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Petition of Enron Energy Services Power, Inc.  
for approval of an Electric Competition and Customer Choice Plan  
and for authority pursuant to Section 2807(e)(3)  
of the Public Utility Code  
to serve as the Provider of Last Resort  
in the service territory of PECO Energy Company.

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Direct Testimony

of

Steven J. Kean

on behalf of

Enron Energy Services Power, Inc.

concerning

Overall Policy Witness

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1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?

2 A. My name is Steven J. Kean. My business address is 1400 Smith Street, Houston,  
3 Texas, 77002.

4  
5 Q. BY WHOM ARE YOU EMPLOYED?

6 A. I am a Senior Vice-President of Governmental Affairs for Enron Corp.

7  
8 Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS  
9 PROCEEDING?

10 A. Yes. I submitted direct testimony in this proceeding on June 20, 1997 (Enron St. 1.0)  
11 on behalf of Enron Power Marketing, Inc. ("EPMI"). EPMI is a wholly-owned  
12 subsidiary of Enron Corp. and is licensed to provide service as an electric generation  
13 supplier in Pennsylvania.

14  
15 Q. WERE YOUR CURRENT RESPONSIBILITIES, PRIOR EXPERIENCE AND  
16 EDUCATIONAL BACKGROUND ADDRESSED IN ENRON ST. 1.0?

17 A. Yes they were and that information remains accurate.

18  
19 Q. ON WHOSE BEHALF IS THIS TESTIMONY SUBMITTED?

20 A. This testimony is submitted on behalf of Enron Energy Services Power, Inc.  
21 ("Enron"). Enron is also a wholly-owned subsidiary of Enron Corp. and is an affiliate  
22 of EPMI. On October 7, 1997, Enron filed a Petition with the Commission requesting  
23 the Commission's approval of an Electric Competition and Customer Choice Plan

1 ("Choice Plan"). On October 9, 1997, the Commission adopted an order which consolidated  
2 Enron's Choice Plan with PECO Energy Company's ("PECO's") Restructuring Proceeding and  
3 the Commission's pending review of a Joint Petition for Partial Settlement ("Partial Settlement")  
4 which has been submitted by PECO and several other litigants in this litigation.

5  
6 **Q. IS ENRON CURRENTLY LICENSED AS AN ELECTRIC GENERATION**  
7 **SUPPLIER BY THE COMMISSION?**

8 A. No. On the same day as Enron filed the Choice Plan, however, it also filed a license  
9 application with the Commission to become an electric generation supplier in  
10 Pennsylvania. It is my understanding that such license applications are subject to a 45-  
11 day review period. I fully expect that Enron will be licensed some time in November of  
12 this year.

13  
14 **Q. WHY WAS THE PETITION SUBMITTED BY ENRON AND NOT BY EPMI, AN**  
15 **ENRON AFFILIATE WHICH IS ALREADY LICENSED AS AN ELECTRIC**  
16 **GENERATION SUPPLIER BY THE COMMISSION?**

17 A. EPMI presently is the corporation in the Enron Corp. corporate "family" that sells  
18 wholesale power pursuant to a FERC certificate and, in addition, sells power to retail  
19 customers in those jurisdictions that presently permit retail access (e.g., through pilot  
20 programs). EPMI currently is the largest power marketer in the United States in terms of  
21 megawatt hours sold. Enron, an indirect subsidiary of Enron Corp., recently was formed  
22 to serve retail customers in new retail markets as such markets are opened to competition.  
23 In connection with the submission of the Choice Plan, it was decided that Enron was the

1 most appropriate entity in the Enron Corp. family to serve retail electric customers in  
 2 PECO's service territory. It will likely be the case that EPMI, or another Enron affiliate,  
 3 will seek to sell to retail customers in Pennsylvania, including those in PECO's service  
 4 territory, that elect to choose a competitive supplier. Enron is also currently considering  
 5 having more than one Enron affiliate offer retail services on a nationwide basis.

6  
 7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A. The purpose of my testimony is to explain and support the Choice Plan, describe how it  
 9 furthers the mandates of the Electricity Generation Customer Choice and Competition  
 10 Act (the "Act") and compare and contrast it with the Partial Settlement.

11  
 12 **Q. PLEASE BRIEFLY DESCRIBE THE CHOICE PLAN.**

13 A. The Choice Plan is a comprehensive plan which guarantees immediate rate reductions to  
 14 PECO's consumers at twice the level offered by the Partial Settlement. In order to  
 15 introduce the level of competition envisioned by the Act, the Choice Plan designates  
 16 Enron as the PLR in PECO's service territory and introduces a pro-competitive rate  
 17 design. In order to foster competition, the Choice Plan contains a level of generation  
 18 credits which will enable marketers to compete; it provides for the unbundling and  
 19 competitive entry of third parties into revenue cycle services such as metering, billing,  
 20 collection and other customer services; and it contains significant competitive safeguards  
 21 which will assure that no market participant receives an unfair competitive advantage.  
 22 The Choice Plan also includes and fully embraces the University Service and Consumer  
 23 Education programs as set forth in the Partial Settlement.

1 Q. DOES THE CHOICE PLAN PROVIDE FOR THE RECOVERY BY PECO OF  
2 THE FULL AMOUNT OF ITS STRANDED COSTS AS AGREED UPON IN THE  
3 PARTIAL SETTLEMENT?

4 A. Yes. The Choice Plan permits PECO to recover every penny of stranded costs agreed  
5 upon in the Partial Settlement. The Act provides that electric utilities should have the  
6 reasonable opportunity to recover their costs that may not be recoverable in a  
7 competitive environment. The Choice Plan does not attack PECO's \$5.461 billion  
8 stranded cost level. At the same time, however, the Choice Plan recognizes that it is  
9 appropriate for PECO to recover this amount from its customers only if real  
10 competition is introduced in Pennsylvania. If competition does not result from the  
11 restructuring plan ultimately adopted by the Commission, consumers will have been  
12 placed in the unfair position of paying for stranded costs without receiving the  
13 concomitant benefit of lower costs from the competitive market, as envisioned and  
14 promised by the General Assembly. In return for giving PECO \$5.461 billion of  
15 claimed stranded costs, the Choice Plan includes the elements which Enron believes are  
16 necessary for the introduction of competition in the retail generation market.

17  
18 Q. WHY DID ENRON FILE ITS CHOICE PLAN?

19 A. Enron filed the Choice Plan because certain aspects of the Partial Settlement are so  
20 anti-competitive that simply criticizing such settlement would not be a constructive  
21 approach. Enron, therefore, decided to offer an alternative plan. The Choice Plan  
22 takes the positive features of the Partial Settlement and builds on them, producing a  
23 better program both for PECO's customers and the Commonwealth, generally. The

1 Act provides that "it is now in the public interest to permit retail customers to obtain  
2 direct access to a competitive generation market." The Act clearly recognizes that  
3 competition will produce benefits for the electric utilities' customers and it provides a  
4 reasonable opportunity for those utilities to recover their costs that may become  
5 unrecoverable due to the transition to competition. I will show how the Choice Plan  
6 achieves the goals of the Act by immediately stimulating the development of a  
7 competitive market for generation. Although the Partial Settlement also claims to  
8 introduce competition, the reality is that it will thwart competition in the generation of  
9 electricity for several years. The Act is predicated on the assumption that consumers  
10 should reap the benefits of a competitive market for generation. It only provides for  
11 the utilities to be reimbursed for costs that will become stranded as a result of the  
12 introduction of competition. The Choice Plan is superior to the Partial Settlement  
13 because it brings those competitive benefits to consumers at its inception, rather than at  
14 some indeterminate date in the future. Unlike the Choice Plan, the Partial Settlement  
15 requires PECO's customers to compensate PECO for its "stranded costs" for several  
16 years before consumers even begin to see the benefits from a functioning, competitive  
17 generation market.

18  
19 **Q. WHY IS THE INTRODUCTION OF A COMPETITIVE MARKET FOR**  
20 **ELECTRIC SERVICES SO IMPORTANT?**

21 **A.** The Act centers around one primary objective: meaningful choices for all consumers  
22 of electricity in the Commonwealth of Pennsylvania -- from homeowners to the largest  
23 industrial users. This is Enron's vision, too. Ensuring that all consumers have

1 meaningful choices requires that numerous suppliers, not just the incumbent utility, are  
2 given access to consumers. In this competitive environment consumers will benefit  
3 from lower costs, better service and improved service offerings. Consumers will see  
4 lower costs because the availability of alternative suppliers will create price competition  
5 among suppliers, as it does in every open market. Suppliers will look for ways to cut  
6 costs, to find less expensive supplies and to increase the efficiency with which they  
7 make delivery of those supplies.

8 Consumers will see better service and improved service offerings for the same  
9 reason -- competing suppliers will distinguish themselves by the reliability of their  
10 service, the quality of information they provide, the accuracy of their bills, and the  
11 precision with which they fill a specific customer's needs. Services will be designed  
12 for specific residential, commercial and industrial customers. Opportunities to lower  
13 customer bills, not just their rates, will be identified. Suppliers will distinguish  
14 themselves in their responsiveness to customer inquiries and concerns.

15  
16 **Q. WHY DOES THE CHOICE PLAN PROVIDE CONSUMERS WITH BOTH A**  
17 **RATE REDUCTION AND COMPETITION?**

18 **A.** The Act, of course, expresses the view that competition, not mandated rate reductions,  
19 ultimately will produce lower rates in Pennsylvania. As the General Assembly noted,  
20 "[c]ompetitive market forces are more effective than economic regulation in controlling  
21 the cost of generating electricity." That is why the Choice Plan is so focused on the  
22 development of a competitive market in PECO's service territory. Nevertheless, while  
23 the Act does not guarantee immediate rate reductions, Enron believes that they are a

1 valid regulatory tool, particularly in PECO's service territory where rates currently are  
2 very high. The Partial Settlement, itself, appears to concede that immediate rate  
3 reductions are needed, providing a reduction of 10% in the first 28 months. Enron  
4 agrees that rate reductions are needed and has proposed to double the rate reductions  
5 offered in the Partial Settlement. The Choice Plan, therefore, provides greater  
6 discounts for consumers and a real opportunity for consumers to save even more money  
7 on their electric bills by having real competitive alternatives. In contrast, the Partial  
8 Settlement exchanges a modest rate reduction for an over-recovery of stranded costs by  
9 PECO and a structure which forecloses significant competition. The Choice Plan is  
10 simply better for consumers because it satisfies the letter and the spirit of the Act.

11  
12 **Q. BRIEFLY DESCRIBE THE PARTIAL SETTLEMENT.**

13 **A.** On August 25, 1997, PECO and several other litigants filed the Partial Settlement  
14 which is currently pending before the Commission in the PECO restructuring  
15 proceeding. The Partial Settlement provides, among other things, for PECO to recover  
16 stranded costs of \$5.461 billion through a Competitive Transition Charge ("CTC") in  
17 return for a 28-month rate reduction of 10% (assuming securitization), with smaller  
18 reductions in the following two years (5% in 2001 and 2% in 2002) until they are  
19 phased out completely. The Partial Settlement also claims to offer an accelerated  
20 introduction of "customer choice."

1 Q. IN VIEW OF ITS PROPONENTS' CLAIMS THAT THE PARTIAL  
2 SETTLEMENT WILL PRODUCE BENEFITS FOR PECO AND ITS  
3 CUSTOMERS, WHY IS ENRON OPPOSING IT?

4 A. Enron opposes approval of the Partial Settlement for three main reasons: first, it  
5 will permit PECO to recover from its customers an amount substantially above the  
6 \$5.461 billion claimed as PECO's stranded cost entitlement; second, it will provide  
7 much lower rate reductions to PECO's customers than are possible; and third, it  
8 will have a "chilling effect" on the development of meaningful competition and  
9 customer choice in PECO's service territory in contravention of the explicit mandate of  
10 the Act that competition for electric generation services be introduced in Pennsylvania.  
11 While the Partial Settlement creates the illusion of fostering customer choice and  
12 competition, the reality is that PECO (alone and through its affiliates) is far more likely  
13 to retain its electric service monopoly for many years to come. Given that the basis for  
14 stranded cost recovery is that competition will render certain past investments  
15 uneconomic, it stands to reason that if the Partial Settlement does not introduce a  
16 "properly functioning and workable competitive electricity market" (66 Pa.C.S.  
17 § 2811) in PECO's service territory, then there is no legal basis for this Commission to  
18 allow PECO to recover any stranded costs, let alone \$5.461 billion of such costs.  
19

1 Q. PLEASE DESCRIBE THE MAJOR RATE DIFFERENCES THAT CONSUMERS  
 2 WILL EXPERIENCE BETWEEN THE CHOICE PLAN AND THE PARTIAL  
 3 SETTLEMENT.

4 A. The following table illustrates on a system-wide average basis the major rate  
 5 differences between the Choice Plan and the Partial Settlement:

6	7 Feature	8 Enron Choice Plan	9 Partial Settlement
10	11 Rate Reduction	12 20% for first 28 months, 13 10% and 4% for next 14 two years	15 10% for first 28 months, 5% 16 and 2% for next two years
17	18 Level of PECO 19 Stranded Cost 20 Recovery	21 \$5.461 billion in 22 lump sum payment	23 More than the agreed-upon 24 \$5.461 billion
25	26 CTC Amount 27 During Rate 28 Reduction Period:		
29	30 9/1/98	31 \$.0137/kWh	32 In bundled rates
33	34 1999	35 \$.0137/kWh	36 \$.0304/kWh
37	2000	\$.0137/kWh	\$.0304/kWh
	2001	\$.0230/kWh	\$.0314/kWh
	2002	\$.0281/kWh	\$.0314/kWh
	31 Treatment of Potential 32 CTC/ITC Over-Recovery 33 Due to Load Growth	34 Returned to customers	35 Kept by PECO
36	37 Average Rate Cap (first 28 months)	\$.0796/kWh	\$.0895/kWh

1 Q. YOU EARLIER ALLUDED TO THE FACT THAT ENRON IS NOT  
2 ATTACKING PECO'S RECOVERY OF THE STRANDED COST CLAIM OF  
3 \$5.461 BILLION. THE CHOICE PLAN HAS BEEN PORTRAYED IN SOME  
4 QUARTERS AS AN ATTACK ON PECO'S STRANDED COST RECOVERY. IS  
5 THIS A FAIR CRITICISM?

6 A. No. Nowhere does the Choice Plan provide that PECO should absorb its stranded  
7 costs. The Choice Plan permits the full and complete stranded cost recovery of the  
8 \$5.461 billion amount contained in the Partial Settlement. Unlike the Partial  
9 Settlement, however, the Choice Plan provides a lawful basis for permitting PECO to  
10 recover its stranded costs by creating a structure which allows competition to develop  
11 in PECO's service territory. Clearly, the consummation and implementation of the  
12 Choice Plan will require certain actions on the part of PECO, actions that are necessary  
13 to promote competition in its service territory and provide legal justification for  
14 recovery of its stranded costs as set forth in the Partial Settlement. Nevertheless,  
15 because PECO's ability to recover stranded costs under the Act is conditioned on the  
16 creation of a competitive electricity market, if PECO does not undertake the actions  
17 called for in the Choice Plan, the essential predicate for stranded cost recovery will be  
18 missing.

19

1 Q. PROVIDING A BASIS FOR STRANDED COST RECOVERY WILL  
2 CERTAINLY HELP PECO. HOW WILL THE CHOICE PLAN HELP PECO'S  
3 CUSTOMERS?

4 A. The Choice Plan will provide many tangible and intangible benefits to PECO's  
5 customers that are missing from the Partial Settlement. The Choice Plan will create  
6 greater savings for PECO's customers without the anti-competitive roadblocks created  
7 by the Partial Settlement. The Partial Settlement essentially requires consumers to  
8 forego the benefits of a competitive market in exchange for a rate decrease of 10%  
9 from September 1, 1998 to December 31, 2000 and a rate decrease of 5% for 2001 and  
10 2% for 2002. The Choice Plan, however, provides for reductions of 20%, 20%, 10%  
11 and 4% for the corresponding periods - rate reductions for customers which are double  
12 the savings promised by PECO. The Choice Plan not only will significantly increase  
13 the rate reductions for PECO's customers, but, unlike the Partial Settlement, it also  
14 will introduce a competitive electricity market - which will increase the benefits  
15 available to consumers in the future. The Commission must not sacrifice competition  
16 and customer choice for the sake of the minimal, short-term reductions promised by the  
17 Partial Settlement. As I stated previously, the Act envisions that savings should result  
18 from competitive development, not instead of competitive development. The Choice  
19 Plan demonstrates that consumers can be given even larger rate reductions than are  
20 provided under the Partial Settlement while simultaneously fostering a competitive  
21 generation marketplace.

22

1 Q. THE CHOICE PLAN HAS BEEN CRITICIZED AS A "SMOKE AND  
 2 MIRRORS" PLAN THAT SIMPLY EXCHANGES LOWER RATES FOR  
 3 CUSTOMERS TODAY FOR HIGHER RATES TOMORROW. DOES THE  
 4 CHOICE PLAN PROVIDE A GREATER LEVEL OF BENEFITS TO PECO'S  
 5 CUSTOMERS THAN THE PARTIAL SETTLEMENT?

6 A. Yes. PECO's residential customers currently pay rates that are more than 40% above  
 7 the national average. The Choice Plan takes hidden benefits in the Partial Settlement  
 8 from PECO and uses them to effect additional rate reductions for consumers. Enron  
 9 witness Mr. Oliver explains this in his testimony. It is true, of course, that the Choice  
 10 Plan produces significant decreases to PECO's rates, in the form of CTC reductions, in  
 11 the early years with somewhat higher CTC charges in the later years. The following  
 12 table reflects this (on a system-wide average basis):

	<u>Partial Settlement</u>	<u>Choice Plan</u>
13	9/1/98— In bundled rates	9/1/98—\$.0137
14	1999— \$.0304	1999—\$.0137
15	2000— \$.0304	2000—\$.0137
16	2001— \$.0314	2001—\$.0230
17	2002— \$.0314	2002—\$.0281
18	2003— \$.0314	2003—\$.0312
19	2004— \$.0287	2004—\$.0303
20	2005— \$.0277	2005—\$.0295
21	2006— \$.0257	2006—\$.0336
22	2007— \$.0247	2007—\$.0376
23	2008— \$.0227	2008—\$.0368

24  
 25  
 26 This does not mean, however, as some critics have incorrectly charged, that the Choice  
 27 Plan has merely reduced rates in the early years and "recaptured" those reductions in

1 the later years. Mr. Oliver demonstrates in his testimony that the customer savings  
2 produced by the Choice Plan are real and significant -- approximately \$1.093 billion  
3 more over the life of the Choice Plan than under the Partial Settlement. Residential  
4 customers alone will see savings from the Choice Plan that are more than \$345 million  
5 greater than they would see under the Partial Settlement. General Service customers  
6 will save an additional \$244 million and HT customers will save at least \$282 million  
7 over the savings offered by the Partial Settlement. As Enron's witnesses will explain,  
8 there are compelling reasons why the CTC/ITC must be kept low in the early years in  
9 order to allow for a larger generation credit to foster the growth of competition.  
10

11 **Q. IT ALSO HAS BEEN ARGUED THAT THE HIGHER GENERATION CREDITS**  
12 **IN THE EARLY YEARS OF THE CHOICE PLAN WILL DISADVANTAGE**  
13 **CONSUMERS. IS THIS A VALID CHARGE IN YOUR OPINION?**

14 **A.** No, it is not. Mr. Oliver also addresses this point in his testimony. A portion of  
15 generation charge can be avoided if competition begins and competitors offer electricity  
16 that is priced lower than the generation credit -- that is, customers can lower their bills  
17 by signing up with alternative generation suppliers who can "beat" the resulting  
18 generation credit. In contrast, the higher CTC under the Partial Settlement cannot be  
19 avoided and, consequently, the resulting generation credit is so low that it is extremely  
20 unlikely that a competitor would be able to meet, let alone "beat," that price.  
21 Therefore, while it is unlikely that consumers can "do better" than the total prices set  
22 under the Partial Settlement in the early years, they will have an opportunity to do so  
23 under the Choice Plan.

1 Q. WHY IS IT THAT THE CHOICE PLAN CAN PRODUCE SUCH A GREATER  
2 LEVEL OF BENEFITS FOR PECO'S CUSTOMERS THAN ARE PRODUCED  
3 UNDER THE PARTIAL SETTLEMENT?

4 A. As to why the Partial Settlement does not provide greater benefits for PECO's  
5 customers, only the signatories to the Partial Settlement can answer that question. As  
6 to how the Choice Plan can produce additional savings for customers, Enron believes  
7 that (1) a lower level of CTCs and intangible transition charges ("ITCs") is necessary to  
8 cover the financing of the stranded costs and (2) that any CTC/ITC collections in  
9 excess of that amount should be returned to consumers.

10  
11 Q. HOW IS IT ANTICIPATED THAT THE SECURITIZATION MECHANISM  
12 WILL OPERATE?

13 A. The securitization structure employed under the Choice Plan is essentially the same as  
14 that contemplated by PECO under the Partial Settlement. However, whereas the  
15 Partial Settlement provides for securitization of \$4.0 billion of such costs, the full  
16 amount of PECO's stranded costs agreed upon in the Partial Settlement will be  
17 securitized under the Choice Plan. Enron witness Mr. Fastow shows that, under the  
18 Choice Plan, Enron will arrange for the payment to PECO of its stated stranded costs  
19 of \$5.461 billion on September 1, 1998, the effective date of the Choice Plan. In order  
20 to effect this payment, PECO will issue, through a special purpose vehicle, \$5.461  
21 billion of transition bonds. The PECO special purpose vehicle will service the bonds  
22 with cash flows from the ITCs. The transition bonds are expected to have an interest  
23 rate lower than the implicit financing rate used by PECO in establishing the CTC levels

1 under the Partial Settlement. The financing proposal in the Choice Plan will allow the  
2 aggregate CTC/ITC rate to be lower under the Choice Plan than under the Partial  
3 Settlement. Moreover, the Partial Settlement permits PECO to keep any  
4 "over-recovery" of CTCs paid by customers – that is, CTC collections that are  
5 determined to be in excess of PECO's stranded costs. In contrast, the Choice Plan is  
6 consistent with the directive of the Act that CTCs must be reconciled by giving PECO's  
7 customers the benefit of any excess collections of CTC/ITCs.  
8

9 **Q. WHY DOES THE CHOICE PLAN PROVIDE FOR AN INTEREST RATE OF**  
10 **9.66% ON THE TRANSITION BONDS?**

11 **A.** As described by Enron witness Mr. Fastow, the 9.66% interest rate figure is the  
12 implicit cost of capital determined by discounting the projected ITC revenue stream  
13 under the Choice Plan such that net present value of such income stream is equal to  
14 \$5.461 billion, the amount of PECO's stranded costs, on September 1, 1998 (the  
15 proposed effective date of the Choice Plan). As discussed by Enron witness Mr.  
16 Fastow, taking into account a securitization at 9.66% nonetheless permits Enron to (1)  
17 significantly reduce the aggregate CTC/ITC charges reflected in the Partial Settlement  
18 and (2) double the rate reductions offered by PECO in the Partial Settlement.  
19

1 Q. PECO HAS ALLEGED THAT ENRON'S SECURITIZATION PLAN IS NOT  
2 WORKABLE, ASSERTING THAT ENRON'S PROPOSED ITC REVENUE  
3 STREAM WILL BE INSUFFICIENT TO AMORTIZE THE TRANSITION  
4 BONDS AND WILL IMPAIR PECO'S FINANCIAL INTEGRITY. DO YOU  
5 AGREE?

6 A. No. As the testimony of Mr. Fastow demonstrates, it is possible to reduce the  
7 CTC/ITC levels from those set forth in the Partial Settlement and still amortize the full  
8 \$5.461 billion of stranded costs agreed to in the Partial Settlement at the stated interest  
9 rate provided in the Choice Plan. The revenue projections in the Choice Plan are based  
10 on the conservative assumption that PECO's load will be static during the CTC/ITC  
11 recovery period and, even in that case, there is more than sufficient revenue to fully  
12 amortize the transition bonds.

13  
14 Q. IS PECO SUBJECT TO AN ADDITIONAL RISK FROM THE  
15 SECURITIZATION FEATURE OF THE CHOICE PLAN?

16 A. As Mr. Fastow notes, this is not likely. After all, under the Choice Plan, PECO will  
17 be provided on the effective date of the Choice Plan with \$5.461 billion in cash. This  
18 up-front recovery of all of its agreed upon stranded costs will eliminate any risk that  
19 PECO will not achieve full stranded cost recovery.

20

1 Q. ARE THE EXTENT OF THE BENEFITS TO CONSUMERS THAT WILL  
2 ARISE FROM SECURITIZATION SUBJECT TO UNCERTAINTY?

3 A. The rate reduction levels set forth in the Choice Plan have been established, in part,  
4 based on certain assumptions with respect to interest rates on the date of issuance of the  
5 transition bonds. The Choice Plan provides for the possibility of additional rate  
6 reductions to customers - in the form of lower charges for CTC/ITC - in the event of a  
7 reduction in interest rates prior to the plan's effective date from the rates used in  
8 preparing the Choice Plan. An increase in interest rates, however, would not alter the  
9 rate reductions or otherwise result in an increase in customer rates. In the case of  
10 certain material increases in interest rates, the Choice Plan provides for adjustments in  
11 the interest rate on the transition bonds and in the charges for CTC/ITC, but without an  
12 increase in customer rates. In such a case, the effect of increasing the CTC/ITC would  
13 result in a corresponding downward adjustment to the generation credit in the Choice  
14 Plan.

15  
16 Q. IS THERE A SITUATION UNDER THE CHOICE PLAN WHERE THE  
17 CTC/ITC MAY BE INCREASED AND CUSTOMERS COULD BE ADVERSELY  
18 AFFECTED?

19 A. Although this is a theoretical risk, the securitization of the transition bonds will be  
20 structured with third party credit enhancement provided by a highly credit-worthy  
21 party, thereby making this an extremely unlikely event. Enron's capital markets  
22 group, working in conjunction with a major investment bank and its counsel, has  
23 prepared a securitization plan that is designed to insulate customers from any increase

1 in the CTCs/ITCs. Again, these matters are described more completely in the  
2 testimony of Enron witness Mr. Fastow.

3  
4 **Q. IT ALSO HAS BEEN ASSERTED THAT THE GREATER LEVEL OF RATE**  
5 **SAVINGS CONTAINED IN THE CHOICE PLAN RESULTS FROM ENRON'S**  
6 **AVOIDING THE PAYMENT OF GROSS RECEIPTS TAXES. IS THIS A**  
7 **VALID ASSERTION?**

8 **A.** No. Enron will remit any and all gross receipts taxes for which it is responsible under  
9 Pennsylvania law. Enron has always been supportive of a fair playing field for electric  
10 competition. Along with other level playing field issues (e.g., marketing affiliate  
11 conduct, proper cost allocation), Enron supports all suppliers paying taxes in a  
12 consistent manner.

13  
14 **Q. YOU MENTIONED THAT THE CHOICE PLAN WILL FOSTER**  
15 **COMPETITION WHILE THE PARTIAL SETTLEMENT WILL NOT. PLEASE**  
16 **ELABORATE.**

17 **A.** As Enron witnesses Messrs. Bohi and Slater demonstrate, the Choice Plan will  
18 introduce genuine customer choice and real competition while the Partial Settlement  
19 will delay the introduction of competition for several years. As Mr. Slater explains in  
20 his testimony, PECO's "generation credit" under the Partial Settlement would be less  
21 than the market price for electric generation (and is projected to be so for a number of  
22 years). This results in PECO's default service having so significant a price advantage  
23 that competition will be thwarted if PECO is permitted to be the PLR. Enron's

1 witness, Dr. Bohi explains that, because of the artificially low generation credit  
2 proposed in the Partial Settlement, PECO would be able to prevent competitors from  
3 participating in the retail electric generation market in PECO's service territory for at  
4 least several years. PECO's customers would simply "choose not to choose" another  
5 electric supplier and the advantage of PECO's subsidized, artificially low price for  
6 generation (which effectively results from the inflated CTC charge, as noted by Messrs.  
7 Slater and Oliver). The effect of allowing PECO to be the PLR at an artificially low  
8 price would be the elimination of competition and, ultimately, the creation of an  
9 unregulated monopoly. The Choice Plan, in contrast, provides Enron with no incentive  
10 to keep customers on default service because it will not make any margin on that  
11 service. This means that Enron will be the PLR for only those customers who make no  
12 other choice. Customers with competitive alternatives, which should be numerous  
13 under the Choice Plan, will migrate to competitive suppliers.

14  
15 **Q. HOW DOES THE CHOICE PLAN ADDRESS THE ANTI-COMPETITIVE**  
16 **EFFECT OF LEAVING PECO AS THE PLR WITH A BELOW MARKET**  
17 **GENERATION CREDIT?**

18 **A.** To eliminate this unfair and subsidized incumbent position, the Choice Plan calls for  
19 Enron to replace PECO as the PLR in PECO's service territory - that is, as the  
20 supplier for customers who do not choose an electric generation supplier other than the  
21 PLR or who return, for whatever reason, to the electric service of the PLR. Enron  
22 proposes to purchase power from PECO to satisfy Enron's supply obligation as PLR,  
23 as well as to retain PECO to perform certain metering, billing and collection functions

1 so as to provide continued stability for PECO and its employees. Enron is not seeking,  
2 however, to become the new "monopoly." In fact, Enron's proposal to be the PLR is  
3 tied to the development of a competitive market which encourages and enables  
4 consumers to do even better than the proposed rate reductions.

5  
6 **Q. WILL ENRON MAKE A PROFIT ON SELLING POWER TO DEFAULT**  
7 **CUSTOMERS IN ITS CAPACITY AS PLR?**

8 A. No. Enron will charge default customers for generation the same amount it will pay to  
9 PECO for power under the Power Purchase Agreement. Enron's objective is not to  
10 make money selling power to such customers. Rather, Enron's objective is to  
11 encourage default customers to choose to obtain their energy from suppliers that offer  
12 better prices, thereby fostering a competitive market which will lower prices to  
13 consumers.

14  
15 **Q. IS HAVING ENRON BE THE PLR THE ONLY STEP THAT IS NEEDED IN**  
16 **THIS REGARD?**

17 A. No. The Partial Settlement provides that PECO may transfer its generation assets  
18 without seeking the Commission's approval. We think this is not only a very bad idea  
19 but that it is also contrary to the Act. Therefore, to further promote the introduction of  
20 real competition, the Choice Plan provides that PECO should not be entitled to transfer  
21 its generation assets to an unregulated affiliate or other entity without the Commission's  
22 review and approval of such transfer and the effect thereof on the electric market in  
23 southeastern Pennsylvania. These changes, plus the significant decrease in the

1 CTC/ITC made possible by Enron's delivery of a 20% rate reduction under its Choice  
2 Plan for the period from September 1, 1998 to December 31, 2000, will produce a  
3 generation credit that will enable competitors to market retail generation service in  
4 PECO's service territory at realistic prices.

5  
6 **Q. DOES THE CHOICE PLAN FOSTER COMPETITION IN ANY OTHER WAYS?**

7 **A.** Yes. Enron witness Mr. Kingerski discusses the necessary competitive tariff changes in  
8 his testimony. He shows that the Choice Plan also facilitates the development of  
9 robust competition through a competition-friendly electric service delivery tariff (the  
10 "Distribution Tariff") which: (1) provides non-discriminatory access and pricing of  
11 essential monopoly services by PECO in a manner that ensures fair and equal treatment  
12 of all electric generation suppliers; (2) provides consumers real and effective choices  
13 with respect to metering, billing and customer care services and undertakes the  
14 necessary cost unbundling of those services in order to create the opportunity for  
15 additional savings and product choices; and (3) creates a fair and level playing field for  
16 all competitors in the marketplace by requiring that PECO participate in competitive  
17 service offerings only through an affiliate separated from its distribution company  
18 pursuant to competitive safeguards that would not permit PECO's competitive affiliates  
19 to have any preferential access in serving customers and would specifically prohibit  
20 such affiliates from using PECO's name or logo or otherwise implying that its  
21 affiliation with the utility distribution company gives it preferential access to service.  
22 Enron's witness Mr. Reising will discuss the merits of permitting metering, billing and  
23 collection and other customer services to be provided on a competitive basis. He will

1 also discuss the credits for non-wires services which are contained in the Distribution  
2 Tariff. These basic changes are essential ingredients of the Choice Plan and are  
3 designed to create the opportunity for real choices for consumers in order to ensure the  
4 promise of even greater savings and better service. Moreover, these changes will  
5 benefit all electric generation suppliers.

6  
7 **Q. ARE THE TARIFF RATES NECESSARY TO IMPLEMENT THESE CHANGES**  
8 **CONTAINED IN THE CHOICE PLAN?**

9 A. Yes, they are. Enron witness Ms. Lopez provides the proof of revenues under the  
10 proposed rates contained in the Choice Plan.

11  
12 **Q. HOW CAN ENRON BE THE PLR IF IT DOES NOT CURRENTLY OWN**  
13 **GENERATION IN PECO'S SERVICE TERRITORY?**

14 A. Enron recognizes that to function as the PLR, it must assume responsibility for the  
15 procurement of electric generation services for a large number of customers. To fulfill  
16 this obligation, the Choice Plan provides that Enron and PECO would enter into the  
17 Power Purchase Agreement to secure capacity and energy necessary to serve this load,  
18 thereby assuring that the present level of service delivered to customers will continue in  
19 all respects. Mr. Slater is available to respond to any questions as to how the Power  
20 Purchase Agreement will operate.

1 Q. SOME PARTIES HAVE CRITICIZED THE CHOICE PLAN BECAUSE IT WAS  
2 SUBMITTED BY A NEWLY FORMED CORPORATION. IS THAT A VALID  
3 CRITICISM?

4 A: No. Enron was organized as the vehicle to serve as the PLR in PECO's service  
5 territory. This is a separate and different function than the activities undertaken by  
6 EPMI, the other corporate entity in the Enron Corp. corporate family that purchases  
7 and sells electric power (primarily on a wholesale basis). However, Enron is fully  
8 aware of the level and nature of its responsibilities to provide retail electric service as  
9 the PLR. Enron has committed in its Petition to cooperate with the Commission to  
10 obtain appropriate financial backing of Enron Corp., its multi-billion dollar publicly-  
11 traded parent company. Such types of financial support are commonplace in large-  
12 scale power purchase and sale arrangements. Indeed, in many similar transactions, a  
13 special purpose entity is organized to engage in a particular transaction or activity,  
14 backed by the financial support of a creditworthy affiliate. The Choice Plan also calls  
15 for PECO and Enron to enter into certain contractual arrangements that will provide  
16 Enron with the resources necessary to provide reliable electric service to those  
17 customers that do not obtain service from an alternative electric supplier. Such  
18 contractual arrangements, when coupled with the financial, operations and other  
19 resources available to be called upon by Enron from other companies in the Enron  
20 corporate group clearly support the qualifications of Enron to serve as the PLR.  
21 PECO's attempt to disparage the Choice Plan because it was submitted by a special  
22 purpose corporation is disingenuous. Moreover, to allege that Enron does not have the  
23 power, the expertise and the contractual and other resources to meet its obligations as

1 the PLR suggests that PECO questions its own ability to meet its obligations to its  
2 customers under the Partial Settlement.

3  
4 **Q. PECO HAS ALLEGED THAT THE COMMISSION DOES NOT HAVE THE**  
5 **POWER UNDER THE ACT TO DESIGNATE A PARTY OTHER THAN PECO**  
6 **TO BE THE PROVIDER OF LAST RESORT AT THIS TIME? DO YOU**  
7 **AGREE?**

8 A. No. We believe the proper reading of the Act is that the PLR can be a party other than  
9 PECO (namely, a "Commission-approved supplier") and that such alternative supplier  
10 can become the PLR at anytime. For example, the Declaration of Policy of the Act  
11 first mentions this option and makes no mention of a temporal limitation on when such  
12 a supplier could be appointed the PLR. Moreover, PECO apparently recognizes this as  
13 well in the Partial Settlement wherein it provides (at page 25) that it would serve as the  
14 PLR unless the Commission designates an alternative supplier.

15  
16 **Q. IS IT YOUR POSITION THAT THE COMMISSION CAN FORCE PECO TO**  
17 **ENTER INTO THE POWER PURCHASE AGREEMENT?**

18 A. The Commission is not required to force PECO's customers to pay PECO almost five  
19 and one-half billion dollars for stranded costs unless those customers obtain the  
20 corollary benefits of competition in the retail generation market. If PECO wants to  
21 recover costs that are "stranded" due to competition, PECO must take the steps  
22 necessary to produce that competition. The Partial Settlement will not produce  
23 competition; the Choice Plan will. We believe that the failure of the Act, or the Partial

1 Settlement, to require a divestiture of PECO's generation, preferable through an  
2 auction process, is regrettable because such a process would have both provided a  
3 realistic basis to gauge PECO's stranded costs and created a market with diverse  
4 generation suppliers. Nevertheless, there are still ways in which a generation market  
5 can be created, with PECO holding the generation, under which Enron can obtain the  
6 energy and capacity necessary to serve the default customers (i.e., through the Power  
7 Purchase Agreement). Under the competitive safeguards contained in the Choice Plan,  
8 PECO is not permitted to market generation under the PECO name, nor is PECO  
9 permitted to favor its own marketing affiliate in the sale of generation. If PECO is not  
10 the PLR, then PECO will have a very strong incentive to sell the required energy and  
11 capacity to the entity that is. Again, PECO may refuse to do so, but the failure to  
12 foster a competitive generation market which would flow from such a refusal should  
13 prohibit PECO's claim for stranded costs.

14  
15 **Q. PECO ALLEGES IN ITS ANSWER TO THE PETITION AND CHOICE PLAN**  
16 **THAT NO "PRUDENT UTILITY MANAGER" WOULD AGREE TO THE**  
17 **TERMS OF THE CONTRACTS PROPOSED THEREIN, NAMELY THE**  
18 **POWER PURCHASE AGREEMENT AND THE MBC SERVICES**  
19 **AGREEMENT. IS THAT A VALID POSITION?**

20 **A.** No. First of all, it should be noted that the price Enron has agreed to pay PECO for  
21 generation under the Power Purchase Agreement is more than the generation credit  
22 proposed by PECO during most years of the term of that agreement -- that is, it is more  
23 than the price PECO essentially is saying that it will sell generation service to

1 customers. Even though the contract price under the Power Purchase Agreement is less  
2 than PECO's proposed generation credit in the later years, it is likely that Enron will  
3 purchase much less power from PECO at such time pursuant to the Power Purchase  
4 Agreement. Since the market price for power at such time is anticipated to be  
5 significantly less than both the contract price under the Power Purchase Agreement and  
6 PECO's proposed generation credit at such time, many customers that initially start off  
7 as default customers and would be served by Enron as the PLR (with power purchased  
8 from PECO under the Power Purchase Agreement) likely will have migrated to  
9 alternative generation suppliers at the time that PECO's proposed generation credit  
10 "crosses" the credit proposed in the Choice Plan.

11 In addition, even if no customer migration to other energy service providers  
12 occurs, the proposed generation credit in the Choice Plan leaves PECO in the same  
13 financial position as its own proposed generation credit curve because the curve was  
14 adjusted in the Choice Plan without affecting the present value of the generation credit  
15 curve. In other words, pursuant to the Choice Plan, the present value to PECO of the  
16 over collection of generation charges in the first five years will be equal to the present  
17 value of the under collection of generation charges in the second five year period, in  
18 each case compared to the proposed PECO generation credit curve in the Partial  
19 Settlement. Given that migration of the customers to other suppliers is expected to  
20 occur, the Enron plan actually creates additional value for PECO to the extent the full  
21 under collection will not be realized due to migration. Lastly, with respect to the MBC  
22 Services Agreement, as Mr. Kingerski will describe, Enron proposes to contract with  
23 PECO to provide these services. Enron will pay PECO its proposed tariff rate for such

1 services, thereby providing it with a return of and on its investment with respect to the  
2 furnishing of such services.

3  
4 **Q. IT HAS ALSO BEEN CLAIMED THAT ENRON IS SIMPLY SEEKING TO**  
5 **"STEP INTO PECO'S SHOES" WITH RESPECT TO METERING, BILLING**  
6 **AND COLLECTION SERVICES BY REQUIRING PECO TO PROVIDE THESE**  
7 **SERVICES TO ENRON FOR THE DEFAULT SERVICE CUSTOMERS.**  
8 **WHY SHOULD PECO PROVIDE THESE SERVICES TO ENRON?**

9 A. Under the Choice Plan, PECO would enter into the MBC Services Agreement with  
10 Enron for metering, billing, collection and other service functions for the PLR  
11 customers. PECO should do this because it would be compensated for these services at  
12 rates commensurate with the costs that are currently contained in PECO's existing  
13 distribution tariffs. Therefore, PECO will suffer no pecuniary loss as a result of  
14 entering into this contract. Enron, moreover, would be procuring these services from  
15 PECO, using PECO's facilities and employees. We believe it is far more beneficial to  
16 PECO and its employees to have them undertaking these services than to suffer the  
17 disruptions that they would incur if Enron obtained them through a bidding process,  
18 probably at a much lower cost. PECO's refusal to enter into the Power Purchase  
19 Agreement or the MBC Services Agreement with Enron would risk recovery of its  
20 stranded costs because the Partial Settlement will not bring about the necessary  
21 predicate of competition that is legally required for stranded cost recovery.

22

1 Q. IS IT TRUE THAT THE CHOICE PLAN RESTRICTS THE BENEFITS  
2 OFFERED TO ELIGIBLE LOW INCOME CUSTOMERS UNDER THE  
3 PARTIAL SETTLEMENT?

4 A. No. The Choice Plan, like the Partial Settlement, extends the benefit of the universal  
5 service program to up to 100,000 eligible customers in PECO's service territory. We  
6 will be filing shortly with the Commission an amendment to the Petition and the Choice  
7 Plan to make sure there is no misunderstanding on that point. We take exception to  
8 those parties that issued press releases and other public statements alleging that our plan  
9 restricted universal service even though we informed them that we would clarify the  
10 Choice Plan to make it clear that the Choice Plan includes the same benefits in that  
11 respect as the Partial Settlement.

12  
13 Q. THE CHOICE PLAN ALSO CONTAINS SEVERAL CONDITIONS AND  
14 CONTINGENCIES. WHY HAVE THEY BEEN INCLUDED?

15 A. The conditions and contingencies have been included in order to ensure that the Choice  
16 Plan which is adopted is the same plan which Enron has offered. The provisions of the  
17 Choice Plan are interrelated and interdependent and cannot be changed or eliminated  
18 without jeopardizing the integrity of the plan as a whole and subjecting Enron and  
19 PECO's customers to unforeseen risks. These conditions and contingencies are simply  
20 necessary to protect Enron in the event that changes are forced on the Choice Plan that  
21 will render it unworkable.

22

1 Q. THE CHOICE PLAN APPEARS TO REQUIRE SOME FUNDAMENTAL  
2 CHANGES TO BOTH THE PARTIAL SETTLEMENT AND THE MANNER IN  
3 WHICH ELECTRIC UTILITIES HAVE PREVIOUSLY DONE BUSINESS IN  
4 PENNSYLVANIA. HOW DO YOU ANSWER CRITICS WHO ASSERT THAT  
5 THE CHOICE PLAN IS NOT "REALISTIC"?

6 A. The relief requested by this Petition is certainly far reaching and would authorize Enron  
7 to "step into PECO's shoes" in many respects relating to the provision of electric  
8 service to PECO's customers, not only in fulfilling the PLR obligation, but also in  
9 financing PECO's authorized stranded costs. But, while the relief sought is far  
10 reaching, the potential benefits of the proposal are even more far reaching. Many  
11 people at Enron have worked diligently on the Choice Plan and we are committed to  
12 making it work. Our evidence in this proceeding has been offered to demonstrate that  
13 the Choice Plan is both workable and would be highly beneficial to PECO's customers.  
14 In order for PECO's customers to obtain these significant benefits, the Commission  
15 need only approve the Choice Plan.

16  
17 Q. WILL PECO'S FINANCIAL POSITION BE JEOPARDIZED IF THE CHOICE  
18 PLAN IS IMPLEMENTED?

19 A. No. The Choice Plan is designed to provide PECO on the effective date with the full  
20 amount of the stranded costs agreed to under the Partial Settlement, thereby enhancing  
21 its financial integrity by eliminating any risk to PECO that it could end up absorbing  
22 any of such costs. In addition, the amounts payable by Enron to PECO under the

1           Power Purchase Agreement and MBC Services Agreement fairly compensate PECO for  
2           providing energy and services and should not adversely affect PECO financially.

3

4       Q.    **DOES THIS CONCLUDE YOUR TESTIMONY?**

5       A.    Yes.

6

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Statement No. 1-R C0007  
etal  
Phila 11/17/97  
C.N.

Petition of Enron Energy Services Power, Inc. for  
Approval of an Electric Competition and Customer Choice Plan  
and for Authority Pursuant to Section 2807(e)(3) of the  
Public Utility Code to Serve as the Provider of Last Resort  
in the Service Territory of PECO Energy Company

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Rebuttal Testimony

of

Steven J. Kean

on behalf of

Enron Energy Services Power, Inc.

concerning

Overall Policy Witness

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1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Steven J. Kean. My business address is 1400 Smith Street, Houston,  
3 Texas, 77002.

4  
5 Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS  
6 PROCEEDING?

7 A. Yes, I submitted Enron Statement Number 1.

8  
9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

10 A. The purpose of my testimony is to respond to the assertions in the various testimonies  
11 submitted in this proceeding pertaining to the Choice Plan submitted by Enron Energy  
12 Services Power, Inc. ("Enron"). In some cases I will respond to criticism by pointing  
13 out the errors in the views expressed by witnesses. In other cases, I will explain why  
14 the Choice Plan already satisfies concerns which have been identified. Still in other  
15 cases, I will accept certain valid points raised by the testimony and clarify or modify  
16 the Choice Plan to accommodate these concerns.

17

18 Q. WHAT IS YOUR ASSESSMENT OF PECO'S TESTIMONY FILED IN  
19 RESPONSE TO ENRON'S CHOICE PLAN?

20 A. PECO's testimony attempts to misdirect the Commission's attention. Perhaps the  
21 most significant misdirection is the attempt to focus the Commission's attention away  
22 from the central purpose of the Electricity Generation Customer Choice and  
23 Competition Act (the "Act") and this proceeding

1 -- the creation of a competitive market for the benefit of consumers. Whether the  
2 Commission approves the Choice Plan or elects to fashion its own restructuring plan  
3 from the record in these proceedings, one objective remains paramount -- the  
4 Commission must approve or develop a plan that establishes competition in PECO's  
5 service territory. Competition is the fundamental objective of the Act -- the parties  
6 cannot "settle it away." Competition is also the prerequisite for stranded cost  
7 recovery; PECO is not entitled to stranded cost recovery and a set of rules which  
8 thwart competition. Pro-competitive rules create for PECO the same opportunity to  
9 compete as other suppliers of generation and other competitive services.  
10 The Choice Plan sets forth the rules for a competitive market and provides for  
11 stranded cost recovery. It is, therefore, the only proposal before the Commission  
12 which complies with the Act.

13  
14 **Q. IN WHAT OTHER RESPECTS DOES THE PECO TESTIMONY MISDIRECT**  
15 **THE COMMISSION IN YOUR VIEW?**

16 **A.** PECO attempts to divert attention from the inadequacies in the Partial Settlement by  
17 inappropriately and inaccurately characterizing Enron's possible level of earnings  
18 under the Choice Plan. Not only are PECO's projections of Enron's earnings  
19 substantially exaggerated, but PECO fails to admit that PECO would realize profits for  
20 its shareholders under the Partial Settlement that would dwarf those that could be  
21 realized by Enron. Indeed, given the magnitude of the Choice Plan's rate reductions,  
22 PECO's statements about Enron's earnings are an admission that PECO is retaining  
23 substantially more than that amount for its shareholders. PECO's repeated allegation

1 that under the Choice Plan, Enron, a "non-Pennsylvania company" would take profits  
2 out of Pennsylvania also is intended to inaccurately characterize the Choice Plan when  
3 compared to the Partial Settlement. PECO's shareholders -- the beneficiary of  
4 PECO's overrecovery of its stranded costs under the Partial Settlement -- probably live  
5 across the country and even around the world. The Choice Plan, in contrast, provides  
6 for greater economic benefits for consumers right here in Southeastern Pennsylvania.

7  
8 **Q. IS IT ALSO TRUE THAT PECO HAS INACCURATELY CHARACTERIZED**  
9 **THE FEASIBILITY OF THE SECURITIZATION STRUCTURE PROVIDED IN**  
10 **THE CHOICE PLAN?**

11 **A.** Yes. PECO tries to mislead the Commission by asserting that Enron's securitization  
12 proposal is uncertain, apparently without regard to the following facts:

- 13 a) The legal challenges directly or indirectly affecting securitization that  
14 have been raised would apply with equal force to the Partial Settlement;  
15 and  
16 b) Enron, based on the advice of its financial advisor and counsel, believes  
17 that these legal challenges should not prevent Enron's securitization  
18 plan from being timely implemented.

19 Further, to the extent the legal challenges constitute impediments to securitization  
20 under the Choice Plan, such impediments similarly would prevent securitization under  
21 the Partial Settlement. If PECO considers these legal challenges as bona fide barriers  
22 to its own securitization proposal, then PECO has been disingenuous in promoting the  
23 Partial Settlement as promising an initial 10% rate reduction, rather than the 7%

1 reduction that applies if PECO is not able to securitize. In addition, PECO's proposal  
2 violates the Act by (a) not creating a competitive market, (b) including as "stranded  
3 costs" items not eligible for such recovery under the law, and (c) failing to provide for  
4 a "true-up" mechanism for the competitive transition charges ("CTCs") to protect  
5 consumers from overrecovery of stranded costs. PECO's plan fails to fulfill the basic  
6 purposes and requirements of the Act.

7  
8 **Q. PLEASE OUTLINE THE REMAINDER OF YOUR REBUTTAL TESTIMONY.**

9 **A.** My testimony rebuts PECO's testimony by refocussing on the essential requirement of  
10 this proceeding -- the creation of competitive alternatives for electric consumers.

- 11 • First, I show how the Choice Plan creates a framework for establishing  
12 real competition in PECO's service territory -- with or without  
13 securitization of PECO's stranded costs.
- 14 • Second, I show how even beyond the creation of a competitive market,  
15 the Choice Plan benefits consumers through additional rate reductions  
16 over those provided in the Partial Settlement and the return of excess  
17 stranded cost recoveries to consumers.
- 18 • Third, I describe how the Choice Plan comports with the requirements  
19 of the Act, while also demonstrating why the Partial Settlement violates  
20 the Act in key respects.
- 21 • Fourth, I describe certain clarifications and enhancements to the Choice  
22 Plan offered in response to the testimony of PECO and the other parties  
23 that have participated in this proceeding, including:

- 1 (a) Offering a contingency plan in the event that securitization under  
2 the Choice Plan is delayed or prevented that provides for rate  
3 reductions significantly greater than offered by PECO in the  
4 event PECO is delayed or prevented from securitizing;
- 5 (b) Clarifying the impact of the Choice Plan on certain special  
6 contracts and rate riders;
- 7 (c) Clarifying the recovery of gross receipts taxes ("GRT") on CTC  
8 recoveries and intangible transition charges ("ITCs");
- 9 (d) Offering an alternative rate restructuring which lowers the  
10 stranded cost charges in the later years of the Choice Plan;
- 11 (e) Accelerating the termination of stranded cost charges so that the  
12 recovery period does not exceed 120 months;
- 13 (f) As part of the alternative rate restructuring, establishing  
14 increased generation credits to address concerns about  
15 competition in the later years of the Choice Plan and PECO's  
16 assertion that Enron's original out-year generation credits would  
17 jeopardize its "financial integrity";
- 18 (g) Removing certain costs from PECO's T&D rates which, as  
19 testimony in this case shows, more properly are assigned to  
20 PECO's competitive businesses or recovered as part of the  
21 PECO generation rate; and
- 22 (h) Eliminating certain conditions in the Choice Plan that were  
23 objectionable to various parties.

1 In many cases, Enron makes these clarifications and enhancements by using proceeds  
2 that Enron otherwise would have received in connection with its securitization plan.  
3 Further, these clarifications and enhancements are made while: (1) continuing to  
4 double the rate reductions proposed in the Partial Settlement, (2) establishing a truly  
5 competitive market as required by the Act and (3) compensating PECO fully for its  
6 agreed upon \$5.461 billion in stranded costs, including all GRT on stranded cost  
7 recoveries. The Choice Plan is superior in all key respects to the Partial Settlement.

8

1 I. THE CHOICE PLAN ESTABLISHES A FRAMEWORK FOR REAL  
2 COMPETITION AS REQUIRED BY THE ACT. PECO'S PARTIAL  
3 SETTLEMENT DOES NOT

4  
5 Q. PLEASE RESPOND TO PECO'S CLAIMS IN ITS TESTIMONY THAT THE  
6 COMMISSION SHOULD NOT ADOPT THE PRO-COMPETITIVE  
7 PROVISIONS IN THE CHOICE PLAN.

8 A. PECO's position, as sponsored by witness Hill, appears to be based on the idea that it  
9 can cut a deal for stranded costs and establish rules which prevent competition. But,  
10 competition is not a part of the Act that can simply be settled away by private parties  
11 or the Commission. Without proposing a plan that provides for a competitive market,  
12 PECO has not fulfilled the requirements of the Act and is not entitled to stranded cost  
13 recovery. Equally important, including these pro-competitive rules can be  
14 accomplished while still allowing stranded cost recovery. There is no financial harm  
15 to PECO -- it still gets to recover its stranded costs -- it will just have to compete, like  
16 everyone else, for consumers' business. Competition and pro-competitive rules are  
17 not available to be traded away by PECO or anyone else in this proceeding. If a  
18 utility's shareholders receive their stranded costs they have no justifiable objection to  
19 opening the market to competition.

20  
21 Q. SPECIFICALLY, WHAT PROVISIONS MUST BE INCLUDED TO ENABLE  
22 COMPETITION?

23 A. The following elements must be included if competition is to be achieved:

- 1           ●     A generation credit which permits entry and competition in the marketplace by
- 2                     competitive suppliers, thereby permitting consumers to do even better than the
- 3                     rate caps under both the Partial Settlement and the Choice Plan;
- 4
- 5           ●     "Provider of Last Resort" ("PLR") rules which: (1) provide competitive
- 6                     benefits to customers who do not choose to purchase electricity from another
- 7                     supplier and (2) prevent the incumbent utility from thwarting competition in
- 8                     the market;
- 9
- 10          ●     A code of conduct which prevents PECO from using its access and control
- 11                     over transmission and distribution facilities to advantage its sales or other
- 12                     competitive businesses; and
- 13
- 14          ●     The unbundling of other competitive services, such as metering, billing,
- 15                     customer information and collection services and to allow the competitive
- 16                     provision of those services.
- 17

18   **Q.    ARE THESE ELEMENTS SEPARABLE IN A COMPETITIVE MARKET?**

19   A.    No, they are interrelated.  Contrary to the assertions of PECO witnesses Hill,  
20        Sundermeir and Crowe, if the generation credit is competitive but sellers cannot  
21        provide billings directly to customers it will be difficult for new entrants to compete  
22        since competitors will not be able to secure ongoing customer relationships.  Likewise,  
23        if the other competitive elements are included but PECO remains in the PLR role with

1 the ability to price discriminate there will be little competition in the market. All of  
2 these elements working together create a competitive market and they can be  
3 accomplished while permitting stranded cost recovery and substantial customer rate  
4 reductions.

5 It makes no sense to exclude any of these elements from restructured utility  
6 services. Across the nation the most egregious error made in restructuring utility  
7 service is providing utilities with full stranded cost recovery and allowing them to  
8 compromise the rules for the competitive marketplace. Utilities should not be  
9 permitted to have it both ways. Under the Act they cannot.

10  
11 **Q. PLEASE DESCRIBE THE PROPOSED GENERATION CREDIT.**

12 **A.** The generation credits are shown on Attachment A. Several witnesses including  
13 PECO witnesses Hill and Hieronymus, Fumo et al. witness Silkman and AARP  
14 witness Cooper have questioned the appropriateness of the Choice Plan generation  
15 credits. As I mentioned, Enron has adjusted the generation credits to accommodate  
16 concerns about the sufficiency of the generation credit in the later years to stimulate  
17 competition. Enron's revised generation credits address parties' concerns about the  
18 later years of the Choice Plan and work even while providing full stranded cost  
19 recovery and doubling the rate reductions proposed by PECO. Moreover, our revised  
20 generation credits fall within the range of market price estimates in the record of this  
21 proceeding.

1 Q. PECO ARGUES THAT THE CHOICE PLAN DID NOT ACCOUNT FOR GRT.  
2 IS THAT CORRECT?

3 A. No. PECO asserts that its stranded cost recovery under the Partial Settlement was  
4 intended to recover not only \$5.461 billion in stranded costs but also GRT on those  
5 receipts. The clarifications to the Choice Plan set forth herein accommodate that  
6 interpretation. Specifically, the revised rates and the revised securitization proposal  
7 enable full payment of the \$5.461 billion in stranded costs and the payment of  
8 associated GRT out of the stranded cost charges. The MBC Services Agreement  
9 provides for the payment of GRT on the services provided under that agreement,  
10 including transmission and distribution service.

11  
12 Q. HOW SHOULD THE PLR ROLE BE RESOLVED?

13 A. In response to the proposal introduced by the witnesses for the Environmentalists and  
14 NEV witness Boonin, I agree that the PLR should be competitively selected. In this  
15 proceeding Enron and PECO are competing for this role and each has offered its PLR  
16 proposal. Having Enron as the PLR provides further compensatory benefits to  
17 consumers in Southeastern Pennsylvania since Enron has no incentive to attempt to  
18 retain customers on default service and thus will not act as a barrier to competitive  
19 suppliers. Since the Choice Plan provides that Enron will not make a margin on sales  
20 to default customers, Enron has every incentive to encourage customers to "do better"  
21 and obtain energy from alternative suppliers at a lower price. In the absence of  
22 securitization under the Choice Plan, the PLR should be competitively selected. The  
23 Act provides the following basis for this approach:

- 1 (1) it allows the Commission to select someone other than the distribution
- 2 company to be PLR;
- 3 (2) it requires the service provided by the PLR to be at the prevailing
- 4 market price plus reasonable costs; and
- 5 (3) it requires stranded costs to be fully mitigated.

6 The Commission can accommodate all of these by allowing for competitive provision of PLR  
7 service.

8

9 **Q. HOW WOULD THAT WORK?**

10 A. The Commission would presumably require potential PLRs to meet criteria, including  
11 financial viability, adherence to consumer protection standards and competitive  
12 pricing. The Commission could select from among competing PLRs by, for example:

- 13 (1) using an allocation methodology like that proposed by witnesses for the
- 14 Environmentalists;
- 15 (2) allowing each PLR to bid a dollar amount for the right to serve a
- 16 portion of the default customer class and using the proceeds to mitigate
- 17 stranded costs; or
- 18 (3) allowing each PLR to bid for the right to serve default customers under
- 19 a set of prices, terms and conditions, with the Commission selecting the
- 20 PLRs which offer the best package.

21 In addition to jump-starting competition and eliminating the distribution company's  
22 incumbency advantage, this approach mitigates stranded costs and ensures that those

1 customers who, for whatever reason, do not select a competitive provider nevertheless  
2 receive the benefits of competition.

3 In the absence of establishing competition for this service the Commission  
4 would bestow a huge advantage (and a huge benefit) on PECO and would forego a  
5 real opportunity to benefit consumers and mitigate stranded costs. The PLR function  
6 has real value, as evidenced by Enron's proposal in this proceeding. Utilities should  
7 not be permitted to fully recover stranded costs and simply walk off with this valuable  
8 incumbency position. The Commission should capture that value for consumers. If  
9 PECO retains the PLR role, PECO would largely retain its monopoly over consumers  
10 by selectively discounting its prices to prevailing market prices -- but only when it was  
11 forced to do so to retain customers. Competitive provision of this service provides all  
12 customers with the benefits of competition and avoids the endless wrangling the  
13 Commission will otherwise have to engage in to keep PECO's default service rates at  
14 competitive levels.

15  
16 **Q. PECO HAS CLAIMED THAT THE ACT PREVENTS ANYONE OTHER THAN**  
17 **PECO FROM SERVING AS PLR WHILE STRANDED COSTS ARE BEING**  
18 **COLLECTED. HOW DO YOU RESPOND?**

19 **A.** As I discuss in greater detail in part III of my testimony, even the PECO Partial  
20 Settlement acknowledges that someone other than PECO may be selected by the  
21 Commission during the time period when stranded costs are being recovered.

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**II. THE CHOICE PLAN PROVIDES SUBSTANTIAL ADDITIONAL BENEFITS TO CONSUMERS**

**Q. PECO CLAIMS THAT ENRON'S CHOICE PLAN DOES NOT BENEFIT CONSUMERS TO THE SAME DEGREE AS THE PARTIAL SETTLEMENT AND THAT IT IS A PLOY FOR ENRON TO RECOVER \$1 BILLION WITHOUT PROVIDING VALUE. HOW DO YOU RESPOND?**

**A.** The Choice Plan doubles PECO's proposed rate reductions and adds an additional year of rate reductions for consumers. The Choice Plan puts approximately \$1 billion (that PECO would otherwise keep) into the pockets of Philadelphia area consumers. If PECO assumes Enron is making \$1 billion, which is an erroneous and exaggerated assumption, PECO is admitting that it is recovering significantly more than its stranded costs, because Enron is offering greater rate reductions than PECO and the Choice Plan is also:

- Returning excess recoveries of CTCs due to load growth in PECO's service territory to consumers while simultaneously insulating consumers from any additional CTC charges due to load decline, and
- Providing consumers with the benefit, in the form of additional rate reductions, in the event interest rates decrease prior to the effective date of the Choice Plan while simultaneously insulating consumers from any rate increases due to increases in interest rates during such period.

1 In addition, with the enhancements proposed herein, Enron is further reducing  
2 stranded cost collections (and its own economic return) in order to (a) explicitly pay  
3 for the GRT in stranded cost recovery and (b) lower stranded cost charges in the later  
4 years of the plan.

5  
6 **Q. PECO WITNESS HILL CLAIMS THAT ENRON CAN ADJUST GENERATION**  
7 **SALES RATES TO REFLECT INCREASES IN GENERATION COSTS; IS**  
8 **THIS DIFFERENT FROM PECO'S PROPOSAL?**

9 A. The Choice Plan actually exposes customers to less risk of price increases. PECO has  
10 broadly reserved rights to adjust rates. The situation in which Enron, as PLR, could  
11 adjust rates above the cap would result from a breach or other nonperformance of  
12 PECO under the power purchase agreement between PECO and Enron (the "PPA").  
13 The PPA secures the prices customers pay. If PECO fails to perform and Enron is  
14 required to buy power at a higher price in the market then it is possible for the price to  
15 increase. Even in that situation, however, Enron would have rights against PECO to  
16 recover damages and upon receiving those recoveries and such amounts would be  
17 applied as a credit or refund for the benefit of customers. PECO's assertion that  
18 consumers could be adversely affected under the Choice Plan is interesting since that  
19 only would occur as a result of a breach by PECO. Consumers bear the same risks  
20 under the Partial Settlement.

1 Q. PECO WITNESS MITCHELL CLAIMS THAT ITS FINANCIAL INTEGRITY  
2 IS PLACED AT RISK UNDER THE ENRON CHOICE PLAN. DO YOU  
3 AGREE?

4 A. First, it is extraordinary that PECO would claim that it would be financially devastated  
5 if it were paid \$5.461 billion in a lump sum. Enron surmises that PECO's claim that  
6 the Choice Plan would harm it financially results from the fact that the implementation  
7 of such plan would deprive PECO of its overrecovery of stranded costs as provided in  
8 the Partial Settlement.

9 Further, PECO seems to think the consumers of the Philadelphia area owe it a  
10 living. Like other companies in a competitive market, it will have to earn a profit not  
11 from a government-protected monopoly but from offering better service, competitive  
12 prices and efficient operations. It will have to change the way it does business and the  
13 way it approaches customers. But unlike other companies that have to make these  
14 transitions every day as the competitive environment changes, PECO will get a check  
15 for \$5.461 billion. Only in the insulated world of a government protected monopoly  
16 could anyone even think to claim more. PECO does claim more. Its testimony tells  
17 us \$5.461 billion upfront is not enough. It should also earn a profit on its uneconomic  
18 investments and benefit from a set of rules to keep competition out. The Choice Plan  
19 is a good deal for PECO. It gets paid for its uneconomic investments, and it gets a  
20 chance to compete. If PECO really wanted to make the transition to competition it  
21 would need the same pro-competitive rules Enron seeks.  
22

1 **III. THE CHOICE PLAN IS CONSISTENT WITH THE ACT; THE PARTIAL**  
2 **SETTLEMENT IS NOT**

3  
4 **Q. WHAT IS YOUR UNDERSTANDING OF THE CONSISTENCY BETWEEN**  
5 **THE CHOICE PLAN AND THE ACT?**

6 **A.** It is my understanding, based on advice of counsel, that the Choice Plan is consistent  
7 with both the spirit and letter of the Act. Certainly, the Choice Plan is consistent with  
8 the spirit of the Act since the most important objective of the Act is to open the  
9 competitive retail generation market to meaningful competition in order to bring  
10 benefits to consumers through lower rates and new and innovative products and  
11 services. Such objectives are particularly important for customers in PECO's service  
12 territory where rates are unusually high.

13  
14 **Q. HAVE PECO'S WITNESSES CHALLENGED THE CHOICE PLAN'S**  
15 **LEGALITY?**

16 **A.** Yes, although PECO witnesses have challenged the legality of certain provisions of the  
17 Choice Plan, it is my understanding that the concerns of those witnesses are  
18 misplaced. For example, Mr. Hill claims that the Act bars any entity other than  
19 PECO from serving as PLR as long as PECO is collecting either CTC or ITC. Based  
20 upon advice of counsel, however, I believe that such view is not consistent with the  
21 Act. Furthermore, such position is wholly inconsistent with the language of the  
22 Partial Settlement itself.

23 There are at least two provisions of the Act which specifically indicate that the  
24 Commission may designate an entity other than the distribution company to serve as

1 the PLR. Neither of these sections restrict the time period for which this option is  
2 available. If one were to accept Mr. Hill's view, the Commission would be precluded  
3 from exercising authority which is clearly provided by the Act since under the Partial  
4 Settlement PECO will collect CTC or ITC for the entire transition period -- the same  
5 period in which the PLR serves a critical role in assuring continued service to all  
6 customers. Accordingly, Mr. Hill's view of the Act would render certain provisions  
7 of the Act regarding a PLR completely meaningless or at least inapplicable to PECO.  
8 Such a view defies common sense.

9 Equally important is the fact that Mr. Hill's view is inconsistent with the  
10 Partial Settlement itself. Paragraph 33 of the Partial Settlement states that, "PECO  
11 agrees that unless the Commission designates an alternative provider of last resort  
12 under Section 2807(E)(3) of the Electric Competition Act, it will serve through  
13 December 31, 2008 as the provider of last resort for all retail electric customers in its  
14 service territory that do not choose or cannot choose to purchase power from  
15 alternative suppliers." Of course, under other provisions of the Partial Settlement,  
16 PECO will collect CTC or ITC through December 31, 2008. Accordingly, the Partial  
17 Settlement expressly recognizes that an entity other than PECO can serve as the PLR  
18 during the period that CTC or ITC is collected.

19  
20 **Q. IS IT YOUR UNDERSTANDING THAT THE PARTIAL SETTLEMENT IS**  
21 **CONSISTENT WITH THE ACT?**

22 **A.** No. Just the opposite. It is my understanding that the Partial Settlement is  
23 inconsistent with the Act in at least two key respects.

1 First, the Partial Settlement does not include an annual review and "true-up" of the  
2 CTC. Not only is such a true-up critical to assuring that consumers get the benefit and  
3 that PECO not improperly profit -- from the expected growth in sales which occur  
4 over the transition period as demand increases -- but I have been advised by counsel  
5 that Section 2807(e)(2)(i) of the Act requires PECO to implement an annual review  
6 and true-up of the CTCs; that is, the true-up is not optional for PECO, but is an  
7 explicit statutory requirement. Since PECO has insisted that if any term of the Partial  
8 Settlement is disapproved by the Commission the entire plan becomes void, one could  
9 properly characterize PECO's plan as being "dead on arrival."  
10

11 **Q. WHAT IS THE SECOND KEY ASPECT IN WHICH THE PARTIAL**  
12 **SETTLEMENT IS INCONSISTENT WITH THE ACT?**

13 **A.** The second key aspect is PECO's attempt to recover what it believes to be the value of  
14 certain concessions it made to other signatories of the Partial Settlement through the  
15 stranded cost recovery mechanism. For example, Mr. Hill indicates that under a  
16 securitization scenario, some of the revenue produced by the CTC would serve the  
17 purpose of recovering approximately one half of a billion dollars in revenues "in order  
18 to fund its obligations under the Partial Settlement (i.e., industrial rate concessions,  
19 universal service expansion, early rate reduction and transmission and distribution rate  
20 cap expansion)." However, I have been advised by counsel that the transition or  
21 stranded costs which PECO may recover through the CTC or ITC is subject to a strict  
22 legal definition. I have also reviewed the definition of transition or stranded costs in  
23 the Act and I see no reference to items like rate concessions, universal service

1 expansion or early rate reductions. Furthermore, I have been advised by counsel that  
2 any revenue reduction which results from these purported concessions is not included  
3 within the scope of the legal definition. PECO's belated attempt to throw these other  
4 items into its stranded cost bucket is a thinly disguised plan to justify its now exposed  
5 stranded cost overrecovery.

6  
7 **Q. DOESN'T THE FACT THAT CONCESSIONS ARE MADE WITHIN THE**  
8 **CONTEXT OF A SETTLEMENT EXCLUDE THE PARTIAL SETTLEMENT**  
9 **FROM STRICT LEGAL REQUIREMENTS?**

10 **A.** I have been advised by counsel that under Pennsylvania law, partial settlements must  
11 comply fully with all applicable legal provisions. Accordingly, it is my view that  
12 PECO's claim for recovery of these items through the CTC is inconsistent with the  
13 Act.

14  
15 **IV. CLARIFICATIONS AND ENHANCEMENTS TO THE CHOICE PLAN**

16  
17 **Q. PLEASE SUMMARIZE THE CLARIFICATIONS AND ENHANCEMENTS TO**  
18 **THE CHOICE PLAN WHICH RESPOND TO THE PARTIES' TESTIMONY.**

19 **A.** Enron has adjusted the generation credits, the stranded cost recovery charges and the  
20 T&D charges under the Choice Plan in direct response to the testimony of witnesses  
21 addressing the Choice Plan. The revised system average figures are reflected in  
22 Attachment A. Enron made these changes to address concerns (1) about Enron's  
23 earnings under the Choice Plan raised by PECO witness Hill, (2) about the level of  
24 stranded cost charges in the later years and (3) that the generation credit levels in the

1 later years would not permit competition in those years and would not provide PECO  
2 with sufficient revenues under the PPA. The T&D rates have been adjusted in the  
3 testimony of witness Reising, which remove costs more properly allocated to  
4 competitive businesses, such as electricity sales.<sup>1</sup> Finally, the Choice Plan also  
5 provides for payment of the GRT on behalf of PECO with respect to the stranded costs  
6 collections.

7  
8 **Q. WHAT OTHER CLARIFICATIONS AND ENHANCEMENTS DOES ENRON  
9 OFFER TO THE CHOICE PLAN.**

10 A. To respond to concerns raised by PECO witnesses, Enron's Choice Plan has been  
11 revised to reflect a 120 month collection of stranded cost charges, rather than 124  
12 months — again to address Mr. Hill's concerns.

13  
14 **Q. WHAT ABOUT QUESTIONS THAT HAVE BEEN RAISED CONCERNING  
15 THE EFFECT OF THE CHOICE PLAN ON CERTAIN SPECIAL CONTRACTS  
16 AND RATE RIDERS?**

17 A. The testimony of witness Kingerski describes those clarifications.  
18

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<sup>1</sup> Enron reserved the right to challenge these rates as more data became available. Enron Choice Plan Petition, pg. 20, fn 28.

1 V. THE CHOICE PLAN HAS BEEN MODIFIED TO CONTAIN A CONTINGENCY  
2 PLAN THAT WOULD PERMIT THE PLAN TO GO INTO EFFECT EVEN IF  
3 SECURITIZATION OF PECO'S STRANDED COSTS IS DELAYED OR DENIED  
4

5 Q. WHY HAS THE CHOICE PLAN BEEN MODIFIED TO CONTAIN A  
6 CONTINGENCY PLAN IF SECURITIZATION IS PRECLUDED BY A LEGAL  
7 IMPEDIMENT?

8 A. Some parties have criticized the Choice Plan on the basis that there was no guarantee  
9 that the rate reductions would go into effect if a legal impediment prevented  
10 securitization from being implemented. Enron has elected to address those concerns  
11 and has developed a road map to achieve the objectives of the Act even in the absence  
12 of securitization.

13  
14 Q. PLEASE EXPLAIN HOW ENRON'S "CONTINGENCY PLAN" OPERATES  
15 UNDER THE CHOICE PLAN IN THE EVENT THAT A LEGAL IMPEDIMENT  
16 PREVENTS PECO FROM ISSUING THE TRANSITION BONDS TO ENRON?

17 A. First of all, let me emphasize, as described by Mr. Fastow in his Rebuttal Testimony,  
18 that Enron has been advised by its financial advisor, Chase Securities, Inc., that the  
19 existing lawsuits that have been cited by certain opponents of the Choice Plan as possible  
20 legal impediments to the securitization of PECO's stranded costs (as contemplated by the  
21 Choice Plan as well as in the Partial Settlement) should not prevent PECO from securing  
22 the Required Rating<sup>1</sup> for such securities or from issuing such securities on the terms  
23 provided in the Choice Plan. Witness Voorhees of Chase has stated that, based on advice

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<sup>1</sup> The Required Rating means a AAA rating (or its equivalent) or the highest possible rating for such asset type.

1 of counsel, the pending lawsuits are without merit and should not prevent the  
2 securitization contemplated by the Choice Plan. Thus, Enron should be able to  
3 implement the securitization structure proposed in the Choice Plan. Nonetheless, Enron  
4 elected to modify the Choice Plan to provide for the timely realization of rate reduction  
5 benefits for customers even if the existing lawsuits or additional future legal challenges  
6 were to prevent securitization. This change to the Choice Plan addresses the concerns  
7 expressed by some that such plan is contingent on securitization. However, this  
8 contingency plan is just that - a plan that nonetheless would provide for real competition  
9 in PECO's service territory, real savings to customers and full stranded cost recovery  
10 even if, due to circumstances beyond the control of PECO and Enron, a legal  
11 impediment arises that blocks securitization, even if only blocked temporarily.

12

13 **Q. PECO WITNESSES HILL, MITCHELL, HILLER AND RAYZIS CONTEND**  
14 **THAT THE SECURITIZATION STRUCTURE CONTEMPLATED BY THE**  
15 **CHOICE PLAN RUNS AFOUL OF THE PROVISIONS OF PECO'S FIRST**  
16 **MORTGAGE BOND INDENTURE AND, THUS, SUCH INDENTURE WILL**  
17 **PREVENT ENRON FROM IMPLEMENTING ITS SECURITIZATION PLAN FOR**  
18 **PECO'S STRANDED COSTS. DO YOU AGREE?**

19 **A.** No. As discussed by witness Fastow, Enron's securitization plan provides for the  
20 payment to PECO of the full amount of its agreed upon stranded costs and for the  
21 assumption from PECO of significant risk in exchange for an assignment of the ITCs.  
22 This payment and assumption should be sufficient to enable PECO to (1) obtain a release  
23 of the intangible transition property from the lien of the indenture or (2) defease the

1 bonds secured by the indenture, either of which should permit the implementation of  
2 Enron's securitization plan without regard to the existence of PECO's first mortgage  
3 bond indenture.

4  
5 **Q. PLEASE DESCRIBE HOW THE CHOICE PLAN WOULD BE MODIFIED IF**  
6 **THE SECURITIZATION STRUCTURE PROPOSED IN THE CHOICE PLAN IS**  
7 **NOT ABLE TO BE IMPLEMENTED ON SEPTEMBER 1, 1998, THE**  
8 **EFFECTIVE DATE OF THE CHOICE PLAN, BECAUSE OF A LEGAL**  
9 **IMPEDIMENT.**

10 A. In the event a legal impediment prevents the Transition Bonds from being issued as of  
11 such date, then the CTCs and generation credits set forth on Attachment B (determined  
12 on a system wide average basis) would go into effect. (Note that the actual charges  
13 payable by customers would be determined for each specific rate class). The CTC  
14 figures provide for a net present value recovery to PECO of \$5.461 billion<sup>1</sup> (plus GRT)  
15 and the generation credits are the same as those provided in the securitization case under  
16 the Choice Plan, thereby establishing the same framework for competitive entry into the  
17 marketplace. In addition, these CTC and generation credit rates would result in  
18 customers receiving the rate reductions set forth on Attachment B which, while lower  
19 than the rate reductions provided for by the Choice Plan if securitization can be  
20 accomplished, are greater than those provided in the "no securitization" case under the  
21 Partial Settlement. The CTC rates would be effective during the period from September  
22 1, 1998 until the date that the securitization structure proposed in the Choice Plan is

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<sup>1</sup> Using the implicit interest rate from the Choice Plan.

1 implemented. If such structure is not able to be implemented because, for example, one  
2 or more of the legal impediments are not successfully resolved, then the schedule of  
3 CTCs, generation credits and rate reductions set forth on Attachment B would continue in  
4 effect.

5  
6 **Q. PLEASE EXPLAIN WHAT HAPPENS UNDER THE CONTINGENCY PLAN IF A**  
7 **LEGAL IMPEDIMENT WERE TO PREVENT SECURITIZATION ON**  
8 **SEPTEMBER 1, 1998, BUT SUCH LEGAL IMPEDIMENT IS SUBSEQUENTLY**  
9 **ELIMINATED; FOR EXAMPLE, DESCRIBE HOW THE PLAN WORKS IF A**  
10 **LEGAL IMPEDIMENT TO SECURITIZATION IS EXTINGUISHED AND PECO**  
11 **IS ABLE TO ISSUE THE TRANSITION BONDS TO ENRON ON JANUARY 1,**  
12 **2000.**

13 **A.** If a legal impediment to securitization is subsequently eliminated, Enron's obligation to  
14 purchase the Transition Bonds would kick in. That is, subject to PECO's agreement to  
15 customary financing commitments dealing with, among other things, representations and  
16 warranties, Enron would be obligated to purchase such bonds for an amount equal to the  
17 unamortized balance of PECO's initial \$5.461 billion of stranded costs as of the date the  
18 Transition Bonds are issued.

1 Q. ARE THERE ADJUSTMENTS TO THE RATES PAYABLE BY CUSTOMERS IN  
2 THE EVENT SECURITIZATION OCCURS AFTER SEPTEMBER 1, 1998  
3 BECAUSE OF THE ELIMINATION OF A PRIOR LEGAL IMPEDIMENT AND  
4 THE "MID-STREAM" ISSUANCE OF THE TRANSITION BONDS?

5 A. Yes. Once the Transition Bonds are issued, the rate reductions contained in the Choice  
6 Plan would go into effect as of that date and continue for the remaining portion of the  
7 period set forth therein. For example, if securitization occurred on January 1, 2000, the  
8 20% rate reduction under the Choice Plan would apply for the period from January 1,  
9 2000 through December 31, 2000, and the 10% and 4% reductions would apply for  
10 calendar years 2001 and 2002, respectively.

11  
12 Q. IS THERE A LIMIT ON THE TIME PERIOD DURING WHICH ENRON IS  
13 OBLIGATED TO "STAND READY" TO PURCHASE THE TRANSITION  
14 BONDS?

15 A. Enron is committed to purchase the Transition Bonds until December 31, 2000. If Enron  
16 is not able to securitize by such time, its obligations under the Choice Plan shall expire.

17  
18 Q. IF THIS SHOULD OCCUR, WHAT TARIFF WILL BE IN EFFECT?

19 A. The pro-competitive tariff and generation credits of the Choice Plan will remain in effect,  
20 but without Enron serving as PLR or purchasing the Transition Bonds, and without the  
21 additional rate reductions securitization would have made possible.<sup>1</sup>

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<sup>1</sup> Note that even in such circumstances the contingency plan would provide for real competition (including competition (continued...))

1 Q. WHY INCLUDE THE DECEMBER 31, 2000 CUT OFF DATE?

2 A. First, that date should allow sufficient time to resolve any outstanding issues. Second,  
3 the largest consumer benefits under the Choice Plan are in the first 28 months. After that  
4 time, the gap narrows.

5  
6 Q. DOES THIS SUPERSEDE THE DEADLINES ORIGINALLY CONTAINED IN  
7 THE CHOICE PLAN?

8 A. Yes.

9

10 Q. IN THE EVENT THAT A PRIOR LEGAL IMPEDIMENT IS ELIMINATED AND  
11 A SECURITIZATION OCCURS IN "MID-STREAM", HOW IS THE  
12 UNAMORTIZED PORTION OF PECO'S ORIGINAL \$5.461 BILLION IN  
13 STRANDED COSTS DETERMINED AS OF THE DATE OF SECURITIZATION?

14 A. As reflected in Attachment C, PECO's \$5.461 billion stranded cost amount would be  
15 amortized by applying the CTC cash flows payable under the contingency plan  
16 alternative using the interest rate that would have applied on the Transition Bonds had  
17 such bonds been able to be issued on September 1, 1998 (taking into account any  
18 adjustments resulting from the application of the formula provided in Section 23(m) of  
19 the Choice Plan). For example, as reflected in Attachment C, if a securitization were to  
20 occur at the end of February 2000, the unamortized portion of PECO's stranded costs

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<sup>1</sup>(...continued)  
for the PLR role), real savings for customers and full stranded  
cost recovery.

1 and the face amount of the Transition Bonds that would be purchased by Enron would be  
2 \$4.991 billion.

3  
4 **Q. WOULD THE PAYMENT BY ENRON TO PECO OF THE UNAMORTIZED**  
5 **PORTION OF ITS STRANDED COSTS FULLY COMPENSATE PECO?**

6 A. Yes. The CTCs payable by customers to PECO during the pendency of a legal  
7 impediment are calculated such that the stream of payments results in a net present value  
8 to PECO of \$5.461 billion. Together those revenues plus the payment of the  
9 unamortized balance at the time the Transition Bonds are issued fully compensates PECO  
10 for its agreed upon stranded costs.

11  
12 **Q DOES PECO FULLY RECOVER ITS AGREED UPON STRANDED COSTS IF**  
13 **SECURITIZATION DOES NOT OCCUR BY DECEMBER 31, 2000 AND THE**  
14 **CTCs AND GENERATION CREDITS UNDER THE CONTINGENCY PLAN**  
15 **CONTINUE IN EFFECT FOR THE ENTIRE TRANSITION PERIOD?**

16 A. Yes. In fact, PECO would overrecover. Attachment D illustrates that the net present  
17 value of the CTC revenue stream payable to PECO under the contingency plan  
18 alternative under the Choice Plan, discounted at a rate equal to PECO's composite cost of  
19 capital, exceeds its agreed upon \$5.461 billion in stranded costs by several hundred  
20 million dollars.

1 Q. SECTION 23(M) OF THE CHOICE PLAN PROVIDES FOR A FORMULA THAT  
2 MAY RESULT IN AN ADJUSTMENT TO THE INTEREST RATES PAYABLE  
3 ON THE TRANSITION BONDS AS WELL AS CORRESPONDING  
4 ADJUSTMENTS TO THE CTC AND GENERATION CREDITS PROPOSED BY  
5 ENRON BASED ON MOVEMENTS IN INTEREST RATES PRIOR TO THE  
6 DATE OF ISSUANCE OF THE TRANSITION BONDS. DOES THIS FORMULA  
7 ALSO APPLY UNDER THIS CONTINGENCY PLAN AND, IF SO, HOW?

8 A. The formula, as reflected on Revised Exhibit 4, continues to apply during the period  
9 prior to the issuance of the Transition Bonds. Regardless of the movement in market  
10 interest rates prior to such date, however, such adjustment will not result in any increase  
11 in rates payable by customers under the Choice Plan even if securitization is delayed or  
12 never occurs.

13

1 Q. IS THE CHOICE PLAN STRUCTURED SO THAT THERE IS AN INCENTIVE  
2 FOR ENRON TO TAKE ALL ACTIONS NECESSARY TO CAUSE  
3 SECURITIZATION TO OCCUR?

4 A. Yes. Enron will not profit from selling energy to customers under the Choice Plan in its  
5 capacity as PLR since it will purchase energy from PECO at the same price it sells it to  
6 consumers. Since Enron's economic return under the Choice Plan is tied directly to  
7 securitization, Enron is economically motivated to eliminate any prior legal impediments  
8 to securitization. Notwithstanding this, PECO has substantially exaggerated and distorted  
9 the potential profit that Enron might realize from its purchase of the Transition Bonds.

10  
11 Q. ARE ENRON'S INTERESTS ALIGNED WITH CUSTOMERS WITH RESPECT  
12 TO CAUSING SECURITIZATION TO BE IMPLEMENTED?

13 A. Unquestionably yes. As noted above, Enron's economic return is tied in large part to  
14 PECO's ability to issue the Transition Bonds. Similarly, the 20% rate reductions for  
15 customers (with savings greater than in the Partial Settlement in later years) provided in  
16 the Choice Plan kick in when securitization is consummated.

17  
18 Q. ARE THERE OTHER CHANGES TO THE CHOICE PLAN THAT APPLY IF  
19 SECURITIZATION IS BLOCKED BY A LEGAL IMPEDIMENT ON  
20 SEPTEMBER 1, 1998?

21 A. Yes. If PECO is prevented from securitizing, Enron will not become the PLR as of such  
22 date and, accordingly, the PPA and the MBC Services Agreement would not go into  
23 effect at that time. However, once the legal impediments are eliminated and the

1 Transition Bonds are issued, Enron would become the PLR and the PPA and MBC  
2 Services Agreement would go into effect.

3  
4 **Q. SEPARATE AND APART FROM THE CRITICISM OF THE CHOICE PLAN AS**  
5 **BEING CONTINGENT, PECO WITNESS SHARPE HAS STATED THAT THE**  
6 **SECURITIZATION STRUCTURE CONTEMPLATED BY THE CHOICE PLAN**  
7 **WOULD RESULT IN PECO INCURRING A TAX LIABILITY IN EXCESS OF \$2**  
8 **BILLION UPON RECEIPT OF THE \$5.461 BILLION IN PROCEEDS OF THE**  
9 **TRANSITION BONDS. DO YOU AGREE?**

10 **A.** No. As witness Fastow describes, Enron has worked closely with Chase and its tax  
11 counsel, Milbank, Tweed, Hadley & McCloy, in putting together the tax structure for the  
12 securitization. Mr. Fastow describes a number of the inaccuracies in Mr. Sharpe's  
13 testimony, suggesting that Mr. Sharpe misunderstood some of the features of the Choice  
14 Plan's securitization structure. Further, Mr. Fastow notes that certain of the other  
15 features cited by Mr. Sharpe as tax problems are, in actuality, irrelevant to the tax  
16 analysis. Enron, based on advice of such counsel, believes that there is no substantive  
17 difference in the tax consequences to PECO under the securitization structures  
18 contemplated by the Partial Settlement and the Choice Plan.

1 VI. *RESPONSES TO OTHER CRITICISMS*

2 1. Chapter 56 Compliance

3 Q. MR. SUNDERMEIR CRITICIZES THE CHOICE PLAN BECAUSE HE  
4 BELIEVES THE DELIVERY SERVICE TARIFF OMITTS CERTAIN CONSUMER  
5 PROTECTIONS. HOW DO YOU RESPOND?

6 A. Mr. Sundermeir has closely examined Enron's proposed Delivery Service Tariff in an  
7 attempt to identify instances in which the Tariff is silent as to whether Enron, as the  
8 provider of last resort, or EGSs, which are participating in the competitive generation  
9 market, must comply with Chapter 56. For example, Mr. Sundermeir criticizes the  
10 Delivery Service Tariff for not imposing credit protections applicable to EGSs, not  
11 restricting late payment charges to 1½% and not requiring the inclusion of certain  
12 information on the bill.

13 Overall, Mr. Sundermeir's criticisms are based on the following statement found  
14 on page 8 of his testimony:

15 No, the Commission's Chapter 56 consumer protection regulations  
16 already cover many matters listed in this rule. In general, the  
17 Enron tariff is silent on whether an EGS will have to comply with  
18 provisions in Chapter 56, or pay fines for failure to comply with  
19 these provisions. As such, Enron's promise to comply with  
20 Chapter 56 purportedly contained in its application to be a licensed  
21 EGS in Pennsylvania is conspicuously absent in its proposed tariff  
22 provisions.

23

1 I read this statement as a challenge to the commitment Enron made in its supplier  
2 application and the numerous prior statements by Enron that it will comply with all  
3 applicable provisions of Chapter 56. But the purpose of the Delivery Service Tariff is  
4 not to repeat these provisions and expressly impose them on other EGSs since each EGS  
5 has presumably already made a similar compliance commitment to the Commission.  
6 However, I can clarify the record by unequivocally stating that under the Choice Plan, all  
7 EGSs will be required to comply with all applicable provisions of Chapter 56.<sup>1</sup> I believe  
8 that this statement alone is responsive to many, if not most, of Mr. Sundermeir's  
9 criticisms.

10  
11 **2. Proposed Code of Conduct**

12 **Q. MR. KEAN, MR. SIDAK CRITICIZES THE PROPOSED CODE OF CONDUCT**  
13 **CONTAINED IN THE CHOICE PLAN BECAUSE IT CONTINUES TO IMPOSE**  
14 **RULES ON PECO EVEN UNDER THE ASSUMPTION THAT ENRON -- AND**  
15 **NOT PECO -- WOULD BE THE PLR. WOULD YOU COMMENT?**

16 **A.** The Code of Conduct proposed by Enron is properly directed at the electric distribution  
17 company (the "EDC")-- in this case PECO -- and should continue to apply to PECO even  
18 if PLR responsibility is transferred to another entity. Application of a Code of Conduct  
19 is justified primarily for two reasons: (1) to restrain the ability of the EDC to take  
20 advantage of its historic incumbent market position; and (2) after direct access, to

---

<sup>1</sup> My reference to "applicable" provisions is not intended to avoid any Chapter 56 requirements, but instead to recognize that it is in my understanding that the Commission is presently reviewing which provisions of Chapter 56 are directly applicable to EGSs.

1 prevent the EDC from using its control of the remaining monopoly facilities  
2 (transmission and distribution) to benefit its affiliated businesses. Under the Choice Plan  
3 as it has been proposed (and as modified by Enron's Rebuttal Testimony), PECO would  
4 continue to control transmission and distribution facilities and continue to be able to  
5 leverage the benefits of its historic incumbent market position (e.g., name recognition,  
6 customer relationships) to thwart competition and harm competitors. As such, it is  
7 essential for PECO to operate according to the Choice Plan's Code of Conduct even if  
8 PLR authority is transferred.

9 Moreover, under the Choice Plan, PECO would continue to provide non-wire  
10 services (such as billing and metering) on behalf of Enron and, thus, would continue to  
11 have access to customer information which, if disseminated in a discriminatory manner to  
12 PECO's affiliates, could be harmful. PECO must be subject to a competition-protecting  
13 Code of Conduct. Mr. Dirmeier is submitting testimony in response to the PECO claims  
14 about the specifics of the Code of Conduct that should be applied to PECO whether or  
15 not it continues to function as the PLR.

16  
17 **Q. MR. SIDAK ALSO CRITICIZES THE CHOICE PLAN ON THE GROUND THAT**  
18 **IT FAILS TO INCLUDE A CODE OF CONDUCT TO GOVERN ENRON'S**  
19 **ACTIVITIES AS PLR WITH ITS AFFILIATES, SUCH AS ENRON POWER**  
20 **MARKETING, INC. IS THAT A VALID CRITICISM?**

21 **A.** No. Enron will be a licensed generation supplier and, as such, will be subject to the  
22 supplier code of conduct established by the Commission. This code generally assures  
23 that Enron will adhere to high standards of fairness in its interactions with all suppliers

1 including its affiliates. However, to assure suppliers that they will be treated fairly by  
2 Enron when it is acting as the sole PLR, Enron would agree to adhere to reasonable  
3 conditions on the utilization of information it obtains as the sole PLR.  
4

5 **Q. WHAT ADDITIONAL CODE OF CONDUCT PROVISIONS DO YOU BELIEVE**  
6 **SHOULD BE APPLIED WHEN ENRON OPERATES AS THE PLR?**

7 A. Specifically, the "information" and "promotion of affiliate" sections of the code of  
8 conduct proposed by Enron (or comparable provisions) would be appropriate to apply to  
9 Enron so long as it is acting as the single "PLR". These provisions will limit Enron's  
10 ability to utilize information it obtains solely as a result of its role as PLR to benefit its  
11 affiliated competitive generation supplier and will also limit Enron's ability to use its  
12 contacts with default customers to "jointly market" with an Enron affiliate.  
13

14 **Q. ARE THERE ANY SITUATIONS IN WHICH ADDITIONAL RULES**  
15 **APPLICABLE TO AN ALTERNATIVE PLR WOULD NOT BE NECESSARY?**

16 A. Yes. If, for example, the Environmentalists' proposal for a fully competitive PLR  
17 service is accepted, then the additional code of conduct rules I have identified would not  
18 be necessary or appropriate. In that instance, each supplier would have equal  
19 opportunity to act as the PLR and the ability to jointly market to customers in  
20 consideration for the price "bid" by a supplier for the right to act as the PLR.

1 Q. DOES ENRON SUPPORT THE IMPLEMENTATION OF SUCH A PLR BID  
2 PROCESS?

3 A. Yes. As I stated earlier in my testimony, Enron believes that bringing more competition  
4 to the PLR process is an excellent way to "jump-start" competition and enhance the  
5 benefits to consumers that a more fully competitive market will bring.

6

7 **3. Power Purchase Agreement and MBC Services Agreement**

8 Q. HOW DO YOU RESPOND TO MR. PRATZON'S CONTENTIONS REGARDING  
9 THE INTEGRITY OF THE PPA?

10 A. The PPA is designed to assure that Enron always has an adequate energy supply to fulfill  
11 its PLR responsibilities. Of course, the arrangement between PECO, as supplier, and  
12 Enron, as provider, must be completely dependable or the Philadelphia area consuming  
13 public will be put at risk and continuous service could be threatened.

14

15 Q. ARE MR. PRATZON'S CONCERNS REGARDING SPECIFIC TERMS AND  
16 CONDITIONS OF THE PPA JUSTIFIED?

17 A. No. Enron believes that the proposed terms of the PPA are likely to be substantially  
18 similar to the PPA that PECO would enter into with its supplier affiliate if the Partial  
19 Settlement was approved by the Commission. Mr. Pratzon's complaints boil down to the  
20 notion that Enron should not be privy to the same type of power purchase agreement as  
21 PECO would have with its own supplier affiliate. This is simply another example of  
22 PECO's insistence that it should be given special treatment and be provided service  
23 alternatives which would not be made available to other entities seeking to serve

1 customers in its service territory. As I stated previously, Enron's proposed PPA is an  
2 essential arrangement to assure adequate and continuous service to the public.

3 Accordingly, Mr. Pratzon's testimony essentially presumes that only PECO can serve as  
4 the PLR in its service territory. I cannot agree with this premise and it is my  
5 understanding that the Act has created an alternative to PECO's notion of exclusivity for  
6 itself.

7  
8 **Q. SHOULDN'T ENRON PROVIDE ADDITIONAL COMPENSATION TO PECO OR**  
9 **ITS SUPPLIER AFFILIATE TO ASSURE THE SUPPLY OF ENERGY ON**  
10 **DEMAND?**

11 A. No. Mr. Pratzon describes the PPA as a "call contract" on PECO's energy and capacity  
12 which he claims should be accompanied by a reservation fee to compensate PECO for  
13 assuring the supply of energy to Enron on demand. I do not agree with Mr. Pratzon's  
14 assessment that the PPA is a call contract; rather, it is a full requirements contract.  
15 Further, I cannot agree that the circumstances which surround this transaction justify  
16 payment of a reservation fee as might occur if a call contract were negotiated within the  
17 context of a competitive marketplace.

18  
19 **Q. HOW DO YOU DISTINGUISH THE PPA FROM CALL CONTRACTS**  
20 **NEGOTIATED IN THE COMPETITIVE MARKETPLACE?**

21 A. The underlying purpose of the PPA is to assure a continuous supply of energy to  
22 customers who for whatever reason are not being supplied power through the competitive  
23 retail generation market. As a matter of public policy, these customers must be supplied

1 energy by a PLR with an accompanying obligation to serve those customers. Essentially,  
2 it is the customers who have a "call" on the energy being provided to them by the PLR.  
3 Enron is not getting a "call" on generation for any purpose other than serving the full  
4 requirements of customers in PECO's service territory. This scenario is no different than  
5 the current situation in which all of the customers in PECO's service territory have a  
6 "call" on energy from PECO at tariffed rates. Moreover, PECO is fully compensated for  
7 its agreed upon stranded investments under the Choice Plan. That is, PECO is getting  
8 paid for the very facilities which should be used to supply Enron under the PPA. No  
9 additional reservation fees are necessary or appropriate.

10

11 **Q. ARE ANY DEFAULT SERVICE CUSTOMERS TREATED UNFAIRLY UNDER**  
12 **THE CHOICE PLAN?**

13 A. Absolutely not. Mr. Pratzon points to the fact that, under the Choice Plan, "Transition  
14 Default Customers," or customers who "choose not to choose" are not provided an  
15 opportunity to purchase energy at market-based prices. Such an assertion is simply  
16 incorrect. As reflected in the record of this proceeding, the generation credits themselves  
17 are calculated to be market-based. All customers, including those who have not chosen,  
18 have a continuous opportunity to purchase generation service at market-based prices  
19 through the competitive retail market. At the same time, transitional customers who  
20 choose not to select an alternative supplier and the prices offered by them are provided  
21 rate cap protection.

22

1 **Q. HOW DO YOU COMPARE THE DEFAULT SERVICE OFFERING IN THE**  
2 **CHOICE PLAN TO THAT INCLUDED IN THE PARTIAL SETTLEMENT?**

3 A. There is a fundamental difference in underlying purpose between the default service  
4 included in the Choice Plan as compared to the Partial Settlement. The Choice Plan  
5 views default service as a transitional stage to a fully competitive market. While some  
6 customers may take longer than others to develop a preference for an alternative supplier  
7 or to become comfortable making any choice, the ultimate goal of the Act is to transition  
8 all customers to the competitive retail market. The Choice Plan adopts and fosters this  
9 underlying goal of the Act and provides for a default service offering which is  
10 specifically designed to be transitional and to provide incentives for customers to make a  
11 choice. The Partial Settlement is designed to do just the opposite and provides  
12 disincentives to customers exercising choice and attempts to establish the PLR, which  
13 under the Partial Settlement is PECO, as a permanent fixture which attempts to maintain  
14 customers on default service rather than transitioning them to the competitive  
15 environment directed by the Act. Such a proposal deters choice, is unfair to customers  
16 and impedes the transition to competition.

17

18 **Q. A NUMBER OF PECO'S WITNESSES, INCLUDING WITNESSES PRATZON**  
19 **AND CROWE, ASSERT THAT THE CONTRACTS PROPOSED IN THE**  
20 **CHOICE PLAN, NAMELY THE PPA AND THE MBC SERVICES AGREEMENT,**  
21 **CONTAIN ONE-SIDED PROVISIONS IN ENRON'S FAVOR AND, THUS,**  
22 **WOULD NOT BE EXECUTED BY ANY PRUDENT UTILITY MANAGER. DO**  
23 **YOU AGREE?**

1 A. No. Except to the extent necessary to reflect the special features of this transaction,  
2 Enron believes that those contracts reflect typical terms and conditions for agreements of  
3 this type. However, I should note that Enron prepared these contracts because they were  
4 a necessary part of the Choice Plan. Enron would be willing to discuss with PECO any  
5 reasonable objections that it may have to the terms of those contracts.  
6

7 **4. Elimination of Certain Conditions to the Choice Plan**

8 **Q. A NUMBER OF PECO'S WITNESSES, INCLUDING WITNESSES HILL AND**  
9 **PRATZON, HAVE ALLEGED THAT THE CHOICE PLAN IS TOO**  
10 **CONTINGENT SINCE IT CONTAINS CERTAIN CONDITIONS AND RIGHTS**  
11 **THAT MAY BE EXERCISED BY ENRON THAT WOULD PERMIT ENRON TO**  
12 **"BACK AWAY" FROM ITS PLAN. HAS THE CHOICE PLAN BEEN MODIFIED**  
13 **IN RESPONSE TO ANY OF THESE CRITICISMS?**

14 A. Yes. During the period since we filed the Choice Plan with the Commission, we have  
15 attempted to respond to constructive criticisms about our plan. An area where we believe  
16 that changes are desirable relates to the conditions that must be satisfied for Enron to be  
17 obligated to effect the Choice Plan. In that respect, we are modifying the Choice Plan to  
18 eliminate or modify the following conditions:

19 (1) The condition that the Commission approve the Choice Plan in conjunction  
20 with its approval of the terms of the Partial Settlement which are not inconsistent with the  
21 terms of the Choice Plan is eliminated.

22 (2) The condition that the Transition Bonds carry an interest rate of 9.66% is  
23 replaced with the condition that such bonds carry an interest rate of 9.31% (subject to

1 adjustment pursuant to Paragraph 23(m) of the Choice Plan). Exhibit 4, Tables A and B,  
2 to the Choice Plan is correspondingly replaced by Revised Exhibit 4.

3 (3) The condition set forth in Paragraph 35(d) of the Choice Plan is modified to  
4 provide that a final Commission order approving the Choice Plan must be entered by  
5 April 1, 1998 and the effective date of the Choice Plan (as modified to include the  
6 contingent "no-securitization" case) shall be no later than September 1, 1998.

7 (4) The condition that Enron reserves the right at any time to withdraw the Choice  
8 Plan is eliminated, provided that such right shall continue to apply if the Commission  
9 were to approve the Choice Plan with any modification, amendment or addition thereto  
10 (or any of the agreements required to implement the plan) not acceptable to Enron.  
11 Enron will require customary conditions precedent for the undertaking reflected in the  
12 Choice Plan, including without limitation, that no material adverse change shall have  
13 occurred in the business, financial position or prospects of PECO prior to the effective  
14 date of the Choice Plan.

15 (5) The condition that there arises no legal impediment to the issuance of the  
16 Transition Bonds pursuant to section 2812 of the Act shall be eliminated. As described  
17 in detail above, in the event a legal impediment prevents the issuance and sale of the  
18 Transition Bonds to Enron on the effective date of the Choice Plan, the contingency plan  
19 under the Choice Plan would go into effect on September 1, 1998; provided, that Enron  
20 shall not be obligated to purchase the Transition Bonds if the legal impediment is not  
21 eliminated and the Transition Bonds are not issued prior to December 31, 2000. If the  
22 Transition Bonds are not issued by PECO and purchased by Enron by that date, Enron  
23 also would not be obligated to become the PLR, nor would the PPA or the MBC

1 Services Agreement go into effect. At such time, any obligation of Enron under the  
2 Choice Plan would terminate.

3 (6) The condition set forth in Paragraph 35(i) of the Choice Plan shall remain and  
4 it shall further be required that the Transition Bonds be issued with the Required Rating.  
5 In addition, as noted in the Rebuttal Testimony of witness Fastow, it needs to be  
6 emphasized that in connection with the issuance and sale of the Transition Bonds and the  
7 other financing aspects of Enron's securitization proposal, PECO will be required to use  
8 its best efforts to take such actions as may be necessary to successfully issue the  
9 Transition Bonds with the Required Rating.

10  
11 **VI. THERE ARE A NUMBER OF OTHER WITNESSES WHO WILL REBUT PECO'S**  
12 **CRITICISMS OF THE CHOICE PLAN**

13  
14 **Q. PLEASE DESCRIBE THE OTHER WITNESSES' REBUTTAL TESTIMONY.**

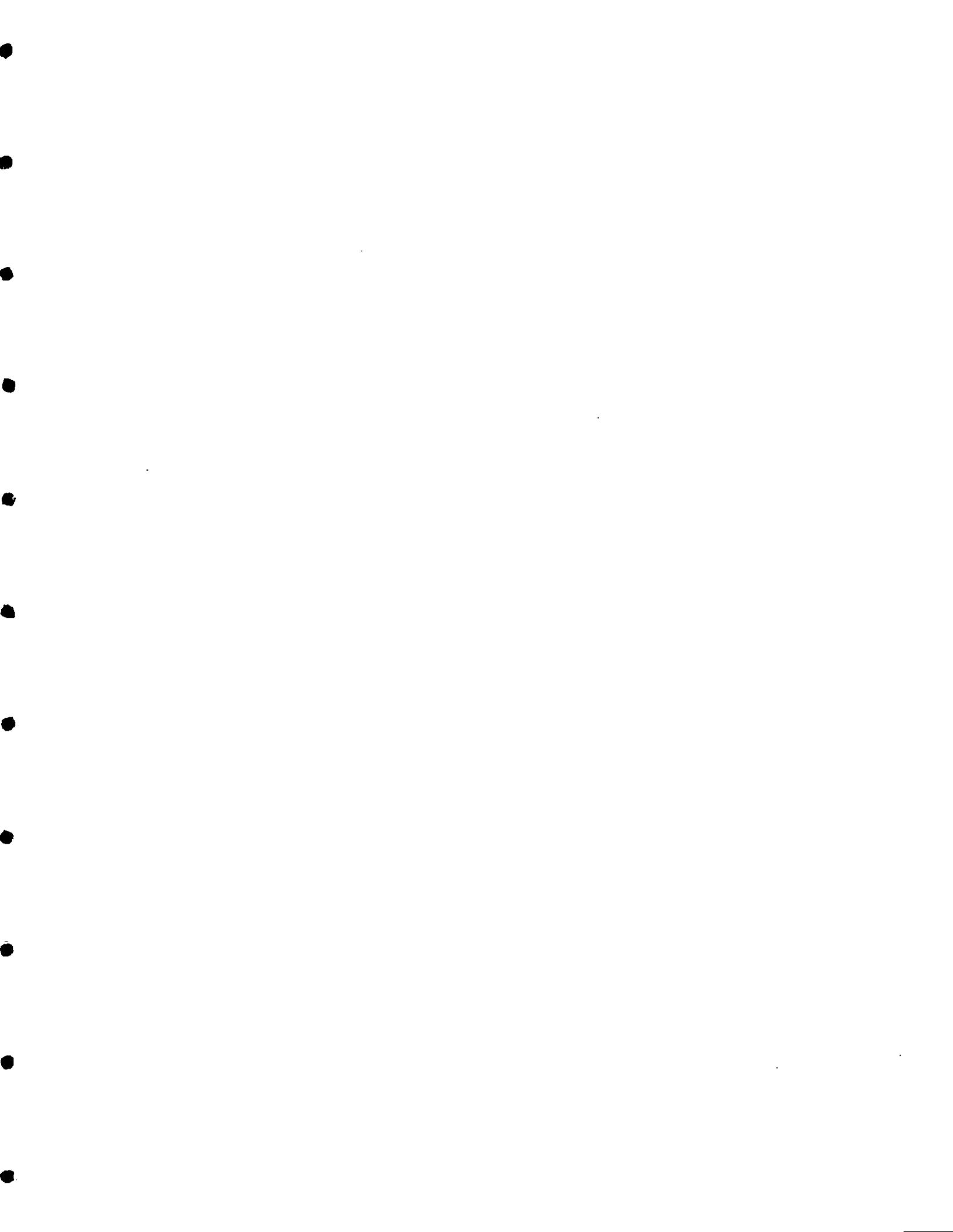
15 **A.** Witness Lopez will testify to the revised rates and charges to reflect the enhancements  
16 described above and their derivation under both the Choice Plan and the contingency plan  
17 portion of the Choice Plan. Witness Kingerski will describe the clarifications regarding  
18 the impact of the Choice Plan on certain special contracts and rate riders and address the  
19 consumer protection provisions of the Choice Plan. Witness Reising will testify  
20 regarding the proper charges that are associated with transmission and distribution as well  
21 as the competitive services component of distribution service. Witness Slater will testify  
22 regarding the proposed generation credits. Witnesses Fastow and Voorhees will respond  
23 to PECO's claims regarding securitization and tax structure considerations. Witness  
24 Oliver responds to and dispels the doubts raised about the economic superiority of the

1 Choice Plan over the Partial Settlement. Witness Dirmeier responds to the meritless  
2 claims of Mr. Sidak and Mr. Crowe that the competitive safeguards included in the  
3 Choice Plan are inappropriate.

4

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A. Yes.**



## Attachment A

### The Choice Plan -- Full Securitization

	<b>Transmission</b>	<b>Distribution</b>	<b>CTC</b>	<b>Generation Credit</b>	<b>Rate Reduction</b>
Sept-Dec 1998	0.37	2.00	2.11	3.48	20.00%
1999	0.37	2.00	2.11	3.48	20.00%
2000	0.37	2.00	2.11	3.48	20.00%
2001	0.37	2.00	2.73	3.61	12.44%
2002	0.37	2.00	2.89	3.75	9.44%
2003	0.37	2.00	2.95	3.89	7.44%
2004			2.80	4.04	
2005			2.65	4.19	
2006			2.99	4.35	
2007			3.32	4.52	
Jan-Aug 2008			3.32	4.52	

## Attachment B

### The Choice Plan – Contingency Plan

	<b>Transmission</b>	<b>Distribution</b>	<b>CTC</b>	<b>Generation Credit</b>	<b>Rate Reduction</b>
Sept-Dec 1998	0.37	2.00	2.66	3.48	14.45%
1999	0.37	2.00	2.66	3.48	14.45%
2000	0.37	2.00	2.66	3.48	14.45%
2001	0.37	2.00	3.03	3.61	9.42%
2002	0.37	2.00	3.09	3.75	7.43%
2003	0.37	2.00	2.95	3.89	7.44%
2004			2.80	4.04	
2005			2.65	4.19	
2006			2.99	4.35	
2007			3.32	4.52	
Jan-Aug 2008			3.32	4.52	

### Attachment C

8/31/98 NPV of ENRON CTC Quarterly Cash Flows from 9/1/98-8/31/08\* 20% Case ("The Choice Plan")  
 \*Assuming a delayed securitization until the end of the 6th Quarter/Feb/00

	4th Quarter 98	1st Quarter 99	2nd Quarter 99	3rd Quarter 99	4th Quarter 99	1st Quarter 00	2nd Quarter 00	3rd Quarter 00				
	1	2	3	4	5	6	7	8				
Quarterly Cash Flow												
Interest Payment		9.31%									169,286,915	169,286,915
Principal Paymen											116,182,447	114,946,399
Unamortized Principal Balance											53,104,469	54,340,517
											\$4,991,558,052	4,884,113,087
2nd Quarter 02	3rd Quarter 02	4th Quarter 02	1st Quarter 03	2nd Quarter 03	3rd Quarter 03	4th Quarter 03	1st Quarter 04	2nd Quarter 04	3rd Quarter 04	4th Quarter 04	1st Quarter 05	
15	16	17	18	19	20	21	22	23	24	25	26	
231,866,913	231,866,913	231,866,913	233,471,528	236,680,759	236,680,759	236,680,759	232,669,220	224,848,144	224,848,144	224,848,144	220,834,605	
100,131,695	97,065,454	93,927,844	90,717,204	87,394,484	83,919,729	80,364,095	76,725,702	73,095,993	69,568,544	65,958,991	62,265,422	
131,735,217	134,801,458	137,939,068	142,754,324	149,286,274	152,781,030	156,318,663	155,943,519	151,550,150	155,077,589	158,687,153	158,389,183	
4,170,232,794	4,035,431,336	3,897,492,267	3,754,737,943	3,605,451,669	3,452,690,639	3,296,373,975	3,140,430,457	2,988,880,307	2,833,802,707	2,675,115,554	2,516,746,371	
4th Quarter 06	1st Quarter 07	2nd Quarter 07	3rd Quarter 07	4th Quarter 07	1st Quarter 08	2nd Quarter 08	3rd Quarter 08	4th Quarter 08				
33	34	35	36	37	38	39	40	41				
239,889,989	248,715,373	266,366,142	266,366,142	266,366,142	266,366,142	266,366,142	266,366,142	88,788,714				
34,270,412	29,484,454	24,381,682	18,749,303	12,985,826	7,088,199	1,053,301	-	-				
205,619,577	219,230,919	241,984,460	247,616,839	253,380,316	259,277,943	265,312,841	266,366,142	88,788,714				
1,266,743,548	1,047,512,628	805,528,168	557,911,329	304,531,013	45,253,071	-	-	-				

## Attachment C

4th Quarter 00	1st Quarter 01	2nd Quarter 01	3rd Quarter 01	4th Quarter 01	1st Quarter 02
9	10	11	12	13	14
169,286,915	185,867,940	219,029,890	219,029,990	219,029,990	223,308,964
113,681,580	112,387,322	110,677,003	108,155,002	105,574,299	102,933,528
55,605,335	73,480,618	108,352,987	110,874,988	113,455,891	120,375,436
4,828,507,732	4,755,027,114	4,646,674,128	4,535,799,138	4,422,343,447	4,301,968,011

2nd Quarter 05	3rd Quarter 05	4th Quarter 05	1st Quarter 06	2nd Quarter 06	3rd Quarter 06
27	28	29	30	31	32
212,611,529	212,611,529	212,611,529	221,704,349	239,889,989	239,889,989
58,579,255	54,994,032	51,325,361	47,571,298	43,518,214	38,947,507
154,032,274	157,617,496	161,286,168	174,133,051	196,371,775	200,942,483
2,362,714,097	2,205,096,601	2,043,810,433	1,869,877,382	1,673,305,608	1,472,363,125



### Attachment C

3rd Quarter 00 8	4th Quarter 00 9	1st Quarter 01 10	2nd Quarter 01 11	3rd Quarter 01 12	4th Quarter 01 13
213,470,800	213,470,800	223,295,058	242,943,572	242,943,572	242,943,572
113,917,884	111,600,814	109,229,709	106,574,749	103,400,857	100,152,885
99,552,817	101,889,987	114,065,348	136,368,824	139,542,915	142,790,887
4,794,716,882	4,692,846,896	4,578,781,547	4,442,412,724	4,302,869,808	4,160,078,921
1st Quarter 05 26	2nd Quarter 05 27	3rd Quarter 05 28	4th Quarter 05 29	1st Quarter 06 30	2nd Quarter 06 31
220,634,605	212,611,529	212,611,529	212,611,529	221,704,349	239,889,989
51,919,715	47,992,743	44,161,111	40,240,295	36,228,219	31,911,116
168,714,890	164,618,786	168,450,418	172,371,234	185,478,130	207,978,874
2,061,917,006	1,897,298,221	1,728,847,803	1,556,476,569	1,371,000,438	1,163,021,565

### Attachment D

8/31/98 NPV of PECO Revised CTC Quarterly Cash Flows from 9/1/98-8/31/08\*

\*Using Enron proposed Gen Credits and PECO proposed Gen Caps

		4th Quarter 98	1st Quarter 99	2nd Quarter 99	3rd Quarter 99	4th Quarter 99	1st Quarter 00	2nd Quarter 00
		1	2	3	4	5	6	7
Quarterly Cash Flow	10.35%	\$5,673,518,474	142,313,867	213,470,800	213,470,800	213,470,800	213,470,800	213,470,800

**Attachment D**

3rd Quarter 00	4th Quarter 00	1st Quarter 01	2nd Quarter 01	3rd Quarter 01	4th Quarter 01	1st Quarter 02	2nd Quarter 02	3rd Quarter 02	4th Quarter 02	1st Quarter 03	2nd Quarter 03
8	9	10	11	12	13	14	15	16	17	18	19
213,470,800	213,470,800	223,295,058	242,943,572	242,943,572	242,943,572	244,573,326	247,832,835	247,832,835	247,832,835	244,115,476	236,680,759

**Attachment D**

3rd Quarter 03 20	4th Quarter 03 21	1st Quarter 04 22	2nd Quarter 04 23	3rd Quarter 04 24	4th Quarter 04 25	1st Quarter 05 26	2nd Quarter 05 27	3rd Quarter 05 28	4th Quarter 05 29	1st Quarter 06 30
236,680,759	236,680,759	232,669,220	224,846,144	224,846,144	224,846,144	220,634,805	212,611,529	212,611,529	212,611,529	221,704,349



Revised Exhibit 4

Table A<sup>(1)</sup>

10 Year Treasury Rate on Effective Date	Interest Rate on Transition Bonds	ITC/CTC Reductions (Cents/kWh)	Adjusted Bill Cap (Cents kWh)			
			1999	2000	2001	2002
5.50%	9.06%	-0.032	7.928	7.928	8.678	8.978
5.25%	8.81%	-0.064	7.896	7.896	8.648	8.946
5.00%	8.56%	-0.096	7.864	7.864	8.614	8.914
4.75%	8.31%	-0.128	7.832	7.832	8.582	8.882

Table B<sup>(2)</sup>

10 Year Treasury Rate on Effective Date	Interest Rate on Transition Bonds	ITC/CTC Increase (Cents/kWh)	Reduction in Gen Credit (Cents/kWh)	Effects on
				Customer's Bills (Cents/kWh)
7.25%	9.56%	0.032	-0.032	0.00
7.50%	9.81%	0.064	-0.064	0.00
7.75%	10.06%	0.096	-0.096	0.00
8.00%	10.31%	0.128	-0.128	0.00

(1) To the extent the 10-year Treasury bond has a yield below 5.75% on the Effective Date, the interest rate on the transition bonds purchased by Enron (or its designee) shall be reduced by an amount equal to the basis point spread between 5.75% and said Treasury bond yield. In addition, the per kWh charge for CTC/ITC shall be reduced by .0013 cents/kWh for each basis point reduction, thereby resulting in a corresponding reduction in customers' bills.

(2) To the extent the 10-year Treasury bond has a yield above 7.0% on the Effective Date, the interest rate on the transition bonds purchased by Enron (or its designee) shall be increased by an amount equal to the basis point spread between 7.0% and said Treasury bond yield. In addition, the per kWh charge for CTC/ITC shall be increased and the generation credit shall be correspondingly decreased by .0013 cents/kWh for each basis point increase. The reallocation between CTC/ITC and the generation credit, respectively, shall not result in an increase in customers' bills.