider
9 having it entered without further cross
10 examination.

11 JUDGE CHESTNUT: Okay. Let's not get into
12 this further, and I don't want there to be an
13 endless round of responsive testimony, either.

14 At some point we just have to go with what we
15 have.

16 MR. DWORETZKY: Okay. Well, may I reserve
17 simply the right to examine that at end of the
18 testimony and see if that would be helpful?

19 JUDGE CHESTNUT: Certainly.

20 MR. DWORETZKY: Thank you. May I approach
21 the court reporter, Your Honor?

22 JUDGE CHESTNUT: Certainly.

23 MR. DWORETZKY: Would you mark that as NEV
24 Cross Exhibit 1?

25 (Thereupon, NEV Cross Exhibit 1

1 was marked for identification.)

2 (Discussion off the record.)

3 BY MR. DWORETZKY:

4 Q Mr. Cohn, I am going to hand you a
5 document that has been marked as NEV Cross No. 1,
6 and I would like to make a short statement about
7 this document.

8 MR. DWORETZKY: This document is one of the
9 confidential documents that we dealt with the other
10 day, and the copy that I have given to the witness
11 and to the court has been redacted, and with the
12 agreement with the company, I am going to proceed
13 with examination of this document in an attempt to
14 do so in a way that does not require us to take the
15 special steps that were needed to be taken the
16 other day.

17 JUDGE CHESTNUT: Thank you, Mr. Dworetzky.

18 MR. RYAN: Your Honor, are there additional
19 copies?

20 MR. CLEARFIELD: We are circulating them.

21 MR. RYAN: Oh, all right. Thank you.

22 MR. DWORETZKY:

23 Q Mr. Cohn, are you familiar with this
24 document?

25 A Yes, I am.

1 Q And can you describe what your role was in
2 preparing this document?

3 A Yes. Mr. Hill asked if I could quantify
4 essentially the revenue or revenue requirement we
5 could recover under, you know, this scenario in the
6 settlement, in the settlement.

7 Q And when did Mr. Hill ask you to do that?

8 A I couldn't give you an exact date, but
9 probably in August.

10 Q Can you pin the date down in terms of
11 reference to when the agreement, the settlement
12 agreement was finalized?

13 A The settlement was, what, August 27th. It
14 probably would have been a little bit before that.

15 Q So are you pretty sure that it was before
16 the settlement agreement was actually finalized?

17 (Witness nodded.)

18 MR. CLEARFIELD: Was that a yes?

19 THE WITNESS: Yes, yes.

20 JUDGE CHESTNUT: You the have to remember to
21 speak up for the court reporter.

22 THE WITNESS: Yes.

23 BY MR. DWORETZKY:

24 Q Mr. Cohn, am I correct that this was one
25 of several scenarios that you prepared?

1 A That's correct.

2 Q And were they all prepared at the same
3 time?

4 A Yes.

5 Q And were there a total of twelve
6 scenarios?

7 A That's correct.

8 Q And they were prepared at Mr. Hill's
9 instruction?

10 A That's correct.

11 Q And it was at a time before the settlement
12 agreement was finalized?

13 A Yes.

14 Q In this document that has been marked NEV
15 Cross No. 1, you calculate the nominal CTC recovery
16 during each of the years of the settlement? Is
17 that correct?

18 A That's correct.

19 Q And then you adjusted for the GRT --

20 A That's correct.

21 Q -- and for present valuation?

22 A That's correct.

23 Q Now, so I understand, the CTC, when is
24 that collected?

25 A When the customer pays their bill.

1 Q So it would be collected throughout the
2 year in the same way that the company would collect
3 with respect to any other payment by the
4 consumer --

5 A Yes.

6 Q -- who was sent a bill?

7 A Yes, the same way expenses would be costs
8 incurred throughout the year.

9 Q Now, let me ask you to refer to your
10 exhibit that you have submitted with your
11 testimony, ABC 13. Can you describe what that
12 document is?

13 A It is essentially the same thing. It is
14 quantifying the present value of the CTC revenue or
15 all the economic impacts of the settlement
16 effectively, and then the actual revenue components
17 up top, and then below, there are additional costs,
18 potential costs or benefits, you know, with the
19 ultimate goal of trying to target a revenue
20 requirement.

21 We view the revenue requirement at 5.461.
22 We have stranded -- we have, you know, 6.024
23 billion as the revenue requirement, which, as you
24 were saying before, you know, your revenues occur
25 during the year.

1 This revenue requirement was assuming that
2 all the costs occur at the end of the year, such
3 that the revenues and the costs are on a consistent
4 basis.

5 If you switch that, just assuming that the
6 revenues occur throughout the year, you would have
7 to assume the same on the costs, and that would go
8 from 6.024 to maybe 6.28 billion.

9 JUDGE CHESTNUT: Excuse me. Mr. Cohn, this
10 would go a lot easier if you would wait for a
11 question before you answer it.

12 THE WITNESS: Okay.

13 BY MR. DWORETZKY:

14 Q Okay. Let's see. Let me give you
15 another document. This is already part of the
16 record.

17 I don't know whether you have it or not.

18 Do you have the exhibits that were
19 presented by Mr. Mitnick yesterday, SAMSR-1A?

20 A Let me see. I think I have it.

21 Q I have an extra one, if you don't.

22 A Yes. 1A?

23 Q Yes. SAMSR-1A.

24 JUDGE CHESTNUT: I think Judge Rainey has
25 them.

1 A Yes, I have that.

2 Q Okay. And do you understand from
3 reviewing that what that document represents?

4 A Yes, I do.

5 Q And does that attempt to calculate the CTC
6 recovery for the same period as the CTC recovery as
7 calculated in NEV Cross No. 1 and Exhibit ABC 13?

8 A Yes.

9 Q It uses the same period of years?

10 A Well, no.

11 Q Okay. Explain that.

12 A In NEV Cross No. 1, there is also the 1998
13 rate reduction.

14 Q Are there any dollars attributed to that
15 up here to that year?

16 A In Mr. Mitnick's exhibit?

17 Q I'm sorry. Into -- yes. Your point is
18 well taken. Let me go back. Let me rephrase my
19 question.

20 Focusing on Mr. Mitnick's exhibit, SR

21 1A --

22 A Yes.

23 Q -- and comparing that to the calculation
24 that appears in the grid at the top of each of NEV
25 Cross 1 and Exhibit ABC 13, do they cover the same

1 period of years?

2 A Yes.

3 Q And do they use the same CTC values?

4 A Yes, they do.

5 Q And with the exception of the number of
6 commas, do they use the same sales numbers?

7 A Yes.

8 Q And do they calculate the same nominal CTC
9 recovery?

10 A Yes.

11 Q Then they adjust for GRT. Do they make
12 the same adjustments for GRT?

13 A Yes.

14 Q Now, I ask you to go down and look at the
15 number which appears in the lower bottom column of
16 NEV Cross No. 1, which for convenience, I will
17 identify to you as the 5892 number.

18 A Okay.

19 Q Does that represent, in terms of this
20 calculation on NEV Cross No. 1, the discounted
21 present value the income stream represented by the
22 CTC over this ten-year period, adjusted for GRT?

23 A No.

24 Q Okay. Let me ask you to look at ABC 13
25 and look at the number in the same location, and I

1 ask you the same question: Does that number
2 reflect the discounted present value of the CTC
3 recovery over this period of years after adjustment
4 for GRT discounted at the present rate?

5 A No. As it states on the exhibit, it is
6 discount to 9-1-98.

7 Q Okay. Now, you testified in your -- well,
8 let's do this. Let's do the third piece.

9 Look at SR 1A, and look at the number that
10 is called "Base Case MPV" --

11 A Yes.

12 Q -- and does that represent the discounted
13 present value of the CTC recovery after adjustment
14 for GRT over the same period of years?

15 A Yes. Using a mid year convention, yes.

16 Q And am I correct that this is as of a
17 January 1st date, compared to what you testified
18 concerning the other two documents, which was a
19 September 1st date of 1998?

20 A That's correct.

21 Q Now, you testified in your rejoinder, your
22 rejoinder testimony at Page 6, that Mr. Mitnick has
23 over stated the present value the CTC recovery by
24 175 million dollars as a result of using a
25 September 1 date, rather than a January 1 date? Is

1 that correct?

2 A That's correct.

3 (Thereupon, NEV Cross Exhibit 2

4 was marked for identification.)

5 (Discussion off the record.)

6 BY MR. DWORETZKY:

7 Q Mr. Cohn, I am handing you a document that
8 has been marked NEV Cross Exhibit No. 2, and ask
9 you if you could put that in front of you?

10 A All right.

11 Q Now, would you accept that the referenced
12 Mitnick base case per SAMSR-1A of six million --
13 I'm sorry -- 6,317,000,000 shown there is a
14 reference to the number that we have been looking
15 at in SAMSR-1A --

16 A Yes.

17 Q -- as the base case MPV value?

18 A Yes.

19 Q And would you accept that the reference of
20 5,892,000,000 is a reference to the numbers that
21 have appeared on NEV Cross 1 and ABC 13? Is that
22 correct?

23 A Yes.

24 Q And is the difference between those two
25 numbers 425 million?

1 A Yes.

2 Q Now, you testified before that the
3 four-month valuation period difference between
4 September 1 and January 1st was a 175 million
5 dollar error by Mr. Mitnick? Is that correct?

6 A That's correct.

7 Q So if we excluded that error from, or the
8 alleged error from the 425 million, would you agree
9 that there is still a 250 million dollar
10 difference?

11 A That's correct.

12 Q Now, when you calculated the discounted
13 present value of the income stream for the period
14 1999 through 2008 in NEV CR No. 1 and in Exhibit
15 ABC 13, am I correct that you calculated that
16 assuming that the cash flow from the CTC always
17 received in a single lump sum payment at the end of
18 each year?

19 A That's correct.

20 Q But you testified before, did you not,
21 that the CTC is in fact received on a regular basis
22 when the bill is paid?

23 A That's correct.

24 Q And you admit that the -- strike that.

25 Isn't it true that the effect of that

1 calculation is to over state the net present value
2 of the CTC income stream by what is effectively a
3 period of six months?

4 A That would be looking at only part of the
5 comparison. It is not an over statement, no.

6 Q It doesn't over state it?

7 A It is a different statement.

8 Q Does the company receive cash under --
9 assuming the CTC -- assuming this agreement is
10 accepted, and CTC is received throughout the year,
11 you would agree with me that cash receipts during
12 the first month have a value to the company --

13 A Yes.

14 Q -- and that you would determine that
15 value, you would discount them back from the date
16 of receipt to the first evaluation date? Is that
17 correct?

18 A That's correct.

19 Q And that you could do that for each month
20 throughout the year?

21 A Yes.

22 Q Is that correct?

23 A Yes.

24 Q And the effect of doing that would be to
25 give you a discounted present value as of the

1 valuation date of that stream of income during the
2 course of the year?

3 A That's correct.

4 Q And that if you assume that the payments
5 all came in at end of the year, and you valued,
6 simply valued the payments all having been received
7 at that point in the year, you could still discount
8 that back to present value as of the first of the
9 year, but you would have a different number? Is
10 that correct?

11 A That's correct.

12 Q And in my using the numbers that we are
13 working with here, isn't it true that the
14 difference between those two numbers would be 250
15 million dollars?

16 A That's correct.

17 Q Now, when you talked about Mr. Mitnick's
18 error in calculating the CTC recovery or present
19 valuing the CTC recovery as of September 1, 1999,
20 or nineteen ninety -- strike that.

21 Referring to your testimony, you said that
22 Mr. Mitnick had over stated the value, the over
23 recovery of CTC by using a January 1st, '99
24 valuation date, as opposed to the September 1, 1998
25 valuation date that you used? Is that correct?

1 A That's correct.

2 Q And the reason you said that is because
3 you believe that is the date on which the company
4 makes its rate decreases under the settlement
5 agreement, and therefore, it is an appropriate
6 valuation date?

7 A Yes. That is the time the economic
8 impacts of the settlement really start, yes.

9 Q Now, would you agree with me that when --
10 that the valuation date of the company's claim for
11 stranded cost recovery is not September 1, '98?

12 A Yes.

13 Q And that that date, the date on which the
14 company has calculated its claimed for stranded
15 asset recovery is January 1, 1999?

16 A Yes.

17 Q So that if you were comparing the claim on
18 one hand and the receipt of funds on the other
19 hand, if you used September 1 for the date of
20 valuing the receipts, and January 1, '99 for
21 valuing the claim, you would be using two different
22 valuation dates? Is that correct?

23 A You could use September 1. You could just
24 January 1. They are two different dates.

25 Q Thank you.

1 A I will agree to that --

2 Q That is what I asked you.

3 A -- but are you -- no. Never mind.

4 Q Now, during the period between September
5 1, 1998 and January 1, 1998, what rate would the
6 company be receiving from rate payers on average,
7 system wide, all in?

8 A 9.95 cents.

9 Q Right. And that is the fully bundled
10 rate --

11 A Yes.

12 Q -- that the company currently has in
13 effect, and if that rate were to be unbundled on
14 the same basis that the unbundling occurs in 1999,
15 isn't it fair to say that it would include an
16 implicit -- implicit, because there is no
17 unbundling, but if it were to be unbundled, an
18 implicit CTC on the order of three dot one four?

19 A Three dot one four? No.

20 Q Three dot oh four?

21 A I can't say.

22 Q Well, what is the --

23 A I mean --

24 Q Let's do it this way. What is the
25 explicit unbundled CTC for the 1999 period?

1 A 3.04.

2 Q 3.04?

3 A Yes.

4 Q And would you accept that at least on an
5 order of magnitude basis that that is an
6 appropriate reference for determining what the
7 implicit CTC would be for the preceding period of
8 four months if the rates were unbundled during that
9 period?

10 A You know, I don't really know. I don't
11 know the market price projection to say that's a
12 CTC, so I don't know.

13 Q Well, do you think that the CTC that is
14 included explicitly in the 1999 period is higher
15 than what the CTC would be determined for that
16 four-month period, if there were unbundling for
17 that period.

18 MR. BONNEY: Your Honor, he answered already
19 this question.

20 JUDGE CHESTNUT: I am going to allow the
21 question.

22 I think Mr. Dworetzky is probing the extent
23 of Mr. Cohn's ignorance.

24 A Do I think three point four is higher than
25 what would be there in 1998?

1 I will say no. No.

2 Q You don't think it would be higher. Do
3 you think it would be lower?

4 A Probably similar.

5 Q Similar. All right. Let me ask you to do
6 this.

7 You have your calculator there. Take it
8 out and multiply the sales anticipated during that
9 four-month period by the CTC that was in fact used
10 during the 1999 period and tell us what the CTC
11 recovery or the implicit CTC recovery would be
12 during that four-month period.

13 JUDGE CHESTNUT: Are you able to do that
14 calculation, Mr. Cohn, on the basis of the
15 information that you have?

16 THE WITNESS: Yes.

17 JUDGE CHESTNUT: Okay.

18 A Okay.

19 Q And what do you get?

20 A It is approximately 340 million prior to
21 gross receipts tax.

22 Q And can you do the gross receipts tax
23 adjustment?

24 A That makes it \$325 million.

25 Q Thank you. Mr. Hill testified here the

1 other day, Tuesday of this week, and you were not
2 in the courtroom for his testimony?

3 A No, I was not.

4 Q Let me represent to you that during his
5 testimony, without trying to use the exact words,
6 that he was asked whether the company had filed a
7 -- whether the company's claim, legal claim in the
8 case for stranded costs was six point eight billion
9 dollars, roughly six point eight billion dollars
10 before the settlement, and that when asked whether
11 he was -- whether excluding, taking the assumption
12 that the settlement agreement was not in place,
13 whether the company's claim would be fully
14 satisfied by the receipt of a check for six point
15 eight billion dollars, and that his answer was no,
16 that that would not fully satisfy the company.

17 Do you agree with Mr. Hill's testimony in
18 that regard?

19 A Yes.

20 Q And would that be because it is your
21 position that a return of the full stated amount of
22 the company's legal claim would not include the
23 return that you have talked about before?

24 A No, no.

25 Q What would be your reasoning?

1 A The company's full cost is approximately
2 seven and a half billion --

3 Q Okay. I'm sorry.

4 A -- so they would not have received that.

5 Q I am glad I asked, because I didn't want
6 any confusion on that.

7 I distinguished during my testimony with
8 Mr. Hill between the company's calculation of
9 stranded costs of 7.4 and the company's legal claim
10 of six point eight. Okay?

11 A Uh-huh.

12 MR. BONNEY: Your Honor, my recollection of
13 the testimony is, that distinction was not made in
14 the question that Mr. Hill answered.

15 It was made in earlier questions, but not in
16 the question that Mr. Hill answered.

17 BY MR. DWORETZKY:

18 Q Okay. Well, let me try to be quite clear.

19 What I am asking you now is whether you
20 agree that the company's legal claim before the
21 settlement agreement was signed was -- and as filed
22 in the proceeding, was for roughly six point eight
23 billion dollars in stranded asset recovery?

24 A Do you want me to --

25 Q You can't --

1 A I mean, if you have finished -- I mean,
2 you started the question, or you are going back to
3 the other question?

4 JUDGE CHESTNUT: That was the question, Mr.
5 Cohn.

6 BY MR. DWORETZKY:

7 Q That was the question. It wasn't
8 beautiful, but it is the best I can do.

9 A Okay. You are saying, was that our claim?
10 Yes. Our claim was six point eight billion
11 dollars, six point eight something.

12 Q And that was the full legal claim that you
13 had as of that time, and under that assumption? Is
14 that correct?

15 MR. BONNEY: Objection, Your Honor. It has
16 already been asked and answered, and now he is
17 calling for a legal conclusion.

18 JUDGE CHESTNUT: Well, I don't really think
19 it is a legal conclusion.

20 MR. BONNEY: I think that --

21 JUDGE CHESTNUT: To the extent that it is a
22 layman answering, it is not a legal conclusion.

23 MR. BONNEY: I'm not sure what the difference
24 is between that and the other two questions he has
25 already asked regarding what the company's claim

1 is.

2 We have already established that the
3 company's claim was six point eight billion.

4 JUDGE CHESTNUT: Okay. Go ahead, Mr.
5 Dworetzky.

6 MR. DWORETZKY: Mr. Bonney's representation
7 is perfect for me.

8 BY MR. DWORETZKY:

9 Q Mr. Cohn, so my question to you now is:
10 In your view, would a check for six point eight
11 billion dollars satisfy the company's full legal
12 claim for --

13 MR. BONNEY: Your Honor, I object.

14 Q -- assets to recover?

15 MR. BONNEY: I'm sorry. Were you finished?

16 MR. DWORETZKY: I am now.

17 MR. BONNEY: I object, Your Honor. It has
18 been asked and answered and also calls for a legal
19 conclusion.

20 JUDGE CHESTNUT: Well, obviously Mr. Cohn
21 can't render a legal conclusion, but he can do the
22 math.

23 MR. BONNEY: He has already answered the
24 question, Your Honor, that it does not satisfy.

25 JUDGE CHESTNUT: I thought there was some

1 misunderstanding, though, in terms of the basis for
2 that, so obviously, the math is the math.

3 Obviously, the claim is the claim.

4 MR. BONNEY: If he wants to ask what the
5 difference for the misunderstanding is, which he
6 has also already asked, I think he could do that,
7 but to reask the same question to try to get a
8 different answer is inappropriate, Your Honor.

9 JUDGE CHESTNUT: I don't think he is trying
10 to get a different answer.

11 I just want to clarify for the record. Okay.
12 Just state your question and give your answer, and
13 then we will go on.

14 BY MR. DWORETZKY:

15 Q Would you take -- would the company accept
16 six point eight billion dollars for full
17 satisfaction of its legal claim for stranded asset
18 recovery in the absence of the settlement?

19 MR. BONNEY: Your Honor, I also object to the
20 question on the grounds that there is no foundation
21 for the check.

22 I'm not sure who would issue the check.

23 JUDGE CHESTNUT: It doesn't matter. That is
24 not the question, Mr. Bonney.

25 MR. BONNEY: Well, Your Honor, it is a

1 hypothetical without basis.

2 I'm not sure that anybody in this party or
3 any entity that I know of is in a position to issue
4 a check to PECO for six point eight billion
5 dollars.

6 JUDGE CHESTNUT: Your objection is overruled.

7 A I personally couldn't accept a check.
8 When you say "could I," could the company accept, I
9 don't know, but six point eight billion, I would
10 have to say, no, it probably would not be
11 sufficient.

12 Q Okay. Now explain to me why that would not
13 be sufficient.

14 A Well, it is -- you know, it would depend
15 if there is any -- how you are getting the money.

16 Are there any strings attached? Is it a
17 securitization? Is it taxable for gross receipts
18 tax purposes?

19 I don't know.

20 Q Mr. Cohn, this is really a pretty simple
21 question. Your legal claim is six point eight.
22 The check --

23 MR. BONNEY: Your Honor, I believe he is
24 arguing with the witness now.

25 JUDGE CHESTNUT: Mr. Bonney, if you have a

1 legitimate object, that is fine, but I don't think
2 that is true.

3 I think he is probing the basis for the
4 witness's answer, and I know that --

5 MR. BONNEY: Your Honor, the answer that the
6 witness gave was that it is not a simple question,
7 that there are a number of factors and strings
8 attached, depending on what the check is.

9 For Mr. Dworetzky to attempt to
10 recharacterize his testimony and argue to him that
11 it is a simple question is inappropriate.

12 JUDGE CHESTNUT: He is not arguing with him.
13 He is recasting his question, is the way I
14 understood it, aren't you?

15 MR. DWORETZKY: That is my attempt is to get
16 a straight answer from the witness without Mr.
17 Bonney answering it first.

18 THE WITNESS: Could you read the question
19 again, please?

20 JUDGE CHESTNUT: Or can you state the
21 question again, or would you rather have it read?

22 MR. DWORETZKY: I would be happy to state it
23 again.

24 BY MR. DWORETZKY:

25 Q Mr. Bonney, positing a simple question to

1 you, which is that the company has a legal claim of
2 six point eight billion dollars, and the company
3 receives a check for six point eight billion
4 dollars addressed to the company -- I am not asking
5 whether the company wants the check, or whether the
6 company thinks that's a good idea -- I am asking
7 whether receipt of that check would fully satisfy
8 the company's legal claim?

9 A And I don't think it would.

10 Q Now, tell me why.

11 A If you are receiving -- considering the
12 receipt of revenue, you would pay a gross receipts
13 tax. That's four point four percent more than
14 that.

15 Q Is there any other reason?

16 A That is the one I can think of off the top
17 of my head.

18 Q So if the check included the four point
19 four percent gross receipts tax, in other words,
20 were grossed up to include that, would that fully
21 satisfy the company's legal claim?

22 A Yes.

23 Q And can you make that calculation?

24 A Okay.

25 Q And what is that?

1 A A round number, seven point one billion.

2 Q Now, if you were to make a -- no. Strike
3 that. That's fine.

4 Let's go back and look at your exhibit, or
5 the exhibit that I gave you before that -- I think
6 it was Cross Exhibit No. 1, and we talked before
7 about the entries on that that were in the grid,
8 and then the present valuation.

9 A Yes.

10 Q There's a number of entries below the grid
11 on that sheet, are there not?

12 A Yes, there are.

13 Q And you see the word "redacted," which I
14 will represent to you is something that I put there
15 when I took out the actual dollar amounts that were
16 entered in different places?

17 A Yes.

18 Q So I ask you in your answers not to use
19 dollar amounts in responding.

20 Am I correct that those typewritten
21 entries reflect offsets to the calculated recovery
22 on the top part of the sheet?

23 A That's correct.

24 Q And would I be right that those would
25 represent commitments that the company made in the

1 context of the settlement agreement?

2 A That's correct.

3 Q And is it fair to say that those were sums
4 which the company gave up or represented here as
5 having given up during the course of settlement
6 negotiations?

7 A That's correct.

8 Q Do you recall what the original stranded
9 calculation or claim for stranded -- I'm sorry, not
10 claim, but position with respect to stranded
11 recovery filed by the Office of the Consumer
12 Advocate was in the case?

13 A I don't recall what they were proposing,
14 no.

15 Q Would you agree with me that it was
16 somewhere substantially less than the five point
17 four six billion dollars that is referred to in the
18 settlement agreement?

19 A I would agree that it is less than that,
20 yes.

21 Q And there were other parties that
22 challenged the company's stranded calculation and
23 proposed a number that was substantially less than
24 5.46 billion?

25 A That was less than 5.46 billion, yes.

1 Q And that as part of the settlement
2 agreement that those objections have been resolved?

3 A That is my understanding, yes.

4 Q Is it fair to then calculate, to
5 characterize the items which are listed on the
6 sheet as part of the trade-offs that were made in
7 the context of reaching a settlement on the
8 stranded asset number?

9 A In not reaching an asset number, but in
10 what value people are getting out of the
11 settlement, I mean, this is -- I mean, the company
12 put its view down here as to what it thought an
13 agreement was worth.

14 Others may have other opinions.

15 Q Okay. Let me take one: EER/LILR
16 modifications.

17 A Yes.

18 Q The point I want to make is -- strike
19 that.

20 The EER/LILR modifications are not
21 themselves stranded assets?

22 Rather, this is a trade of something as
23 part of the settlement agreement which
24 resolves the stranded assets? Is that correct?

25 A There are not stranded assets, themselves,

1 no.

2 Q And is that also true with respect to the
3 universal service modifications --

4 A That's correct.

5 Q -- and the extended transmission
6 distribution rate cap?

7 A That's correct.

8 Q Mr. Cohn, could you take -- again, let's
9 stay with the document we had there -- NEV Cross
10 Exhibit No. 1, and compare it to ABC 13?

11 A Okay.

12 Q Now, on ABC 13 there, read the bottom line
13 that's in bold on that sheet.

14 A It is in bold? "Revenue requirement on
15 5.461 billion."

16 Q Right. And what is the amount given?

17 A 6,024,800,000.

18 Q And in your testimony, you said that Mr.
19 Mitnick had made an error in calculating the over
20 recovery of CTC, because he hadn't credited some
21 six million dollars of return revenue, or revenue
22 requirement? Is that correct?

23 A That's correct.

24 Q And what you were referring to was the
25 difference between the revenue requirement on 5.46

1 billion and this number that you have just read?

2 A That's correct.

3 Q I would like you to take NEV Cross No. 1
4 and show me where the revenue requirement is shown
5 on that sheet.

6 A It is not on that sheet.

7 Q And this is a sheet that you used
8 internally within the company and prepared
9 internally before the settlement agreement was
10 signed?

11 A Yes.

12 Q And ABC 13, that was prepared as part of
13 your rejoinder testimony which you submitted after
14 Mr. Mitnick had presented his initial testimony?

15 A That's correct.

16 MR. DWORETZKY: Nothing further.

17 JUDGE CHESTNUT: Is there any other cross
18 examination for this witness?

19 MR. CLEARFIELD: Yes, Your Honor. I have a
20 few questions.

21 JUDGE CHESTNUT: Okay.

22 CROSS EXAMINATION

23 BY MR. CLEARFIELD:

24 Q Just to follow up on that last line, Mr.
25 Cohn, do you know whether what has been shown as

1 NEV Cross 1 was provided to any of the parties to
2 the joint settlement agreement other than PECO?

3 A I don't know. It was -- I don't know.

4 Q Do you personally know whether the net
5 present value figures on NEV 1 were conveyed to any
6 of the joint -- any of the parties to the joint
7 settlement agreement at the time the settlement was
8 signed?

9 A I don't know.

10 Q Just a few questions to follow up. First,
11 with respect to your testimony this morning -- I
12 have lost track of what it is supposed to be called
13 -- do you have -- can you provide us with a
14 document, documentary support for your allegation
15 or your suggestion that PG&E and PP&L have
16 requested return of and on stranded cost recovery

17 A Which was it? PG&E, and which was the
18 other one?

19 Q PP&L.

20 A PP&L.

21 JUDGE CHESTNUT: Is that an on-the-record
22 data request?

23 MR. CLEARFIELD: Yes, it is.

24 JUDGE CHESTNUT: Mr. Bonney?

25 MR. BONNEY: No objection, Your Honor.

1 BY MR. CLEARFIELD:

2 Q And I'm sorry. You stated that none of
3 the parties in the proceeding here questioned your
4 right to recover a return on the unamortized
5 portion of the stranded investment?

6 Did I hear that right?

7 A No. I didn't say that.

8 Q In fact, the Office of Consumer Advocate
9 submitted testimony, or testimony was submitted on
10 behalf of the Office of Consumer Advocate in which
11 PECO's right to recover a return on its unamortized
12 stranded investments was challenged, wasn't it, or
13 didn't it?

14 A They didn't challenge the fact that the
15 return is part of your stranded costs.

16 They thought the company absorbing that
17 was a sharing issue, not that it wasn't appropriate
18 to include that in the overall cost.

19 Q Are you referring to the testimony of --
20 well, whose witness? Do you remember what witness
21 it was, what witness you are referring to?

22 A I am trying to think who the witness was.
23 I mean, it was their view that it was a sharing or
24 something for the company to not get a return on
25 it.

1 Q Okay. This is Mr. LaCapra's testimony,
2 OCA's Statement 1. I am going to show you Page 17
3 and 18 of that.

4 MR. CLEARFIELD: And Your Honor, this will
5 not be in the record, at the present time, but will
6 be in the record when the testimony is moved, I
7 take it.

8 JUDGE CHESTNUT: Excuse me. You are saying
9 that is among the portions of the --

10 MR. CLEARFIELD: Yes, Your Honor.

11 JUDGE CHESTNUT: -- the testimony that will
12 be included in the record?

13 MR. CLEARFIELD: Yes.

14 JUDGE CHESTNUT: Okay.

15 MR. CLEARFIELD: Yes, Your Honor. This is
16 OCA Statement 1, the testimony of Mr. LaCapra.

17 BY MR. CLEARFIELD:

18 Q Starting with the question on line
19 twenty-two, Mr. Cohn, would you read that question
20 and the answer and the next question -- the next
21 question and the first paragraph of the next
22 paragraph into the record?

23 JUDGE CHESTNUT: No, no, not read into the
24 record. He can read it to himself.

25 MR. CLEARFIELD: Okay.

1 JUDGE CHESTNUT: If the document is going to
2 be admitted, that will be the record reference.

3 MR. CLEARFIELD: I am going to have to look
4 over his shoulder, then, Your Honor, if that's all
5 right.

6 JUDGE CHESTNUT: Sure.

7 BY MR. CLEARFIELD:

8 Q Okay. Tell me when you are done.

9 A Okay.

10 Q Okay. Does that question and answer
11 convey Mr. LaCapra's position that it is
12 unacceptable and inconsistent with past
13 Pennsylvania PUC rate-making policy to allow a
14 return on the unamortized portion of stranded cross
15 recovery?

16 Is that a fair characterization?

17 A That's his view, that it is unacceptable
18 to allow that, yes.

19 Q And therefore, isn't it fair to --

20 A I don't agree with that, but that's his
21 view.

22 Q I understand you don't agree, but it is
23 Mr. LaCapra's position in that testimony that it is
24 not appropriate to allow that return? Isn't that
25 right?

1 A That's correct.

2 Q Let me ask you some questions about the
3 offsetting items that have been discussed obliquely
4 in your colloquy with Mr. Dworetzky.

5 Now, I don't want you to get into the
6 amounts, but I want to ask you a question about
7 several of the items, I'm sorry, because -- if you
8 can look at NEV Cross Exhibit 1 for a moment, that
9 would be helpful, because they at least break those
10 out.

11 Well, first, am I correct that the items
12 that are listed sequentially on NEV Cross Exhibit 1
13 at the bottom, under the amount 578 and 546 are the
14 same items that you reference in your rejoinder
15 testimony and which are displayed under the column
16 "Other Components" on ABC 13?

17 A That's correct.

18 Q There are no other items that you are
19 referencing?

20 A Well, not in that footnote there aren't.

21 Q Okay. And with respect to offsets, that
22 decreased, in your view, the stranded cost recovery
23 representation?

24 A Okay. Just those two.

25 Q Okay. Now, with respect to the universal

1 service modifications, again, without getting into
2 the numbers which you alleged are proprietary, does
3 this reflect just the additional cost that the
4 company estimates will be incurred to add
5 additional PECO rate payers to the CAP program,
6 C-A-P, all capitals?

7 A Yes, the additional customers.

8 Q Does it reflect any administrative costs
9 to add additional customers?

10 A No.

11 Q Will there be administrative costs
12 associated with that?

13 A Quite possibly there will be, yes.

14 Q Have you started the process of gearing up
15 to add additional customers to the CAP program?

16 A I am not that familiar with the CAP
17 program that I could tell you if they are doing
18 that or not. I don't know.

19 Q You don't know if they started that?

20 A It mean, there is a CAP program in place,
21 and there is a CAP rate in place, and that's --

22 Q Okay. I understand. Do you know whether
23 it would be necessary to expand the administrative
24 mechanisms associated with the CAP program in order
25 to add additional customers to the program?

1 A Well, it may be. I mean, you are
2 significantly increasing the number of customers.

3 I mean, right now I think there's 40,000,
4 and it could go up to ninety I think or even one
5 hundred in the settlement -- I am not exactly sure
6 of the number off the top of my head -- but there's
7 a lot more low income customers than that, so you
8 may an administrative problems just constraining it
9 to a given number.

10 Q Do you expect that it would take some
11 time for the company to be in a position to be able
12 to add the customers to the program?

13 A I don't -- you know, I don't know how long
14 it would take.

15 It is going to take some time. A long
16 time, I don't know. Probably not a long time.

17 Q A month, two months?

18 A A few months. Once it is a given,
19 probably a few months, you are right, but again, I
20 am not an expert in that area, so I couldn't give
21 you a --

22 Q With respect to the value of the extended
23 transmission and distribution rate cap calculation,
24 as I understand it, you have made some calculations
25 or projections of additional revenue requirements

1 that might be associated with plant additions
2 associated with distribution, among other things,
3 that might occur in the next couple of years?

4 A That's correct.

5 Q And those would be additional costs that,
6 all other things being equal, the company would
7 have to absorb unless it received a rate increase
8 from the PUC to cover those costs?

9 Is that right?

10 A That's correct.

11 Q I mean, it is not subject to an automatic
12 adjustment clause like your friends over in
13 Philadelphia Suburban Water Company have, it is?

14 A No, no.

15 Q Off the record.

16 (Discussion off the record.)

17 BY MR. CLEARFIELD:

18 Q So this isn't automatic? This is
19 something that the company, without the rate,
20 without the settlement, the company would have had
21 to file with the Pennsylvania Public Utility
22 Commission to receive? Is that right?

23 A Let me think about this. Yes.

24 You would have to file to receive it, yes.

25 Q Yes. And in fact, the company's right to

1 this would be based on its ability to show that on
2 a overall basis it wasn't earning a fair return on
3 its investment, i.e, its cost to capital?

4 Would that be a fair general
5 characterization of that process?

6 A Overall, in the transmission and
7 distribution, yes.

8 Q Well, what if it wasn't earning on its
9 transmission and distribution, but in fact was over
10 earning on other parts of its business, Mr. Cohn?

11 Wouldn't that be a offset if in fact on an
12 overall basis it was earning at present rates
13 exactly its cost per capita as determined by the
14 Commission?

15 A I don't think so, no.

16 Q You don't think so?

17 A You are focused on a regulated business at
18 that point, and that's what you would file to the
19 Commission.

20 Q I am trying to -- hypothetically, now we
21 are in 1997.

22 We haven't unbundled.

23 A Right.

24 Q We are in a traditional context. The
25 company comes in and says, "I want you just to look

1 at my transmission and distribution operations.

2 "We are not earning enough on that part of
3 the business. Please don't look at any other parts
4 of my business."

5 In fact, that is not the way the
6 Commission would determine whether you are entitled
7 to a rate increase for that portion of the
8 business, is it?

9 A Right.

10 Q I mean, the company --

11 A That's correct. In 1997, you couldn't,
12 yes.

13 Q Okay. Right. You would look at the
14 company's overall business at that point?

15 A That's correct, and you are under a rate
16 cap.

17 Q And in terms -- let's just look at the --
18 well, I am sorry. I said you are under --

19 A We are under a rate cap.

20 Q Yes, but the hypothetical is that there is
21 no rate cap.

22 A All right.

23 Q Did you attempt to look at the company's
24 overall return on investment in this period before
25 you determined whether these additional costs would

1 be recoverable under traditional rate making?

2 A No, and it really wasn't necessary.

3 Q All right. Let me ask you this: Did you
4 look just with respect to the T and D costs to
5 determine whether the company, just on those
6 assets, would be over or under earning its last
7 allowed cost of capital?

8 A Indirectly that was has done in the sense
9 that I think right now we are under earning what we
10 say our cost of capital is.

11 We have flat sales, and our costs are
12 going up. You are going to be under earning at
13 that point.

14 Q So you had to assume you were under
15 earning --

16 A Yes.

17 Q -- your view of what the cost of capital
18 was?

19 A Yes.

20 Q You had to assume that there were flat
21 sales, and you had to assume that costs are going
22 up?

23 Those are the assumptions that you would
24 have to make to assume that you would be able to
25 recover these from the Commission as in the form of

1 a rate increase? Is that correct?

2 A You would have to assume you aren't
3 earning your return.

4 Flat sales isn't as critical, and then
5 your costs are going up, yes.

6 Q You made some additional references in
7 your testimony, I guess, to sort of justify the
8 fact that in your view there was value to the
9 extension of the T&D cap by referencing the
10 comparison of the cost of service study that was
11 used for the pilots -- I believe that's a 1990 cost
12 of service study, or a cost of service study using
13 a 1990 test year --

14 A Yes.

15 Q -- and the 1996 cost of service study
16 which has been presented here by Mr. Clemmer? Is
17 that right?

18 A That's correct.

19 Q Now, if I had questions with respect to
20 the 1990 cost of service study, can I ask you those
21 questions, or should I ask Mr. Clemmer?

22 A Mr. Clemmer is not --

23 Q Mr. Clemmer?

24 A Mr. Clemmer is not testifying on 1990.

25 Q Well, okay.

1 A You can ask me the question, and if I can
2 get the answer for you --

3 Q That's probably better.

4 A Thank you.

5 Q Do you know whether there were any
6 methodological changes in the way in which the
7 company allocated costs in the 1990 cost of service
8 study versus the 1996 cost of service study?

9 A Yes. Let me just clarify one thing. The
10 1990 cost of service study, as used in the pilot
11 filing in February, the methodology in unbundling
12 wasn't that different than what was used in the --
13 it is actually the same as what was used in our
14 initial restructuring filing.

15 See, it probably had a bigger allocation
16 of A&G to it than the current settlement rates in
17 rebuttal.

18 Q You looked at the 1990 cost of service
19 study to determine that?

20 A No. That is how it was done for the
21 pilot.

22 Q Okay. Do you know how administrative and
23 general expenses were allocated in the 1990 cost of
24 service study, and what allocation formula was
25 used?

1 A Back in 1994, the cost for allocating
2 among rate classes, or do you mean, how was it done
3 in the pilot?

4 Q How was it done in the pilot?

5 A The A&G, I believe, pensions and benefits
6 and property taxes were allocated or directly
7 assigned to generation of T&D, and everything else
8 went to T&D.

9 Q In the pilot?

10 A In the pilot, yes.

11 Q What about in the 1990 cost of service
12 study prior to the pilot?

13 A Yes. Well, it wasn't unbundled at that
14 point.

15 Q How did they allocate A&G costs?

16 A I think based on O&M expense.

17 JUDGE CHESTNUT: I'm sorry. Based on what
18 expense?

19 THE WITNESS: I believe -- I believe it was
20 based on O&M expense, non-fuel O&M expense.

21 BY MR. CLEARFIELD:

22 Q Non-fuel and non-purchase power O&M
23 expense?

24 A I believe that's what it was. Mr. Clemmer
25 could probably tell you that one.

1 Q When you make your comparison in terms of
2 the 1990 versus 1996, are you -- and the growth and
3 the expenses, are you comparing the 1990 cost of
4 service study with the allocation of the
5 administrative and general expenses using an O&M
6 expense allocator, or are you looking at it -- is
7 that what you are comparing?

8 A No. That is comparing what was used for
9 the pilot, I mean, the A&G allocation I had just
10 described.

11 Q I see. So with the A&G allocator, which
12 was the way in which the company allocated the A&G
13 prior to Mr. Clemmer's rebuttal testimony? Would
14 that be right?

15 A That's correct.

16 MR. CLEARFIELD: Just a moment, Your Honor.

17 BY MR. CLEARFIELD:

18 Q And so with respect to this comparison
19 that's shown on ABC 12 --

20 A Yes.

21 Q -- that reflects a comparison of the
22 pilot, which is a 1994 test year, or a 1990 test
23 year?

24 A 1990 in the pilot, the pilot.

25 Q Are there any methodological differences

1 between the pilot cost of service study and the
2 cost of service study used for the restructuring of
3 which you are aware?

4 A Not that I am aware of, no.

5 MR. CLEARFIELD: Thank you, Your Honor.

6 I am finished. Thank you Mr. Cohn.

7 JUDGE CHESTNUT: Mr. Doll?

8 CROSS EXAMINATION

9 BY MR. DOLL:

10 Q I have very few questions. Would you turn
11 to Page 6 of your testimony, line five?

12 This is just for my own clarification.

13 You say that you relied upon -- Mr.
14 Mitnick, excuse me, has relied upon the 1996
15 resource plan.

16 Are you referring to the resource plan
17 that was filed with the Commission in May of '96?

18 A Yes. Essentially, the '96 and '97 were
19 essentially the same thing, except that the '97
20 report included actual data from 1996.

21 That was the only difference.

22 Q We won't get into that discussion again.

23 On Exhibit ABC 11, in 1997, just so that I
24 am clear in my mind, you have that Footnote B.

25 It says the twelve months ending 8-31. I

1 think that's August 31.

2 A Right. That's correct.

3 Q So then that year 1997 would include sales
4 from September, October, November and December of
5 1996, also?

6 A That's correct.

7 Q Now, are these weather-adjusted sales?

8 A No, they are not.

9 Q Do you have that data for weather-adjusted
10 sales?

11 A Not for the ten years, no.

12 Q Can you get that data?

13 A I will provide what we have.

14 Q Thank you.

15 MR. DOLL: I would like to make an
16 on-the-record data request for the weather-adjusted
17 sales.

18 JUDGE CHESTNUT: Mr. Bonney?

19 MR. BONNEY: No objection, Your Honor.

20 MR. DOLL: If I could have a moment?

21 (Discussion off the record.)

22 MR. DOLL: I have nothing further, Your
23 Honor.

24 JUDGE CHESTNUT: Is there any further cross
25 for this witness by any other party?

1 (No response.)

2 JUDGE CHESTNUT: Redirect, Mr. Bonney?

3 MR. BONNEY: May I have just a few minutes,
4 Your Honor?

5 JUDGE CHESTNUT: Certainly.

6 (Discussion off the record.)

7 REDIRECT EXAMINATION

8 BY MR. BONNEY:

9 Q Mr. Cohn, I would like to direct your
10 attention to NEV Cross Examination No. 1.

11 You were asked a question by Mr.
12 Dworetzky, a series of questions regarding whether
13 you showed revenue requirement figures on this
14 exhibit.

15 Do you remember those questions?

16 A Yes, I do.

17 Q And why is it that revenue requirements
18 are not shown on this exhibit?

19 A There was really no need. I mean, people
20 know. They know the revenue requirement is going
21 to be higher than the asset, and we had a general
22 magnitude out there of about six billion dollars --
23 we recognized that is what it was -- so there was
24 really no need to put that on here for comparison.

25 I mean, this was just, how much am I

1 recovering? We wanted to know, how much am I
2 getting?

3 We knew what the cost was. It was what
4 you are getting.

5 Q Is the company's claim based on a revenue
6 requirement of six point eight billion dollars
7 claim, is that based on the revenue requirements or
8 another basis?

9 A Other basis. It is an absolute fact.

10 JUDGE CHESTNUT: Excuse me. Mr. Cohn, could
11 you remember to keep your voice up --

12 THE WITNESS: Yes.

13 JUDGE CHESTNUT: -- for the benefit of people
14 sitting behind you?

15 THE WITNESS: Yes.

16 BY MR. BONNEY:

17 Q Let me direct your attention to NEV Cross
18 Examination Exhibit No. 2 --

19 A Yes.

20 Q -- and in particular the line entitled
21 "Difference, 250 million dollars."

22 Do you have any further comment on your
23 understanding of what that difference is?

24 A It is a two hundred and fifty -- it is,
25 the 250 million dollar difference is driven by the

1 mid year convention on the revenue, which is fine
2 if, when you make your comparison, you compare it
3 to revenue requirements which are developed on a
4 mid year convention.

5 In my analysis, I think it is ABC 13.

6 The revenue requirements, 6.024, are
7 developed on a year end convention.

8 If I were to change that to a mid year
9 convention, it would go to six point two eight
10 billion, essentially a 250 million dollar increase,
11 because then you would be putting them back in
12 sync, comparing apples to apples.

13 You don't want to compare a year end
14 requirement to a mid year revenue.

15 That is not a valid comparison.

16 Q Mr. Dworetzky asked you a question
17 regarding, what average rate would the company
18 receive from September '98 to January 1999, and I
19 being you testified that it would be 9.95 cents on
20 average.

21 Do you recall that?

22 A Yes. You know, that's essentially prior,
23 assuming the settlement wasn't there.

24 Otherwise, with the settlement, it is
25 8.95.

1 Q And why would it be 8.95, instead of 9.95?

2 A That would be the ten percent rate
3 reduction effective September 1.

4 Q Mr. Dworetzky also asked you some
5 questions regarding implicit CTC recovery during
6 that period.

7 Do you have any further comment with
8 respect to that?

9 A Again, if you are going to look at that,
10 you are going to look at the revenue requirement
11 during that period also, not just CTC revenue.

12 You have to factor all pieces in there to
13 do the computation, which is actually in our six oh
14 point -- six billion dollar number.

15 It reflects recovery, essentially a
16 generation of revenue and generation of revenue
17 requirements.

18 Q Mr. Clearfield showed you a copy of the
19 OCA witness LaCapra testimony, and asked you some
20 questions about that.

21 Let me just direct your attention to that
22 portion of Mr. LaCapra's testimony again.

23 A Okay.

24 Q Am I correct that the testimony that Mr.
25 Clearfield was referring to is under a heading

1 entitled "Sharing of Stranded Costs Between Stock
2 Holders and Rate Payers"?

3 A That's correct.

4 Q You were asked an on-the-record data
5 request regarding documents from PG&E and PP&L
6 supporting your statements regarding whether a
7 return on stranded assets is permitted.

8 Do you have any of those documents here
9 with you?

10 A I have the PG&E.

11 Q Mr. Cohn, what does "PG&E" stand for?

12 A Portland General Electric.

13 Q And please indicate what section of the
14 document you are -- what the document is that you
15 are looking at, and what section of it you are
16 looking at as the basis for your statement?

17 A The Customer Choice Plan, Chapter 4, Page
18 39.

19 Q Would you read the statement that you are
20 relying upon?

21 A Okay. It is, like, a whole paragraph. It
22 just says, "As a result, one hundred percent
23 recovery of the transition cost is fundamental to
24 implementation of Customer Choice Plan," and then
25 -- do you want me to continue?

1 Q Yes.

2 A "The securitization of transition cost
3 allows recovery of those costs to be spread equally
4 over a shorter time period, reducing the carrying
5 cost on the unamortized investment."

6 The carrying cost is the return of the
7 investments.

8 That you are going to reduce them, that is
9 the whole purpose of securitization is to reduce
10 the return being paid on the investment.

11 Q What is the date of that document?

12 A I think it was September 1997.

13 MR. BONNEY: That's all I have, Your Honor.
14 Thank you.

15 JUDGE CHESTNUT: Is there any recross based
16 on the redirect testimony given?

17 MR. DWORETZKY: Yes, Your Honor.

18 JUDGE CHESTNUT: Mr. Dworetzky?

19 RE CROSS EXAMINATION

20 BY MR. DWORETZKY:

21 Q Mr. Cohn, you answered Mr. Bonney's
22 question about NEV Cross Exhibit No. 1 by stating
23 that there was no need to have the revenue
24 requirement listed on that sheet, because the
25 people at PECO who know about the case know about

1 that requirement?

2 Is that correct?

3 A Yes.

4 Q Do you think that is something that is
5 more generally known in the populous at large?

6 A If you deal in utilities, in the sense you
7 probably understand that revenue requirements are
8 higher than the assets, the assets and the return.

9 Q Let me hand you what we will get marked.
10 (Thereupon, NEV Cross Exhibit No. 3
11 was marked for identification.)

12 BY MR. DWORETZKY:

13 Q I have handed you a document that should
14 be marked NEV Cross Examination No. 3, and have you
15 seen that document?

16 A I believe I have, yes.

17 Q Would you agree with me that this is the
18 notice that PECO sent to its customers concerning
19 its request for the Commission to approve the
20 settlement agreement?

21 A Yes.

22 Q And this was mailed to all PECO customers?

23 A That's correct.

24 Q Would you read the -- just read the third
25 bullet point on the right-hand column?

1 MR. BONNEY: Objection, Your Honor.

2 This is well beyond the scope of the redirect
3 examination.

4 JUDGE CHESTNUT: Oh, I think it clearly
5 relates to it. My concern is a different one,
6 though.

7 Is this the final version that was sent?

8 MR. DWORETZKY: Your Honor, I copied this
9 from the one that came in the bill.

10 JUDGE CHESTNUT: Because I thought there was
11 a sentence in there that had been added after I saw
12 the draft about how there were parties who did not
13 agree to the settlement.

14 MR. DWORETZKY: Your Honor --

15 JUDGE CHESTNUT: Is that something different?

16 MR. DWORETZKY: Your Honor, can we do this:
17 Admit this one subject to checking, and if it's not
18 the final one, we will obviously substitute the
19 proper one?

20 JUDGE CHESTNUT: Oh, that understanding, yes,
21 and maybe, Mr. Bonney, that is something you could
22 check.

23 MR. BONNEY: Yes, Your Honor.

24 MR. DWORETZKY: Actually, could I be advised
25 either way of the results of that, Mr. Bonney?

1 MR. BONNEY: Certainly.

2 (Discussion off the record.)

3 MR. RYAN: That is in the third paragraph,
4 about halfway down.

5 MR. BONNEY: Yes. Thank you.

6 JUDGE CHESTNUT: Oh, yes. There it is. I'm
7 sorry. This probably is the one.

8 BY MR. DWORETZKY:

9 Q Okay. I just asked you simply to read
10 aloud the third bullet point.

11 A "PECO Energy to recover four point six
12 billion dollars in stranded assets and costs
13 through a competitive transition charge -- paren --
14 "(CTC)" -- close paren -- "and/or an intangible
15 transition charge" -- paren -- "(ITC)" -- close
16 paren -- "through December 31, 2008."

17 MR. DWORETZKY: Thank you. Nothing further.

18 JUDGE CHESTNUT: Is there any further
19 recross?

20 MR. CLEARFIELD: Yes, Your Honor. I just had
21 a few questions.

22 RE CROSS EXAMINATION

23 BY MR. CLEARFIELD:

24 Q Mr. Cohn, you referenced a couple of
25 sentences from the PG&E Customer Choice Plan, I

1 guess --

2 A Yes.

3 Q -- is the way you referenced it,
4 characterized it? Is that right?

5 A Yes.

6 Q Now, the sentence that talked about
7 reducing carrying costs, that had to do with the
8 reduction of carrying costs associated with a
9 securitization?

10 Is that my understanding?

11 A Yes.

12 Q Did I understand that reference correctly?

13 A Yes.

14 Q And generally, when stranded costs are
15 securitized, the benefit of securitization is that
16 the company is able to finance those stranded costs
17 using an instrument that has a -- reflects a cost
18 of debt, as opposed to financing them on the basis
19 of their overall cost of capital?

20 Is that right?

21 A That's correct.

22 Q And the reduction in the carrying costs
23 that were referenced there would likely be that
24 reduction?

25 A Yes.

1 Q Thank you.

2 JUDGE CHESTNUT: Any further recross?

3 (No response.)

4 JUDGE CHESTNUT: Thank you very much, Mr.
5 Cohn. You are excused?

6 THE WITNESS: You are welcome.

7 (Witness excused.)

8 JUDGE CHESTNUT: Mr. Dworetzky, do you want
9 to move in your cross examination exhibits?

10 MR. DWORETZKY: I'm sorry, Your Honor. I
11 would like to move in NEV Exhibits Nos. 1, 2 and 3.

12 JUDGE CHESTNUT: Is there any objection?

13 MR. BONNEY: None, Your Honor.

14 JUDGE CHESTNUT: The documents are admitted.

15 (Thereupon, NEV Cross Examination Exhibits 1,
16 2 and 3 were admitted in evidence.)

17 JUDGE CHESTNUT: Okay. The next witness is
18 Mr. Baron.

19 MR. KLEPPINGER: Yes.

20 JUDGE CHESTNUT: Would you stand, please, and
21 raise your right hand?

22 STEPHEN BARON, called as a witness, having
23 been first duly sworn, testified as follows:

24 JUDGE CHESTNUT: Please give and spell your
25 name for the record.

1 THE WITNESS: My name is Stephen J. Baron,
2 B-a-r-o-n.

3 That's Stephen with a p-h.

4 JUDGE CHESTNUT: Mr. Kleppinger?

5 MR. KLEPPINGER: Thank you, Your Honor

6 DIRECT EXAMINATION

7 BY MR. KLEPPINGER:

8 Q Mr. Baron, would you please state your
9 name and business address for the record?

10 A Yes. My name is Stephen Baron. By
11 business address is 35 Glenn Lake Parkway, Suite
12 475, Atlanta, Georgia 30328.

13 Q You have before you three documents, the
14 first one labeled PAIEUG Statement No. 1, the
15 second one PAIEUG Statement No. 1-R and PAIEUG
16 Statement No. 1 SS?

17 A Yes, I do.

18 MR. KLEPPINGER: Your Honor, could I have
19 those materials identified as I have listed them?

20 JUDGE CHESTNUT: The documents will be so
21 marked.

22 (Thereupon, PAIEUG Statement 1, PAIEUG
23 Statement 1-R and PAIEUG Statement 1 SS were
24 marked for identification.)

25 BY MR. KLEPPINGER:

1 Q Mr. Baron, were these document prepared by
2 you or under your supervision?

3 A Yes, they were.

4 Q And are there any decisions or corrections
5 you would like to make to those at this time?

6 A None, to my knowledge.

7 Q If I were to ask you the questions
8 contained in these three documents, would your
9 answers be the same as set forth therein?

10 A Yes, they would.

11 Q And are those answers true and correct, to
12 the best of your knowledge, information, and
13 belief?

14 A Yes.

15 MR. KLEPPINGER: Your Honor, I would like to
16 move for the admission at this time of the PAIEUG
17 Statements, Statement No. 1, which includes both
18 text and Exhibits SJB 1 through 8, Statement No.
19 1-R, and Statement 1 SS.

20 JUDGE CHESTNUT: Any objection?

21 (No response.)

22 JUDGE CHESTNUT: The documents are admitted.

23 (Thereupon, PAIEUG Statement 1, PAIEUG
24 Statement 1-R and PAIEUG Statement 1 SS were
25 admitted in evidence.)

1 MR. KLEPPINGER: Your Honor, I have brief
2 oral supplemental sur-rebuttal which, with the
3 agreement of counsel for the environmentalists we
4 were permitted to do orally, due to the deferral of
5 testimony on these subjects over the holiday that
6 Mr. Baron was trying to celebrate last weekend.

7 JUDGE CHESTNUT: Go ahead.

8 BY MR. KLEPPINGER:

9 Q Mr. Baron, just a few questions related to
10 the direct testimony of David Schoengold.

11 At Page 15 of Mr. Schoengold's testimony,
12 he discusses the issue of universal service?

13 Is that a subject which you had previously
14 addressed in Statement 1-R?

15 A Yes, it is.

16 Q And would your statements included in
17 Statement 1-R also apply to the position set forth
18 by Mr. Schoengold on universal service in his
19 prepared testimony on the joint petition for
20 settlement?

21 A Yes, they would.

22 Q At Page 43 of Mr. Schoengold's testimony,
23 he indicates, and I quote: "Many of the industrial
24 customers appear to be able to avoid large amounts
25 of CTC payment based on their special rate status."

1 Do you agree with that statement?

2 A No. The industrial customers are paying
3 the same type of CTC as other customers, in the
4 sense that their rates are being unbundled in the
5 same manner, and whatever the CTC that is actually
6 residing in those rates will be paid.

7 Q And those would be the rates that those
8 customers are paying as of January 1, 1997?

9 A Yes, exactly the same as for other
10 customers.

11 Q Finally, Mr. Baron, at Page 44 of Mr.
12 Schoengold's testimony, he indicates in a
13 conclusary statement that the joint petition for
14 settlement does not allocate stranded cost
15 collection fairly among customer classes.

16 Do you agree with that statement?

17 A No. I absolutely disagree with that.

18 Q So is it your testimony today that the
19 joint petition for settlement does fairly allocate
20 stranded costs among customers?

21 A Yes. It follows principles that I have
22 basically presented in this case and other
23 restructuring cases.

24 I believe it is fair.

25 Q Thank you.

1 MR. KLEPPINGER: Your Honor, with that, the
2 witness is available for cross examination.

3 JUDGE CHESTNUT: Okay. Who is going to go
4 first in terms of crossing Mr. Baron?

5 MR. CLEARFIELD: I guess I can go first, Your
6 Honor.

7 JUDGE CHESTNUT: Did you want to go first?

8 MR. BONNEY: I have nothing. Thank you.

9 CROSS EXAMINATION

10 BY MR. CLEARFIELD:

11 Q Good morning, Mr. Baron.

12 A Good morning.

13 Q Mr. Baron, am I correct that in your
14 direct testimony that was submitted prior to the
15 joint petition for partial settlement, as part of
16 your testimony, you sponsored, or at least
17 referenced a generation market price analysis that
18 was prepared or produced by one of your colleagues,
19 I believe, Mr. Falkenberg?

20 A Yes, that's correct.

21 Q And that provided an energy capacity
22 market price for PECO starting, I believe, in 1999?

23 A Yes, that's right.

24 Q And were those -- and were they displayed
25 in any document that you are aware of?

1 A They were -- well, the basics, the basic
2 information was produced and developed by Mr.
3 Falkenberg, a witness for PAIEUG, in his market
4 price analysis.

5 I relied on that information in my rate
6 unbundling, and so I used the basic information for
7 the period 1999 through 2005, and I did include
8 that information in my direct testimony.

9 Q Now, Mr. Baron, were those energy and
10 capacity market prices adjusted, or did they
11 include additions or adjustments for delivery costs
12 and assumptions about load factor?

13 A In the actual rate unbundling that I
14 presented for some selected rate classes, we took
15 the market generation, the market rates that Mr.
16 Falkenberg developed and used them for losses.

17 It incorporates load factor.

18 It incorporates operates reserve margin on
19 capacity, so those were adjusted, yes.

20 Q Did you do that for the residential class?

21 A Yes, I did.

22 Q Do you know what those adjusted or
23 delivered market prices for energy and capacity
24 would be for the residential class, utilizing the
25 market price projections that were produced by Mr.

1 Falkenberg?

2 A Yes, I do.

3 Q Could you provide those?

4 A It is exhibit -- it is my exhibit in
5 Statement No -- PAIEUG Statement No. 1.

6 It is my Exhibit SJB-7, Page 2 of 2.

7 Q And those are delivered prices?

8 A Yes. Those would be at the meter.

9 Q And for the residential customer, the
10 residential class, Rate R for 1999, could you just
11 tell me what that delivered price would be?

12 A The numbers that I used in my direct
13 testimony in the unbundling analysis for Rate R for
14 1999 was 3.61 cents.

15 Q And does that include gross receipts tax?

16 A Yes, it does.

17 Q And have you had occasion to -- did you
18 calculate an average or an overall average
19 delivered market price for all classes based on
20 that same market price analysis?

21 A No, I didn't, and that's a good point,
22 because depending on the load factor, for example,
23 a higher load factor class, such as HT, would have
24 a proportionately lower rate, because the capacity
25 component of the rate is being spread over more

1 hours or more kilowatt hours, so the weighted
2 average would be different, and so -- and the
3 losses and so forth would be different as well.

4 Q Have you had occasion to examine TPH 31,
5 an exhibit that was attached to Mr. Hill's
6 rejoinder testimony?

7 A I don't -- I may have seen it just
8 briefly, but I honestly don't recall it.

9 Q Let me just show that to you for a second.

10 MR. CLEARFIELD: May I approach, Your Honor?

11 JUDGE CHESTNUT: Of course.

12 BY MR. CLEARFIELD:

13 Q And I am showing you TPH 31, and you note
14 that it shows a 1999 retail price that has a label
15 there, "PAIEUG," and it says 3.26 cents. Do you
16 see that?

17 A Yes.

18 Q Now, can you tell us whether that, in your
19 opinion, is an accurate indication of the average
20 generation and energy delivered market price, using
21 Mr. Falkenberg's figures or not at this point?

22 A I don't know. As I said, we never did
23 that calculation.

24 We actually unbundled each rate
25 independently, so we didn't approach it in an

1 aggregate fashion as the settlement has.

2 Q Would it be difficult to do that? Is that
3 something we could request?

4 A It would require -- it would require some
5 analysis.

6 We basically would have to go back into
7 our computer model and pull out the rates.

8 I think those have been provided. The
9 individual unbundling analyses have been provided
10 in discovery responses previously, so you may have
11 them, actually, and then depending on how you chose
12 to weight it, if you weighted it by kilowatt hours,
13 I guess it could be calculate that way.

14 Q Would you have an opinion, sitting here
15 today, as to whether Mr. Hill's calculation using
16 Mr. Falkenberg's market price analysis, is more or
17 less relatively accurate?

18 If not, that's fine.

19 A I simply don't know.

20 Q Okay. That is fine.

21 A It looks like, based on the title of his
22 exhibit, it says "PAIEUG wholesale prices converted
23 to retail," so it appears that Mr. Hill used maybe
24 Mr. Falkenberg's prices and developed them in a
25 different fashion.

1 I honestly don't know, though.

2 Q All right. Do you --

3 A I just haven't --

4 Q I'm sorry.

5 A I just haven't done the analysis.

6 Q Do you have your direct testimony that you
7 presented in the proceeding, and specifically,
8 Pages 30 and 31 of that statement?

9 I think that would be -- is that PAIEUG's
10 Statement 1?

11 A Yes, I do have that. I have got that
12 page.

13 Page 30? Is that what you indicated?

14 Q Yes.

15 A Yes.

16 Q Mr. Baron, in those pages -- and I will
17 give you a moment to review them, if you wish, 30,
18 31 and 32 -- you essentially comment on PECO's
19 original proposal for a generation component of the
20 unbundled bill, and particularly the generation
21 component for residential customers?

22 Would that be a fair interpretation?

23 A Yes, yes. I think that would be
24 reasonable.

25 Q And is it true that in fact you comment

1 that to the extent that PECO's proposed generation
2 component for residential customers is below the
3 market price for generation of energy that you have
4 calculated, that essentially, no competition will
5 develop for residential customers under that rate
6 scheme?

7 MR. KLEPPINGER: Just if I could have a
8 clarification, Mr. Clearfield, you are asking for
9 Mr. Baron to comment on his direct testimony which
10 addresses PECO's original litigation proposal?

11 MR. CLEARFIELD: That is my understanding,
12 yes.

13 MR. KLEPPINGER: Okay, because there has been
14 misunderstanding over use of the PECO proposal.

15 Mr. Baron wasn't here for that, so I want to
16 make sure that's clear.

17 BY MR. CLEARFIELD:

18 Q This is the original, your original direct
19 testimony, and I believe it clearly responds to
20 PECO's original proposal.

21 A I think that the way I characterized it,
22 and this testimony in my original direct was in
23 response to the market prices implied in PECO's
24 unbundling analysis, and I think in this testimony,
25 this page of the testimony you referred me to, I

1 actually compared it to PECO's own market price
2 forecast, and my conclusion, which was on Page 31,
3 at lines three and five, was -- I think I said the
4 rate structure would deter a reasonable
5 development, or has the potential to do that.

6 Q Okay. And the rate structure or the
7 aspect of the rate structure to which you are
8 referring there, though, was the establishment of a
9 generation component that essentially was below,
10 that was at a rate that was below your calculation
11 of a delivered market price for residential
12 customers?

13 Isn't that true?

14 A That's correct.

15 Q Now, you told me today that your -- that
16 the delivered market price for residential
17 customers using the -- can I call it the -- should
18 I call it the "Baron market prices" or the
19 "Falkenberg"?

20 A I guess they are the Falkenberg prices.

21 MR. KLEPPINGER: We prefer "PAIEUG."

22 THE WITNESS: I was going to say.

23 MR. CLEARFIELD: Fair, fair.

24 BY MR. CLEARFIELD:

25 Q The PAIEUG market price was 3.61 cents per

1 kilowatt hour in 1999?

2 Is that right?

3 A For the residential class --

4 Q That's right.

5 A -- delivered at the meter.

6 Q Now, do you know what the energy and
7 capacity charge -- or I'm sorry -- cap for
8 residential customers Rate R is proposed to be in
9 the partial settlement?

10 A I have the averages. I don't have the
11 individual tariffs with me.

12 Q Would you accept, subject to check, that
13 Mr. Hill has testified earlier this week that it is
14 essentially three cents? 3.05 cents I believe is
15 the precise number.

16 A I can accept that, subject to check, and
17 is that for a particular year?

18 Q 1999.

19 A 3.05 cents. Okay.

20 Q Now, Mr. Baron, is it fair to conclude
21 that if the ECC for residential customers is 3.05
22 cents, and the delivered market price for power as
23 PAIEUG has calculated it for 1999 is 3.61 cents,
24 that your statement on Page 29 of your direct
25 testimony -- I believe that is the reference you

1 had given us, lines three to five, or was that --

2 A Would you be able to repeat the beginning
3 of this question?

4 I want to make sure that I followed you
5 exactly.

6 Q Is it -- can I conclude that if the --
7 that with an ECC for residential customers of 3.05
8 cents for 1999, as proposed in the settlement, and
9 your projection of a residential delivered market
10 price for power of 3.61 cents for 1999 for
11 residential customers, that your conclusion that
12 was contained in your direct testimony and that you
13 referenced to me earlier, that is, that PECO has
14 potentially established a rate structure that will
15 deter a reasonable development of a competitive
16 market in its region would apply to the rate
17 structure that is proposed under the partial
18 settlement for residential customers?

19 A For the year 1999, I think logic would
20 dictate that that would be true.

21 However, in my testimony, if you recall,
22 on Page 30, I looked at the range throughout the
23 transition period, and I think it would be
24 important in really making the conclusion that I
25 drew today to examine the implications over the

1 entire range of during the transition period, and
2 really, through 2008.

3 Q That's a fair point, but to the extent
4 that in any year the market price, delivered market
5 price for residential customers under the PAIEUG
6 analysis exceeds that energy and capacity cap, your
7 conclusion that we have just referenced about its
8 affect on competition, its detrimental effect on
9 competition would apply?

10 Is that also fair?

11 A If it was a material -- if it was a
12 material difference.

13 The types of differences that I was
14 looking at in my analysis were material.

15 For example, in the company's -- just to
16 give you an example, in the year 2005, the company
17 had a price for residential -- the market price,
18 the implied market price for residential customers
19 of 3.93 cents.

20 Our analysis indicated 5.13 cents?

21 That's a material difference, and that is
22 the type of result that I used to base my -- to
23 draw the conclusion that we are really focusing on
24 here, so materiality would be another factor,
25 obviously, in the overall evaluation.

1 Q But you told me earlier that with respect
2 to the ECC that is in the partial settlement for
3 residential customers, and the delivered market
4 price that you have calculated for residential
5 customers, with respect to that difference, which
6 is about two and a half mills, approximately, that
7 your conclusion on Page 31 of your testimony that
8 that relationship would deter the reasonable
9 development of a competitive market in this region
10 would apply at least in 1999?

11 Is that right?

12 MR. KLEPPINGER: I have to object, because it
13 went a little too far in the question compared to
14 his answer.

15 His answer was, in 1999, in PECO's service
16 territory, not generally for the region.

17 MR. CLEARFIELD: I'm sorry. I was just
18 referencing the precise language in the testimony,
19 but I will accept that clarification.

20 A Well, in my testimony, I was -- let's take
21 1999, just to make sure I understand it, and I will
22 try to clarify it.

23 The price that PECO had for a residential
24 rate was two point four five cents.

25 As we talk, the number that I had in our

1 market price was 3.61 cents, which is about -- it
2 is a little over -- it is about 1.2 cents, or
3 twelve mills.

4 Is that what your --

5 Q So it was about twelve mills difference?

6 A Yes, I believe that's right.

7 Q So in that context, that would --

8 A That was certainly --

9 Q We are concerned about that. In this
10 case, it is two mills. Do you continue to have a
11 concern?

12 A I haven't really thought about that. I
13 have -- obviously, I believe the settlement is
14 reasonable.

15 We are talking about now a difference --
16 just to make sure the record is clear, you
17 indicated that Mr. Hill testified that the
18 residential rate, the market price component, the
19 implied price component is 3.05 cents in 1999.

20 As we discussed, the market price analysis
21 that I presented in my direct testimony for
22 residential for 1999 was 3.61 cents, which is about
23 a point four cent difference, or four mills.

24 Q I'm sorry. And that is pretty
25 significant, isn't it?

1 A I don't have an opinion. I haven't really
2 drawn an opinion of that.

3 As I said, it is certainly greater. I
4 agree.

5 It is not twelve mills, which is what I
6 was focusing on in the conclusion that I drew in my
7 direct testimony.

8 In evaluating the settlement, and with
9 respect to this issue, I looked at the entire
10 period and concluded that, along with other
11 factors, that it was reasonable.

12 Q Okay.

13 A I just haven't drawn an opinion about
14 whether four mills is significant or not.

15 Q Does your statement on Page 31 apply to
16 the difference that we have discussed today with
17 respect to the residential market price that you
18 projected will be in place in 1999 and the ECC,
19 that is, that potential, that PECO has potentially
20 established -- or let's strike that, that PECO has
21 potentially established -- that that rate structure
22 will deter a reasonable development of competitive
23 market in its region, and if it is -- if it is yes,
24 but to a lesser degree than in your testimony, I
25 can understand that answer.

1 Would that be a fair way to characterize
2 it?

3 A There is certainly -- I certainly would --
4 the answer is yes, with respect to, there is
5 certainly a possibility, but I recall -- I think I
6 need to reiterate my previous -- an answer to a
7 previous question, and that is, it is important, in
8 drawing any conclusion, such as I drew on Page 31,
9 to look at it over a range of years, not just the
10 year 1999, or not just the Year 2000, so there is a
11 lot of information, but anything has the potential,
12 obviously.

13 I mean, even, for example, you could have
14 a situation where the rate was higher in the first
15 year, but maybe lower in some subsequent year than
16 the market, and that might have a potential for
17 detering the competition, and it really -- some of
18 that may be unknown, but it is certainly feasible
19 to -- possible to consider that.

20 Q But I don't mean to press, but just so I
21 am clear, with respect to 1999, or in a year in
22 which this relationship existed, you would agree
23 that that would create the potential for this
24 deterrence of competition?

25 And I understand your concern that you

1 would also have to look at the subsequent years and
2 the other years as well.

3 Is that fair?

4 MR. KLEPPINGER: Your Honor, I would object.
5 We have answered this three times now.

6 MR. CLEARFIELD: This is the last time, Your
7 Honor.

8 MR. KLEPPINGER: And he is going to give the
9 same answer as he has the last three times.

10 JUDGE CHESTNUT: Well, you have beaten it to
11 death --

12 MR. CLEARFIELD: Can I just --

13 JUDGE CHESTNUT: -- but can you just answer
14 it with a yes or no or summarize it?

15 I mean, I think we are all clear.

16 A I think I can repeat a previous answer,
17 which I will keep it very short, and that is yes,
18 but obviously, the materiality of the difference,
19 the significance of the difference would make --
20 would have all the bearing on it.

21 We could have had a situation where it was
22 a hundredth of a mill.

23 That could have the potential for having
24 some impact on the market development for one year.

25 That is certainly possible, and I could

1 agree with that.

2 Whether this is a significant event, I
3 certainly can't agree to that.

4 Q All other things being equal, it would be
5 better for the development of a competitive market
6 if the energy and capacity cap was at or higher
7 than the projected market price, as opposed to
8 being lower?

9 Would that be fair to say?

10 A If that were -- if everything else was
11 equal, everything else were equal, I think I could
12 agree with that, but everything else is obviously
13 not equal.

14 Q Mr. Baron, you mentioned the delivered --
15 we have talked about the delivered price of power
16 for the residential customers.

17 Is there an equivalent calculation for the
18 customers that you represent, Rate HT that you have
19 available?

20 A Yes, and in my direct testimony, I also
21 presented an unbundling analysis of Rate Schedule
22 HT, and it has the same type of market price
23 delivered to the meter of the average customer in
24 that rate class.

25 Q And is there an equivalent energy capacity

1 cap for Rate HT for 1999 as part of the partial
2 settlement?

3 A There is embedded in the rates. I don't
4 have that with me, but yes.

5 Effectively, the tariff contains a
6 component similar to the residential.

7 Q And do you know, sitting here today,
8 whether that energy capacity cap is above or below
9 your projected marked prices for 1999 for
10 delivered, on a delivered basis for Rate HT?

11 A As I said, I haven't -- I haven't looked
12 at this.

13 I just don't know.

14 I certainly -- if someone handed me the
15 documents, I probably could figure it out pretty
16 quickly, though.

17 Q All right. Perhaps if it is -- in
18 redirect, it is easily calculated you could provide
19 that. If not, then --

20 MR. KLEPPINGER: I don't have the tariffs
21 from the joint petition.

22 THE WITNESS: They are pretty substantial, as
23 I recall.

24 MR. CLEARFIELD: That's all I have. Thank
25 you.

1 JUDGE CHESTNUT: Is there further cross for
2 this witness?

3 (No response.)

4 JUDGE CHESTNUT: Okay. Any redirect?

5 MR. KLEPPINGER: If I could just ask one
6 question?

7 JUDGE CHESTNUT: Sure.

8 MR. KLEPPINGER: Off the record for a moment.

9 (Discussion off the record.)

10 MR. KLEPPINGER: No redirect, Your Honor.

11 JUDGE CHESTNUT: Thank you very much, Mr.
12 Baron.

13 THE WITNESS: Thank you, Your Honor.

14 (Witness excused.)

15 JUDGE CHESTNUT: The next witness that is
16 listed is Mr. Clemmer.

17 (Discussion off the record.)

18 JUDGE CHESTNUT: Mr. Clemmer, would you raise
19 your right hand, please?

20 ROBERT CLEMMER, called as a witness, having
21 been duly sworn, testified as follows:

22 JUDGE CHESTNUT: Please sit down and give and
23 spell your name for the record.

24 THE WITNESS: Robert A. Clemmer,
25 C-l-e-m-m-e-r.

1 JUDGE CHESTNUT: Mr. Trask?

2 MR. TRASK: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. TRASK:

5 Q Mr. Clemmer, would you please state for
6 the record by whom you are employed?

7 A PECO Energy Company.

8 MR. TRASK: Your Honor, PECO has previously
9 distributed three statements in connection with
10 this matter prepared by Mr. Clemmer, Statement No.
11 12, Statement No. 12-R, and Statement No. 12-RJ,
12 and those have been previously distributed to all
13 the parties of record.

14 (Thereupon, Statements 12, 12-R and 12-RJ
15 were marked for identification.)

16 BY MR. TRASK:

17 Q Mr. Clemmer, did you, or did persons under
18 your direct control prepare the statements that I
19 have just -- or direct supervision, did they
20 prepare the statements that I just mentioned?

21 A Yes. Yes, we did.

22 Q And if I were to ask you the questions
23 contained in those statements, would your answers
24 be the same?

25 A Yes, they would.

1 Q Do you have any corrections to any of the
2 three statements?

3 A I have a clarification for the record.

4 In Statement No. 12, there are a series of
5 pages which are repeated, and they are simply
6 redundant, and just for the purpose of making sure
7 that the record isn't confused, that they are
8 designated, the second set of Pages No. 7 through
9 37 of 83, and that's contained in the Exhibit
10 RAC-1.

11 Q Isn't it the --

12 A I'm sorry.

13 Q Okay. You are talking about exhibit
14 RAC-1?

15 A Yes.

16 Q And after you get through the first 36
17 pages --

18 A Right.

19 Q -- then there is a series of sheets
20 that --

21 A Right, go back to Page 7 again and go out
22 to Page 36.

23 Q So the number again starts at seven. We
24 are talking about the number in the top right-hand
25 corner of the page?

1 A Right.

2 Q And that goes up to --

3 A Page 36.

4 Q In other words, those should not be part
5 of the record --

6 A Right.

7 Q -- because the pages following are the
8 correct pages?

9 A Yes. The preceding pages are the correct
10 pages, right.

11 Q Some of the pages preceding are the
12 correct page, correct?

13 A That's correct.

14 MR. TRASK: I don't know how you want to
15 handle this, Your Honor.

16 JUDGE CHESTNUT: I think it is clear.

17 THE WITNESS: Thank you.

18 MR. TRASK: All right. If any of the parties
19 need clarification, we could identify on your copy
20 what pages are out, and what are in.

21 When you get to the top of the right-hand
22 corner, where it said Page 7, all of a sudden, up
23 through Page 36 --

24 THE WITNESS: 36.

25 MR. TRASK: -- those should be taken out of

1 the record, and then it picks up again with Page 37
2 in Exhibit RAC-1, and when it picks back up, that
3 is in the record.

4 Now, Your Honor, did you say that you would
5 like to move these into the record later?

6 JUDGE CHESTNUT: No. Now, if you are
7 finished with your voir dire.

8 MR. TRASK: Yes. I would like to move the
9 three statements that we mentioned into the record,
10 Your Honor.

11 JUDGE CHESTNUT: Is there any objection?

12 (No response.)

13 JUDGE CHESTNUT: The statements are admitted.

14 MR. TRASK: The witness is available for
15 cross examination, Your Honor.

16 JUDGE CHESTNUT: Is there any cross
17 examination for this witness?

18 MR. CLEARFIELD: Yes, Your Honor.

19 JUDGE CHESTNUT: Mr. Clearfield?

20 MR. CLEARFIELD: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. CLEARFIELD:

23 Q Good morning, Mr. Clemmer.

24 A Good morning.

25 Q I want to ask you a series of questions

1 about your rejoinder testimony to Mr. -- well,
2 arising, among others, and we will be referencing,
3 I believe, your rebuttal testimony as well, and I
4 just want to ask you a few questions to set the
5 stage.

6 Mr. Clemmer, you sponsored the cost of
7 service study that PECO used initially to propose
8 the various unbundled rates in its original
9 restructuring filing? Is that right?

10 A The April 1 filing?

11 Q Yes.

12 A Yes.

13 Q And the allocation, and you did that by
14 attempting to allocate costs among the, in essence,
15 various functions that would be unbundled, or the
16 various portions of the rate that would be
17 unbundled?

18 Is that right?

19 A There were two parts to it, yes. The
20 first part was to allocate costs to the classes of
21 service, and then within each class of service, to
22 unbundle those costs.

23 Q And that --

24 A That was, you know --

25 Q In your rebuttal testimony, in response to

1 some criticisms about the way in which you had
2 allocated administrative and general costs, which I
3 will call " A&G costs," you prepared and presented
4 a functional analysis of the A&G costs in order to
5 determine how they might be assigned to the various
6 categories of costs which you were using? Is that
7 fair?

8 A Within the A&G category, there are a
9 number of accounts. There might be 10.

10 Several of those accounts were not changed
11 in my rebuttal testimony.

12 Some of those costs were not challenged.

13 There were other accounts that were --
14 when we it took a different look at it, yes, we
15 made some changes.

16 Q Now, let me see if I can understand what
17 your purpose was.

18 Essentially, starting on January 1st,
19 1999, as opposed to a bundled rate, we are going to
20 have essentially three -- three pots, or three
21 rates.

22 The first would be the transmission and
23 distribution rate, and that would cover the cost of
24 transmission and distribution? Is that right?

25 A If I could, I think actually, those would

1 be split as well.

2 Q You mean between transmission and
3 distribution?

4 A Yes.

5 Q Yes. I understand there would be two of
6 those rates.

7 A Yes.

8 Q And that covers the wires and poles, the
9 actual of getting the electrons to the customer's
10 meter, and in fact the meter, meters as well?

11 Isn't that right?

12 A Yes, the billing and maintenance and so
13 forth.

14 Q And then, if you will, there is going to
15 be another function that is going to be unbundled,
16 and that is the CTC/ITC, if you want to consider
17 that to be a separate business?

18 A The transitional charges, yes.

19 Q And then there is the third business that
20 the company is going to be engaged in, and that is
21 the provision of retail electrical services? Isn't
22 that right?

23 A Yes.

24 Q And when I say the "company," that's PECO,
25 correct?

1 A My hesitation is, organizationally, I
2 don't know what, if any, changes are going to be
3 made, but currently that's PECO.

4 Q And when you referenced the distribution
5 company in your testimony, that is the equivalent
6 of PECO today, at least in terms of the analysis
7 you presented, isn't it?

8 A It is a subset of PECO as it exists today.

9 Q Well, okay.

10 A Internally, we are going to refer to it as
11 the LDC.

12 Q Right. The LDC in 1999 will be providing,
13 in addition to transmission and distribution
14 services, it will also be providing electric --
15 competitive electric retail services -- isn't that
16 right -- in terms from PECO's standpoint?

17 A I'm sorry. I don't know what you mean by
18 the word "services," "electric services."

19 Q It is going to be selling electricity --

20 A Oh.

21 Q -- to customers?

22 A Selling the electricity?

23 Q Yes.

24 A Yes, subject to, you know, whatever
25 changes occur organizationally.

1 Q But, well, is it your understanding, or
2 was it your understanding, when you conducted the
3 cost of service study, that the LDC would be
4 engaged in the process of selling electrons,
5 selling electricity to customers, starting in 1999?

6 A Functionally, when you look at the cost of
7 the LDC, those costs were not included in terms of
8 the commodity of the electron, itself.

9 They were not included in the cost
10 allocation.

11 Q I understand the commodity wasn't, but --
12 and maybe I didn't make this clear -- with respect
13 to the administrative and general costs category --

14 A Yes.

15 Q -- one of the functions that the LDC will
16 perform, and which will be supported by those
17 administrative and general costs, is the process of
18 selling electricity to customers starting January
19 1st, 1999?

20 Isn't that right?

21 A No. I did not look at costs in that way.

22 Q Well, let me -- I am not asking you in
23 terms of looking at costs.

24 In terms of the company's plan, or what
25 you understand to be what the company is going to

1 do, starting in 1999, will not the LDC be, in
2 addition to other things, selling electrons,
3 selling electricity to customers in 1999?

4 A Yes.

5 Q And when it does so, it is going to incur
6 costs in that process, isn't it?

7 A Yes.

8 Q And those were generally retail delivery
9 costs, service costs, customer service costs, among
10 other things?

11 A Unfortunately, to me, you are mixing LDC
12 type costs with Genco type costs, so I'm sorry.

13 I see them overlapping, so I can't answer
14 your question.

15 Q Well, I am trying to understand the
16 assumption you made when you conducted your cost of
17 service analysis, and I am trying to understand
18 your understanding, your view of how PECO will be
19 operated, or let's say the LDC in 1999 --

20 A Right.

21 Q -- and so I guess I just -- I will ask the
22 again: When the LDC engages in the process of
23 selling electricity, it is going to incur retail
24 costs, the cost of selling that electricity, retail
25 delivery costs, such as customer service, sales,

1 and et cetera?

2 Isn't that right?

3 A I would say that the LDC will incur those
4 types of costs regardless of whether it sells the
5 electrons.

6 Q Mr. Clemmer, if they didn't sell any
7 electricity, would it incur any costs associated
8 with the sale of electricity?

9 A If you analyze the cost that I looked at,
10 that I analyze, and specifically focus on the 900
11 series, which is the sales expense accounts, those
12 kinds of costs, those levels of costs would
13 continue.

14 Q So let's just take a hypothetical. Let's
15 assume that the LDC didn't sell any electricity at
16 all.

17 All the electricity provided to PECO
18 customers was provided by unregulated and
19 unaffiliated suppliers of electricity, and all that
20 the LDC did was administer and maintain the
21 distribution system. All right?

22 Are you with me?

23 We are completely out of the merchant
24 function of the sale of electricity. That is being
25 conducted by others.

1 Are you with me there?

2 A On your hypothetical --

3 Q Yes.

4 A -- I am with you.

5 Q Now, it wouldn't incur any costs to sell
6 any electricity in that context, would it?

7 A If the LDC was simply contracted for by a
8 marketer to provide the wires, service to an
9 ultimate customer which was not the customer of the
10 LDC? Is that what you are suggesting? And in that
11 process, any costs it incurred, it would bill out
12 to the power marketer, if you want to call it the
13 power marketer, the Genco, whatever acronym that
14 you have?

15 Is that what you are saying?

16 Q Well, that is not what I was saying, but
17 let's just use that.

18 In that context, would the company incur
19 any costs associated with the sale of electricity?

20 A Beginning in 1999?

21 Q Yes.

22 A Literally just a few months away, would
23 just a few of those costs just stop overnight?

24 No, they would not, so the company would
25 incur those costs.

1 Q Would not incur those costs?

2 A They would. You are asking me, on January
3 1, 1999, would those costs disappear, and the
4 answer is no.

5 Q Even though it wasn't selling any
6 electricity then, you would still continue to sell
7 -- it would still continue to have a sales force?

8 A If we could, let's focus. You say sales
9 forces versus A&G, and you are mixing -- you are
10 mixing the specifics of the FERC accounting, so if
11 you want to focus on sales, we will focus on sales.

12 If you want to focus on A&G, as
13 differentiated from sales, according to the FERC
14 uniform system of accounts, we will do that.

15 Q Let's do that.

16 A Okay.

17 Q Let's focus on sales.

18 A All right. Sales account expense 911,
19 912, 913.

20 Q If it knew today that it was not going to
21 be in the business of selling electricity on
22 January 1st, 1999 --

23 A I am with you. Go ahead. And your
24 question is?

25 Q -- it is logical, isn't it, that at that

1 point it would stop incurring sales costs that are
2 associated with those accounts that you mentioned?

3 A No. Those particular costs in question I
4 believe would continue at about the same level for
5 the following reasons.

6 One is that the LDC would have to know, as
7 a matter of efficiency in operating and maintaining
8 and in growing its system, what the customer base
9 out there is going to do, and how it is going to
10 use its product.

11 That's No. 1, the efficient utilization of
12 existing equipment.

13 And No. 2, the LDC of course does get
14 revenues on a per kilowatt basis, so there would be
15 an incentive there to make sure that the use of
16 that existing equipment is maximized.

17 Q So you would have the same level of sales
18 force that you have today, even though you weren't
19 in the business of selling electricity?

20 Is that your testimony?

21 A No. My testimony relates to the sales
22 expenses as shown on those accounts that I alluded
23 to earlier, and we are talking about an order of
24 magnitude of about twelve million dollars, so I
25 would say yes.

1 Q It would stay the same, so your answer is
2 yes?

3 Even though it would not be in the
4 business of selling electricity, your testimony is
5 that PECO would continue to incur exactly the same
6 level of costs?

7 A For those accounts that I just referenced,
8 yes. Now, you say --

9 Q Wait. There is no question pending.

10 Let's look at A&G expenses as well now.
11 Let's focus on your position with respect to A&G
12 expenses.

13 Am I correct that your analysis of A&G
14 expenses essentially attempted to look at each of
15 the accounts to determine whether, starting in
16 1999, or in an unbundled environment, the company
17 would continue, in your view, to have the expense,
18 or to incur the function?

19 A Yes.

20 Q Now, so you didn't distinguish between
21 whether this function or overhead cost would be
22 associated with supporting the distribution portion
23 of the business, that is, the wires and poles,
24 versus the sale of electric service portion of the
25 LDC business starting in 1999, did you?

1 A I would say that I did.

2 Q You did?

3 A So that is it -- based on that answer,
4 would it be fair to conclude that to the extent
5 that you allocated an overhead costs as a
6 distribution-related expense, you made the judgment
7 that that was an expense that would only be related
8 to the distribution part of the service, that is,
9 the wires and poles part of the service, and not
10 the sale of electric service, electrons?

11 A Within the context of those specific A&G
12 accounts and the work center costs that we
13 examined, yes.

14 Q Yes. Okay. Let me turn to some specifics
15 for a minute, Mr. Clemmer, so that I can understand
16 your view, and I will ask you the questions, and
17 then, you know, if we need to get into the details,
18 we can do that.

19 A Understood.

20 Q Let me ask you about the executive
21 department costs.

22 A Yes.

23 Q Are you familiar with that account?

24 A Yes.

25 Q Is that the account that includes the

1 labor and associated cost for the Executive
2 Department of PECO?

3 A If we could, just a point of
4 clarification.

5 When you say "account," it is not an
6 account.

7 Within the company's accounting system, we
8 have identified approximately 700 areas wherein we
9 call them work centers, where certain identifiable
10 functions are performed, so the executive is Work
11 Center 1000 in our own internal system of
12 numbering.

13 Q What costs are represent by the expenses
14 in Work Center 1000?

15 A Work Center 1000 can have costs, as a
16 general statement -- and I don't know this to be a
17 fact, because I haven't examined the entire costs
18 of Work Center 1000 -- but Work Center 1000 can in
19 theory charge to any one of the primary FERC
20 accounts.

21 Those accounts can be FERC mapped -- we
22 call "mapping" -- to any one of the primary FERC
23 accounts --

24 Q Does it reflect the costs -- I'm sorry.

25 A -- and in this instance, what we are

1 focusing on is the subset of costs from that Work
2 Center 1000, which happens to be the Executive
3 Group that were FERC mapped to account, in this
4 instance, 920, and then later on, 921, and so
5 forth, so when you say "account," we have to be
6 very specific.

7 I have to be specific with you in terms of
8 what costs you are actually focusing on.

9 Q All right. You said that the Account 920
10 is one of the FERC accounts --

11 A Yes.

12 Q -- that is represent by the costs that are
13 reflected in Work Center 1000? Is that right?

14 A Work Center 1000 charged some of its costs
15 to FERC Account 920.

16 Q And FERC Account 920 is the salaries of
17 the Executive Department? Is that right?

18 A No. FERC Account 920 is the salaries for
19 what we call A&G, which includes the executive
20 part.

21 Q So Work Center 1000 includes, at least in
22 part, the salaries for the Executive Department for
23 PECO? Is that right?

24 A Yes.

25 Q And how much of Work Center 1000 did you

1 associate, or did you assign to the distribution
2 category of your functional accounting categories?

3 A I can't answer your question.

4 Q Why not?

5 A I don't have the answer.

6 Q Would you --

7 MR. TRASK: This is because I think there is
8 still some confusion about the work center.

9 A work center is a group of people that
10 charge dollars to a whole number of FERC accounts.

11 THE WITNESS: Right.

12 A So if you are asking me how much within
13 Work Center 1000 -- how much of the salaries within
14 Work Center 1000 were charged to FERC Account 920,
15 I just don't have that detail.

16 I don't have the specific --

17 Q That is not what I am asking. That is not
18 what I am asking.

19 A Okay.

20 Q What I am asking is: When you allocated
21 Work Center 1000 to the various cost
22 functionalization accounts, did you not allocate
23 one hundred percent of Work Center 1000 to the
24 distribution function?

25 A One hundred percent of Work Center 1000

1 costs that were FERC'd to 920 account were
2 allocated to --

3 Q Right.

4 A -- or assigned to the distribution
5 function.

6 Q So that means, doesn't it, that all of the
7 costs associated with the salaries for the
8 Executive Department of PECO were allocated solely
9 to the distribution function?

10 Isn't that right?

11 A Again, I can't say at one hundred percent
12 assuredly that all of the salary dollars FERC mapped
13 to 920, and thereby, by the reference that we just
14 made, all wound up in the distribution function

15 Q No. That is not what I said. I said, all
16 of the salary dollars that were in Account 920 --

17 A For that work center?

18 Q -- for that work center were assigned to
19 distribution?

20 A Yes, yes.

21 Q Were there any salary dollars associated
22 with the Executive Department assigned to any of
23 the other functional accounts in any of the other
24 work centers as a result of being assigned or
25 included in any of the other work centers that you

1 know?

2 A No. I'm sorry. Again, I'm sorry to
3 belabor the point in terms of our accounting
4 system, but --

5 Q That is all right. We have plenty of
6 time. We can spend all day on this, if we have to.

7 A Work Center 1000 charges or clears its
8 costs through a multiple of -- could clear its
9 costs through a multiple of FERC accounts.

10 I don't know if in this process it cleared
11 its costs to other work centers, okay, and wherein
12 it becomes sort of an internal company allocation
13 of overheads, so --

14 Q Okay. Let me ask you this: In terms of
15 the salaries for the Executive Department --

16 A Yes.

17 Q -- and FERC accounts, is there any other
18 account into which the salaries of the Executive
19 Department are booked?

20 A I don't know. I wouldn't think so.

21 Q Okay. In terms of Account 920, based on
22 what you have told me about the work center, can I
23 conclude that all of the dollars associated with
24 FERC Account 920 were assigned 100 percent to the
25 distribution function in your functional accounting

1 center?

2 A No, no. If you are --

3 Q Account 920, the FERC Account 920 --

4 A Right.

5 Q -- was not assigned one hundred percent to
6 distribution?

7 A That's correct. See, FERC Account 920, if
8 you will allow me -- if you turn to Exhibit RAC-3,
9 if you look at FERC Account 920, FERC Account 920
10 involves an analysis of about 350 work centers.

11 Q Okay?

12 A It goes from Page 3 to --

13 Q Okay.

14 A -- Page 17.

15 Q All right. What about the first line
16 item?

17 A Okay. That's one work center out of the
18 350.

19 Q And that is --

20 A Okay.

21 Q -- Work Center 1000, isn't it?

22 A That's right.

23 Q And where was that assigned?

24 A All of the dollars that FERC mapped to
25 that Account 920 were assigned to the T&D,

1 transmission and distribution, not just
2 distribution, but the T&D function.

3 Q And none to the production function?

4 A That's correct, on that single line in
5 that exhibit.

6 Q On that single line?

7 A Yes.

8 Q And that's a million dollars --

9 A Yes, that's correct.

10 Q -- in costs?

11 A Yes.

12 Q And those dollars represent the cost of
13 the salaries for the Executive Department at PECO?

14 A Yes.

15 Q Isn't that correct?

16 A They do.

17 Q Now, does that mean, based on this
18 analysis, that the Executive Department of PECO is
19 not going to spend any time supervising,
20 administering, or being involved in the electric
21 service sales portion of the LDC business, starting
22 in 1999, in your view?

23 A No, it doesn't.

24 Q Will they be spending time on that part of
25 the business?

1 A They may.

2 Q Does this include the salary for the
3 president, McNeill?

4 A The chairman and chief executive officer,
5 yes.

6 Q Excuse me. I apologize. Does it include
7 that salary?

8 A Yes.

9 Q And you are not suggesting that he is not
10 going to be intimately involved in all aspects of
11 the LDC business, including the sale of electrons,
12 the electric service part of the business, are you?

13 A No.

14 MR. TRASK: Your Honor, I object to the form
15 of the question.

16 First of all, there are too many "nots," and
17 I think he already testified.

18 MR. CLEARFIELD: I will withdraw that.

19 BY MR. CLEARFIELD:

20 Q All of the Executive Department,
21 executives at PECO will be involved in all parts of
22 the business?

23 Isn't that fair to conclude?

24 A All executives will be involved to a
25 greater or lesser extent, that's correct.

1 Q But in terms of your allocation, you
2 haven't assigned any of those costs to the
3 production part of your functional accounting
4 analysis?

5 A That's correct.

6 Q And you, as a result, have included all of
7 them as a transmission and distribution cost, and
8 in turn reflected them in the transmission and
9 distribution part of the unbundled rate? Isn't
10 that right?

11 A When you say "all of them," if you are
12 referring to that one line, yes.

13 Q That one line.

14 A Yes.

15 Q Absolutely that one line. All right.
16 Let's ask you about another line. All right.

17 Let's go to the next one.

18 MR. TRASK: Your Honor, if I may interject
19 here, I think that the answer to these questions
20 are apparent from what is in the record.

21 I mean, I don't know why it is necessary to
22 ask questions just to establish what is in the
23 record.

24 If they are going to ask something else about
25 what is in the record, that would be appropriate.

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I don't know why we need to sit here and
relive what is already in the record.

MR. CLEARFIELD: Your Honor, I am trying to
probe the basis for the witness's testimony that it
is appropriate to assign these costs in this
manner.

JUDGE CHESTNUT: Go ahead, Mr. Clearfield.
If you have a specific objection, Mr. Trask, you
may raise it.

MR. TRASK: Very well, Your Honor.

BY MR. CLEARFIELD:

Q Maybe we could just do it quick by with
respect to the next line, Work Center 1300.

A Office of the Chief Financial Officer?

Q Right. You assigned one hundred percent
of those costs to T&D expenses?

A That's correct.

Q Now, do you expect that the CFO will be
involved in all aspects of the LDC business,
including the portion of the business that is
associated with selling electric service starting
in 1999?

A He may well, yes, he or she.

Q But you haven't assigned any of those

1 costs to that portion of the business, have you?

2 A No, I have not.

3 Q And it would be fair to say that in each
4 instance in which -- strike that.

5 Mr. Clemmer, on page, I believe it is --
6 well, strike that.

7 Looking again at RAC-3 and at FERC Account
8 920, I just wanted to establish that in any
9 instance in which the accounting detail that you
10 show there indicates that the costs are assigned
11 only to the column marked T&D expense --

12 A Yes.

13 Q -- that reflects -- that indicates that
14 costs were allocated solely to that account, to
15 that functional account in a manner similar to the
16 way in which you have characterized the costs that
17 were assigned for Work Center 1000 and Work Center
18 1300, that in fact they were only allocated to the
19 T&D portion, and not allocated to other portions of
20 the business? Is that right?

21 A If I could, with respect to the cost of
22 each of these work centers, that individually, the
23 work centers individually as they -- their costs
24 were FERC mapped to 920, where you see a K in the
25 column labeled T&D, and then you see the dollars,

1 generally speaking, dollar for dollar, they are at
2 one hundred percent, they represent the actual
3 costs of that work center, those costs having been
4 mapped to the 920 account.

5 Q What I asked was, though, if you look over
6 at the line, and you see that one hundred percent
7 of the cost of T&D, if the actual number and the
8 number that is shown on the T&D expense column are
9 the same, can you conclude fairly that all of the
10 costs for that particular work center were
11 allocated to the T&D function --

12 A Yes.

13 Q -- as opposed to the other function?

14 A Yes.

15 Q Now, again, just a general: In all of
16 these cases, Mr. Clemmer, are you disputing the
17 notion that these administrative and general cost
18 expenses will be used to support the electric
19 service portion of the LDC business, as well as the
20 T&D portion of the business?

21 A What I am suggesting is that --

22 Q Could you say yes or no, and then --

23 A No.

24 Q They will support in fact all parts of the
25 business, including the electric service portion?

1 A They may.

2 Q Okay. But it is likely that they will,
3 won't they?

4 A In a transition?

5 Q In a transition?

6 A 1999 is the first year of the transition.

7 Q So at some point, these costs may go away
8 or not be associated with the electric service
9 portion of the --

10 A No.

11 MR. TRASK: Your Honor, I would like to
12 object to the question.

13 These costs, are we talking about every
14 single figure under the column actual or --

15 MR. CLEARFIELD: Well, let's just take Work
16 Center 1000 again, the cost of the Executive
17 Department.

18 BY MR. CLEARFIELD:

19 Q Those costs establish -- are used to
20 support, and I think we have already argued this,
21 support all aspects of the business, including the
22 electric service portion of the business?

23 A Yes, and I believe those costs will
24 continue with the LDC --

25 Q Okay.

1 A -- at the same level.

2 Q At the same levels?

3 A Yes, that's correct.

4 Q Will any of these overhead costs -- and I
5 am referring again to the cost of Account 920 --
6 support PECO's unregulated or subsidiaries that may
7 be selling power or other electric services, if you
8 know?

9 MR. TRASK: Your Honor, I would like to
10 object to the form of the question.

11 Could you define what up mean by "support,"
12 so Mr. Clemmer can give you a clear answer?

13 MR. CLEARFIELD: Your Honor, those objections
14 are inappropriate.

15 If the witness doesn't understand, he can say
16 he doesn't understand.

17 MR. TRASK: I don't think the objection is
18 appropriate.

19 Do you need a definition of "support"?

20 JUDGE CHESTNUT: Mr. Clemmer, are you able to
21 answer the question as it was posed?

22 THE WITNESS: I believe so.

23 JUDGE CHESTNUT: Okay. Go ahead.

24 A When looking at the costs that I
25 enumerated her for Account 920, there are

1 approximately 350 separate identified groups of
2 costs.

3 Some of those costs are directly assigned
4 to the existing production function of PECO Energy.

5 Some of those costs are directly assigned
6 to the existing transmission and distribution
7 functions of PECO Electric Company.

8 These are costs that were incurred in
9 1996, basically, actuals, with a minor modification
10 for performance, and essentially, the data that you
11 see here represents a verbatim listing of account
12 detail provided by our internal accounting system,
13 so to say that all of these are considered to be
14 T&D related is not the way these were handled.

15 You have to go down each line by line,
16 which is what we did in our study, or at least our
17 analysis, and we said, okay. Where our work center
18 clearly was in the production, existing production
19 function, then it was assigned to only the
20 production function.

21 Where a work center was clearly within the
22 existing organizational structure in a group called
23 CESG, Consumer Energy Services Group, which is akin
24 to the T&D function, being the LDC that we are
25 talking about, then those costs were assigned to

1 T&D.

2 In most instances, we couldn't clearly
3 define whether it was transmission related or
4 distribution related, so we had a suballocation so
5 that we didn't pile up all of those costs into the
6 distribution column, but rather allocated them,
7 apportioned them between transmission and
8 distribution.

9 There are a number of accounts now, a
10 number of work centers whose costs are or could not
11 be clearly defined to be one or the other or a
12 combination of all three, and those costs we
13 allocated across all the functions according to the
14 non-fuel O&M schedules.

15 MR. CLEARFIELD: Move to strike
16 as nonresponsive.

17 JUDGE CHESTNUT: I am not going to strike the
18 answer.

19 I think it was the honest attempt to be
20 responsive. I'm not sure that it was responsive,
21 but I think Mr. Clemmer has explained the basis for
22 the functionalization, but I am not actually sure
23 he answered the question.

24 MR. CLEARFIELD: No.

25 JUDGE CHESTNUT: Maybe you could recast your

1 question or move on.

2 THE WITNESS: Thank you.

3 BY MR. CLEARFIELD:

4 Q Do you expect that these administrative
5 and general functions of the LDC will be used to
6 support operations of PECO and other affiliates
7 that PECO might have?

8 A I -- I don't know.

9 Q Let's take Horizon Energy. Are you
10 familiar with Horizon?

11 A I am.

12 Q Does Horizon receive support,
13 administrative and general support from PECO today?

14 A Mr. Clearfield, we are -- pardon me. If I
15 could, we are examining 1996 cost data.

16 Horizon Energy did not exist, so in terms
17 of the numbers that we have before us --

18 Q Okay. With respect to 1999, do you have
19 any information about how Horizon would receive
20 general administrative and general sport from PECO?

21 A No.

22 Q So you don't know whether Horizon will be
23 -- you don't know how Horizon will receive, for
24 example, financial services of the kind that will
25 be provided by a CFO? Is that right?

1 A I do not know the internal accounting that
2 will be set up for the Horizon Group, no.

3 Q Do you know whether the CFO, for example,
4 will be providing financial services to Horizon, as
5 well as other affiliates?

6 A I don't know. He may.

7 Q Do you expect that he will?

8 A Yes.

9 Q Do you know how -- and you testified that
10 with respect to your cost of service study, no
11 allocation of costs have been made for the CFO
12 account account, which is Work Center 1300, FERC
13 Account 920, to Horizon?

14 A That's correct. Horizon doesn't exist.

15 Q Horizon doesn't exist?

16 A In 1996, it didn't exist.

17 Q So the answer is, a priori, it couldn't
18 have been allocated? Is that right?

19 A Yes. Because it didn't exist, it couldn't
20 be allocated.

21 Q And you testified that in your view, the
22 general level of costs that you are experiencing,
23 for example, in the CFO account, will continue in
24 1999?

25 A That's correct.

1 Q If Horizon, for example, does receive CFO
2 services from the CFO which are representative of
3 costs that would be booked in that account in 1999,
4 would you expect that those costs, or at least a
5 portion of those costs would be assigned to Horizon
6 through some cost allocation process or affiliated
7 interest agreement?

8 A I honestly don't know.

9 Q Did you consider that in your cost of
10 service study, and, I'm sorry, in your
11 functionalization that you can testify to?

12 A In a manner, yes, because what I
13 considered was whether those costs that we had
14 booked in 1996 would continue with the LDC,
15 regardless of whether the company creates an
16 affiliated Genco, Horizon, Energy One, whatever it
17 might be, or not, and the question we asked was
18 whether those ongoing -- whether those costs would
19 continue at approximately -- at the same levels
20 that we saw in 1996.

21 Q And you concluded that, again, using this
22 as an example, that that cost would continue?

23 A Yes, regardless of whether or not the
24 company creates a Horizon Group or Energy One
25 Group, or spins off the Genco and gets out of the

1 business entirely.

2 Q But that is because the CFO would provide
3 those services, and then the cost of those services
4 most likely would be allocated or would be assigned
5 to the Genco or the affiliate?

6 Isn't that right?

7 A Again --

8 Q Isn't that --

9 A I'm sorry. I don't know. I thought I
10 answered that. You asked that question before.

11 Q Well, if they -- there's only two ways
12 this can go, isn't it, Mr. Clemmer?

13 If in 1999, there's affiliates -- let's do
14 it this way.

15 Right now, the CFO is providing services
16 to all parts of --

17 A To the traditional utility structure.

18 Q Structure. Let's assume there is a
19 portion which is represented -- that represents the
20 services that a new Horizon would be providing,
21 electric retail services.

22 Are you with me?

23 A Yes.

24 Q And let's assume that the CFO is providing
25 financial services to that entity today as part of

1 the bundled PECO services that are being provided.
2 Do you have that part of the --

3 A We have it. We don't have that situation,
4 but I have the hypothetical.

5 I just want to make sure it is understood
6 that it is a hypothetical.

7 Q Let's assume that in 1999 there is a
8 unbundling of -- now we are talking about electric
9 retail services, and this portion of the electric
10 retail services is assigned to Horizon, so that
11 Horizon must perform that task now and sell that
12 service.

13 Do you have me? Are you with me on that,
14 on the hypothetical?

15 A Yes.

16 Q Okay. Now, the CFO -- now, there's two
17 choices with obtaining financial services for this
18 new affiliate? Is that fair?

19 One is that it can continue to receive
20 services from the LDC CFO and be billed for that?

21 That is one hypothetical? That is one
22 assumption, right?

23 A Yes.

24 Q And then the second would be that they
25 would receive it from someplace else, from some

1 unaffiliate?

2 Is that the second option?

3 A That they buy it elsewhere --

4 Q They buy it elsewhere.

5 A -- or secure it elsewhere?

6 Q Right.

7 A That is another option.

8 Q With respect to the first option, the
9 service would continue? That is, PECO would
10 continue to incur the costs, but would bill it to
11 this affiliate, or assign it to them? Isn't that
12 the likely result?

13 A I don't know.

14 MR. TRASK: Your Honor, I would object to the
15 question, because Mr. Clemmer previously testified
16 that he doesn't know what the arrangements are
17 between Horizon and PECO.

18 He doesn't have familiarity with the
19 affiliated interest agreements that exist.

20 MR. CLEARFIELD: It is a hypothetical.

21 JUDGE CHESTNUT: It is a hypothetical, but I
22 do want to warn you, Mr. Clearfield, that we have
23 been on this line quite a while, and I'm not sure
24 that you and Mr. Clemmer are talking on the same
25 level.

1 MR. CLEARFIELD: I am trying my best to
2 stay --

3 JUDGE CHESTNUT: I understand you are trying,
4 but I understand that Mr. Clemmer is trying, too, I
5 think.

6 THE WITNESS: Thank you.

7 JUDGE CHESTNUT: Maybe you could just recouch
8 it.

9 BY MR. CLEARFIELD:

10 Q The question I asked you was that if this
11 new company, Horizon, who is providing these
12 electric services, received financial services from
13 the CFO from the LDC, it is likely that those
14 services, the cost of those services would be
15 billed or assigned to the Horizon affiliate? Isn't
16 that right?

17 MR. TRASK: Again, is this a hypothetical?

18 MR. CLEARFIELD: This is a hypothetical.

19 MR. TRASK: Okay. And what are the
20 conditions surrounding the hypothetical?

21 JUDGE CHESTNUT: I think Mr. Clemmer should
22 be able to answer that --

23 MR. TRASK: All right.

24 JUDGE CHESTNUT: -- and if he isn't, he can
25 say so.

1 A Repeat the question.

2 Q If the new affiliate, the Horizon
3 affiliate, receives financial services from the CFO
4 of the LDC, isn't it likely that that new affiliate
5 will be billed or have those costs assigned to it
6 under an affiliated interest agreement or cost
7 assignment structure?

8 A I don't know if there will be formal
9 billing between the parent company, the LDC, if
10 that is the parent company, and this new
11 unregulated affiliate.

12 What I would say is that incrementally,
13 there will be no additional costs, so that the
14 costs of the LDC would remain the same at about the
15 same levels reflected here.

16 Q But whether there is formal billing, or an
17 assignment of costs on an accounting basis, some of
18 those costs would be taken out of the LDC pot and
19 assigned to the affiliate?

20 Isn't that right?

21 A Not assigned by me.

22 Q Would they be assigned by anybody, Mr.
23 Clemmer?

24 A I don't know.

25 Q So it is your testimony, then, under this

1 hypothetical, that it is just as likely as not that
2 the LDC would continue to provide services to an
3 unregulated affiliate of Horizon selling retail
4 services, and it would not --

5 A What I am --

6 Q Excuse me. -- and it would not assign
7 those costs to the unregulated or the affiliated?

8 MR. TRASK: Your Honor, I object to the
9 question. He just answered that question.

10 JUDGE CHESTNUT: No. I think he is
11 clarifying his answer here.

12 THE WITNESS: Oh, boy.

13 JUDGE CHESTNUT: That's a yes or no.

14 A I mean, I believe that the costs currently
15 being incurred by the LDC would continue at about
16 the same levels unchanged, whether or not there is
17 a new unregulated affiliate, and whether or not
18 some of those costs that are being incurred by the
19 LDC would incrementally increase, I don't know.

20 Q That is not what I asked.

21 JUDGE CHESTNUT: See, that is not his
22 question.

23 THE WITNESS: Sorry.

24 JUDGE CHESTNUT: I think -- I don't mean to,
25 you know, jump in too much here, but I think you

1 are taking as the basis for your hypothesis that
2 there is no incremental cost.

3 MR. CLEARFIELD: Correct.

4 BY MR. CLEARFIELD:

5 Q I am asking you whether costs are now
6 being offered, or costs associated with providing
7 financial services to this separate affiliate would
8 be assigned by the LDC to the separate affiliate,
9 not whether they would grow or not grow, whether
10 they would be assigned?

11 A I don't know.

12 JUDGE CHESTNUT: And is that because somebody
13 else would make that decision or make that
14 allocation?

15 THE WITNESS: From the standpoint of the
16 affiliate agreements, I don't have any direct
17 knowledge of what that agreement looks like or will
18 look like in terms of the allocations of costs.

19 If I were doing it, I would not make such an
20 assignment.

21 BY MR. CLEARFIELD:

22 Q You wouldn't?

23 A As it relates to the LDC.

24 Q Because the LDC continues to incur the
25 costs?

1 Is that why?

2 A Yes, and incrementally, there are no
3 increased costs.

4 Q And as a result of that determination, you
5 would continue to assign those costs to the
6 transmission and distribution portion of the rate,
7 wouldn't you?

8 A Yes, for purposes of the evaluation of
9 costs during this transition period.

10 Q Which is the basis for unbundling the
11 rates --

12 A Right.

13 Q -- that are being proposed in the joint
14 petition for partial settlement?

15 A Right.

16 Q Isn't that right?

17 A Yes, and it is not in perpetuity.

18 Q Well, how long is the transition period?

19 A I'm not sure how long the cap lasts. It's
20 at least several years. Depending on whether the
21 settlement is approved or not it changes the cap.

22 Q Well, under the assumption that under the
23 partial settlement, the cap last until the Year
24 2003, would you agree? Is that right?

25 A I believe that's correct.

1 MR. TRASK: That's through the year 2003.

2 THE WITNESS: Yes, that's correct.

3 MR. TRASK: He said "to."

4 MR. CLEARFIELD: I'm sorry.

5 BY MR. CLEARFIELD:

6 Q Up to the Year 2003.

7 MR. TRASK: It is through, through.

8 THE WITNESS: Through.

9 MR. TRASK: Up to 2004. Give us the benefit
10 of the extra year, if you would.

11 JUDGE CHESTNUT: You are spending a lot of
12 time talking about something that's self evident.

13 Let's not quibble over these things.

14 MR. CLEARFIELD: I know.

15 BY MR. CLEARFIELD:

16 Q But for that period, at least, that
17 assignment that we just discussed would be embedded
18 in the transmission and distribution rate that is
19 being proposed in the joint partial settlement,
20 joint petition for partial settlement --

21 A Yes.

22 Q Just let me finish the question. Did you
23 say yes to that?

24 A Did you finish your question?

25 Q Yes.

1 JUDGE CHESTNUT: Now he forgot it.

2 A During that transition where the company
3 is doing lots of things, yes.

4 Q Hold your applause. I am turning to a
5 different area.

6 Would you turn to Exhibit RAC 12, please,
7 and look at Page 2?

8 A The rejoinder testimony?

9 Q Yes.

10 A Yes.

11 Q Now, with respect to this settlement, this
12 schedule, would you just identify for me the
13 revenues that are produced under the proposed
14 settlement rates?

15 A I'm sorry. I'm sorry. I don't have the
16 exhibit in front of me.

17 MR. TRASK: Do you want to see if this is the
18 same copy?

19 MR. CLEARFIELD: That's all right.

20 THE WITNESS: Oh, this here?

21 MR. TRASK: Yes. Page two of two. You have
22 got it here.

23 THE WITNESS: I had the wrong page. Thank
24 you. I have it.

25 BY MR. CLEARFIELD:

1 Q Okay. What are the revenues produced
2 under the proposed settlement rates as per this
3 schedule?

4 A \$685,357,000.

5 Q Now, would you tell me how that revenue
6 level was computed generally?

7 A Using this schedule?

8 Q Yes.

9 A Yes. Although I might add -- well, we
10 start with the second column designated column one,
11 bills and kilowatt hour from sample.

12 Q Yes.

13 A Okay. And we have the new unbundled
14 pricing supplement, based on supplement number ten.

15 There is a cross multiplication performed
16 to get to the second of the column designated
17 three, column three.

18 Q Okay.

19 A And now, again, you are on Page one of
20 two.

21 Q Two of two?

22 A I'm sorry. Two of two. There is a
23 different reference, okay, and at that point the
24 revenues generated in column three are summed and
25 granted to the thousand dollars.

1 Q All right. So would it be fair to say
2 that what you did was, you took the amount of
3 energy in each of the rate blocks, times the rate
4 for the blocks, and then you came up with an amount
5 of -- a level of revenues, and then you completed
6 it for each of the -- and you took that all the way
7 through all of the blocks?

8 A Yes.

9 Q Now, the amount of kilowatt hours in total
10 that were used there on that page, then, was the
11 six million -- I'm sorry 6,000,172,000?

12 A It is 6,172,000,000, yes.

13 Q 267,164 kilowatt hours? Is that right?

14 A That's correct.

15 Q And that is what produces the 685,000,000
16 shown on the exhibit?

17 A The cross multiplication involving those
18 kilowatt hours produces that grand total.

19 Q Do you have Appendix C in the first table
20 for 1999, the proof of revenue associated with that
21 table with you?

22 MR. TRASK: On the partial settlement?

23 A Yes.

24 JUDGE CHESTNUT: I'm sorry. Proof of revenue
25 for what?

1 MR. CLEARFIELD: For 1999, shown in Appendix
2 C of the petition for partial settlement.

3 THE WITNESS: It literally is the proof of
4 revenue page?

5 MR. TRASK: It is in the partial settlement.

6 MR. CLEARFIELD: Your Honor, I can give
7 him --

8 THE WITNESS: Yes. Okay.

9 MR. CLEARFIELD: I can provide you with a
10 copy of that 1999, if you wish.

11 THE WITNESS: That would be helpful.

12 MR. CLEARFIELD: We have it marked as a cross
13 exhibit, but I don't believe that that is necessary
14 to use it.

15 MR. TRASK: Okay. This is part of Appendix
16 C?

17 MR. CLEARFIELD: Yes.

18 JUDGE CHESTNUT: Thank you.

19 MR. RYAN: Can we have one more?

20 JUDGE CHESTNUT: You are not going to make it
21 a cross exhibit, since everybody has it? Okay.

22 MR. CLEARFIELD: I wasn't going to make it a
23 cross exhibit, because it has already -- well --

24 JUDGE CHESTNUT: Well, it is a settlement
25 exhibit?

1 MR. DOLL: No, not yet.

2 MR. CLEARFIELD: Let's mark it as ENRON Cross
3 Exhibit 4, I believe.

4 JUDGE CHESTNUT: 4.

5 (Thereupon, ENRON Cross Exhibit No. 4
6 was marked for identification.)

7 BY MR. CLEARFIELD:

8 Q Now, I should have asked you this, but
9 with respect to RAC-12, Page 2, that shows a proof
10 of revenue for the individual rate blocks for Rate
11 GS? Is that right?

12 A That's right.

13 Q Now, turning to ENRON Cross Examine
14 Exhibit 4, and looking at the total revenues for
15 Rate GS, do you see the figure 685,357,000? Is
16 that right?

17 A Yes.

18 Q And is that the same figure that is shown
19 on your settlement proof of revenue Exhibit RAC-12,
20 Page 2?

21 A Yes, it is.

22 Q Now, going over one column to the sale,
23 the megawatt hours, on that proof of revenue, what
24 number is shown there?

25 A On the proof of revenue --

1 Q Yes.

2 A -- on Cross Examination Exhibit 4?
3 6,596,000,000 kilowatt hours, or 6.6 million
4 megawatt hours.

5 Q And we have identified that -- in fact,
6 when you sum up all of the hours that are used for
7 the proof of revenues on Rate GS on RAC-12, the
8 number is actually 6.1 billion kilowatt hours?
9 Isn't that right?

10 A On page two of two, it is 6.1, that's
11 correct, 6.2.

12 Q Why aren't the megawatt hours on the
13 summary proof of revenue the same as the megawatt
14 hours on the settlement proof of revenue worksheet
15 that you show on RAC-12, Page 2, Mr. Clemmer?

16 A The reason that they are different relates
17 to the sample data gathered for this particular
18 subset class of service, Rate GS, and the
19 relationships between the sample data gathered and
20 the universe total pro forma 1996 conditions for
21 that same group.

22 Q All right. Is it right that the
23 685,357,000 was produced by the rates that are
24 shown on RAC-12, the individual element rates, for
25 example, for the CTC?

1 MR. TRASK: You are talking about Page 1 or
2 Page 2?

3 MR. CLEARFIELD: Page 2.

4 A I'm sorry. Repeat your question.

5 Q Yes. If the 685,357,000 for Rate GS was
6 produced by utilizing the rates that are
7 established for all of the various elements, but
8 let's just focus on the CTC that are shown on your
9 RAC-12, Page 2 --

10 A Oh, yes.

11 Q All right. -- and for CTC, the CTC
12 portion is two hundred ninety-four one
13 seventy-four? Is that right?

14 A Yes.

15 Q Now, am I right that if we took the rates
16 that are shown on RAC-12 that are used for the
17 proof of revenues, and you utilized the higher
18 sales, that is, the 6,596,721, if I got that number
19 right --

20 A Right.

21 Q -- that the CTC for Rate GS would actually
22 be much higher, or higher, at least? Isn't that
23 right?

24 A No.

25 Q It is not? You are saying that you would

1 produce the same amount of revenue using higher
2 kilowatts, even though you were using higher
3 kilowatt hours, Mr. Clemmer?

4 A In terms of how we --

5 Q I am just asking you just to -- just so I
6 understand, I think that we need to go slowly.

7 A No. As it relates to the proof of
8 revenue, the answer to your question is no.

9 It would produce the same dollars of
10 revenue.

11 Q Well, I asked you whether you would -- if
12 you used the kilowatt hours that are shown on ENRON
13 Exhibit, Cross Examination Exhibit 4, and applied
14 them to the rates that are shown for CTC on RAC
15 Exhibit 12, Page 2, whether you produce a greater
16 amount of revenue?

17 Even I think I know the answer to that
18 one.

19 A I believe you are right.

20 Q And if that is the case for -- when the
21 company calculated the overall recovery of CTC, if
22 you know this, did it use the total sales reflected
23 in the column marked "Sales MWH" that is shown on
24 ENRON Cross Examination Exhibit 4?

25 MR. TRASK: Are you talking about in this

1 exhibit, or when you calculate the CTC for this
2 rate on that, on that sheet that --

3 BY MR. CLEARFIELD:

4 Q When, for example, Mr. Cohn attempted to
5 calculate the nominal recovery of CTC by the
6 company using the -- by the company, did it use the
7 sales that are shown on ENRON Cross Examination
8 Exhibit 4?

9 MR. TRASK: Now, are you talking about April
10 1 in the rebuttal testimony for the settlement?

11 MR. CLEARFIELD: In the settlement.

12 MR. TRASK: If you know the answer.

13 BY MR. CLEARFIELD:

14 Q If you know the answer.

15 A No, he didn't, and he should not have.

16 Q Do you know if Mr. Cohn used those levels
17 of sales --

18 A No.

19 Q -- in calculating the recovery on a
20 nominal basis of CTC --

21 A Right. No.

22 Q Just let me finish, so the record is
23 clear.

24 Do you know if Mr. Cohn used it, for
25 example, in his ABC 13?

1 A I don't have ABC 13, but if it relates to
2 these numbers on Cross Examination Exhibits 1 or 2,
3 no, he wouldn't have used those sales, either.

4 Q Do you have a copy of ABC 13 with you?

5 A No.

6 Q Does that refresh your recollection?

7 You have been hand a copy of ABC 13,
8 haven't you?

9 A Yes.

10 Q And does that refresh your recollection of
11 the sales that were used to calculate the total
12 amount of CTC revenues for the company in each
13 year?

14 A I didn't prepare this document, so there
15 is nothing to recollect.

16 Q Well, I'm sorry. I thought you said, no,
17 that Mr. Cohn would not have used the 33,569,000
18 number, and I am just asking you if that in fact --
19 whether that last answer was correct, now that you
20 have looked at this schedule?

21 A No. It was inaccurate.

22 Q What number did he use?

23 A He used an average, an average CTC of
24 three oh four, multiplied against total system
25 sales, thirty-three five sixty-nine.

1 Q And in fact, in terms of the rates, in
2 terms of the rates that are in Appendix C, those
3 rates reflect a lower level, or are calculated
4 using a lower level of KWH, at least, for example,
5 for Rate GS, as we went through earlier, and that
6 is shown on your Schedule RAC 12? Isn't that
7 right?

8 A That is not correct.

9 Q Then I am confused. What part of that
10 isn't correct?

11 A That used, for example, a rate --

12 Q Wait a minute. Just so I understand, we
13 will just go through this step by step.

14 I thought we established that on RAC 12,
15 for Rate GS, that schedule developed the rates
16 using a level of KWH of 6.1 odd billion KWH? Isn't
17 that right?

18 A That's right.

19 Q And we also established that in
20 calculating the total amount of revenue in summary
21 fashion on page -- on ENRON Cross 4, that the
22 company has used a higher level, that is, 6.596
23 billion? Isn't that right?

24 A Yes.

25 Q And --

1 A Well, you say "calculation." I mean, the
2 column is data presented.

3 I don't -- there is no cross
4 multiplication on this particular exhibit.

5 Q Well, isn't it fair to imply that if you
6 have a sales column of 6.5, 6.5696 billion 721, and
7 then total revenues, that that was derived by
8 multiplying an applicable CTC rate to that level of
9 sales?

10 A The applicable CTC rate in this instance
11 on Exhibit RAC 12, Page 2, is comprised of five
12 different sets of prices --

13 Q So --

14 A -- five different sets of prices.

15 Q So what you are saying is that the revenue
16 there, the total revenue shown there, the 685, was
17 not derived by applying those rates to the six
18 point -- the six million five nine six seven
19 twenty-one?

20 A That's correct. There are five sets of
21 prices cross multiplied against the blockings as
22 shown on Exhibit RAC 12, Page two of two.

23 None of those prices happens to be the
24 average of 304, which is part of ABC 13.

25 Q So the amount of revenue the company in

1 fact -- one moment.

2 (Discussion off the record.)

3 BY MR. CLEARFIELD:

4 Q Let me just try to sum this up. What if
5 the amount of revenues that are going to be
6 collected by the company on a pro forma basis for
7 Rate GS for the CTC column, for example, is --
8 well, strike the CTC.

9 The total revenues, which is six hundred
10 eighty-five three fifty-seven, reduced by 6.2
11 billion KWH, has the company accounted for any of
12 the additional revenues that would be produced by
13 applying the 6.596 KWH?

14 A There would be no additional revenues
15 generated by this difference in kilowatt hour
16 totals on a pro forma basis versus what was derived
17 in the sample.

18 Q How can that be?

19 A I attempted to discuss that issue in the
20 rejoinder testimony, and what is important to focus
21 on in the proof of revenue is not the absolute
22 level of sales, but a relative level of sales and
23 the distribution of those sales amongst the
24 appropriate price blocks for the given rate.

25 If the CTC were one price, then what you

1 are asking for, or asking about would be correct.

2 You would take the one price times all
3 kilowatt hours, regardless of whether it is on my
4 sheet or the proof of revenue or out of the
5 accounting exhibit that the company had put forth,
6 and that would be the revenue generated.

7 However, we don't have one price on a CTC.

8 We have multiple prices, and in fact we
9 have multiple prices within a given class of
10 service.

11 Rate GS has five distinct -- in this
12 proposal has five distinct CTC charges.

13 Q All right. Let me try it this way.

14 A I --

15 MR. TRASK: Your Honor, he has not finished.

16 MR. CLEARFIELD: I'm sorry. I'm sorry.

17 MR. TRASK: Go ahead, Mr. Clemmer.

18 Is that okay?

19 BY MR. CLEARFIELD:

20 Q Keep going.

21 A What we have -- what we have done here is
22 to demonstrate that taken in the context of coming
23 back to a zero point, i.e, the end revenues are
24 exactly the same as the starting revenues, then you
25 look at the CTC in total with everything else, and

1 you see that when you cross multiple these things
2 and then adjust them for the universe to sample
3 ratio, all right, which is a revenue-driven ratio,
4 not sales-driven ratio, but a revenue-driven ratio,
5 that you get back to the starting point, which is
6 685 million dollars.

7 Q Are you finished?

8 A Yes.

9 Q Look at exhibit RAC 12. Look at the
10 column marked, or the part of the column marked
11 CTC, which is labeled as column one.

12 Do you see that? This is on Page 2.

13 A Yes.

14 Q And the level of KWH there is 6.172
15 billion. Do you see that?

16 A Yes.

17 Q Now, it is true, isn't it, that if the --
18 and the revenue is two hundred ninety-four one
19 seventy-three. Do you see that?

20 A That's correct.

21 Q Okay. Now, isn't it true that if the CTC
22 revenues for this class were calculated using KWH
23 that totaled six million -- 6,596,721,000, as
24 opposed to 6,172,267,000, the total amount of
25 revenues that would be produced from that class for

1 CTC would be greater?

2 A No. What I am suggesting --

3 Q Yes or no, and then you can explain.

4 A No.

5 Q It wouldn't be greater?

6 A No. It would be the same.

7 Q You would take -- now that is about five
8 -- that is 500 million additional KWH?

9 A Yes.

10 MR. TRASK: Your Honor, I have to object now.
11 This question has been asked and answered now
12 four times.

13 If Mr. Clearfield doesn't understand how the
14 rates are made, that is Mr. Clearfield's problem.

15 He has explained it. It is in the testimony.

16 He has explained it three times now. It is
17 in the testimony.

18 I would anticipate that Mr. Reising may get
19 on the stand and testify later about why he thinks
20 it should be done a different way.

21 MR. CLEARFIELD: That is fine, Your Honor. I
22 think we will take that suggestion, and we will
23 present our position with respect to this now that
24 we have gotten this on the record, and I thank you
25 for your indulgence.

1 If I could just check my notes, I will see if
2 I have any further questions.

3 JUDGE CHESTNUT: Sure.

4 MR. CLARK: Your Honor, may we go off the
5 record for a procedural matter?

6 MR. CLEARFIELD: I am finished.

7 (Discussion off the record.)

8 JUDGE CHESTNUT: Okay. Let's go back on the
9 record.

10 Mr. Clearfield indicated he was done with
11 his cross examination.

12 MR. CLEARFIELD: I'm sorry?

13 JUDGE CHESTNUT: Did you --

14 MR. CLEARFIELD: Yes, I am finished --

15 JUDGE CHESTNUT: You are finished.

16 MR. CLEARFIELD: -- with my cross examination

17 JUDGE CHESTNUT: Is there any other cross
18 examination for this witness?

19 MR. DOLL: Yes.

20 MS. MILLER: Yes.

21 JUDGE CHESTNUT: Can you give me an estimate
22 how long?

23 MR. DOLL: Two minutes.

24 MR. TRASK: I have a watch here.

25 JUDGE CHESTNUT: Miss Miller, how about you?

1 MS. MILLER: I have four questions.

2 JUDGE CHESTNUT: Then why don't we wrap that
3 up, do that now?

4 Go ahead, Mr. Doll.

5 CROSS EXAMINATION

6 BY MR. DOLL:

7 Q Good afternoon, Mr. Clemmer. For us who
8 are semi-dysfunctional cost allocators, am I
9 correct that you said that there were no accounts
10 set up for Horizon or for Energy One at this time?

11 A No. I said using the 1996 data. The data
12 contained in the accounting exhibit is actual data,
13 adjusted for certain things for 1996.

14 Q Okay. So as of 1996, I can understand
15 there were no cost centers set up, but there are
16 cost centers set up now for Horizon or Energy One?

17 A Yes, there are.

18 Q And as a follow-up to Mr. Clearfield, and
19 again, pleading some ignorance, if we compare the
20 KWH on your RAC 12 of six point two billion, and
21 the KWH sales of six point -- roughly six billion
22 for the GS class on the Cross Examination Exhibit
23 4, and we have established that they are different,
24 I presume, you are not testifying that PECO is in
25 effect not charging for those three hundred

1 thousand megawatts, are you?

2 A No.

3 MR. DOLL: I have nothing further, Your
4 Honor.

5 JUDGE CHESTNUT: Okay. Miss Miller?

6 MS. MILLER: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MS. MILLER:

9 Q Good morning, Mr. Clemmer. I am Janet
10 Miller.

11 A Good morning.

12 Q I represent Mid-Atlantic Power Supply
13 Association, and I just want to ask a few follow-up
14 questions along the line of what Mr. Clearfield was
15 going into, but certainly not that detailed.

16 In your rejoinder testimony, am I correct
17 that you state, "When possible, it is preferable to
18 allocate costs directly based on a functional
19 analysis, rather than based on particular
20 activities"?

21 A Do you have a reference?

22 Q Yes. It begins at Page 2, line seventeen,
23 and carries on over onto Page 3.

24 A In rejoinder testimony?

25 Q In rejoinder testimony. I'm sorry.

1 A I don't see that. I'm sorry.

2 MR. TRASK: Ask her to repeat the question.

3 Page 2, line seventeen?

4 MS. MILLER: Page 2, lines 19 and 20.

5 A I see that, but would you please repeat
6 your question?

7 Q Is it your testimony that when possible,
8 it is preferable to allocate costs based on a
9 functional analysis or directed to the cost causer,
10 rather than based on activity?

11 A I'm sorry. I don't understand the second
12 part of the question, "rather than on activity,"
13 because that is what you focus on to determine
14 where the costs belong.

15 Q There is a statement on lines 19 and 20 of
16 Page 2 of Statement 12 RJ, it says, "In response to
17 testimony presented by Mr. Reising and Mr.
18 Johnstone, that they continue to argue that
19 allocations based on labor or other costs are
20 superior to direct assignments based on functional
21 analysis," so is it your testimony that the reverse
22 is how it should be?

23 A The reverse?

24 Q That it is superior to allocate costs
25 based on direct assignments based on functional

1 analysis, rather than based on labor or other
2 costs?

3 A If that information is available, yes.

4 Q A direct cost assignment represents a one
5 hundred percent allocation of the cost to the cost
6 causer, in the case that we were speaking about
7 this morning, perhaps to the work center or the
8 FERC Account 920.

9 A It doesn't have to be direct one hundred
10 percent.

11 It can be direct 50/50, if you will, but --

12 Q So to be proper for accounting purposes or
13 appropriate for the Commission approval, a direct
14 cost assignment then has to have a direct
15 relationship to the cost causer? Isn't that
16 correct?

17 MR. TRASK: I object to the form of the
18 question.

19 Do you mean for accounting purposes, or for
20 rate making purposes?

21 MS. MILLER: We will start with for
22 accounting purposes.

23 A I don't know if that standard is applied
24 that way. I don't know.

25 Q Were the administrative and general

1 expenses treated the same in the preparation of the
2 cost of service study that was presented in PECO's
3 restructuring as they were treated in the cost of
4 service study prepared in connection with PECO's
5 last approval case?

6 A The allocation of costs to individual
7 classes of service, which is all that the former
8 study did, not the latter, but the former study,
9 those were handled in essentially the same fashion,
10 that's correct.

11 Q That would include allocation of the
12 administrative and general costs?

13 A Yes, to the given classes of service.

14 Q Thank you.

15 MS. MILLER: That's all the questions I have,
16 Your Honor.

17 JUDGE CHESTNUT: Is there any further cross
18 for this witness?

19 (No response.)

20 JUDGE CHESTNUT: Do you want to redirect?

21 MR. TRASK: I would like to confer for a few
22 moments, yes.

23 JUDGE CHESTNUT: Certainly.

24 (Discussion off the record.)

25 MR. TRASK: We have no redirect.

1 JUDGE CHESTNUT: Thank you very much, Mr.
2 Clemmer. You are excused.

3 (Witness excused.)

4 MR. CLEARFIELD: Your Honor, can I move into
5 evidence ENRON Cross 4?

6 JUDGE CHESTNUT: You can try.

7 MR. CLEARFIELD: I hearby move into evidence
8 ENRON Cross 4, Your Honor.

9 JUDGE CHESTNUT: Any objection?

10 MR. TRASK: No.

11 JUDGE CHESTNUT: The document is admitted.

12 (Thereupon, ENRON Cross Exhibit 4
13 was admitted in evidence.)

14 MR. TRASK: Your Honor, I forget if we moved
15 our statement into the record.

16 I believe we did.

17 JUDGE CHESTNUT: Yes, you did.

18 MR. TRASK: Thank you.

19 JUDGE CHESTNUT: Okay. Shall we take a break
20 for lunch now, or go ahead with the next witness?

21 (Chorus of "break for lunch.")

22 (Discussion off the record.)

23 JUDGE CHESTNUT: Okay.

24 (Thereupon, a luncheon recess was taken from
25 1:00 o'clock PM until 2:00 o'clock PM, on the

1 same day and date.)

2 JUDGE CHESTNUT: We will proceed. Mr.
3 Clearfield?

4 MR. CLEARFIELD: Thank you, Your Honor. Mr.
5 Reising is being presented on behalf of ENRON Power
6 Marketing with respect to testimony that was
7 directed at earlier issues, and also unresolved
8 issues, and for the Pennsylvania Electric
9 Competition Coalition, with respect to the partial
10 settlement.

11 JUDGE CHESTNUT: Mr. Reising, will you stand,
12 please, and raise your right hand?

13 PAUL REISING, called as a witness, having
14 been duly sworn, testified as follows:

15 JUDGE CHESTNUT: Please sit down and give and
16 spell your name for the record.

17 THE WITNESS: My name is Paul Reising.
18 That's spelled R-e-i-s-i-n-g.

19 JUDGE CHESTNUT: Go ahead, Mr. Clearfield.

20 MR. CLEARFIELD: Thank you Your Honor.

21 Your Honor, we have distributed to all the
22 parties and the court reporter today several
23 statements, first, the direct testimony of Paul D.
24 Reising on behalf of ENRON Power Marketing, Inc,
25 which has been marked as ENRON Statement 3, and

1 then the sur-rebuttal testimony of Paul D. Reising
2 on behalf of ENRON Power Marketing, Inc. marked as
3 ENRON Statement 3-SR, and then the statement of --
4 supplemental testimony of Mr. Reising, which we
5 have marked as PECC Statement 3, and I ask that
6 they all be marked as I have indicated.

7 JUDGE CHESTNUT: The documents will be so
8 marked.

9 MR. CLEARFIELD: Thank you.

10 (Thereupon, ENRON Statement 3, ENRON
11 Statement 3-R and PECC Statement 3 were
12 marked for identification.)

13 DIRECT EXAMINATION

14 BY MR. CLEARFIELD:

15 Q Mr. Reising, do you have all those
16 documents that I have just listed --

17 A Yes, I do.

18 Q -- before you?

19 A Yes.

20 Q And were they prepared by you, or under
21 your supervision and direction?

22 A Yes, they were.

23 Q And do you have any additions or
24 corrections that you wish to make at this time?

25 A I do not.

1 Q Are they true and correct, to the best of
2 your information, knowledge, and belief?

3 A Yes, sir.

4 MR. CLEARFIELD: Your Honor, I would move for
5 admission of ENRON Statements 3 and 3-SR, as well
6 as PECC Statement 3 at this time.

7 JUDGE CHESTNUT: Any objection?

8 (No response.)

9 JUDGE CHESTNUT: The documents are admitted.
10 (Thereupon, ENRON Statement 3, ENRON
11 Statement 3-R and PECC Statement 3 were
12 admitted in evidence.)

13 MR. CLEARFIELD: Your Honor, at this time we
14 have some very short sur-rejoinder or sur-rebuttal
15 in response to testimonies of PECO witnesses that
16 have been submitted previously, if we may proceed
17 with that.

18 JUDGE CHESTNUT: Go ahead.

19 BY MR. CLEARFIELD:

20 Q Mr. Reising, would you state the areas of
21 testimony and the witnesses that you propose to
22 respond to this afternoon?

23 A Yes. I would like to respond to the
24 rejoinder testimony of Mr. Clemmer and Mr. Cohn.

25 Q Okay. With respect to Mr. Clemmer, Mr.

1 Clemmer has indicated in his rejoinder testimony
2 that he has properly allocated administrative and
3 general expenses, sales and uncollectibles in his
4 cost of service study and assigned those costs
5 appropriately to the distribution or transmission
6 and distribution portions of the unbundled rates
7 that are reflected in the partial settlement.

8 Is Mr. Clemmer correct in that respect?

9 A In my opinion, no, he is not.

10 Q What is the fundamental reason for his
11 failure to properly allocate those costs?

12 A Well, I think, as I demonstrated in my
13 sur-rebuttal testimony, as well as the supplemental
14 testimony, there are several obvious areas, in
15 particular with administrative and general
16 expenses, of which Mr. Clemmer and his colleagues
17 assigned directly to transmission and distribution
18 functions without regard to how those expenses are
19 actually incurred, and how those expenses would be
20 assigned to other affiliates, in particular, in a
21 restructured environment, and for that reason, I
22 believe that the allocation of those A&G expenses
23 should continue to be done on the basis of the
24 allocation methods that have been used previously
25 before this Commission, and that's based on O&M

1 expenses, less purchase power and fuel expenses,
2 and I have the same concerns with respect to sales,
3 customer accounts -- not customer accounts --
4 customer services and information and uncollectible
5 accounts expense.

6 Q Are you familiar with the basis on which
7 Mr. Clemmer conducted his functional analysis of
8 the administrative and general accounts?

9 A Yes. It is my understanding that after
10 the first round of the testimony, when myself and
11 other witnesses presenting testimony, direct
12 testimony before this Commission in this
13 proceeding, raised concerns about the manner in
14 which Mr. Clemmer's initial cost of service study
15 -- I think it is exhibit RAC 1 -- assigned
16 administrative and general expenses to,
17 essentially, with the exception of, I think it was
18 insurance and maybe one other account, all of those
19 A&G expenses were assigned exclusively to
20 transmission and distribution, none to production,
21 and as a result of that critique, Mr. Clemmer
22 responded by conducting what he described as a
23 study to determine, as I understand it, by work
24 activity center, or whatever the terminology was,
25 by examining each of those line items and

1 determining whether or not the expense would
2 continue.

3 In many of those instances, since they
4 continued, he decided to assign those strictly to
5 transmission and distribution function --

6 Q What was --

7 A -- and went through some examples of that
8 this morning, and the Executive Department is one
9 example of that.

10 Q In your opinion, did Mr. Clemmer ask the
11 right question in examining those expenses, that
12 is, whether those expenses would continue with the
13 LDC?

14 MR. TRASK: Your Honor, at this point I don't
15 know whether I would like to make an objection.

16 Let me just state that it appears that we are
17 just going through Mr. Reising's written testimony,
18 where Mr. Reising makes the exact same arguments
19 and points that he is making now, which of course
20 are appropriate to make.

21 I don't know that it is necessary to make
22 them again on the record on oral rejoinder, so on
23 that basis, I would object to the line of
24 questions.

25 JUDGE CHESTNUT: Well, let's try and limit

1 your questions to the additional matter.

2 BY MR. CLEARFIELD:

3 Q Do you recall the question I just asked?

4 A Yes.

5 Q Did he ask the right question in analyzing
6 these costs?

7 A Well, I don't -- in my opinion, no.

8 If you take, for example, the very first
9 line item in the whole set of expenses under
10 Account No. 20, which is administrative and general
11 salaries, the question that was asked was, well,
12 are these costs going to continue, and if they
13 continue, then we are going to assign those to the
14 T&D function.

15 I don't think that is the correct
16 question.

17 The question would be: What is going to
18 happen to those?

19 Do those particular activities currently
20 support the entirety of the business of PECO Energy
21 Company, and my conclusion is, yes, they do, and
22 that those should be functionalized across all of
23 the functions, and the question really would be,
24 you know, when these rates, these rates, unbundled
25 rates are applied, beginning with competition on

1 1-1-99, the cost associated with the Executive
2 Department needs to be -- needs to be accounted for
3 between the various operations of the company, and
4 that may mean that a portion of it stays with the
5 LDC, but a portion of that needs to be billed out
6 to, for example, the energy supply affiliates, and
7 that is the case for several of the line items that
8 we identified very quickly in just the first few --
9 first few line items of Mr. Clemmer's exhibits.

10 MR. TRASK: Your Honor, I would renew my
11 objection, and Mr. Reising just restated exactly
12 what is in his written testimony.

13 JUDGE CHESTNUT: I think I do agree with
14 that.

15 MR. CLEARFIELD: Your Honor, we are finished
16 with that line.

17 JUDGE CHESTNUT: Okay.

18 MR. CLEARFIELD: What we are trying to do is
19 respond to the rejoinder, because -- and clarify
20 and summarize the points, so I think it is
21 different.

22 It adds some specificity, because now it
23 addresses a specific allegation and contentions
24 made by Mr. Clemmer in his rejoinder.

25 MR. TRASK: Your Honor, I don't think that it

1 clarifies it.

2 It simply restates it.

3 JUDGE CHESTNUT: All right. We don't have to
4 discuss it any further, Mr. Trask.

5 I took your comment, since I'm not sure it
6 was an objection, and I certainly am going to
7 repeat it to Mr. Clearfield, which is that it
8 really isn't appropriate to restate points already
9 made.

10 If you want to clarify something made this
11 morning, that's a different story, but please try
12 and keep it brief.

13 MR. CLEARFIELD: I am, Your Honor.

14 BY MR. CLEARFIELD:

15 Q Mr. Clemmer has criticized your position
16 with respect to uncollectibles in his rejoinder
17 testimony by suggesting that you had improperly
18 allocated overhead associated with the
19 uncollectibles.

20 Do you recall that part of his rejoinder?

21 A Yes, I do.

22 Q Okay. Was it appropriate for you to
23 allocate overhead along with the uncollectibles to
24 all the functions of the PECO business?

25 A Well, yes, I do. I think they should.

1 Those, the dollars that are coming in from
2 the customers are either paid or unpaid are
3 associated with the entire spectrum of the
4 business, and that's a generation, as well as a T&D
5 portion of the business.

6 Q What about the overhead? Is there any --

7 A The overhead, yes, I think there probably
8 -- I think there is justification for allocating
9 overhead expenses to uncollectible accounts, given
10 that, you know, there are activities involved with
11 uncollectibles, and those need to be supported and
12 managed.

13 Q Have you had occasion to review the way in
14 which the company has allocated overheads, and
15 particularly with respect to uncollectibles?

16 A Yes, I did. In examining Mr. Clemmer's
17 revised cost of service, and in particular, his
18 Exhibit RAC 3, I believe it is, and that is in the
19 rebuttal testimony, if you will give me a second
20 just to pluck that out here, when he allocated --
21 for example, for several line items, in, say,
22 Account 920, not all of them, but in some of the
23 line items he assigned some of those costs to, he
24 said they would be spread among the production,
25 transmission and distribution functions, in so

1 doing, his next step then was to say, if this
2 amount -- and I think he has some 25 million
3 dollars in, for example, Account 920, and I find
4 that on Page 17 of Exhibit RAC 3 -- when he -- he
5 first identified that there were approximately 25
6 million dollars of Account 920, administrative and
7 general expenses, 25.4 million dollars, which he
8 said those would be attributed to all three
9 functions, and once you have established that, then
10 it is necessary, the next step would be to allocate
11 those among production, transmission, and
12 distribution, and when I went back and looked at
13 how he actually did that, the actual allocation he
14 assigned, for example, thirty-six point -- in fact,
15 let me get the exact reference on that.

16 Mr. Clemmer assigned -- I will just give you
17 the numbers and read them into the record.

18 Mr. Clemmer assigned 58.7 percent of those
19 PT&D, is what he referred to them, expenses, to
20 production, five percent to transmission, and 36.3
21 percent to distribution.

22 MR. TRASK: Your Honor, if I could ask that
23 the witness identify the document which he is
24 referring to in response to this question, and
25 perhaps share a copy with me, if I could take a

1 look at it?

2 Is this a PECO document?

3 THE WITNESS: What I am referring to is a
4 work paper that I prepared on the basis of
5 basically summarizing the information in Mr.
6 Clemmer's cost of service study --

7 MR. TRASK: And -- I'm sorry. Go ahead.

8 THE WITNESS: -- and then I compared that to
9 what he did, and in fact they did cross foot, if
10 you will.

11 MR. TRASK: Is this a document --

12 MR. CLEARFIELD: Just a second, Your Honor.
13 I don't think a colloquy at this point with counsel
14 for PECO is appropriate.

15 MR. TRASK: Okay. Well --

16 MR. CLEARFIELD: If there is an objection,
17 make it.

18 JUDGE CHESTNUT: Right.

19 MR. TRASK: The objection --

20 JUDGE CHESTNUT: The proper procedure is
21 actually to go through this, and if you want to see
22 his work paper, then you will be more than welcome
23 to do that --

24 MR. CLEARFIELD: That's absolutely right. I
25 would be happy to show it to you.

1 MR. TRASK: Very well, Your Honor.

2 JUDGE CHESTNUT: -- although I think it is
3 appropriate for --

4 MR. TRASK: Can I see it while he is
5 testifying?

6 JUDGE CHESTNUT: -- Mr. Trask to ask for
7 identification.

8 Pardon me?

9 MR. TRASK: I'm sorry. May I see it while he
10 is testifying about it?

11 JUDGE CHESTNUT: No.

12 MR. CLEARFIELD: No.

13 JUDGE CHESTNUT: I have never actually seen
14 that happen. Usually it is waited.

15 I think as a courtesy, if you have a copy you
16 can give to him, that's fine, but aren't you
17 reading through numbers?

18 THE WITNESS: I am just reading through
19 numbers.

20 JUDGE CHESTNUT: Can't you write those
21 numbers down?

22 MR. TRASK: Very well, Your Honor. Yes.

23 JUDGE CHESTNUT: If it's something
24 complicated, we can take a break.

25 MR. TRASK: That's all right.

1 JUDGE CHESTNUT: I think it is easier just to
2 go through --

3 MR. TRASK: Very well, Your Honor. That is
4 fine. Thank you.

5 JUDGE CHESTNUT: -- and if you want to look
6 at it, that would be fine.

7 MR. TRASK: All right. Thank you.

8 BY MR. CLEARFIELD:

9 Q Go ahead.

10 A Let me repeat. The percentage assigned,
11 for example, to distribution, 36.3 percent, now,
12 that number was calculated by comparing total O&M,
13 total distribution O&M.

14 That includes operation and maintenance of
15 distribution facilities, customer accounts,
16 including uncollectible accounts, and that is the
17 important point, customer services expense and
18 sales expense, so as a result of including
19 uncollectible accounts in distribution O&M, he has
20 allocated 36 point six -- 36.3 percent of those
21 costs to distribution.

22 Now, I find that if you take out
23 uncollectibles out of the -- if you think of the
24 36.3 percent as being a ratio, the numerator and
25 the denominator, the numerator is the total O&M

1 expenses, including customer accounts, and I
2 mentioned uncollectibles and sales, and the
3 denominator is total O&M expenses other than fuel
4 and purchase power.

5 If I modify that by taking out
6 uncollectibles, the percentage is reduced by almost
7 six percent.

8 It reduces to 30.5 percent, so my
9 conclusion, in looking at Mr. Clemmer's
10 distribution of these expenses that are allocable
11 among three different functions is that in fact he
12 did allocate overhead expenses to uncollectible
13 accounts, and thereby, to distribution costs.

14 Q With respect to Mr. Cohn's testimony, Mr.
15 Cohn has suggested that it is fair to assume that
16 T&D costs will increase at a fairly high level per
17 year, based on comparing, making a comparison, as
18 shown on Exhibit ABC 12 of his testimony, between
19 what is alleged to be the T&D costs calculated in
20 the cost of service study presented, submitted in
21 the PECO pilot filing docket, and the cost of
22 service study utilized in this proceeding in the
23 restructuring proceeding.

24 Have you had an opportunity to examine
25 that comparison, and is it a valid one?

1 A I have had an opportunity to look at that,
2 and I can only conclude from that indeed, 3.11 is
3 twenty percent greater than 2.6.

4 I can't conclude that that is all
5 attributable to increases in T&D costs.

6 I did my own analysis of transmission and
7 distribution, O&M expenses, as well as transmission
8 and distribution net plant, and I cannot -- I can
9 only attribute a portion of that twenty percent
10 change to increases in T&D, O&M and rate base
11 elements.

12 Q What annual level of growth were you able
13 to identify?

14 A Over that period of time, compared
15 relative to the increase, during that period of
16 time, sales also increased, so you have to take
17 that into account, that net of the change in sales,
18 the per unit cost had increased about 1.5 percent
19 per year over that six-year period of time.

20 That would certainly amount to a lot less
21 than 20 percent. It amounts to a lot less than ten
22 percent.

23 Q Thank you.

24 MR. CLEARFIELD: That's all we have, Your
25 Honor.

1 JUDGE CHESTNUT: Mr. Trask.

2 I'm sorry. Did you want to -- you moved in
3 the statement.

4 Okay. Mr. Trask?

5 CROSS EXAMINATION

6 BY MR. TRASK:

7 Q Good afternoon, Mr. Reising.

8 A Good afternoon.

9 Q My name is Noel Trask. I am one of the
10 attorneys for PECO.

11 I just have a few questions for you.

12 You mentioned at the beginning of, I guess
13 we call it, sur-rebuttal, your oral testimony, that
14 in your opinion, PECO allocated A&G, and I believe
15 you said without regard to how expenses are
16 actually incurred or are going to be incurred. Is
17 that --

18 A Certainly in many of the -- many of the
19 line items that Mr. Clemmer identified and has
20 studied.

21 Q Have you conducted any specific analysis
22 of PECO's A&G activities to determine which of
23 those will be needed to support PECO's transmission
24 and distribution functions following the
25 introduction of customer choice?

1 A Yes. I examined the details by line item,
2 as I think labeled, identified in Mr. Clemmer's
3 exhibit RAC-4, and I certainly also looked at the
4 overall A&G expenses, and in the process, I have
5 also looked at the A&G expenses in 1990 versus 1996
6 as part of the that other analysis I mentioned
7 earlier, so I have looked at the details of Mr.
8 Clemmer's analysis.

9 I have gone through that by -- on a
10 line-by-line basis.

11 Q Okay. That was not actually my question.
12 I know you did that.

13 What I want to know is: Have you
14 conducted any investigation or analysis of PECO's
15 A&G functions to determine which will continue, and
16 the extent to which they will continue, if you
17 think they will continue, when all customers can
18 choose their electric generation supplier?

19 A Yes. I looked at each of those line items
20 and concluded that whether or not -- for example,
21 if you take the executive department, that was some
22 one million dollars of salaries for executives of
23 the company.

24 My conclusion is that -- that it is
25 logical to assign a very significant portion of

1 those expenses to the production function, because
2 the executives will have to continue to support all
3 elements of the business, including the regulated
4 as well as the deregulated portions of their
5 business, and I would expect that they would
6 probably be in the same proportion of historical
7 ratio that has been used for that purpose.

8 MR. TRASK: Okay. Your Honor, I would like
9 to mark an exhibit, and I don't know what number we
10 are on.

11 This one does not have numbers on it, but I
12 can hand write the numbers.

13 JUDGE CHESTNUT: You are up to -- let's see.
14 You are up to Cross Examination Exhibit 14. I'm
15 sorry, but this nitpicky stuff, it is my life.

16 MR. TRASK: Okay. I will mark two copies for
17 the court reporter.

18 (Thereupon, PECO Cross Examination Exhibit 14
19 was marked for identification.)

20 MR. TRASK: Your Honor, for the record, I
21 identify this document that has been marked as PECO
22 Cross Examination Exhibit No. 14.

23 This is an interrogatory and a response
24 prepared by ENRON.

25 It is ENRON's response to Interrogatory PECO

1 ENRON Set 6, No. 19.

2 BY MR. TRASK:

3 Q Let me ask you first, Mr. Reising --

4 JUDGE CHESTNUT: Excuse me. Before you go
5 on --

6 MR. TRASK: Yes.

7 JUDGE CHESTNUT: -- could you tell me what
8 statement this interrogatory refers to?

9 MR. TRASK: This statement I believe refers
10 to Mr. Reising's original direct testimony.

11 JUDGE CHESTNUT: Okay. So when it says Page
12 2, that would be ENRON Statement 3?

13 MR. TRASK: I believe that's correct.

14 BY MR. TRASK:

15 Q First, Mr. Reising, are you familiar with
16 this interrogatory?

17 A Yes, I am.

18 Q And you note that it says there that you
19 are the responsible witness?

20 A Yes.

21 Q Is that correct?

22 A Yes, that's correct.

23 Q And that means that you have prepared
24 this?

25 A I did prepare this, yes.

1 Q Okay. Would you please read the question
2 out loud into the record?

3 A Sure. With reference to Page 2, Lines 18
4 through 20 --

5 JUDGE CHESTNUT: Excuse me. I don't think it
6 is necessary.

7 Are you going to introduce this into the
8 record?

9 MR. TRASK: Okay. All right.

10 BY MR. TRASK:

11 Q Would you read that to yourself? There is
12 no need to read it for the record.

13 A All right. I have read it.

14 Q Okay. The question there asks essentially
15 -- well, not essentially -- exactly the same
16 question that I just asked you a moment ago, does
17 it not?

18 A I think it probably does. It is very
19 close to the same question.

20 Q And your answer before here was that you
21 had conducted some studies, ad which you referred
22 to as your analysis of the accounts?

23 A Yes.

24 Q Okay. But your answer to this
25 interrogatory was that you didn't conduct any

1 studies?

2 A That's right, and you have to think about
3 the timing of this. This -- this data request went
4 to my direct testimony.

5 Subsequent to the direct testimony, I have
6 had the opportunity to review the details of the
7 information provided in Exhibits RAC-3 and RAC-4.

8 Q So the analysis or investigations that you
9 have conducted have been exclusively with respect
10 to PECO accounts and records? Is that a correct
11 characterization --

12 A Yes, that's correct.

13 Q -- of your testimony?

14 A That's correct.

15 Q Does that mean that you did not undertake
16 -- strike that. Is it correct to say that you note
17 in, I believe it is, your -- I forget which
18 statement, but is it correct to note that in one of
19 your testimonies, you highlight the fact that Mr.
20 Clemmer said in his testimony that he had not done
21 a time and material study of PECO's A&G functions?

22 A I did say that, yes.

23 Q Okay.

24 A He indicated that -- just to clean that up
25 a little bit, he indicated that the proper way to

1 do that, and I think I am paraphrasing him
2 correctly, is to do a time and material, but he
3 indicated there wasn't time to do that.

4 Q Okay. Did you conduct any investigation
5 by endeavoring to find out specifically whether or
6 not PECO would continue to incur certain functions
7 following the introduction of customer choice?

8 A No, other than my answer is the same. I
9 reviewed the information that was itemized in much
10 greater -- much greater detail than anything that
11 had been available to me at the time that my direct
12 testimony was prepared.

13 Q Okay. Have you performed any analysis to
14 identify or quantify the costs which PECO's
15 transmission or distribution functions might incur,
16 new costs that PECO's transmission and distribution
17 functions might incur following the introduction of
18 customer choice?

19 A No, I have not.

20 Q So that would mean that you have done no
21 studies of the additional costs that PECO will have
22 to incur to carry out these new functions? Is that
23 correct?

24 MR. CLEARFIELD: Objection to the form of the
25 question.

1 It assumes that these are new costs, and I
2 don't believe that is --

3 MR. TRASK: The prior question assumed that
4 as well.

5 MR. CLEARFIELD: The prior question was any
6 analysis of whether there would be new costs, or
7 the level of new costs.

8 BY MR. TRASK:

9 Q Okay. Do you think there would be any new
10 costs that the transmission and distribution
11 functions will incur following the introduction of
12 customer choice?

13 A Well, when you say "new cost," you mean --

14 Q New functions.

15 A -- additional facilities or --

16 Q Well, okay. Do you believe that following
17 the introduction of customer choice, there will be
18 new functions that the transmission and
19 distribution company will have to carry out to
20 accommodate customer choice?

21 A I am not -- I'm not sure there would be?
22 There may actually be less functions for the LDC to
23 carry out.

24 Q Won't PECO require a completely new
25 billing system to be able to accommodate customer

1 choice?

2 A I don't know whether they would or not? I
3 know they have claimed that they would need a new
4 billing system.

5 Q But you haven't studied that question,
6 whether or not one would be required or not?

7 A No. That -- you know, whether that --
8 yes. I have not studied whether, to what extent
9 changes are necessary to their current billing
10 system.

11 Q So you wouldn't know whether or not there
12 are any additional costs that PECO might have to
13 incur to carry out new functions? Is that correct?

14 A That's right. I haven't examined what
15 costs might increase, but I also, from the same
16 standpoint, haven't identified what costs might
17 decrease.

18 Q Okay. With respect to common plant costs,
19 have you -- would it be your testimony that the
20 analysis that you conducted would be -- in order to
21 evaluate PECO's claims, PECO's allocations or
22 assignments, the analysis that you have done would
23 be limited to a review of PECO's accounts and
24 records, accounting records that were available to
25 you during this proceeding, or made available to

1 you during this proceeding?

2 A That would be generally the case. That is
3 the case, yes.

4 MR. TRASK: Your Honor, I have no further
5 questions.

6 JUDGE CHESTNUT: Is there any further --

7 MR. TRASK: Thank you, Mr. Reising.

8 JUDGE CHESTNUT: Is there any further cross
9 examination for this witness?

10 (No response.)

11 JUDGE CHESTNUT: Okay. Any redirect?

12 MR. CLEARFIELD: No, Your Honor.

13 JUDGE CHESTNUT: Okay. Thank you very much,
14 Mr. Reising. You are excused.

15 THE WITNESS: Thank you, Your Honor.

16 (Witness excused.)

17 JUDGE CHESTNUT: Mr. Trask, do you want to
18 move in your exhibit?

19 MR. TRASK: Yes. I would move for the
20 admission of PECO Cross Examination Exhibit No.
21 14, Your Honor.

22 JUDGE CHESTNUT: Any objection?

23 (No response.)

24 JUDGE CHESTNUT: The document is admitted.

25 (Thereupon, PECO Cross Examination Exhibit 14

1 was admitted in evidence.)

2 JUDGE CHESTNUT: Okay. That brings us to Mr.
3 Freeman.

4 (Discussion off the record.)

5 JUDGE CHESTNUT: Could you stand up and raise
6 your right hand?

7 MICHAEL FREEMAN, called as a witness, having
8 been duly sworn, testified as follows:

9 JUDGE CHESTNUT: Please sit down and give and
10 spell your name for the record.

11 THE WITNESS: The first name is Michael,
12 M-i-c-h-a-e-l. The last name is Freeman,
13 F-r-e-e-m-a-n.

14 JUDGE CHESTNUT: Mr. Bonney?

15 MR. BONNEY: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. BONNEY:

18 Q Mr. Freeman, by whom are you employed, and
19 in what capacity?

20 A I am employed by PECO Energy. I am a
21 supply manager on the National Energy Team of PECO
22 Energy.

23 MR. BONNEY: Your Honor, we have previously
24 distributed to yourself and the parties PECO
25 Statement No. 26-RJ the rejoinder testimony of Mr.

1 Freeman, as well as Exhibit MSF-1.

2 (Thereupon, PECO Statement 26-RJ and PECO
3 Exhibit MSF-1 were marked for
4 identification.)

5 BY MR. BONNEY:

6 Q Mr. Freeman, were these documents prepared
7 by you or under your direction and supervision?

8 A Yes, they were.

9 Q Do you have any corrections to them?

10 A No, I do not.

11 Q Are the statements that you make in this
12 testimony true and correct, to the best of your
13 knowledge, information, and belief?

14 A Yes, they are.

15 MR. BONNEY: Your Honor, I would ask at this
16 time that PECO Statement No. 26-RJ and the
17 accompanying exhibit be admitted into the record,
18 subject to cross examination.

19 JUDGE CHESTNUT: Any objection?

20 (No response.)

21 JUDGE CHESTNUT: The documents are admitted.

22 (Thereupon, PECO Statement 26-RJ and PECO
23 Exhibit MSF-1 were admitted in evidence.)

24 MR. BONNEY: The witness is available for
25 cross examination.

1 JUDGE CHESTNUT: Who is going to go first in
2 terms of crossing Mr. Freeman?

3 MR. DOLL: I think I am going to lead.

4 JUDGE CHESTNUT: Pardon me?

5 MR. DOLL: I am going to lead for our team --

6 JUDGE CHESTNUT: Okay.

7 MR. DOLL: -- unless there is something from
8 MAPSA.

9 MS. MILLER: I have two questions.

10 JUDGE CHESTNUT: Do you want to wait or do
11 them now?

12 MS. MILLER: I want to do them now.

13 JUDGE CHESTNUT: Okay.

14 CROSS EXAMINATION

15 BY MS. MILLER:

16 Q Mr. Freeman, my name is Janet Miller. I
17 represent the Mid-Atlantic Power Supply
18 Association.

19 I have two questions with respect to
20 testimony you made on Page 4 of your rejoinder
21 statement.

22 A All right.

23 Q The last line of the first paragraph on
24 that page, the paragraph that continues over from
25 Page 3 reads, "Additionally, other generators may

1 want to break into the PJM market, creating
2 competitive pressure that does not exist today."

3 Do you find that statement?

4 A Yes, I do.

5 Q By that statement, do you mean that
6 additional competitors in the market will tend to
7 lower the price?

8 A Yes, I do.

9 Q If you look into the next paragraph, three
10 lines down, you state, "The energy and capacity
11 caps should not be set at a level such that
12 competitive suppliers can experience a windfall
13 from the outset of retail access."

14 Can you quantify, either in cents or
15 mills, what you mean by "windfall"?

16 A I think I will refer to Mr. Johnstone's
17 testimony.

18 He told us yesterday that 4.8 mills is a
19 reasonable matter to the retail cost of power, and
20 I would characterize that as a windfall.

21 Q Would anything less than 4.8 be considered
22 a windfall?

23 A I can't say.

24 Q Okay. Thank you.

25 MS. MILLER: That's all I have, Your Honor.

1 JUDGE CHESTNUT: Thank you, Ms. Miller.

2 Mr. Doll?

3 MR. CLEARFIELD: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. DOLL:

6 Q Good afternoon Mr. Freeman. My name is
7 Craig Doll, and I am here on behalf of Conective
8 Energy.

9 You stated that, excuse me, you work for
10 PECO Energy Company as manager of PECO's National
11 Energy Team.

12 Is the National Energy Team a division of
13 PECO, or a division of Horizon, a division of
14 Energy One, or is it a department?

15 How does that fit into the overall scheme
16 of things?

17 A It is a group within marketing and sales.

18 Q Of PECO Energy?

19 A Of PECO Energy.

20 Q And could you tell me what your work
21 center is, if you know?

22 A Can you define "work center"?

23 Q I won't go down that path again.

24 JUDGE CHESTNUT: Well, I assume you have the
25 same definition that Mr. Clemmer used, right?

1 MR. CLEARFIELD: Yes.

2 MR. DOLL: Okay.

3 JUDGE CHESTNUT: Are you familiar with the
4 term that Mr. Clemmer used?

5 THE WITNESS: I didn't hear Mr. Clemmer's
6 definition.

7 JUDGE CHESTNUT: Lucky you. No. Seriously,
8 it is an accounting device used by PECO, and if you
9 are not familiar with it, okay.

10 THE WITNESS: I am vaguely familiar with the
11 term. I don't know how to answer the question.

12 MR. DOLL: I don't want to make an
13 on-the-record data request. I make a request of
14 counsel, if Mr. Clemmer does know that, could he
15 just provide that to us, through the cost center?

16 BY MR. DOLL:

17 Q Now, you state in your testimony -- it is
18 Page 1 in answer to the second question, about the
19 third line. Mine doesn't have any -- for some
20 reason, mine doesn't have any numbers on it.

21 You say that you make supply arrangements
22 at the lowest possible cost. Did you find that?

23 A Yes.

24 Q Now, are these arrangements made between
25 PECO and individual customers, or do you arrange

1 purchases and sales similar to what the Power Team
2 does at PECO?

3 A At the retail level, yes. We --

4 Q So in other words -- I'm sorry. Continue.

5 A We try to make supply arrangements for
6 customers under a general description of broker or
7 sales agent or supply agent for customers.

8 Q Okay. So you are actively going out in
9 the market as a sales representative for PECO
10 Energy to make sales to customers?

11 A We are the National Energy Team of PECO
12 Energy, and that is how we describe ourselves.

13 We do not necessarily turn to PECO
14 generating assets administered by the Power Team
15 and priced by the Power Team to provide supply.

16 Q So in other words, you could go out and
17 find a customer, let's say, in the City of
18 Philadelphia, and you would go out as an employee
19 of PECO Energy, and say, "We can get you a supply
20 from Delmarva Power," and you would arrange that
21 supply?

22 A Well, not within PECO's service territory.
23 We are operating in service territories other than
24 PECO's.

25 Q Okay. I think I understand that. On Page

1 2 of your testimony, in the last answer, you say
2 that the suppliers -- well, first of all, who do
3 you mean by "suppliers"? Is that just a generic
4 term?

5 A I'm sorry. Is this in the last answer?

6 Q Yes. I'm sorry.

7 A Page 2. I am referring to licensed
8 electric generation suppliers. I apologize. No
9 line numbers.

10 Q I thought it was just me.

11 A No. It is me, too.

12 Q You say that the suppliers have helped
13 enroll customers?

14 A Yes.

15 MR. DOLL: At this point, Your Honor, I would
16 like marked for identification -- and I'm sorry I
17 don't have the name written on all of these -- as
18 Conectiv Cross Examination Exhibit Number --

19 JUDGE CHESTNUT: Let me check.

20 MR. DOLL: I think it is 5, but I'm not sure.

21 JUDGE CHESTNUT: 5.

22 MR. DOLL: Thank you.

23 (Thereupon, Conectiv Cross Examination
24 Exhibit 5 was marked for identification.)

25 BY MR. DOLL:

1 Q Do you recognize those documents, sir?

2 A Yes, I do.

3 Q And are these advertisements that appeared
4 -- within I believe they are all within the
5 Philadelphia Enquirer on behalf of PECO Energy
6 and/or Energy One?

7 A That appears to be the case.

8 Q Okay. Now, in this pilot program
9 enrollment, you say that approximately 93,000
10 customers -- I'm sorry -- that suppliers have
11 helped enroll 93,000 customers.

12 Do you know how many were actually
13 enrolled by the marketers?

14 A 93,000. Are you -- I'm sorry. Are you
15 making a distinction between helped enrolled and
16 actually enrolled?

17 Q Actually enrolled. Yes. Thank you for
18 that clarification.

19 A I also mean actually enrolled.

20 Q Do you know how many total customers were
21 enrolled?

22 A I believe it was something like 400,000 in
23 PECO's pilot.

24 MR. DOLL: Your Honor, I don't have copies of
25 this, because I wasn't intending on admitting this

1 as a cross examination exhibit.

2 What it consists of is an October 2, 1997
3 PECO Energy customer web page, statements that were
4 made by PECO Energy regarding the number of
5 customers.

6 Unfortunately, the copies that I have have
7 two numbers underlined, and I don't have copies.
8 If I could just ask the witnesses if he could look
9 at those numbers, and if that would change his
10 answer in any way, maybe we can get around making
11 copies.

12 JUDGE CHESTNUT: Okay.

13 MR. DOLL: May I approach?

14 JUDGE CHESTNUT: Certainly.

15 A Well, the number, the number that I
16 received was 93,000, when I asked the question.

17 Q Would you accept now, subject to check,
18 that PECO has stated publicly that that number is
19 approximately 85,000?

20 A Yes. I would accept that subject to
21 check.

22 Q And sir --

23 MR. DOLL: Oh, did you look at the second
24 one?

25 MR. BONNEY: Thank you.

1 BY MR. DOLL:

2 Q And would you also accept, sir, subject to
3 check, that approximately 61,000 businesses were
4 enrolled by Horizon Energy Company?

5 A It says businesses and residents.

6 Q I stand corrected.

7 A State wide.

8 Q Yes, sir.

9 A That is what it says.

10 Q Thank you, sir. Now, on Page 3 of your
11 testimony, well, beginning at line four, you say
12 your experience has been that suppliers have been
13 much more willing to use price caps as a hedge.

14 Now, have you performed any studies
15 yourself which lead you to this conclusion?

16 A I rely on my own experience with the
17 National Energy Team and my reading of contracts
18 that have been signed in New England, California
19 and proposed in Pennsylvania to make that
20 statement.

21 Q So the direct answer to my question is,
22 no, you have not performed any type of study? It
23 is just from general reading?

24 A Well, in this context, how would you
25 define "study"? How would one study that question?

1 Q I believe my role is to ask the question.
2 If you can't answer it, just say you can't answer
3 it.

4 MR. BONNEY: Your Honor, the witness asked
5 for a clarification, and he also answered the
6 question, that he did perform a study of it, as he
7 defend it.

8 BY MR. DOLL:

9 Q So your conclusion is based upon your
10 personal experience and having read contracts in
11 New England? Is that correct?

12 A Read of contracts in New England.

13 Q Read of them?

14 A Yes.

15 A And California, I might add.

16 Q Okay. Thank you. In the next paragraph,
17 the second line of the next paragraph, you talk
18 about cost base projections.

19 Have you done any independent studies on
20 your own of cost base projections?

21 A No, I have not. I have relied upon the
22 three analyses or studies of production cost
23 modeling that were done in the PECO restructuring
24 case, and also upon PP&L's restructuring testimony
25 and GPU's restructuring testimony for the PJM

1 market.

2 Q Thank you. You have just answered my next
3 three questions.

4 A Okay.

5 Q This is going better than I thought. If
6 we continue down on that paragraph, about six lines
7 from the bottom, where it states, "The Power Team
8 will charge suppliers an all-in price for energy
9 and capacity," are you there, sir?

10 A Yes.

11 Q Okay. Now, just to clarify in my mind,
12 this is only during the period of the pilot? Is
13 that correct?

14 A That is correct.

15 Q Now, is it your testimony, or do you know
16 that the price offered by the Power Team will
17 include both energy and capacity?

18 A Yes, it will.

19 Q So it is an all-inclusive price?

20 A Yes, it is.

21 Q And would it be possible merely to, just
22 by capacity, offer that Power Team offer?

23 A Unbundled capacity?

24 Q Yes.

25 A The Power Team included in the same offer

1 a solicitation for people to bid on unbundled
2 products from the Power Team, including capacity.

3 Q Okay. And this is just during the pilot?

4 A Yes. Installed capacity.

5 MR. DOLL: I am trying to eliminate some
6 things, Your Honor.

7 BY MR. DOLL:

8 Q Now, included within that bundled price, I
9 think you also mentioned the gross receipts tax,
10 and that is going to be included in -- I hate to
11 use the term -- the bundled price that is going to
12 be charged?

13 A They will extract the gross receipts tax
14 from the unit cost to be charged suppliers.

15 Suppliers must pay the tax on their own.

16 Q Okay.

17 A The Power Team will not charge the GRT.

18 Q Okay. So then when you -- it isn't really
19 clear. What I am reading in your testimony, it
20 says, "load-following costs," et cetera, and "gross
21 receipts tax," so what you are saying now is that
22 the four point four percent gross receipts tax will
23 be pulled out of that price, so that there is no
24 double collection?

25 A That's correct.

1 Q And to your knowledge, will this bundled
2 rate being charged to the suppliers be
3 approximately two point eight cents -- strike
4 that.

5 Do you know at what price will this be --
6 will this be an average price that will be charged
7 to the supplier?

8 A The way it is going to be done depends on
9 -- or I'm sorry.

10 The unit cost charged to the supplier for
11 power that they procure from the Power Team under
12 this standard offer will be a function of the
13 customer mix that the suppliers wish to supply with
14 the Power Team purchase.

15 Q So to that extent, it will be customer
16 specific? In other words, if Conectiv Energy only
17 picks up residential load, then it will be charged
18 out -- if we are one hundred percent residential --

19 A Right.

20 Q -- it will be charged out at the
21 residential -- or it will be priced out at the
22 residential rate?

23 A Exactly.

24 Q Now, to your knowledge, has the Power Team
25 made any energy and capacity available for the

1 period of time which has been referred to as the
2 remainder of the 1997-'98 planning period, or the
3 1998-'99 planning period?

4 A Did you say "made energy and capacity
5 available"?

6 Q Capacity available.

7 A Capacity available.

8 Q Well, we can take both.

9 A Okay.

10 Q Let's start out with both, and then we can
11 split it up.

12 A Okay. To my knowledge, the Power Team
13 will solicit bids for either product, unbundled or
14 together, for those planning periods that you
15 identified.

16 Whether they have actually done any
17 transaction for those periods, I don't know.

18 Q Okay. And this will be for the entire
19 planning period, or will it about on a
20 month-to-month basis?

21 A For the right price, I am sure they would.

22 Q "For the right price, I am sure they
23 would."

24 On Page 4, the first line, you say, "For
25 the specific" -- the phrase, "For the specific

1 purpose of supplying retail loads."

2 One, is it your testimony that the amount
3 of energy and capacity that's going to be made
4 available would only be up to the amount of energy
5 and capacity that would meet the load that an
6 alternative supplier would need to serve those
7 customers?

8 A I don't know.

9 Q In the first full paragraph, the third
10 line from the bottom of that paragraph, where you
11 talk about -- it begins, "And services such as
12 billing, metering, and any other services."

13 A Yes, yes.

14 Q Now, is it the National Energy Team's
15 position that billing and metering could be
16 provided by third parties?

17 A In reference to billing and metering in
18 that sentence, what I am talking about is a service
19 such as consolidated billing for a customer,
20 wherein we would gather, as the buying agent for
21 the customer, all the customer's utility bills, for
22 example, electric, gas, water, sewer, et cetera,
23 and create one consolidated bill, if the customer
24 wanted that, and customized reports as the customer
25 desires, not that we would actually take over the

1 billing function from the LDCs that the customers
2 are behind.

3 Q So let's say you have a customer in
4 Allentown, which is in PP&L's territory, that you
5 have managed to get, and you make an arrangement
6 between that customer in Allentown and Energy One
7 or Horizon, so is what you are telling me is that
8 you will take the PP&L bill, and that would be sent
9 to you for the T&D function? You would take the
10 Energy One generation bill and have that sent to
11 you also, plus their water, sewer, or whatever, and
12 you would recast that in a single bill?

13 A If it made economic sense to do it that
14 way, yes, I would do that.

15 Q Do you see any reason why anyone else
16 shouldn't be able to provide that service?

17 A The same service that you described?

18 Q The same service that you are going to
19 provide.

20 A Consolidated billing?

21 Q Yes.

22 A No. I see no reason why anyone should not
23 provide that. Let me clarify that.

24 I am not talking about taking over the
25 billing from the LDCs, if that is what you are

1 driving at.

2 Q No, but you are also talking about
3 metering.

4 A Okay.

5 Q How would you propose to do metering?

6 A Okay. The metering service is as follows.
7 If a customer has a monthly meter that just reads
8 accumulated monthly kilowatt hours and is not a
9 continuous interval demand meter, and the customer
10 is being characterized as a low profile customer by
11 the LDC, in other words, there is no real time or
12 near real time hourly or half hourly data, and
13 fine. The National Energy Team said, "I think I
14 can serve the customer more economically if I
15 installed a more sophisticated meter at his
16 facility and got metered data," and proposed to the
17 LDC that the meter data be substituted for the
18 profile, I would do that.

19 Q And who would pay for that meter?

20 A The National Energy Team generally, but I
21 can't say in one hundred percent of the cases.

22 Q On Page 5 of your testimony, you talk
23 about Dr. Hieronymus's projections, and a
24 clarifying question from me: You say "actual
25 all-hours energy prices in PJM, as reported in the

1 Power Market Weekly."

2 Was this energy only?

3 A Yes, it is.

4 Q You also talk about the time frame January
5 1, '97 through October 3, '97.

6 Now, the price that you give there of
7 \$20.34 per megawatt hour, is that price for that
8 time period only? I mean -- let me strike that.

9 That price, to your knowledge, of \$20.34,
10 is that an average price for that period, or is
11 that a price for a contract from that -- from
12 January '97 through October of '97?

13 A It is an average price for that period.

14 Q And I assume that these are wholesale
15 prices?

16 A Yes, they are.

17 Q To move on to your next question, you say
18 that "PECO has contracts for the purchase or sale
19 of capacity within PJM at prices that are equal to
20 or less than 16 dollars per kilowatt year capacity
21 price," and we are moving onto capacity from
22 energy.

23 Is that 16 dollars the purchase price, the
24 price that PECO was willing to purchase power at?

25 A Well, it is purchases and sales.

1 Q Okay. So PECO in fact has made sales at
2 16 dollars a kilowatt hour?

3 A Yes.

4 Q A year. How recently were those sales?

5 A There is a sale to GPU. The dates on it
6 are -- June 1, '97 was the start date.

7 It runs through May 31, '99, and it is a
8 sales install capacity credit from PECO --

9 Q I'm sorry.

10 A -- installed capacity credit sale from
11 PECO to GPU.

12 Q To your knowledge, does PECO have any more
13 of that 16 dollar per kilowatt year capacity
14 available?

15 A We can talk.

16 Q Thank you very much. After the hearing, I
17 will give you the name of the person to contact.

18 And these other contracts for purchase and
19 sale at 16 dollars, they were -- I don't want to
20 get into actual pricing, but were these within PJM
21 companies primarily?

22 A Yes.

23 Q Okay. You said we can talk. Do you know
24 what the current KWH per year price is on average?

25 A I'm sorry. KWH?

1 Q Kilowatt, I'm sorry, kilowatt year --

2 A Of --

3 Q -- what the capacity price is?

4 A Of installed capacity credits?

5 Q Yes.

6 A On average?

7 Q Yes.

8 A Within PJM?

9 Q Yes.

10 A I only know about PECO transactions. I
11 don't know about the transactions of other
12 companies.

13 Q Do you then know what the current PECO
14 kilowatt year capacity price is for the two
15 planning periods we spoke about?

16 A Installed capacity transactions are of
17 varying lengths with different start times.

18 I can't say in general that I know of the
19 average price of transactions over the planning
20 period time that you spoke of.

21 I can reference a Power Team PEPCO
22 transaction at Thomas Edison.

23 Q That is not a PJM transaction, is it?

24 A PEPCO is -- PEPCO is PJM.

25 MR. KLEPPINGER: PEPCO is a member of PJM.

1 JUDGE CHESTNUT: Thank you for clarifying
2 that.

3 A That would -- 1-1-97 was the start date.

4 Q Yes. I don't want you to mention any
5 prices.

6 A Oh, okay.

7 Q Yes. As far as, could you give me, like,
8 a range of prices, because we are getting into an
9 area that I know Mr. Bonney and I have agreed that
10 we will keep confidential.

11 MR. BONNEY: Thank you.

12 A Okay. I can say in general that the range
13 that I am aware of installed capacity transactions
14 within PJM from PECO to other PJM companies, or
15 from other PJM companies to PECO is somewhere
16 between 10 dollars a kilowatt year and 29 dollars a
17 kilowatt year.

18 Q Now, you talked about installed capacity.
19 Would that be the same thing as a capacity credit?

20 A Yes.

21 Q Okay.

22 A As a matter of fact, Mr. Doll, we offered
23 your company, my records show --

24 Q Oh, please stay away from prices, please.

25 A We offered your company a very good deal,

1 and you didn't take it, according to my records.

2 Q The one price we can mention, is that the
3 deal you are referring to of the seventy-five
4 megawatt that was purchased?

5 A No. That was an actual purchase. I am
6 talking about something that occurred before that.

7 JUDGE CHESTNUT: Well, maybe Mr. Doll can
8 advise them.

9 MR. DOLL: Yes.

10 JUDGE CHESTNUT: Go ahead.

11 BY MR. DOLL:

12 Q On page seven, you speak about your
13 experience with California Water Agencies Utility
14 Service Agency and also Rhode Island.

15 Specifically, with Rhode Island, you say,
16 "The standard option is two point eight cents per
17 kilowatt hour."

18 That's an energy price?

19 A Energy and capacity.

20 Q Energy and capacity. Okay. Now, in Rhode
21 Island and California, do they possess some of the
22 transmission constraints that are faced within the
23 PJM area?

24 A There's significant transmission
25 constraints in both areas.

1 Q Both in California and in Rhode Island?

2 A In New England, and NEPOL in general, yes.

3 MR. DOLL: Can I have a moment, Your Honor?

4 JUDGE CHESTNUT: Certainly.

5 (Discussion off the record.)

6 BY MR. DOLL:

7 Q Mr. Freeman, you spoke of that offer that
8 was made.

9 Could you make that available to me,
10 please, to the --

11 A The offer that you rejected?

12 Q Yes.

13 MR. CLEARFIELD: Allegedly.

14 Q Allegedly.

15 A Allegedly rejected? Once rejected, we
16 don't -- I can't speak for the Power Team, so I
17 don't know.

18 Q Well, was this a written offer?

19 A I believe it was.

20 MR. DOLL: I would then make a data request
21 for a copy of that written offer.

22 JUDGE CHESTNUT: Mr. Bonney?

23 MR. BONNEY: No objection, Your Honor.

24 JUDGE CHESTNUT: Okay.

25 MR. BONNEY: I assume that Delmarva already

1 has it, because it was made either to them or by
2 them, but we would be happy --

3 MR. DOLL: We are not sure --

4 MR. BONNEY: -- to make a copy of it, Your
5 Honor, for clarification.

6 MR. DOLL: Well, my witness isn't here right
7 now, so I can't ask him.

8 MR. BONNEY: That is fine. We will be happy
9 to, Your Honor.

10 MR. DOLL: I have nothing further, Your
11 Honor.

12 JUDGE CHESTNUT: Is there any other cross for
13 this witness?

14 MR. CLEARFIELD: A few questions, Your Honor.

15 JUDGE CHESTNUT: Okay.

16 CROSS EXAMINATION

17 BY MR. CLEARFIELD:

18 Q Mr. Freeman, on page, I believe it is six,
19 five and six, you discuss arrangements where
20 customers might sign contracts with suppliers
21 whereby a supplier would offer to deliver power at
22 lower rates and in essence take a commission if
23 they are successful in doing that? Is that right?

24 A A commission, shared savings, whatever you
25 want to call it.

1 Q Well, a commission which could be
2 calculated in a variety of ways, one of which could
3 be shared savings?

4 A Yes, I agree.

5 Q Would that be fair to characterize as a
6 free option to a customer? In other words, if the
7 supplier can find power that's cheaper, and both
8 the customer and the supplier benefit; if they
9 can't, then the customer continues to receive
10 service from the existing or the incumbent LDC --
11 EDC? Wrong industry.

12 A If that is how you define "free option,"
13 yes, I agree with that.

14 Q Have you seen anywhere where the supplier
15 actually pays the customer up front for the right
16 or the privilege of entering into that kind of
17 arrangement?

18 A Well, I am aware that -- I heard a
19 representative of ENRON tell a room full of
20 industrial customers that ENRON would subsidize
21 rate discounts from the regulated bill for
22 customers in return for long-term contracts in
23 retail access.

24 Q Contracts in which they would act as
25 agents and share savings if they were able to

1 procure it?

2 A I think the idea was that there would be a
3 shared savings formula that would be created in a
4 retail access type transaction.

5 Q So if they were able to produce lower
6 prices, they would pass those savings on and take
7 some, but if they weren't, there would be no cost
8 to the customer? Is that right?

9 A ENRON would fix the formula such that it
10 would recoup its losses incurred as a result of
11 subsidizing the early years rate discount.

12 Q If it were able to find power that were
13 cheaper than then was being provided by the
14 incumbent electric company? Is that right?

15 A Under this arrangement, there was no
16 option as you have described it. It was --

17 MR. CLEARFIELD: Well, then, Your Honor, I
18 move to strike the last answer.

19 It is not responsive.

20 I asked specifically about an agency
21 agreement, and Mr. Freeman obviously took the
22 opportunity to present this additional information,
23 which if it were relevant, should have been
24 presented in his direct testimony.

25 JUDGE CHESTNUT: Just go ahead with your

1 questions.

2 BY MR. CLEARFIELD:

3 Q Was this an arrangement whereby this
4 company, ENRON, or any other company was acting as
5 an agent for the customer and sharing in savings?

6 A The arrangement that ENRON would enter
7 into with a customer was a subsidized rate discount
8 in the early years prior to resale access.

9 When the customer was available for retail
10 access, ENRON would act as the broker or buy agent
11 for the customer.

12 They would split savings under a certain
13 benchmark price.

14 ENRON would fix the formula of the split
15 savings such that it would recoup the early years
16 losses and begin to make money.

17 Q And if ENRON couldn't provide any power
18 that was at a lower price than the electric
19 company, would the customer incur any cost over and
20 above what it would have incurred just had it
21 stayed with the electric company, the electric
22 company in this instance as being the incumbent, if
23 you know?

24 A Under this arrangement, no, that would not
25 occur, because ENRON would have to make sure it was

1 recouping its losses.

2 Q And the recoupement occurred if it was
3 able to find cheaper power?

4 A Again, the --

5 Q Is it a yes or no. I am just having
6 trouble understanding how -- whether this
7 arrangement existed, as you said, in a context in
8 which ENRON was offering to try to find cheaper
9 power for the customer, and if it did, it would
10 share the savings and attempt to recoup losses or
11 recoup discounts that were provided to the customer
12 early on?

13 Is that the arrangement?

14 A The arrangement is a price cap. ENRON --

15 Q I don't understand.

16 A May I explain?

17 Q Go ahead, but I am trying to --

18 A ENRON would set a -- what is called a
19 "strike price" or a "benchmark price" for the
20 customer in cents per kilowatt.

21 The customer would always pay that, never
22 more.

23 If ENRON was able to procure power for
24 less than the strike price, it would split the
25 savings with the customer according to some

1 formula.

2 Q So the customer was never worse off? It
3 was always better off? Is that right?

4 A It depends on where the strike price was
5 set.

6 Q Well, would you expect that the customer
7 would enter into this contract if the strike price
8 was higher than the price that was available from
9 the LDC?

10 A Yes, I would.

11 Q Why?

12 A Because the customer is getting, say, a
13 twelve to fifteen percent reduction off their
14 regulated bill during the pre-retail access period.

15 That is the basis for the deal.

16 Q So the strike price wouldn't be higher?
17 It would be lower?

18 A No. It would be higher. ENRON is
19 subsidizing a discount prior to retail access.

20 It is sustaining losses. It is paying the
21 bill for the customer and getting the customer to
22 pay it less 12 to 15 percent less than the
23 regulated bill.

24 Q Do you have any documents which reflect
25 this offer that you are discussing here?

1 A No, I don't.

2 Q Have you seen any documents which indicate
3 what this offer -- the details of this offer?

4 A If the ENRON representative's presentation
5 was written or done on hard copy, I imagine
6 something exists.

7 Q That wasn't the question, sir. I asked
8 you if you saw a document.

9 Now you just said that if there were a
10 document, then they would exist.

11 Now, did you see a document?

12 A I saw a presentation done on a screen. I
13 saw slides on a screen. I don't have the written
14 slides.

15 MR. BONNEY: Perhaps we could make an
16 on-the-record data request, Your Honor, for a copy
17 of those documents.

18 A I can give you the dates of the seminar
19 and the name of the person.

20 Q Mr. Freeman, what I am trying to
21 understand here is whether the customer would ever
22 be worse off in this situation, and under the
23 circumstances, as you understood this deal that was
24 offered, would the customer have to make up any of
25 these discounts if in fact ENRON -- would it ever

1 pay more than the total it would have paid to the
2 LDC, plus the discounts, over a period of time, if
3 ENRON was not able to procure lower price power at
4 a future point?

5 A I don't believe so.

6 Q You mentioned a capacity, installed
7 capacity credit sale from PECO to GPU for June 1st
8 to May 31st, June 1st, '97 to May 31st, 1999?

9 A Yes.

10 Q Can I have a copy of the term sheet or
11 other information that reflects that transaction?

12 A Yes. Would you like it right now?

13 Q If you have it, I would like to look at
14 it.

15 JUDGE CHESTNUT: Is that okay with you, Mr.
16 Bonney?

17 MR. BONNEY: Yes, Your Honor, subject to any
18 confidentiality restrictions that are set forth in
19 the document, itself.

20 A Give me a moment.

21 [Document handed to counsel.]

22 Q Thank you.

23 MR. CLEARFIELD: May I have a moment, Your
24 Honor?

25 JUDGE CHESTNUT: Certainly.

1 (Discussion off the record.)

2 BY MR. CLEARFIELD:

3 Q Mr. Freeman, do you need this in front of
4 you? If I am going to ask --

5 A No. Go ahead.

6 Q It appears from this that the price per
7 megawatt day increases over time, starting in 1997
8 through to 1998?

9 Is that right?

10 A It increases with additional increments of
11 capacity, not necessarily with time.

12 Q But the additional increments increase the
13 per kilowatt hour year price for the capacity for
14 the installed capacity credit?

15 A Yes.

16 A For example you can buy the first -- give
17 me a moment -- the first 384 megawatts at \$16.43 a
18 kilowatt year. You can buy the next 50 megawatt
19 increment for \$18.25.

20 Q Well, wait a minute. It indicates that
21 for the period 6-1-97 to 7-1-97, there's 100
22 megawatts available? Is that right?

23 A Now I think I have to look it up.

24 Q I am just trying to understand the offer,
25 the document.

1 MR. CLEARFIELD: May I look over the
2 witness's shoulder?

3 JUDGE CHESTNUT: Certainly.

4 MR. CLEARFIELD: Thank you.

5 A I was referring to, yes, 100 megawatts for
6 sale in the period 6-1-97 through 7-31-97 costs
7 \$16.43 a kilowatt year.

8 The next 134 megawatts for the period
9 8-1-97 through 12-31-97 costs \$16.43 a kilowatt
10 year.

11 A The next 150 megawatts, period 1-1-98
12 through 5-31-98, costs \$16.43 a kilowatt year.

13 The next increment of capacity during that
14 time period 1-1-98 through 5-31-98 is \$18.25 cents
15 a kilowatt year, and finally, the last increment of
16 capacity is \$21.08 a kilowatt year.

17 Q During that year?

18 A During this period.

19 Q 1-1-98 through 5-31-98?

20 A Yes.

21 Q And then what about -- what is the highest
22 price for 6-1-98 through 12-31-98?

23 A The price ranges from a low of 16.43 a
24 kilowatt year for the first hundred megawatts
25 during that period, to a high of \$29.20 a kilowatt

1 year, but not until you reach 350 kilowatt
2 megawatts.

3 Q And is that all in all hours capacity?

4 A Well, they are installed capacity credits
5 that are available every hour of the year during
6 those periods.

7 Q Is there a minimum amount that has to be
8 taken?

9 A You mean like a take or pay arrangement?

10 Q Yes, or a minimum amount under the
11 contract that has to be purchased.

12 A I don't believe so. Let me check.

13 There is no minimum.

14 MR. CLEARFIELD: Give me a moment, Your
15 Honor.

16 (Discussion off the record.)

17 BY MR. CLEARFIELD:

18 Q Mr. Freeman, are you aware of any
19 contracts for four to five years for energy and
20 capacity in the PJM serving area?

21 A Four to five years, that specific
22 increment of time?

23 Q Yes.

24 A No, I am not.

25 Q With respect to the contracts you

1 mentioned in other states, Maryland -- I'm sorry,
2 California and New England --

3 A Yes.

4 Q -- did you say that you haven't actually
5 seen the contracts?

6 A I have not seen the contracts, no.

7 Q Would you be able to see them if you would
8 ask for them?

9 A Ask who?

10 Q Asked one or the other contracting parties
11 for copies of the contracts to provide to us.

12 A No.

13 Q You would not have been able to?

14 A you cannot get copies of contracts. It
15 would be highly unusual.

16 Q Can you get specifics, specific terms of
17 arrangements in those circumstances?

18 A If they are publicized.

19 Q Are they? Do they tend it be publicized,
20 or do they tend to be kept confidential?

21 A Specific terms tend to be kept
22 confidential.

23 In general terms, companies will publicize
24 contract successes by saying, "We will provide the
25 customer with a shared savings arrangement below

1 the standard offer," similar statements.

2 (Discussion off the record.)

3 MR. CLEARFIELD: I think that's all I have.

4 Thank you.

5 JUDGE CHESTNUT: Mr. Dworetzky?

6 MR. DWORETZKY: Nothing.

7 JUDGE CHESTNUT: Is there any other party who
8 wishes to cross examine Mr. Freeman?

9 (No response.)

10 JUDGE CHESTNUT: Any redirect?

11 MR. BONNEY: May I have just one moment, Your
12 Honor?

13 JUDGE CHESTNUT: Certainly.

14 (Discussion off the record.)

15 MR. BONNEY: We have nothing further, Your
16 Honor.

17 JUDGE CHESTNUT: Okay. Thank you very much,
18 Mr. Freeman. You are excused.

19 (Witness excused.)

20 JUDGE CHESTNUT: Mr. Doll?

21 MR. DOLL: Your Honor, I would like to move
22 into evidence at this time in connection with cross
23 examination Exhibit 5.

24 JUDGE CHESTNUT: Any objection?

25 (No response.)

1 JUDGE CHESTNUT: The documents are admitted.

2 MR. DOLL: Thank you, Your Honor.

3 (Thereupon, Exhibit No. 5 was admitted in
4 evidence.)

5 JUDGE CHESTNUT: I think that concludes the
6 witnesses that we had scheduled for this set of
7 hearings.

8 MR. CLEARFIELD: Yes, Your Honor.

9 JUDGE CHESTNUT: Are there any other matters,
10 or I should say, any matters any party wishes to
11 bring up at this point before we adjourn?

12 Mr. Cohen?

13 MR. COHEN: Your Honor, two things. One, I
14 was asked, and I can't even represent that I
15 necessarily speak for myself, depending on whether
16 my client wants me to be part of the ENRON
17 hearings, if you can call it that, but for Your
18 Honor to consider holding those hearings in
19 Harrisburg, because this is where I may speak for
20 some others who aren't here. The PP&L hearings are
21 scheduled for the same time, and for those of us
22 who are involved in that proceeding, it would make
23 it easier to deal with both, and GPU is the same
24 thing.

25 MR. KLEPPINGER: GPU?

1 MR. COHEN: I mean GPU. They start on the
2 17th.

3 JUDGE CHESTNUT: Well, I'm not sure that will
4 be possible.

5 MR. COHEN: I just make the request. And
6 secondly, Your Honor, we had I think addressed on
7 Tuesday the issue of the securitization record, and
8 I think from the first prehearing order, you
9 directed that that entire record would be part of
10 that, of this proceeding.

11 For our purposes and the concerns of my
12 client, that direction is sufficient.

13 Given that this hearing did not address the
14 issues that we are concerned with, I would like to
15 just leave it that that direction stands in terms
16 of any possible future appellate record.

17 JUDGE CHESTNUT: Well, it wasn't so much the
18 prehearing order that made that record part of the
19 record in this proceeding.

20 It was the Commission order, itself, that did
21 that, and I think that's very clear that that
22 entire record has been incorporated into the record
23 of this proceeding.

24 What I actually do is designate specific
25 portions, if you intend to rely on them, just as a

1 convenience, so people would know what parts are
2 being addressed, but that whole record has also
3 been incorporated in this.

4 MR. COHEN: Okay. Thank you, Your Honor.

5 JUDGE CHESTNUT: Mr. Bonney?

6 MR. BONNEY: As a guide to Your Honor and the
7 parties, we have revised Appendix H that we
8 previously distributed, and I believe that all of
9 the parties have had a chance to look at this to
10 make sure that it accurately reflects the testimony
11 that we have agreed should be admitted as part of
12 these hearings.

13 Some of these pieces have not been introduced
14 through witnesses, because the witnesses haven't
15 appeared, but it is my understanding that all of
16 the parties have agreed that this testimony that is
17 listed on Appendix H Revised should be admitted
18 into the record.

19 JUDGE CHESTNUT: Okay. With several caveats.
20 One is that the listing of issues is not
21 necessarily determinative of how testimony will be
22 used?

23 MR. CLEARFIELD: Yes, Your Honor.

24 MR. BONNEY: And we added a footnote to
25 reflect that, Your Honor.

1 JUDGE CHESTNUT: Right. And the second is
2 that there are multiple listings of testimony.

3 Obviously, to the extent that occurs, that's
4 only one piece of testimony. I see there would be
5 testimony listed under several different issues,
6 and let me just say to you all that I was intending
7 to issue a prehearing order that set out the terms
8 and the agreements of our Tuesday morning
9 prehearing conference, and I can attach this to it
10 and have parties who are not present and be sure
11 that that does accurately reflect what they want.

12 Otherwise, this will just be a stipulation as
13 to what documents will be admitted into the record
14 without the necessity of each party having to do
15 that.

16 Mr. Shields?

17 MR. SHIELDS: Judge, I had a question. I had
18 a chance to glance at the PP&L order which I think
19 has been issued in that case, and I think you are
20 alluding to that -- I'm not sure; it was not an
21 order -- but however you want to characterize it.

22 Are you talking about something from the
23 bench that will list all possible issues and the
24 structure of how they are to be briefed or --

25 JUDGE CHESTNUT: No, no, no. I think you are

1 confessed, Mr. Shields.

2 MR. SHIELDS: It wouldn't be the first time,
3 Judge.

4 JUDGE CHESTNUT: We are not talking about
5 briefing at this point.

6 MR. SHIELDS: All right.

7 JUDGE CHESTNUT: I think what you are talking
8 about is the table of contents for the brief,
9 right?

10 MR. SHIELDS: Right. There was an order in
11 the PP&L that laid that out.

12 JUDGE CHESTNUT: No. We are not saying -- I
13 am not saying anything about briefing --

14 MR. SHIELDS: Okay.

15 JUDGE CHESTNUT: -- right now.

16 MR. SHIELDS: What was the document you are
17 referring to again, if I --

18 JUDGE CHESTNUT: The revised Appendix H.

19 MR. SHIELDS: You were going to attach to
20 this to something?

21 JUDGE CHESTNUT: I was going to attach this
22 to the prehearing order concerning the items we
23 discussed Tuesday morning, which was basically
24 canceling the hearings scheduled for November 12,
25 13, keeping the November 14th hearing, adding the

1 17th through the 19th, and setting out some
2 testimony receipt dates, and I think that is as far
3 as really we had gotten in terms of the schedule.

4 MR. SHIELDS: I appreciate that, Judge. I
5 wasn't here Tuesday.

6 I just wanted to be able to properly inform
7 my co-counsel.

8 JUDGE CHESTNUT: I'm sorry. I didn't realize
9 Mr. Mickens wanted to keep it a secret from you.

10 MR. SHIELDS: Right. It is a secret to
11 everyone.

12 JUDGE RAINEY: I believe a notice will be
13 going out from the Scheduling Office as well,
14 because new dates have been scheduled.

15 I have received a faxed copy of that.

16 JUDGE CHESTNUT: It has gone out.

17 MR. SHIELDS: Thank you, Your Honor.

18 MR. BONNEY: I just want to note one other
19 item with respect to the schedule.

20 I believe Mr. Clearfield committed to
21 identify witnesses by tomorrow with regard to that
22 schedule.

23 JUDGE CHESTNUT: Okay. If you have some
24 agreement with him, that's fine.

25 MR. BONNEY: It was stated on the record.

1 JUDGE CHESTNUT: All right.

2 MR. BONNEY: The other thing I want to
3 mention, Your Honor, that revised Appendix H, as I
4 am sure you saw, it doesn't list all of the
5 exhibits, but the understanding is that all of the
6 attached exhibits would be included as well --

7 JUDGE CHESTNUT: Yes.

8 MR. BONNEY: -- to clarify.

9 JUDGE CHESTNUT: Yes.

10 MS. MILLER: Your Honor, I have one more
11 question with respect to Appendix H.

12 JUDGE CHESTNUT: Yes.

13 MS. MILLER: The significance of testimony in
14 opposition to the joint petition, is there one?
15 Some of the parties who submitted additional
16 testimony which are in italics also say testimony
17 in opposition to joint petition.

18 JUDGE CHESTNUT: Yes. I don't understand why
19 it is differentiated.

20 I thought it was originally italicized to
21 show additional testimony that was placed on it, as
22 opposed to the original Appendix H.

23 MS. MILLER: My only point is, to the extent
24 that Mr. Johnstone, on behalf of MAPSA, sponsored
25 MAPSA's counter proposal, his Statement 1-S could

1 be considered testimony in opposition to the joint
2 petition, and it is not indicated on Page 2 at
3 number ten and No. 3 block that that is so.

4 MR. CLEARFIELD: I actually would prefer that
5 it said in response to the petition, since it isn't
6 opposing all aspects of the joint petition.

7 THE REPORTER: I am having trouble hearing.

8 (Discussion off the record.)

9 MR. BONNEY: That is fine.

10 JUDGE CHESTNUT: Excuse me. Mr. Bonney, we
11 seem to have two different copies here.

12 MR. KLEPPINGER: It may be the date. Look in
13 the right. 10-16?

14 MR. BONNEY: I have handed you an outdated
15 version. I apologize.

16 MR. DOLL: Are we still on the record? Your
17 Honor, I believe we are still on the record.

18 JUDGE CHESTNUT: That's okay. We can be on
19 the record.

20 We can be confused.

21 MR. BONNEY: The most recent version says
22 "Revision Date 10-16-97" in the upper, right-hand
23 corner.

24 JUDGE CHESTNUT: And you took out the
25 language about Mr. Johnstone --

1 JUDGE RAINEY: Which was --

2 JUDGE CHESTNUT: -- which was on the version
3 that I had, on the previous version.

4 MR. BONNEY: Yes. This reflects the comments
5 that we have received from counsel, and I have no
6 objection to the statements that have been made
7 here for further revisions.

8 JUDGE RAINEY: I guess to meet Miss Miller's
9 needs, it would be putting back in what was taken
10 out, previous testimony in opposition to the joint
11 petition.

12 Is that what you meant?

13 MS. MILLER: Yes.

14 JUDGE RAINEY: Thank you.

15 MR. BONNEY: I apologize.

16 (Discussion off the record.)

17 JUDGE CHESTNUT: Mr. Smith?

18 MR. SMITH: Your Honor, I have copies of our
19 testimony.

20 Would it be appropriate to submit them now,
21 or are we going to dispense with that, or --

22 JUDGE CHESTNUT: Well, I was going to make a
23 statement on the record admitting these documents
24 identified in Revised Appendix H into the record,
25 but of course it is each party's obligation to

1 ensure that copies of the testimony and exhibits
2 are physically submitted into the record, so if you
3 want to do that now, or if you want to do some
4 other arrangements --

5 MR. CLEARFIELD: Would it be --

6 JUDGE CHESTNUT: -- that is fine.

7 MR. CLEARFIELD: -- most convenient to do it
8 now?

9 MR. RYAN: I would like to do it now.

10 (Discussion off the record.)

11 JUDGE CHESTNUT: At this point we have
12 Revised Appendix H, which contains a listing of the
13 various parties' testimony and exhibits.

14 The documents listed in that appendix will be
15 admitted into the record without further
16 discussion.

17 Is there any objection?

18 (No response.)

19 JUDGE CHESTNUT: Okay. Then those documents
20 are admitted.

21 (Thereupon, documents listed in Revised
22 Appendix H were admitted in evidence.)

23 MR. KLEPPINGER: Your Honor?

24 JUDGE CHESTNUT: Mr. Kleppinger?

25 MR. KLEPPINGER: I would like to note for the

1 record that on Tuesday's hearing we did provide to
2 the court reporter two complete copies of all
3 PAIEUG statements listed on Revised Appendix H,
4 which would include Statement 1, 1-R, 1-SS, 2 and
5 3, and pursuant to your ruling, those are now
6 admitted into the record, and copies have been
7 provided.

8 JUDGE CHESTNUT: Thank you. Is there
9 anything else?

10 Mr. Ryan?

11 MR. RYAN: I suppose I should do the same
12 drill.

13 JUDGE CHESTNUT: Well, I really didn't think
14 it is necessary.

15 MR. RYAN: Fine. Fine.

16 JUDGE CHESTNUT: Isn't the point of doing it
17 in the appendix to avoid individual
18 representations --

19 MR. RYAN: No. That's all right.

20 JUDGE CHESTNUT: -- in the record?

21 MR. RYAN: I misunderstood, then.

22 MR. KLEPPINGER: Oh, I thought you wanted
23 that.

24 JUDGE CHESTNUT: Mr. Smith?

25 MR. SMITH: Yes, Your Honor. During the

1 cross examination of Mr. Douglas on the first day,
2 there was a discussion about PECO Cross Examination
3 Exhibit No. 1, which was a letter which had been
4 sent by PECO Energy to Delmarva, and there was an
5 objection on best evidence grounds to that exhibit,
6 and we agreed to attempt to find a copy of the
7 actual letter.

8 What we have found, and I discussed this with
9 Mr. Doll, is, they did not at Power Team have the
10 xerox that they had sent.

11 They kept a computer copy.

12 They have reprinted and resigned the letter,
13 which we now have and would like to present as PECO
14 Cross Exhibit No. 1-R for replacement, and Mr.
15 Doll has agreed to accept that representation with
16 the caveat that he will be allowed to cross check
17 back at Delmarva and make sure that this letter is
18 accurately the letter that they received.

19 MR. DOLL: The basis is that we would want to
20 make sure that this is a conformed copy to what was
21 actually received.

22 JUDGE CHESTNUT: Okay. So you are replacing
23 Cross Examination Exhibit 1 with Cross Exam Exhibit
24 1-R?

25 MR. SMITH: Yes, Your Honor.

1 JUDGE CHESTNUT: And that is a supply offer?

2 MR. SMITH: Yes.

3 JUDGE CHESTNUT: Okay.

4 MR. DOLL: Subject to the ability to renew my
5 objection, if it's not a conformed copy.

6 JUDGE CHESTNUT: Yes.

7 MR. SMITH: There are two markings on the
8 front of this.

9 One is an indication, a stamp that this was
10 received by my colleague, Mr. Bonney, in his office
11 on October 15th, and then a handwritten notice
12 indicating that he would like a carbon copy to go
13 to NHT, who is Mr. Trask.

14 Those were both added to it since we received
15 it from the Power Team kind of accidentally,
16 without realizing why it had come in.

17 MR. DOLL: In addition, I would like to note,
18 Your Honor, on the back, the last page of what
19 would be substituted, Mr. Smith can make the
20 representation of what it is.

21 I would rather not.

22 MR. SMITH: It is a xerox of a Federal
23 Express receipt, indicating that Mr. Stockbridge
24 received a package from us on that day.

25 JUDGE CHESTNUT: Okay.

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MR. DOLL: Could I have a copy, please?

MR. SMITH: We have a whole bunch of those.

JUDGE CHESTNUT: Are there any other matters, then, before this hearing is adjourned?

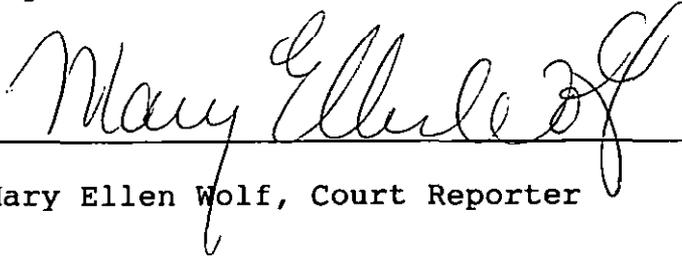
(No response.)

JUDGE CHESTNUT: Okay. Then we will reconvene at 10:00 on November 14th.

- - - - -

(Thereupon, at 3:20 o'clock PM, the hearing was adjourned until November 14, 1997.)

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

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