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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: R-00973953 Pennsylvania Public Utility Commission v. PECO Energy Company Application for approval of a restructuring plan and Consumer Education Program.
P-00971265 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. Further Hearings.

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November 17, 1997

Pages 1187 to 1531, inclusive

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Harrisburg, Pennsylvania 17112-0144

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CERTIFIED ORIGINAL

BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

- - - - -

In re: R-00973953 R-00973953C0001-C0007 Pennsylvania Public Utility Commission v. PECO Energy Company
Application for approval of a Restructuring Plan and Consumer Education Program.
P-00971265 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. Further Hearings.

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Stenographic report of hearing held in
Hearing Room 1, State Office Building,
Philadelphia, Pennsylvania,

Monday,
November 17, 1997
at 10:00 o'clock a.m.

- - - - -

BEFORE

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

APPEARANCES:

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23 Inc, Vector Power Marketing, Inc.

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Appearing Pro Se

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INDEX TO WITNESSES

<u>PECO:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Steven J. Kean	1225	1231	1439	
J. Gregory Sidak	1494	1497		
Brian D. Crowe	1514	1534		
 <u>PAIEUG:</u>				
Stephen J. Baron	0000	1444	1456	
 <u>ENVIRONMENTALISTS:</u>				
Bruce Biewald	1458	1461	1466	
 <u>NEV:</u>				
David M. Boonin	1466	1468		
 <u>ENRON:</u>				
Michael Dirmeier	1477	1468		

INDEX TO STATEMENTS

<u>PECO:</u>	<u>IDENTIFIED</u>	<u>ADMITTED</u>
✓ No. 10-E ✓✓	1495	1495
✓ No. 29-E ✓✓	1518	1518
 <u>ENRON:</u>		
No. 2-R	1458	1461
 <u>NEV:</u>		
✓ No. DMB-2 ✓✓	1467	
 <u>EESPI:</u>		
✓ No. 1 ✓✓	1227	1230
✓ No. 1-R ✓✓	1227	1230
✓ No. 10-R ✓✓	1478	1478
✓ Nos. 6 6-SR ✓✓	1478	1478
 <u>EPMI</u>		
✓ No. 1-0 ✓✓	1227	1230
 <u>PAIEUG:</u>		
✓ No. 1-E ✓✓	1443	1443

INDEX TO EXHIBITS

<u>PECO:</u>	<u>IDENTIFIED</u>	<u>ADMITTED</u>
No. 3 ✓ 141	1220	1220

OCA CROSS EXAMINATION:

No. 1	1299	
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1 JUDGE CHESTNUT: This is the further hearing
2 scheduled with respect to the proceeding at Docket Number
3 R-00973593. For the record, let me state that I am
4 Administrative Law Judge Marlane R. Chestnut. With me is
5 Administrative Law Judge Charles E. Rainey, Jr. I would
6 like counsel present to identify themselves for the record
7 I guess starting with you, Mr. Shields.

8 MR. SHIELDS: Good morning, Your Honors. Charles
9 Daniel Shields, and in a day or so Kenneth Mickens, my
10 co-prosecutor in this case on behalf the Office of Trial
11 Staff.

12 JUDGE CHESTNUT: Thank you.

13 MR. STEINMETZ: Good morning, Your Honors.

14 MR. STEINMETZ: Good morning. Steve Steinmetz on
15 behalf of the Office of Consumer Advocate.

16 MR. RYAN: Bernard Ryan. I am the Small Business
17 Advocate. Working with me on the case is Karen Oill Moury,
18 who probably will not appear at this round of hearings.

19 MR. BONNEY: Paul Bonney on behalf of PECO Energy
20 Company. With me today are Noel Trask and Mary Hopper.

21 JUDGE CHESTNUT: Okay.

22 MR. WALSH: Vincent J. Walsh appearing on behalf of
23 SEPTA which has filed recently a petition to intervene,
24 however late.

25 MR. CLARK: I am Roger Clark representing the

1 interests of the environmentalists.

2 MR. NORDSTROM: Good morning. Paul Nordstrom
3 representing Allegheny Power.

4 MR. DOLL: Good morning, Your Honor, Craig Doll
5 representing Connectiv Energy.

6 MR. DESALLE: Good morning, Your Honors. My name is
7 David DeSalle with the firm of Ryan, Russell, Ogden and
8 Seltzer and we represent GPU Energy.

9 MR. KLEPPINGER: Good morning, Your Honors. Dave
10 Kleppinger with the law firm of McNeese, Wallace & Nurick
11 representing the Philadelphia Area Industrial Energy Users
12 Group.

13 MR. COHEN: Good morning, Your Honors, Walter Cohen
14 representing Indianapolis Power and Light Company.

15 MR. HAWK: William Hawk, Your Honors, representing
16 Mid-Atlantic Power Supply Association.

17 MR. HERSHEY: Good morning --

18 MR. DWORETZKY: Good morning, Your Honor. My name
19 is Joseph Dworetzky on behalf of New Energy Ventures.

20 MR. HERSHEY: Good morning, Your Honors. Steven
21 Hershey appearing on behalf of CEPA, TAG, ACORN and John W.
22 Long, Jr.

23 MR. CRAIG: Christopher Craig representing State
24 Senator Vincent Fumo.

25 MS. OGG: Joelle Ogg representing NORAM Energy

1 Training and Marketing, and Electric Clearinghouse.

2 MR. RUSSELL: Good morning, Your Honors. Paul
3 Russell representing PP&L and with me today is Donald
4 Kaplan.

5 MR. HAVER: It's Lance. I am here for myself.

6 JUDGE CHESTNUT: Okay. Anybody else? Mr.
7 Clearfield?

8 MR. CLEARFIELD: Your Honor, Daniel Clearfield and
9 Alan Kohler from Wolf, Block, Schorr & Solis-Cohen on
10 behalf of ENRON energy Services Power, Inc. and as counsel,
11 Bruce Miller, John Gallagher and John Klauberg from LeBoeuf
12 Lamb.

13 JUDGE CHESTNUT: Is there anyone else who's present
14 and has not signed the appearance sheet that should?

15 (No response.)

16 JUDGE CHESTNUT: Okay. Before we get to the
17 evidentiary portion of this hearing there are a number of
18 procedural matters to be addressed. The first is SEPTA's
19 petition to intervene. Are there any objections to that
20 petition?

21 MR. HAVER: I object to that. That is a complete
22 waste of the people who ride SEPTA's money. They knew
23 about this for years on end and for them to get involved at
24 this point to make money out of the fare box, make it more
25 expensive to ride SEPTA. They should be ashamed of

1 themselves by wasting their money by hiring outside
2 counsel.

3 JUDGE CHESTNUT: Thank you. Petition is granted.

4 MR. BONNEY: Your Honor. May I address --

5 JUDGE CHESTNUT: Yes. I am sorry. Mr. Bonney.

6 MR. BONNEY: Thank you. PECO certainly hesitates to
7 object because we know that the Commission encourages
8 participation but the petition to intervene does not
9 identify the interests that SEPTA has in this proceeding
10 and under the Commission's regulations at 5.73 the petition
11 is fully and completely advise the parties of the specific
12 fact or law to be addressed.

13 The problem that puts into is we don't know what
14 issues are going to be raised at the hearings or on brief.
15 And as a consequence we don't have an opportunity to put on
16 testimony in response to those issues.

17 I have spoken with counsel for SEPTA and it's my
18 understanding they obviously can speak for themselves, that
19 they are not quite sure what the issues are. That they
20 want to address and it puts us in a dilemma because we
21 can't respond.

22 If there's a commitment that there won't be any
23 issues raised that are different from the issue that other
24 parties have already raised which we have had notice of
25 then we would not object to the intervention.

1 MR. WALSH: Your Honor. We will not raise any
2 issues that are not raised by other parties.

3 JUDGE CHESTNUT: Mr. Hershey?

4 MR. HERSHEY: This is the first I hear of the
5 petition to intervene and it's become pretty clear that the
6 usual rules of practice are of less value, perhaps, to some
7 of the parties than others. But would I expect adequate
8 notice of any petition to intervenor any petition to affect
9 the record in any way to give people an opportunity to
10 respond.

11 JUDGE CHESTNUT: Well, I am not sure if you are
12 saying you weren't served with the petition. Is that what
13 you are alleging.

14 MR. HERSHEY: I am saying that when you announced
15 that there was a petition to intervene that was the first I
16 had heard of it and I have asked around to a number of
17 other parties have not seen it or heard of it before.

18 JUDGE CHESTNUT: Well, I am not sure, I am assuming
19 it was served on all the parties of record. Whether you
20 got it or not got it is something you should perhaps bring
21 up with Mr. Walsh.

22 At this point I am going to grant the motion that
23 the with the caveat that as Mr. Bonney pointed out that it
24 would not be appropriate for a party coming into the case
25 at this late juncture to raise new issues. But you can

1 deal with that as it comes up. So the petition is
2 granted. And there are two related motions for admission
3 pro hac vice. Those motions will be granted.

4 MR. WALSH: Thank you, Your Honor.

5 JUDGE CHESTNUT: We have a motion to strike
6 testimony and exhibits of the environmentalists and New
7 Energy Ventures. That motion is denied. The third
8 procedural items are the latest set of Commissioner
9 interrogatories, that is Set 3. Did everybody get a copy
10 this morning?

11 MR. HAVER: No.

12 JUDGE CHESTNUT: During a break come up and I have
13 extra copies here. They were faxed to PECO and to ENRON I
14 believe from Harrisburg last Friday. But there wasn't time
15 to send them out to everybody else.

16 MR. CLEARFIELD: We received them, Your Honor.

17 MR. BONNEY: As did we, Your Honor.

18 JUDGE CHESTNUT: Speaking of Commission
19 interrogatories, at this point the ones that we have
20 received are PAIEUG's response to Set 2, the cover letter
21 only. EESPI, the responses to Sets 1 and 2, and PECO the
22 response to Set 1. If anybody has filed anything else, I'd
23 appreciate a copy.

24 MR. BONNEY: Your Honor, I spoke with counsel for
25 ENRON before we started today, and I think there was,

1 there's going to be a request to move those in. I am not
2 sure if they have been entered or not. We ask that they be
3 incorporated by reference into Mr. Hill's testimony. It
4 would be worth clarifying. We have no objection to any of
5 those going in.

6 JUDGE CHESTNUT: They have to go in. It doesn't
7 matter if you have an objection to them. They are directed
8 by the Commission.

9 MR. BONNEY: I understood there was going to be a
10 revision to some of the ENRON questions. So I have not yet
11 seen those revisions so I may want to comment on those.

12 JUDGE CHESTNUT: Revision to the questions or
13 answer?

14 MR. BONNEY: To the answers, Your Honor.

15 MR. CLEARFIELD: Yes, Your Honor. There are two
16 questions, particularly that we plan to revise to conform
17 then to the revised Choice Plan in the testimony that was
18 submitted on Wednesday of last week and we plan to submit
19 those revisions on Thursday when we submit the answers to
20 the Set 3, I believe.

21 JUDGE CHESTNUT: Set 3 is the most recent.

22 MR. CLEARFIELD: Because those revisions will take a
23 few extra days to complete.

24 MR. BONNEY: Your Honor, if there's any way we could
25 get those so we could address them on the record I think

1 that would be useful. I am not sure what the revisions are
2 going to be.

3 JUDGE CHESTNUT: That's something you can discuss
4 between yourselves, obviously.

5 JUDGE RAINEY: We think it would be reasonable if
6 after those answers are submitted both by ENRON and by
7 PECO, there would be an opportunity to review those and
8 perhaps submit, ask for the right to submit additional
9 clarifying information, if necessary.

10 JUDGE CHESTNUT: I am not sure about that. I think
11 the Commission had certain specific questions it wished to
12 be addressed and it felt this was the best way to get them
13 addressed. It wasn't to open up new areas or to provoke
14 additional rounds of responsive testimony, but you and PECO
15 can work that out in terms of when you supply it to each
16 other but I do want each party to make sure that their
17 responses are made for the record either as an exhibit or
18 through testimony.

19 Speaking of exhibits and testimony, I hope you have
20 all received a copy of my exhibit chart. That was also put
21 out next to the appearance sheets. If you don't have a
22 copy, come and get one. Make sure you check it and make
23 sure I have accurately listed statements and exhibits
24 because I intend to attach to that the certification order
25 as a listing of what's in the record.

1 Now, further speaking about testimony there was
2 certain testimony that was to have been the subject of the
3 hearings scheduled for last Friday. I don't know. Is it
4 intended that that would be admitted into the record by
5 stipulation? Are the parties intending to stipulate?

6 MR. CLEARFIELD: Yes, Your Honor.

7 MR. BONNEY: Yes, Your Honor.

8 JUDGE CHESTNUT: Okay.

9 MR. CLEARFIELD: We will supply the requisite copies
10 for the reporter.

11 JUDGE CHESTNUT: What I have listed was ENRON slash
12 EPMI Statement 4SR, NEV Statement 2, ENRON slash EPMI
13 Statement 3SR which is already in the record. OCA
14 Statement 5R, PECO Statement 15 which is already in the
15 record and 15R, 10R which is already in the record and
16 Exhibit JGS.

17 If there's anything further, please let us know.
18 And with respect to that, Appendix H I think in one or two
19 cases listed pages of statements, the whole statement is
20 admitted. The file room can't identify pages that are in
21 the record and not in the record. So regardless of whether
22 there was a designation of an excerpt or a portion of the
23 statement, that's irrelevant.

24 We can perhaps discuss this later but given the
25 number of witnesses scheduled for each day it might be a

1 good idea to start tomorrow and Wednesday at 9:00 o'clock.
2 See how it goes but keep that in mind as a possibility.
3 Briefing instructions, they are not quite finalized on the
4 part of the Commission.

5 I think it's very clear in terms of what the
6 schedule is from this point that the record has to be
7 certified and your briefs filed by December 2nd. You'll
8 have one briefing opportunity, but in terms of whether
9 there's a page limit that's still being addressed but we'll
10 be able to tell you what's been decided hopefully tomorrow
11 or Wednesday.

12 We have been going through and just trying to parse
13 out from the Commission's various orders what they want in
14 terms of format and the way you are to file the briefs. At
15 this point it looks to us as if you are to file directly
16 with the Commissioners, each Commissioner as well as the
17 Prothonotary, OSA and the Law Bureau and of course, Judge
18 Rainey and I would like a copy of the brief just so we can
19 read it.

20 In terms of copies, we'll tell you how but everybody
21 wants it on disk, the various commissioners as well as OSA
22 and the Law Bureau. So keep that in mind. The format, one
23 order wanted it in Word Perfect. One order wanted it in
24 Word. It seems to me that either one is fine. They can
25 both be read.

1 MR. HAVER: Your Honor, I have a question about
2 that. I do not have the ability to put it on disk as
3 required.

4 JUDGE CHESTNUT: Then you file a hard copy.

5 MR. HAVER: Okay. But --

6 JUDGE CHESTNUT: But hopefully we'll be able to
7 input. We don't know at this point what's necessary in way
8 of briefs. But it's clear they want findings of fact and
9 conclusions of law. Are there any questions about that?
10 Or comments?

11 MR. BONNEY: Your Honor, I have a question. There's
12 some confusion at least in my mind about what groups of
13 parties there are in the case and who might be filing
14 briefs. I was wondering if I could inquire, I am not sure
15 whether you know, whether PECO and MAPSA and ENRON will be
16 filing one brief collectively or whether they'll be filing
17 separate briefs on behalf of each of the entities or what.
18 I would, based on that, I may have some objections to the
19 intentions there. I am not sure if the Commission was
20 going to address that as well.

21 JUDGE CHESTNUT: I don't think it's a bad idea to
22 indicate whether separate briefs will be filed or not.
23 Since you only have one round of briefs and can't respond
24 in a reply brief. So can you make a statement at this
25 point, Mr. Clearfield or Mr. Miller or somebody? Mr.

1 Dworetzky, I guess you can address that.

2 MR. DWORETZKY: I don't think we can determine that
3 yet. I think currently NEV intends to file a brief. I
4 don't think we will overlap.

5 MR. HAWK: MAPSA intends to file its own brief.

6 MR. BONNEY: I am a little confused on that. I am
7 sorry, Mr. Doll.

8 MR. DOLL: Connectiv had intended to file separately
9 but as with Joe, we will work with ENRON and NEV to see so
10 that we just don't overlap anything.

11 JUDGE CHESTNUT: Okay. Mr. Bonney, did you want to
12 address something?

13 MR. BONNEY: Yes. ENRON is a member of MAPSA and as
14 a consequence, they'll be permitted to file two briefs in
15 this proceeding if MAPSA and ENRON are filing separate
16 briefs and I think that's inappropriate.

17 MR. CLEARFIELD: Your Honor, ENRON has always
18 reserved the right, as have all the other suppliers, to
19 participate individually in this proceeding. In fact, I
20 believe that we have made that statement in the initial
21 response to the partial settlement in which the
22 Pennsylvania Electric Competition Coalition first filed a
23 pleading.

24 I believe it's in a footnote, the first footnote in
25 that pleading. MAPSA has already participated separately

1 and separate from its individual members as I understand
2 it. It's an association which takes positions separate
3 from the individual members that are in positions that
4 might be taken by individual members and that's the way the
5 proceeding has gone forward, up until this point.

6 So I think it would be completely inappropriate to
7 suggest that one brief be filed by any of these as a group
8 by all of these parties.

9 JUDGE CHESTNUT: Okay.

10 MR. BONNEY: Your Honor, I am confused, I guess I
11 will be if there are inconsistent positions taken in
12 MAPSA's brief and in the ENRON brief which is the position
13 being advanced by ENRON in the case.

14 JUDGE CHESTNUT: I think you have to keep in mind,
15 Mr. Bonney they did present separate testimony.

16 MR. BONNEY: That's the problem, Your Honor. I
17 agree.

18 JUDGE CHESTNUT: They are entitled to brief the
19 testimony that's presented. If you feel they are
20 inconsistent, that's something you can point out or move to
21 strike or whatever. At this point, I can't make a
22 determination. I don't think it's appropriate to make a
23 determination that ENRON as an entity, can file a brief.

24 MR. BONNEY: I am not saying that they should be
25 prohibited. What I am arguing is that they should not be

1 permitted to file two times. If there's going to be a page
2 limit, if it's a severe limit then we have difficulty with
3 that, too, because of the number of issues that the ENRON
4 Choice Plan raises as legal arguments.

5 But permitting ENRON to file a brief through MAPSA
6 and through ENRON separately they would double the pages
7 that they would be permitted to file in briefs. Perhaps a
8 solution would be that if that's the case we would be
9 permitted to file that many numbers of pages of brief.

10 JUDGE CHESTNUT: Mr. Hawke.

11 MR. HAWK: Your Honor, this is much the same as the
12 pilot proceedings where the individual utilities filed
13 briefs. MAPSA is a corporation and incorporated under the
14 laws of the Commonwealth. It has many members.

15 ENRON is one. There are many other members. It had
16 been reflected in the record so far. We have intervened
17 from the very beginning and we are a party with all rights
18 that other parties have.

19 JUDGE CHESTNUT: Just for clarification.

20 JUDGE RAINEY: Just for clarification, Mr. Bonney,
21 are you suggesting that ENRON will be contributing to the
22 writing of the MAPSA brief?

23 MR. HAWK: No, Your Honor. They will not be except
24 for possible review and comment but they do not write the
25 brief.

1 MR. BONNEY: But they are participating, Your
2 Honor. They are a member of MAPSA and will be
3 participating in reviewing the briefs.

4 MR. HAWK: They are a board member.

5 MR. CLEARFIELD: Your Honor, we don't have any
6 intention of trying to manipulate this to extend the page
7 limitation. ENRON has a position that's obvious and needs
8 to be briefed. MAPSA takes an independent position and
9 that needs to be briefed and NEV and Connectiv have taken
10 positions.

11 It's my guess is that those positions will be fully
12 briefed by the parties in those --

13 JUDGE CHESTNUT: I see less of a problem with ENRON
14 and MAPSA than I do with the suppliers and PECC. PECC
15 submitted as an entity, submitted testimony planning to
16 file a brief. Or are the component members filing their
17 own briefs, which is what my understanding of it, of what
18 was just said?

19 MR. DWORETZKY: I don't think we have made a
20 determination on that at this point Your Honor. But we
21 can't do an overlapping brief on behalf PECC. At the limit
22 I think NEV will file a separate brief but will coordinate
23 with ENRON and Connectiv in connection with the issues that
24 are addressed but we haven't made a final decision on that.

25 JUDGE CHESTNUT: Why don't you think about that and

1 get together with some kind of determination.

2 I am not sure what that response was either, but I
3 don't see a problem, like I said, with ENRON and MAPSA
4 because they took different positions in so many different
5 testimonies, but I am more concerned with the overlap
6 between NEV, Connectiv and I guess ENRON and PECC, whether
7 PECC, itself, should be able to file a brief as opposed to
8 any the member companies doing it.

9 But that's a determination that I guess you can make
10 at some point prior to the close of these hearings.

11 MR. CLEARFIELD: We'll consult with counsel for PECO
12 and try to work it out amicably.

13 JUDGE CHESTNUT: And if you have a proposal with
14 respect to the briefing page limit or the format, let me
15 know because it's very fluid right now in terms of how we,
16 all of us would like it to proceed. I think you recognize
17 the longer the brief, the least likely it will get read.

18 There's a short time interval in which OSA and the
19 Commission is able to review the records and read your
20 briefs. You ought to be pragmatic in terms of how you
21 brief it and what you brief.

22 Is there anything else with respect to the briefing
23 schedule or the issue of briefs?

24 (No response.)

25 JUDGE CHESTNUT: The next issue then that I have in

1 terms of procedure is the schedule. As I said, it's very
2 clear to us that the record has to be certified on December
3 2nd, briefs have to be filed on December 2nd. I am not
4 sure where that leaves you in terms of filing additional
5 testimony or having additional hearings.

6 At some point I think we had asked Mr. Bonney to try
7 to develop a consensus schedule. I am not sure if that was
8 important or was able to be done.

9 MR. BONNEY: Your Honor, I have spoken with the
10 settling parties and I don't believe that they read the
11 activity of the Commission the same way you do. Maybe some
12 others can comment on that. I am assuming by your comments
13 that you are indicating that surrebuttal testimony on
14 settled issues must be filed before December 2nd.

15 JUDGE CHESTNUT: Yes.

16 MR. STEINMETZ: I guess that means, Your Honor, that
17 you view the objections of I guess Connectiv as having a
18 veto power?

19 JUDGE CHESTNUT: Yes. I think that was very clear
20 from the way the Commission worded its order. Mr.
21 Dworetzky, did you want to say so.

22 MR. DWORETZKY: Your Honor, even before you get to
23 that issue there's another issue. The Commission was quite
24 clear, I think, about the circumstances under which PECO
25 would be offered an opportunity to extend the time period.

1 And as I read their order it was clear that if PECO
2 took advantage of that extension, they needed to notify the
3 Commission by the deadline and what would have happened
4 then, had PECO made a proper extension election would have
5 been there would have been a hearing or there would have
6 been on December 11th they would have dealt with the
7 settlement and with the ENRON proposal.

8 PECO purported to take advantage of that extension
9 by filing a letter which says we accept this extension on
10 the condition that the only matter that's dealt with in
11 December is the partial settlement agreement. In my view,
12 that is null as an extension because it tried to vary the
13 basic condition that was set forth in the Commission's
14 order.

15 So even before you get to the objection that
16 Connectiv and NEV filed and that MAPSA testified, there is
17 no extension, they didn't take advantage of the proposal
18 that was made by the Commission originally when they tried
19 to impose conditions that are not contemplated by the
20 Commission on their second filing.

21 JUDGE CHESTNUT: Thank you, but I don't think it's
22 necessary to address the effect of PECO's letter because
23 whether it was a valid extension or not, the fact is it was
24 clearly vetoed by certain parties so it's just not -- there
25 is no extension. Did you have a different perspective, Mr.

1 Bonney or you were trying to fluff that over on somebody
2 else?

3 MR. BONNEY: It's not testimony that has to be
4 filed, Your Honor. So I'm sure it's necessarily our
5 issue.

6 JUDGE CHESTNUT: Did somebody want to address that?

7 MR. STEINMETZ: I guess we did not view that last
8 paragraph in the Commission's order as giving other parties
9 a right to object, to veto the Commission's allowance of us
10 to consider those issues following decision on the partial
11 settlement.

12 JUDGE CHESTNUT: I think it's as clear as can be
13 that's what the Commission did and I think that's the
14 action that was taken.

15 JUDGE RAINEY: What was your reading of that, Mr.
16 Steinmetz, in terms of the ability the Commission gave to
17 other parties to object and what to --

18 MR. STEINMETZ: I thought the Commission would make
19 another determination following a read of the other
20 parties' pleadings on this issue. But in the event that
21 you view otherwise, I think we need to set a date for the
22 filing of our surrebuttal.

23 MR. RYAN: My interpretation was essentially the
24 same as Mr. Steinmetz's. I thought there would be a
25 further ruling by the Commission on the effect of the

1 objections because I did not believe they were giving any
2 party, us or anybody else, a right to object -- a right to
3 veto.

4 JUDGE CHESTNUT: I don't see any basis for your
5 position, I'll be honest with you. I think it's as clear
6 as can be and no party has objected by five o'clock. Well,
7 a party did object. There's nothing in here about having
8 further review at this time or the Commission further
9 considering it in any further way and given the time
10 period, I don't even see how that's possible.

11 I would suggest that you get together and work up a
12 schedule and see how you want to address it from here on
13 with the understanding that the record will be certified
14 December 2nd. Whether hearings are necessary or not is
15 another issue, of course, but we'll leave that up to you to
16 see how you want to do it, Mr. Steinmetz.

17 MR. STEINMETZ: OCA would propose that we be allowed
18 to file our surrebuttal testimony on Friday of this week.

19 JUDGE CHESTNUT: I think at this point there were
20 parties who filed the surrebuttal. I think the Navy did
21 and OTS did and I think other parties had held off in light
22 of the pending settlement. Are other parties intending to
23 file surrebuttal?

24 MR. RYAN: Your Honor, the OSBA had some in draft
25 form and I'll review it and see if we want to serve it. I

1 am going to observe that Friday deadline.

2 JUDGE CHESTNUT: That's fine. For anybody else?
3 Mr. Kleppinger?

4 MR. KLEPPINGER: We do intend to file surrebuttal
5 testimony and we will abide by the OCA's proposed schedule.

6 JUDGE CHESTNUT: If you can file that by Friday,
7 that would be fine. Speaking of filing testimony, make
8 sure you pre-mark it with a number. Be careful about how
9 you number things. People have been very careless in this
10 case.

11 There are overlapping exhibits numbers and things as
12 you'll see from that exhibit chart. So please be careful.
13 If you cannot comply with a filing deadline, do not fax it
14 to us. Just send us a letter saying it will be filed
15 tomorrow, you know. Take your lumps and just admit you
16 didn't have it in on time. Faxing is not acceptable in
17 terms of testimony. Okay?

18 MR. BONNEY: Your Honor --

19 JUDGE CHESTNUT: Friday I assume is an in-hand
20 delivery date, when you say filing Friday?

21 MR. STEINMETZ: Yes.

22 JUDGE CHESTNUT: That's a date of receipt, not a
23 date of mailing, or what.

24 MR. RYAN: We are talking about serving it on
25 Friday.

1 JUDGE CHESTNUT: Right. I am saying that will be
2 the date of receipt.

3 MR. RYAN: In hand that day. But I was a little
4 troubled by your comment about faxing. Obviously, for the
5 record it can't be that way but do you have to have the
6 hard copy here for the record on Friday?

7 JUDGE CHESTNUT: I don't mean to confuse you here.
8 Say your testimony is due Friday and you find you cannot
9 have it here by Friday. Do not fax it to us on Friday.
10 Send it to us on Monday with a cover letter saying you are
11 unable to do it on Friday. Okay?

12 I am not going to mention any names here but there
13 is a party who filed a substantial amount of testimony, and
14 that's not appreciated at all, and it's just not
15 acceptable. Are there any questions about the schedule
16 that the time --

17 MR. BONNEY: Your Honor, I think PECO is inclined at
18 this point not to conduct cross examination on the
19 testimony that will be filed Friday but of course we won't
20 know that until we see it.

21 JUDGE CHESTNUT: Sure.

22 MR. BONNEY: It still makes sense to me, let's set a
23 hearing day, perhaps next Tuesday, or something, in the
24 event there is a need for cross examination that's --

25 JUDGE CHESTNUT: Mr. Kleppinger, you didn't want to

1 comment on that?

2 MR. KLEPPINGER: I was waiting for the outcome of
3 that, Your Honor.

4 JUDGE CHESTNUT: I don't think that's a bad idea to
5 set a date, but --

6 MR. KLEPPINGER: If there's an understanding that
7 there's not going to be cross examination of their
8 surrebuttal testimony, very small likelihood of it, I am
9 not sure that we need to have Friday as an in-hand date.
10 If we could use that as a mailing date it would make life a
11 lot easier for people.

12 JUDGE CHESTNUT: I'll leave that up to you. You are
13 the party most affected by it. I would certainly urge you
14 not to have unnecessary hearings, obviously. You have a
15 very short time and I think you have to be careful how you
16 use it at this point. But why don't you, during a break,
17 get together and see how you want to work that out.

18 MR. CLEARFIELD: Just so it's clear, it's ENRON's
19 position that if the parties, by virtue of this
20 opportunity, will have a full opportunity to cross examine
21 all the testimony that's been placed on the records on all
22 of the issues and that if the hearings are not held it's
23 because of the determination that cross examination is not
24 necessary or it's been waived.

25 JUDGE CHESTNUT: Yes. If you make the decision not

1 to cross examine on the testimony that is your decision to
2 waive cross examination. I am not saying parties are
3 directed to filed testimony which would not be subsequent
4 to cross examination. I don't think that would be proper.

5 MR. CLEARFIELD: I am not suggesting that but that's
6 for all the testimony including the direct and rebuttal
7 that's been submitted and already stipulated into the
8 proceeding.

9 JUDGE CHESTNUT: Yes.

10 MR. CLEARFIELD: I just want to make sure that was
11 clear in my own mind.

12 MR. BONNEY: Could there be some process, Your
13 Honor, to --

14 JUDGE CHESTNUT: I'm just trying to think how to do
15 that.

16 MR. BONNEY: So we can know if the hearing can be
17 canceled.

18 JUDGE CHESTNUT: Well, if you file it on Friday,
19 obviously you review it Friday night and Saturday and get
20 back to us on Monday.

21 MR. BONNEY: Get back to you, Your Honor?

22 JUDGE CHESTNUT: Then we can cancel it for Tuesday.
23 We'll go ahead and we'll schedule a hearing for Tuesday
24 with the expectation that hopefully it will not be
25 necessary to have that hearing but that if it's necessary

1 to cancel it, parties will be notified.

2 JUDGE CHESTNUT: If after the testimony's been
3 served you decide it's not necessary to have a hearing on
4 Tuesday I guess you can just stipulate in your testimony.

5 I don't know the best way to do that because I'd
6 like you to have it done before I have to file the
7 certification order so it can be included in the
8 comprehensive list of statements and exhibits. Why don't I
9 -- we'll just assume that whatever you file will be
10 admitted into the record unless you notify us otherwise if
11 there's some reason you don't want it to be part of the
12 record.

13 But I'll assume that what's filed on Friday will be
14 admitted into the record either through stipulation or
15 after cross examination.

16 MR. SHIELDS: Judge, what about previously
17 distributed surrebuttal?

18 JUDGE CHESTNUT: That you have to make a decision
19 about whether you want that in or not.

20 MR. SHIELDS: Understood.

21 JUDGE CHESTNUT: I'd like you to know. That's why I
22 passed this out. Actually because everything should be
23 listed on here that's been filed up to now. And you'll see
24 that there are items that are not marked as being admitted
25 so if you want them part of the record, let me know in

1 writing, please.

2 I think most things actually have been admitted but
3 like you said, Mr. Shields, there are some that have not
4 been.

5 JUDGE CHESTNUT: Is there anything else related to
6 scheduling? Any other procedural matters any part he
7 wishes to raise at this point. Mr. Bonney.

8 MR. BONNEY: Just one, Your Honor. Mr. Dworetzky
9 has raised a question about the notice that PECO has sent
10 to customers in this case. We had a conversation before we
11 started today and I believe we have an agreement that we
12 could enter into the record the notices that PECO has
13 issued to customers.

14 I have two of them here today, one the September,
15 October, 1997 notice that PECO issued regarding the partial
16 settlement and another, a July 28, 1997 Philadelphia Daily
17 News copy of notice that includes reference to the public
18 input hearings that were previously scheduled but I don't,
19 what I don't have here is the April notice and I'll get a
20 copy of that and ask that they be admitted into the record.

21 JUDGE CHESTNUT: Do you want to -- do you have --
22 how are you going to have that marked?

23 MR. BONNEY: Any way that you would like.

24 MR. DWORETZKY: Your Honor, one of them is already
25 admitted as NEV Trial Exhibit 3. There's this second one.

1 I believe that's the one that should be in the record
2 because we went through some back and forth on whether it
3 was the corrected copy or not. Then we established it was
4 the corrected one.

5 MR. BONNEY: That's the notice about the partial
6 settlement?

7 MR. DWORETZKY: Yes.

8 JUDGE CHESTNUT: Do you want to just call it PECO
9 Exhibit 3.

10 MR. BONNEY: That's fine, Your Honor. We have some
11 cross examination exhibits and I think we were farther
12 along than that.

13 JUDGE CHESTNUT: That's why I called it three as
14 opposed to cross examination exhibit.

15 MR. BONNEY: That's fine with us, Your Honor. I
16 have copies here if anybody wants to see them.

17 (PECO Exhibit No. 3 was produced and
18 marked for identification.)

19 MR. BONNEY: I have provided copies to the Court
20 Reporter.

21 JUDGE CHESTNUT: Do you have copies for us?

22 JUDGE RAINEY: I am sorry, Mr. Dworetzky. Which one
23 was admitted as an NEV exhibit?

24 MR. DWORETZKY: NEV Cross Exhibit Number 3.

25 JUDGE RAINEY: Which one?

1 MR. DWORETZKY: The second notice, the notice of the
2 partial settlement?

3 JUDGE RAINEY: Is that the July?

4 MR. BONNEY: It's the September or October one, Your
5 Honor.

6 JUDGE RAINEY: September, October. So then the July
7 and April notices will be marked as PECO Exhibit 3.

8 MR. BONNEY: Yes, Your Honor.

9 JUDGE RAINEY: Thank you. And you'll provide the
10 April notice.

11 MR. BONNEY: We'll bring that tomorrow.

12 JUDGE CHESTNUT: That's fine. Mr. Haver?

13 MR. HAVER: On the witness list circulated in
14 reference to cross examination I did not check that I would
15 be asking questions but I received a filing of Mr. Kean
16 that's raised some questions and I would like to have the
17 right, if it's not answered during the cross examination,
18 to answer those.

19 JUDGE CHESTNUT: Right. That's not binding but
20 sure. Does anybody else -- I am sorry, Mr. Nordstrom.

21 MR. NORDSTROM: Your Honor, Paul Nordstrom, on
22 behalf of Allegheny Power. In the Commission's November 6
23 order, it ruled that standard of contact issues would be
24 treated generically in a rule making proceeding that the
25 Commission would open by the end of the year and also in

1 the same paragraph of its ruling carved out for this case
2 specific structural and operational relationship issues
3 between PECO and its affiliates.

4 I just wanted to say a couple things for the
5 record. One, Allegheny Power supports the generic
6 treatment in the Commission's anticipated rule making of
7 the standard of conduct issue.

8 Two, it's a bit unclear to me as to what the
9 Commission intended to be a part of this case in terms of
10 standard of conduct and what not. And that it would not be
11 worth our while to try to go through line by line through
12 the various standards of conduct and related testimonies
13 that are proposed.

14 So I just wanted to reserve Allegheny's right to
15 address what should be in and what should be out of the
16 case in terms of standards of conduct on its brief. Thank
17 you.

18 JUDGE CHESTNUT: Thank you. Mr. Miller.

19 MS. MILLER: We have a pending motion by ENRON
20 relating to the testimony of PECO Witness Mitchell and the
21 offer of ENRON Witness Kinney, a pending motion.

22 JUDGE CHESTNUT: What motion are you talking about?

23 MR. MILLER: We filed a motion last week to strike
24 or bar from the record portions of Mr. Mitchell?

25 JUDGE CHESTNUT: I thought that was an alternative

1 to your motion to compel.

2 MR. HERSHEY: I'd appreciate if you could speak up.
3 It's a long room and not very good acoustics.

4 MR. MILLER: Then we offered on Friday the testimony
5 of Mr. Kinney.

6 JUDGE CHESTNUT: Well, today -- yeah. And --

7 MS. MILLER: It's a pending motion. I was just
8 wondering if you want to address that now or later.

9 JUDGE CHESTNUT: Because frankly, I thought your
10 motion had been obviated by PECO's supplying to you of the
11 work papers.

12 MR. MILLER: I think maybe letters didn't catch up
13 to you but we told PECO that we viewed those work papers as
14 being insufficient findings and Mr. Kinney's testimony
15 addresses that, among other things.

16 JUDGE CHESTNUT: Right. Is this something that you
17 can still talk about or is it beyond that?

18 MS. MILLER: We can still talk about it. We should
19 probably talk about it and come back to you with a
20 resolution.

21 JUDGE CHESTNUT: Okay. See if you can resolve
22 that.

23 MS. MILLER: Yes, Your Honor. But I will tell you
24 as a general matter we are very reluctant to strike
25 testimony in this case and it's got to be very, very clear

1 that the testimony should be stricken and marginal
2 testimony will be allowed in and that's consistently been
3 our approach here for all parties.

4 Are there any other procedural matters anybody
5 wishes to raise before we go to the first witness? Mr.
6 Steinmetz?

7 MR. STEINMETZ: Yes. One point of clarification,
8 Your Honor. Mr. Clearfield said, he seemed to indicate if
9 we had a hearing next Tuesday, the direct case would be
10 subject to cross examination as well.

11 JUDGE CHESTNUT: I think he was just reserving his
12 rights to cross examine on any testimony.

13 MR. STEINMETZ: I thought we had in the record that
14 all cross would be waived on the direct case.

15 JUDGE CHESTNUT: I have said that parties can
16 voluntarily give up their right to cross examine. I am
17 ordering the testimony be submitted without the right of
18 cross examination.

19 MR. STEINMETZ: Even previously submitted
20 testimony?

21 JUDGE CHESTNUT: Yes.

22 MR. CLEARFIELD: My statement was only to clarify
23 the statements that if the parties do not cross examine on
24 that testimony, they are doing it voluntarily and that they
25 did have the opportunity.

1 JUDGE CHESTNUT: Yes.

2 MR. CLEARFIELD: That's all.

3 JUDGE CHESTNUT: As a matter of fact, I would
4 encourage that, of course.

5 Is there anything further, then?

6 (No response.)

7 JUDGE CHESTNUT: The first witness that we have
8 listed is, I guess, Mr. Kean or Kane?

9 MR. CLEARFIELD: Mr. Kean, Your Honor.

10 JUDGE CHESTNUT: Kean?

11 MR. CLEARFIELD: Yes.

12 JUDGE CHESTNUT: Would you stand, please and raise
13 your right hand.

14 STEVEN J. KEAN, called as a witness, having been
15 duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 JUDGE CHESTNUT: Please be seated and give and spell
18 your name for the record.

19 THE WITNESS: Steven Kean, K-e-a-n.

20 MR. CLEARFIELD: Your Honor, I'd ask --

21 MR. HERSHEY: I have great difficulty in hearing,
22 particularly if the witness is facing that way.

23 JUDGE CHESTNUT: I'd like you to remind you to keep
24 your voice up. You might want to think about moving up,
25 Mr. Hershey. I'm sure there's room for you at one of these

1 tables.

2 MR. SHIELD: Is there any chance of the witness to
3 sit on the side of the table so the rest of the room could
4 hear because it's my understanding that while we
5 volunteered up here to relinquish our seats for some of the
6 cross examination, apparently they are comfortable back
7 there and maybe that will just facilitate the flow of the
8 questioning.

9 MR. HERSHEY: He won't be able to see you.

10 JUDGE CHESTNUT: Let's go off the record.

11 (Discussion off the record.)

12 JUDGE CHESTNUT: Back on the record. Go ahead, Mr.
13 Clearfield.

14 MR. CLEARFIELD: I'd like to identify for the record
15 three documents. Mr. Kean's direct testimony submitted on
16 behalf of the Choice Plan, which is entitled Direct
17 Testimony of Steven J. Kean on behalf of ENRON Energy
18 Services Power, Inc.

19 We would mark that as EESPI Statement Number 1. Mr.
20 Kean's rebuttal testimony submitted on Wednesday which was
21 premarked as Statement Number 1-R we ask this that be
22 marked as EESPI Statement 1-R. That rebuttal testimony
23 contains four attachments which are part of the testimony.

24 For the sake of the completeness of the record, Your
25 Honor, we'd like to also mark Mr. Kean's original testimony

1 that was submitted in the restructuring proceeding that was
2 -- I don't believe stipulated in previously and that was
3 provided to all the parties in earlier stages of the
4 proceeding. We mark that as EPMI Statement 1-0.

5 JUDGE CHESTNUT: Wait, that --

6 MR. CLEARFIELD: Prepared June 20, 1997.

7 JUDGE CHESTNUT: Okay.

8 MR. RAINEY: This is a part of the --

9 JUDGE CHESTNUT: I have that that was already
10 admitted by stipulation. If it wasn't --

11 MR. CLEARFIELD: We'll authenticate it this morning
12 with Mr. Kean.

13 (EESPI Statements Nos. 1 and 1R and EPMI Statement
14 1-0 Exhibit No. Were produced and marked for
identification.)

15 BY MR. CLEARFIELD:

16 Q Mr. Kean, do you have before you what we have
17 marked for identification as EESPI Statement 1, Statement
18 1-R and EPMI Statement 1.0?

19 A Yes.

20 Q And were they prepared by you or under your
21 supervision and direction?

22 A Yes.

23 Q Now, with respect to, we'll take each of the
24 statements sequentially. With respect to EESPI Statement
25 1, do you have any additions, corrections or revisions

1 you'd like to make at this time?

2 A Yes, I do have one and my understanding is we'll
3 be handing out the amended pages so that people don't have
4 to follow along here. There's twelve copies of them. But
5 if you start at the bottom of page 2, in my direct
6 testimony, line 22, starting after the sentence that ends,
7 of megawatt-hours sold, I am replacing the next sentence in
8 the text that goes over to line 3 of page 3 with the
9 following.

10 ENRON, an indirect subsidiary of ENRON Corp was
11 formed to serve retail customers in new retail markets as
12 such markets are open to competition.

13 In connection with the submission of the Choice Plan
14 it was decided that ENRON was the most appropriate in terms
15 of ENRON Corp family to serve retail electric customers in
16 PECO's service territory.

17 It will likely be the case that EPMI or another
18 ENRON affiliate will seek to serve retail customers in
19 Pennsylvania, including those in PECO's service territory
20 that elect to choose a competitive supplier. ENRON is also
21 currently considering having more than one ENRON affiliate
22 offer retail services on a nationwide basis.

23 The reason for that change is I believe the original
24 direct testimony had said that EESPI was set up
25 specifically for the purpose of becoming the provider of

1 last resort and that statement is corrected and clarified
2 by this.

3 Q Copies of those revised pages Your Honor, have
4 been provided to all the parties, to Your Honors and to the
5 Court Reporter. The copies supplied to the Court Reporter
6 have those revisions. Mr. Kean, do you have those pages in
7 front of you?

8 A Yes, I do.

9 Q I would just note that on page 3, line 22,
10 there's an additional typo that you might want to
11 correct.

12 A Oh, yeah. Line 22, page 3, university should be
13 universal.

14 Q Are those all the changes you have to your EESPI
15 Statement 1?

16 A Yes.

17 Q And with those changes, is that statement true
18 and correct to the best of your information, knowledge and
19 belief?

20 A Yes.

21 Q Now, do you have any corrections or additions
22 you'd like to make to your EESPI Statement 1-R?

23 A Yes. In the rebuttal testimony, page 25, lines 9
24 and 10, I understated the discounts that would apply under
25 the ENRON Choice Plan.

1 The discount for years 2001 and 2002 are 12.444
2 percent and 9.44 percent respectively and there is an
3 additional year of discounts included in the plan as
4 revised and for 2003 and that discount is 7.44 percent.

5 Q Are those the changes you'd like to make to your
6 pre-prepared Statement 1-R?

7 A Yes.

8 Q And with those changes is it true and correct to
9 the best of your information, knowledge and belief?

10 A Yes.

11 Q Do you have any additions or corrections with
12 respect to your Statement EPMI Statement 1 dot 0?

13 A No, I do not.

14 Q Is that true and correct to the best of your
15 information, knowledge and belief?

16 A Yes.

17 MR. CLEARFIELD: Your Honor, I would move for the
18 admission of EESPI Statements 1 and 1-R and EPMI Statement
19 1.0 to the extent that it has not been stipulated.

20 JUDGE CHESTNUT: Any objection?

21 (No response.)

22 JUDGE CHESTNUT: The documents are admitted

23 (EESPI Statements Nos. 1 and 1-R and EPMI Statement
24 1.0 were admitted in evidence.)

25 MR. CLEARFIELD: I believe Mr. Kean is available for

1 cross examination.

2 JUDGE CHESTNUT: Mr. Haver?

3 CROSS EXAMINATION

4 MR. HAVER: Unfortunately, I am loud enough,
5 probably, to be heard. Good morning.

6 THE WITNESS: Good morning.

7 BY MR. HAVER:

8 Q I have some questions about your most recent
9 testimony. On page 10, so I don't have to approach you,
10 may I just read it to you?

11 JUDGE CHESTNUT: No.

12 MR. CLEARFIELD: You just identify whether it's the
13 direct or the rebuttal.

14 MR. HAVER: I believe it's the rebuttal.
15 Unfortunately, I got a faxed copy. I haven't been served
16 with a regular copy, so it does not have a cover page.

17 MR. CLEARFIELD: Was it the copy that was submitted
18 on Wednesday of last week?

19 MR. HAVER: I believe you submitted on Wednesday. I
20 did not receive it until Thursday.

21 MR. CLEARFIELD: That would be the rebuttal.

22 JUDGE CHESTNUT: Mr. Haver, don't read. It's
23 already part of the record. Just direct his attention to
24 the appropriate place.

25 BY MR. HAVER:

1 Q On page 10, line 14, you agree that the provider
2 of last resort should be competitively selected?

3 A Yes.

4 Q Is that your testimony that that's the best way
5 it should be done?

6 A Yes.

7 Q And that's what you believe is appropriate.

8 A Yes. And I believe that's what we are proposing
9 in this case as well.

10 Q In your plan, where you talk about the changes on
11 page 39 of your testimony, could you point out where in the
12 changes to your testimony you say that you are no longer
13 going to be asked that ENRON is no longer going to be the
14 provider of last resort?

15 A We are still asking to become the provider of
16 last resort and we have made a proposal to become that
17 provider. What was further said is that in the event that
18 securitization is otherwise delayed or denied under protest
19 and we are not the provider of last resort, then that role
20 should be competitively selected.

21 Q I am a little confused. You say the better way
22 to do it is to have the provider of last resort not be
23 ENRON but be competitively bid?

24 A No. That's not my testimony. My testimony is
25 that competition for that role is a good thing. That's the

1 point that Boonin made in his testimony. We are competing
2 for that role by putting a competing proposal in this
3 proceeding for that role.

4 We have further provided that in the event, again,
5 securitization is delay or denied that the Commission
6 should consider the competitive selection of provider of
7 last resort.

8 Q I am a little confused. When I asked you before
9 you said it should be competitively bid. You said yes, now
10 you are saying no, that it shouldn't be. Which is it?

11 A I can only say we have made --

12 Q Excuse me. Can I finish my question.

13 A Yes.

14 Q I'm sorry. Is it ENRON's position that the
15 provider of last resort should be solely ENRON's or is it
16 ENRON's position that the provider of last resort should be
17 competitively bid so that all companies be competitive?

18 A Or either our position that we have made a
19 competitive offering for the provider of last resort role.

20 Q You didn't answer my question. Is it --

21 MR. CLEARFIELD: Your Honor, I believe he has
22 answered the question at least twice. He stated that
23 ENRON's Choice Plan is a competitive bid for the provider
24 of last resort role and that in that context it is
25 consistent with the testimony that's been submitted by the

1 environmentalists and I believe Mr. Bonney.

2 JUDGE CHESTNUT: Why don't you proceed.

3 BY MR. HAVER:

4 Q Again, so your position is that it should be
5 competitively bid. Now, do you believe that should be just
6 in the PECO territory or should it be competitively bid in
7 all the territories throughout Pennsylvania?

8 A I believe that as a policy matter, it makes sense
9 to have that role subjected to competitive provision and as
10 a general policy matter.

11 Q Are you opposed to it being the general meaning
12 by the Commission for all the territories to have an equal
13 playing field?

14 A I am not opposed to approaching it as a generic
15 rule making. But the issue is live in this proceeding. It
16 has been raised in this proceeding and I believe it should
17 be resolved in this proceeding as to the service
18 territory.

19 Q So it will not trouble ENRON if there are
20 different answers to these questions and from different
21 territories. You won't object, for instance, in the PP&L
22 territory it's not competitively bid?

23 A It would depend on what those differences were
24 and it would depend on the circumstances of those
25 individual territories.

1 Q You wouldn't mind that there are differences, in
2 other words?

3 A It would depend on what those differences are.
4 We could find in the event there are differences. I
5 wouldn't speculate without knowing.

6 Q I received a call from a Miss Cooper who said she
7 represented ENRON. I am not sure that you know who she
8 is. I know that you have quite a lot of money and you hire
9 quite a lot of staff.

10 MR. CLEARFIELD: Your Honor, I object to that.
11 That's argumentative. There's no necessity for those kinds
12 of comments.

13 JUDGE CHESTNUT: Yes. Try and keep your
14 editorializing to a minimum, if you can, Mr. Haver. Try to
15 ask some questions. I'll let you lay a foundation for the
16 question but let's try and keep on track with what we're
17 doing here.

18 BY MR. HAVER:

19 Q I asked her to cite me the law that allows the
20 Public Utility Commission to force PECO to securitize the
21 set amount. She said she didn't have an answer to that. I
22 should ask someone from ENRON.

23 I am asking you, sir, could you cite that actual law
24 that gives the Public Utility Commission the right to force
25 PECO to securitize a certain amount?

1 A First, with respect to the premise of your
2 question I don't know a Miss Cooper. I don't know who she
3 works for. With respect to, you know, the requirements in
4 the act, I would rely on my counsel to advise on that.

5 Q So you don't know whether this is reasonable or
6 not. You are just going to rely on counsel.

7 MR. CLEARFIELD: Your Honor.

8 JUDGE CHESTNUT: We realize that Mr. Kean is not a
9 law person and his opinion is not entitled to legal
10 weight. But if you can answer the question on the basis as
11 an official of this company, then you can answer.

12 THE WITNESS: We believe that the Commission has the
13 authority to order the securitization and the transfer of
14 the IFC.

15 BY MR. HAVER:

16 Q I would ask you, are you not a lawyer Mr. Kean?

17 A I have a law degree, yes.

18 Q I am asking you for a cite from the law. Can you
19 provide me with a cite that gives that right?

20 A No. I can't at this time. I would sit down and
21 go through the act with counsel and provide it.

22 MR. HAVER: Could I make a request? A transcript
23 request? It's been offered.

24 MR. CLEARFIELD: Your Honor, this is going to be
25 briefed.

1 MR. HAVER: It's been offered as testimony that he's
2 capable of doing that.

3 MR. CLEARFIELD: It's not been offered as testimony
4 that Mr. Kean is testifying today in his capacity as a
5 legal expert.

6 That obviously would not be appropriate to the
7 witness. That question will be fully addressed in ENRON's
8 brief and that should be sufficient. If Mr. Haver wants a
9 preview of the citation, I suppose we could give it to him,
10 in the interest of being cooperative.

11 JUDGE CHESTNUT: Okay. Go ahead.

12 MR. HAVER: Your Honor, Mr. Kean has said he can
13 offer that. I am taking him up on that. I would ask that
14 you make that a demand.

15 MR. CLEARFIELD: Fine. We'll provide the cite.

16 JUDGE CHESTNUT: Mr. Clearfield said he was already
17 going to give it to you so what's the point?

18 MR. HAVER: It's not my understanding of what it
19 was. In what time frame are transcript requests to be
20 answered?

21 JUDGE CHESTNUT: Ten days.

22 BY MR. HAVER:

23 Q I have two more questions about the law and I am,
24 just to save time, I am going to assume that you gave the
25 same answer, just to clarify it. The cite that allows the

1 Public Utility Commission to force PECO to borrow from
2 ENRON, borrow from ENRON I assume you'll provide that to
3 the --

4 A I would defer to counsel on how we are going to
5 handle requests.

6 JUDGE CHESTNUT: I'm not sure there's a foundation
7 for that.

8 MR. CLEARFIELD: I am not sure what he's referring
9 to.

10 MR. HAVER: Let me build a foundation. I am trying
11 to save time. I know there are other people.

12 BY MR. HAVER:

13 Q Under the ENRON Choice Plan, PECO will borrow
14 money from ENRON or ENRON's designees. Is that right?

15 A Right.

16 Q At an interest rate that ENRON sets. Is that
17 correct?

18 A At an interest rate that's specified in the
19 file.

20 Q Right. Could you tell me the cite from the
21 Public Utility Commission law that allows the Public
22 Utility Commission to force PECO to borrow money from ENRON
23 at a specific interest rate?

24 A Well, I think in the context of this proceeding,
25 we have got a proposal from PECO on the table. We have a

1 proposal from ENRON on the table. Part of the proposal
2 that's being offered is for the recovery of a significant
3 amount of stranded costs.

4 Whether the Commission looks at individual statutory
5 provisions and there I would have to defer to counsel on
6 what the legal bases for those actions would be, the
7 Commission may rely either on those legal bases within the
8 statute or within its authority, broad authority to approve
9 settlement and proposals that are within the public
10 interest.

11 JUDGE CHESTNUT: Can you provide me with a cite from
12 the Public Utility Commission law that gives the Public
13 Utility Commission the right to order PECO to borrow money
14 from ENRON at the interest rate ENRON specifies?

15 MR. CLEARFIELD: Your Honor, the legal authority for
16 the Commission to order the Choice Plan is completely set
17 forth in the Choice Plan petition and if there is
18 additional citation we can provide that as an on the record
19 data request if Mr. Haver believes that's necessary.

20 JUDGE CHESTNUT: Okay. Go ahead.

21 BY MR. HAVER:

22 Q Third question is -- again, if you want me to,
23 I'll build a foundation for it but to save time --

24 JUDGE CHESTNUT: Yes, you have to.

25 BY MR. HAVER:

1 Q Under the ENRON Choice Plan, would ENRON force
2 PECO to sell electricity at the price ENRON wants?

3 A The predicate of your question, again confused
4 me. It's not the price that ENRON wants. ENRON has
5 proposed a price. That price is under review by the
6 Commission. The Commission will decide whether that price
7 is appropriate, fair, just and reasonable. Whatever other
8 legal standards it would have to meet.

9 Q But the price wasn't negotiated with PECO. PECO
10 didn't agree to sell it at that price?

11 A The price was set forth in our proposal and
12 there's been testimony filed in the case and the Commission
13 will make a determination as to the appropriate price.

14 Q Could you also give me the legal cite that gives
15 the Public Utility Commission the right in the deregulated
16 market to force PECO to sell selectively at a price that
17 ENRON wants or requested?

18 MR. CLEARFIELD: We'll provide it.

19 MR. HAVER: Thank you. I have one last question.

20 BY MR. HAVER:

21 Q Can you explain to me how there can be any price
22 guarantees if the provider of last resort is competitively
23 bid when no one knows what the prices will be?

24 A Well, if the Commission wanted to, it could
25 specify that it could make specifications as to the terms

1 and conditions of bids that it would find just and
2 reasonable, including potentially specifying what those
3 prices are in advance?

4 Q And if no one entered a bid?

5 A The Commission would have to structure it
6 differently.

7 Q Then how could you guarantee what the price would
8 be?

9 A You know, the Commission, I assume, would set up
10 a process where people would make bids. It could say as
11 part of that it needs to include price guarantees.

12 Q And suppose the lowest bid came in four and a
13 half cents a kilowatt. Just suppose. It's maybe not
14 likely.

15 A The Commission outlines --

16 Q It is possible. Do you agree?

17 A As I understand the Commission is not obliged
18 to select a new provider of last resort. My understanding
19 is the provider of last resort is the distribution company,
20 unless and until the Commission selects an alternative.

21 Q And my question again is if the provider of last
22 resort is put out to bid, and the bid price is four and a
23 half cents a kilowatt hour or higher, how could ENRON under
24 its plan provide any savings?

25 A Under the Choice Plan, the savings are provided,

1 the discounts are provided and the generation credits are
2 pre-specified.

3 Q Right. You didn't answer my question. Again, my
4 understanding is that your position is that it would be
5 appropriate for the Commission to put the provider of last
6 resort out to be competitively selected.

7 A Uh-huh.

8 Q If that happens and the prices come in at four
9 and a half cents a kilowatt hour higher --

10 A Oh, oh.

11 Q -- how are the savings guaranteed?

12 A Again, I believe the Commission has the ability
13 to say on what terms and conditions it will select the
14 provider of last resort. One of those terms and conditions
15 could be fighting within the general credits that are set
16 forth in the Choice Plan.

17 Q And if nobody bids at that price, and the
18 Commission then has to raise the price to get a bid, how is
19 it --

20 A Again, the --

21 Q -- how is it that the price reductions are
22 guaranteed?

23 A Again, the Commission is not obliged to designate
24 a new provider of last resort. To the extent that they
25 determine that they want to keep the utility distribution

1 company in that role they are free to do so.

2 Q And I think I have an answer, but let me make
3 sure I understand it. You are saying that if you bid it
4 out, that it just may not happen? Maybe no one will bid,
5 in which case it doesn't matter.

6 A What I am saying specifically is that the
7 Commission doesn't necessarily have to release the
8 utility distribution company from that role unless it finds
9 a satisfactory outcome from the bidding proceeds.

10 Q Let's find someone who can sell electricity at a
11 lower kilowatt hour rate?

12 A Unless they find a satisfactory outcome from the
13 possess.

14 Q Would that be a satisfactory outcome, finding
15 someone who sells electricity at the lowest kilowatt rate
16 or do you think the Commission should pick a higher
17 kilowatt rate?

18 A You are asking me to speculate on a set of laws
19 that might apply that I can't specify in advance.

20 Q So you don't really know whether the Commission
21 should pick -- you are not advising the Commission whether
22 it puts it out to competitive bids if it should pick the
23 lower rate or the higher rate?

24 A I think it's up to the Commission to decide what
25 terms and conditions they would like to attach to it in the

1 public --

2 Q In your professional opinion, do you think the
3 lowest rate would be in the public interest?

4 A I would think the Commission would want to look
5 at a number of different core rates it would assume the
6 rate would be part of that but it may not be the only
7 consideration.

8 Q I am asking you in your professional opinion.
9 Not with the Commission's opinion. In your professional
10 opinion, is the lowest rate in the public interest?

11 A The rate would be one of the things to be
12 considered.

13 Q You are not answering my question.

14 A Well, I am --

15 MR. CLEARFIELD: He has answered the question, Your
16 Honor.

17 THE WITNESS: I'm saying you are saying I cannot
18 answer the question without knowing more about what the
19 proposal is. Rate, what I am telling you is the rate may
20 not be the only consideration.

21 BY MR. HAVER:

22 Q In your professional opinion, in some cases it
23 would be better to charge a higher rate than a lower rate?

24 A Not necessarily, just saying rate should be one
25 of the considerations.

1 Q Sometimes that could be --

2 A Rate should be one of the considerations.

3 Q I am asking you in your professional opinion is
4 it sometimes better to pick a higher rate than a lower
5 rate?

6 A If the service is better, if the service is
7 markedly better and there are other things that offset
8 that difference, then, yes, certainly that can be the
9 case.

10 MR. HAVER: Thank you. Thank you, Your Honor.

11 JUDGE CHESTNUT: Thank you. Mr. Craig?

12 MR. CRAIG: Thank you.

13 JUDGE CHESTNUT: Could you come up here, please.

14 BY MR. CRAIG:

15 Q Let me introduce myself one more time. Once
16 again, my name is Christopher Craig and I represent State
17 Senator Vincent Fumo, who, as a note is the only litigant
18 in this case voting to consider the act which we are
19 discussing today.

20 In response to interrogatories, you were identified
21 as participating in the draft in the ENRON petition. Is
22 that an accurate statement?

23 A Yes.

24 Q Could you please describe your involvement in
25 that activity?

1 A I have, I oversaw the development of the Choice
2 Plan.

3 Q As part of that oversight, did that involve the
4 comparison about what's in the Choice Plan and what's in
5 the settlement?

6 A To some extent, yes.

7 Q Big extent? Small extent? One of the factors we
8 are trying to understand is how much weight to consider
9 your testimony. So could you please describe to what
10 extent you compare the two?

11 A We did evaluate the proposed settlement because
12 our objective in putting the Choice Plan forward was to put
13 a superior proposal forward. To do that we needed to
14 review the partial settlement, understanding it as best we
15 could.

16 Q In describing what you consider to be the
17 superior proposal, page 3 of your first statement --

18 A I am sorry. Which is that?

19 Q That would be the --

20 A The direct.

21 Q Yeah.

22 JUDGE CHESTNUT: The EESPI direct or the EMPI
23 direct?

24 MR. CRAIG: I have no idea.

25 MR. CLEARFIELD: It would be the EESPI direct, Your

1 Honor.

2 MR. CRAIG: The second one.

3 MR. CLEARFIELD: It's directed to the Choice Plan.

4 JUDGE CHESTNUT: I am sorry. What was that page
5 reference, Mr. Craig?

6 MR. CRAIG: Page 3.

7 JUDGE CHESTNUT: The new page 3?

8 MR. CRAIG: Yeah. But this doesn't involve that.

9 BY MR. CRAIG:

10 Q On line 11, you describe the Choice Plan as a
11 comprehensive plan which guarantees immediate rate
12 reductions to PECO'S customers. Is that an accurate
13 statement?

14 A Yes. The rate reductions would go into effect on
15 September 1, 1998. So it's immediate in the sense that
16 once the Choice Plan starts, it goes into effect then.

17 Q Does ENRON guarantee rate reduction to consumers
18 at the level of either 22 or 14 percent if there's a
19 material adverse change in the business financial position
20 or prospects of PECO Energy Company?

21 A We have included as PECO has, certain conditions
22 that have to be satisfied in order for a rate reduction to
23 go into effect. So to that extent the term guarantee means
24 with those conditions in effect. Having --

25 Q If I am understanding your answer correctly,

1 under that circumstance, there is no guarantee. Is that
2 correct?

3 A I am sorry. Could you repeat the circumstance
4 that you were referring to?

5 Q That there exists a material adverse change in
6 the business financial position or prospects of PECO Energy
7 Company.

8 I believe what you are referring to, and maybe you
9 could give me a more specific reference, but there are
10 provisions in the contracts that we propose to go into
11 effect between PECO and ENRON which include provisions
12 dealing with material adverse changes to PECO and those in
13 those contracts, certain rights are triggered in the event
14 those changes should occur.

15 Q All I am trying to find out is in the event
16 assuming that circumstance occurs, is it correct that there
17 would be no guaranteed rate reduction?

18 A If those circumstances occur, you would have to
19 go through the contracts to figure out what the outcome
20 would be. You would also have to look at what current
21 market prices were and the like and make determinations
22 about whether the rate reductions could continue into
23 effect or not.

24 But there is language, there are conditions on the
25 rate reductions, one of those conditions is that there has

1 not been material adverse changes to -- well, actually one
2 of the conditions or the proposed conditions that are laid
3 out in the power purchase agreement between ENRON and
4 PECO.

5 Q This will be the last time I'll ask this
6 particular question, but again, I'm trying very hard to get
7 to a definitive yes or no, sir. Under this circumstance
8 that you describe would there be, yes or no, a guaranteed
9 rate reduction?

10 A It's very difficult to answer that question yes
11 or no.

12 The rate reductions are contingent upon certain
13 things going into effect.

14 Q Contingent?

15 A Or not taking place and not occurring.

16 Q Okay. Is there --

17 A Just as PECO's are contingent upon certain
18 things.

19 Q I understand that your answer. Does the
20 settlement have a similar expressed condition in it? The
21 settlement being the consumer and PECO settlement?

22 MR. CLEARFIELD: Are you talking about the partial
23 settlement?

24 MR. CRAIG: That's correct. Some people refer to it
25 as the PECO settlement. We like to call it the consumer

1 settlement.

2 THE WITNESS: Of the PECO partial settlement. Does
3 not include a contract between PECO and itself. So it
4 doesn't have the provision that you refer to specifically.

5 BY MR. CRAIG:

6 Q What is a material adverse change?

7 A That's something I really can't opine about.
8 You'd have to look at the circumstances in the case.

9 Q Uh-huh. What is a business or financial
10 prospect?

11 A Again, you would have to apply contractual
12 standards to the circumstances of an individual case.

13 Q Who makes that determination?

14 A I assume it would be made, you know, based you
15 know, with lawyers and judges and the parties to the
16 contract.

17 Q So would that determination have to be a
18 litigated determination? Is that selection made just by
19 ENRON or is it made with ENRON and PECO or is it made with
20 ENRON, PECO and any intervening consumer? I am just trying
21 to understand your proposal.

22 A I have another; not necessarily litigated. It
23 could be.

24 Q It may or may not. We don't know, depending upon
25 the circumstances. Is that correct?

1 A Uh-huh.

2 MR. CLEARFIELD: Is that a yes?

3 THE WITNESS: Yes.

4 BY MR. CRAIG:

5 Q Your explanation depending on the circumstances,
6 it may or may not be the in the contract. It may or may
7 not be between the various parties.

8 Where is that described in your testimony? This --
9 I am referring now to the rebuttal testimony, Statement 1.

10 A I am sorry. I don't know what you are asking me
11 to look for.

12 Q If I understand it correctly, one of the things
13 that your company's trying -- is asking is that the
14 Commission to consider the modifications to its original
15 petition. And in order to consider these changes, you are
16 asking the Commission to accept on faith that everybody
17 here understands what the heck a material adverse change is
18 or how that determination is made.

19 So I am not asking you where is this supplemental
20 information that we, as members of the general public can
21 look to?

22 A Well, the contracts that I believe you are
23 referring to are attached to your original Choice Plan.
24 The language is laid out in the Choice Plan. The
25 contract --

1 Q But this clause does not necessarily -- is this
2 particular clause within your --

3 A I am sorry.

4 Q -- within those contracts?

5 A Let me -- hold on. Let me look. A material
6 adverse change provision is not in the contract, at least
7 based on my looking for it right then.

8 Q All right. I'm sorry.

9 A I was going to say that in the event what we have
10 included is certain conditions in our proposal in the event
11 that there are material adverse changes to PECO's financial
12 conditions that might prevent securitization.

13 Q Is the --

14 JUDGE CHESTNUT: Excuse me. I'd like to remind you
15 to keep your voice up, please, for benefit of the people in
16 the back.

17 BY MR. CRAIG:

18 Q Whereas that clause in your testimony might
19 affect securitization?

20 A Wait a second.

21 MR. CLEARFIELD: Mr. Craig, are you referring to the
22 rebuttal testimony?

23 MR. CRAIG: Well, yes. I am sorry. Well, any
24 document that has been filed.

25 MR. CLEARFIELD: There is language --

1 MR. BONNEY: Wait. Let the witness --

2 MR. CLEARFIELD: Page 40.

3 JUDGE CHESTNUT: Thank you for that testimony, Mr.
4 Clearfield.

5 MR. CLEARFIELD: I was trying to move the process
6 along.

7 JUDGE CHESTNUT: That's a clarification.

8 MR. CRAIG: One of the points I am trying to make
9 was expert testimony was put forth before the Commission
10 and I tried to explore the credibility or the way you --

11 JUDGE CHESTNUT: Credibility doesn't depend on the
12 ability to find a particular reference in testimony. If
13 you know where it is, I don't consider that to be a good
14 use of time. If you know it's there, you can direct him
15 there.

16 MR. CRAIG: I don't know it's there.

17 JUDGE CHESTNUT: But if somebody knows, I would
18 appreciate somebody saying it.

19 THE WITNESS: My recollection is there is such a
20 provision. I cannot remember where it is in the proposal
21 but we can certainly find it.

22 MR. CLEARFIELD: I said it was listed as page 40.

23 JUDGE CHESTNUT: Wasn't it page 40?

24 MR. KLAUBERG: Page 40 of the rebuttal testimony.

25 MR. CLEARFIELD: I thought I had --

1 THE WITNESS: All right.

2 BY MR. CRAIG:

3 Q What line would that be?

4 MR. KOHLER: Eleven, starting on 11.

5 THE WITNESS: Page 40, lines 11 through 14.

6 BY MR. CRAIG:

7 Q Oh, but I am strictly looking for the phrase
8 that you offered that a material adverse change to affect
9 the ability of the company in this case PECO, to
10 securitize.

11 A Well, that phrase is not here.

12 Q Okay.

13 A What I am saying is that there could be an impact
14 on -- well, the phrase is not here.

15 Q All right. Does ENRON guarantee rate reductions
16 to consumers if legal impediments prevent the issues and
17 sale of transition bonds beyond December of the year 2000?

18 A There is no guarantee in the event that there are
19 new legal impediments that arise. With respect to the
20 existing litigation that's out there, there is testimony
21 from witnesses Fastow and Voorhees that goes to the ability
22 of ENRON to securitize, nevertheless.

23 Q Does the settlement provision have a similar
24 expressed condition?

25 A No. The settlement does not have that condition.

1 It has other conditions. And by settlement, you mean PECO
2 partial settlement.

3 Q Or the consumer drafted settlement. What is the
4 meaning of the phrase any obligation of ENRON under the
5 Choice Plan would terminate? That phrase as used in
6 conjunction with this particular clause?

7 MR. CLEARFIELD: I am sorry. I am lost. What
8 clause are --

9 THE WITNESS: What page?

10 MR. CRAIG: This would be in the rebuttal
11 testimony. I would just ask for your indulgence for a
12 second to let me find it.

13 MR. CLEARFIELD: Sure.

14 MR. CRAIG: Page 41, lines 1 and 2.

15 THE WITNESS: Are you asking me -- what are you
16 asking me?

17 BY MR. CRAIG:

18 Q What is the meaning of that phrase? At any time,
19 any obligation of ENRON under the Choice Plan would
20 terminate?

21 A Assuming it would satisfy, any obligation of
22 ENRON would terminate, what it's referring to is certain --
23 there's events listed in that paragraph 5 which begins on
24 page 40 and in the event the conditions set forth therein
25 are not satisfied, ENRON would not have the obligation to

1 become the provider of last resort or to purchase the
2 transition bonds.

3 Q And the phrase any such obligation is strictly
4 limited to those two obligations?

5 A Well, we would -- there are related obligations
6 that go with that. The Power Purchase Agreement and the
7 MBC services agreements are directly related to provider of
8 last resort roles.

9 Those contracts we would not be obligated to move
10 forward under those contracts, either.

11 Q My particular -- what I am particularly
12 interested in is to find out what limitation, if anything
13 is associated with the phrase any obligation of ENRON under
14 the Choice Plan would terminate.

15 Could that include universal service? Could that --
16 let me just leave the question at that.

17 A Well, if these events take place or you know,
18 these conditions are not satisfied, then the Choice Plan
19 does not go into effect.

20 Q Okay. So that -- just to make sure I understand,
21 any obligation encompasses the entire Choice Plan as
22 modified.

23 A Yes. I believe that's right. Again, what we are
24 talking about here is we are not --

25 Q Under this --

1 MR. CLEARFIELD: Let him finish.

2 THE WITNESS: We are out beyond December 31 of
3 2000.

4 BY MR. CRAIG:

5 Q Yes.

6 A We have made proposals in the Choice Plan for the
7 restructuring of distribution services, the unbundling of
8 competitive services, the inclusion of generation credits
9 that will foster competition in the generation market.

10 We are providing those modifications to go into
11 effect in any event. I think your question was
12 specifically going to what obligations we would have under
13 the Choice Plan and those obligations to terminate in the
14 event that these events do not take place by December 31,
15 2000.

16 Q Does ENRON guarantee rate reductions to consumers
17 if the transition bonds are unable to be issued with the
18 quote, required rating?

19 A ENRON's proposal is subject to conditions as is
20 the PECO partial settlement. One of the conditions of that
21 proposal is that the required rating be obtained under
22 transition bonds. If it isn't, it's not obtained we are
23 not obliged to purchase the bonds under our program.

24 JUDGE CHESTNUT: Excuse me Mr. Kean. Keep your
25 voice up. You are starting to fade there.

1 THE WITNESS: Sorry.

2 BY MR. CRAIG:

3 Q Let me repeat the question I want to get a direct
4 answer. Does ENRON guarantee rate reductions to consumers
5 if the transition bonds are unable to be issued with the
6 required rating?

7 A The answer is no but the proposed rate reductions
8 are made in the context of certain conditions. Those
9 conditions have to be nullified. There are conditions on
10 the PECO partial settlement as well, but the conditions in
11 the ENRON proposal would have to be fulfilled in order for
12 those obligations to apply to ENRON.

13 Q Does the settlement have a similar expressed
14 condition related to the required rating?

15 A I don't recall it having that expressed
16 condition.

17 Q Does ENRON reserve the right to withdraw its
18 petition at any time if the PUC were to modify the ENRON
19 petition in a manner not acceptable to the company?

20 A ENRON does reserve that right and I believe,
21 again, PECO partial settlement has that condition as well.

22 MR. SHIELDS: I'm going to move to strike this
23 response as to what conditions, if any, relate to the
24 consumer's plan. It's non-responsive to the answer.
25 Counsel asked a simple question. It's not argumentative.

1 It may or may not be making a point or relate to the
2 consumers' partial settlement or not.

3 But this is the fifth occasion where this witness
4 has taken it upon himself to reference that and it's
5 strictly not responsive to the question, extraneous and I
6 move to strike it.

7 JUDGE CHESTNUT: Your motion is denied. Go ahead.

8 BY MR. CRAIG:

9 Q Does ENRON anticipate any other last minute
10 revisions to its petition?

11 MR. CLEARFIELD: Your Honor, objection to the
12 characterization, Your Honor.

13 MR. CLEARFIELD: Last minute?

14 MR. HERSHEY: Penultimate?

15 JUDGE CHESTNUT: Your objection is denied,
16 overruled, whatever.

17 MR. CLEARFIELD: I am going to object -- whatever.

18 THE WITNESS: ENRON does not anticipate making
19 additional proposed changes. I don't agree with your
20 characterization of last minute.

21 BY MR. CRAIG:

22 Q Is your testimony the only written expression of
23 the revisions that the Commission will be presented? Of
24 which the Commission will be presented? Grammar is off
25 there.

1 A You mean all of the rebuttal testimony? Not just
2 mine but the other witnesses as well?

3 Q That's correct.

4 A Okay. I guess with the exception of any other
5 evidence in the record of, you know, answers to
6 interrogatories or data requests or the like, I believe
7 that's right.

8 Q Specifically, I was trying to determine whether
9 or not contracts included in your original petition would
10 be revised, whether or not you will include tariff sheets
11 for the Commission to consider. Whether or not you will
12 make a formal amendment.

13 A I see. The testimony describes changes to the
14 plan and it incorporates the previous filing but it also
15 describes additional changes to the plan.

16 Some of those changes would have to be turned into
17 tariff language, for example, and it is our assumption that
18 when we get to that stage of the proceeding we would be
19 making a compliance filing that would take in the specific
20 elements that would need to be included to reflect those
21 caps and offering that to the Commission.

22 Q Do you know whether or not the consumer
23 settlement presented to the Commission includes all the
24 appropriate supporting documents that would encompass any
25 revisions or changes?

1 JUDGE CHESTNUT: Excuse me. I do not like the term
2 consumer settlement. I think we should call the documents
3 by their real names, which is the partial settlement or the
4 ENRON plan. Or the ENRON petition. Okay?

5 MR. CRAIG: Would the PECO settlement be equally
6 inappropriate?

7 JUDGE CHESTNUT: I think PECO settlement is not --
8 to refer to it that way is not incorrect.

9 MR. HAVER: I still object to saying that it's the
10 PECO settlement.

11 JUDGE CHESTNUT: I said I don't consider it
12 incorrect but I think the preference would be to call it by
13 its full name, which is the partial settlement. Okay?

14 THE WITNESS: I lost the question.

15 BY MR. CRAIG:

16 Q Do you know whether or not the partial settlement
17 includes all appropriate documents to support the language
18 in there, including revision language?

19 A I don't know that it does or doesn't.

20 Q All right. Kind of to a separate topic, would
21 you please describe some of your responsibilities as vice
22 president for governmental affairs for ENRON?

23 A My primary responsibility is to participate in
24 and direct ENRON's efforts in opening up energy markets
25 around the country.

1 Q I assume, and correct me if I'm wrong, is part of
2 your responsibility to discuss ENRON's objectives, ENRON's
3 concerns with public policy makers in whichever
4 jurisdiction ENRON may be interested.

5 A That's certainly a part of what we do.

6 Q Did you or did ENRON in general craft the ENRON
7 petition based on an evaluation of Pennsylvania consumer
8 needs and demands?

9 A Yes.

10 Q Prior to October 7, which is, was the filing date
11 for -- was the date in which the ENRON petition was filed,
12 did either you or anyone else from ENRON or any person
13 representing ENRON meet with Senator Fumo to discuss the
14 provisions of the ENRON petition to seek his input into
15 crafting the petition?

16 MR. CLEARFIELD: Your Honor, I am going to object to
17 that.

18 THE WITNESS: I don't understand the relevance of
19 that question.

20 MR. CRAIG: The relevance is directly related to
21 whether or not the ENRON petition is responsive to consumer
22 needs and demands. The question was asked to the witness
23 whether or not it was. The witness says it was. It's
24 fully within my right to explore whether or not that's
25 accurate.

1 MR. CLEARFIELD: Your Honor, there's a predicate to
2 the question. That is, the question is about whether
3 meetings with certain individuals would constitute support
4 for reflecting consumer need and interest.

5 Moreover, the plan is as stated in the testimony and
6 as it's been filed. It's going to be judged by the
7 Commission based on that evidence, not on whether there
8 were meetings or weren't meetings for certain individuals.
9 I just don't see how that possibly is relevant.

10 JUDGE CHESTNUT: I don't see how it's relevant
11 either, but I'll allow the question.

12 THE WITNESS: I am not --

13 MR. CRAIG: If I may address, because there may
14 be --

15 JUDGE CHESTNUT: No. Just go ahead.

16 THE WITNESS: I am not aware of any meetings
17 involving representatives of ENRON and Senator Fumo
18 occurring prior to, I believe you said October 7?

19 MR. CRAIG: Yes.

20 THE WITNESS: Right.

21 BY MR. CRAIG:

22 Q Were there any such meetings or requests for
23 input in developing the petition with Lance Haver prior to
24 October 7th?

25 A Not that I am aware of.

1 Q With the board of directors of CEPA?

2 A Again, not that I am aware of.

3 Q With TAG? Tenant Action Group?

4 A Not that I am aware of.

5 Q ACORN?

6 A Again, not that I am aware of.

7 Q The Small Business Advocate?

8 A I believe, although I did not have any such
9 discussions, I believe there were some discussions.

10 Q In developing and crafting the ENRON petition?

11 A In crafting the petition.

12 Q I am sorry.

13 A No. I am sorry. We crafted the petition
14 separately from the settlement negotiation process.

15 Q Were there any such meetings, developing and
16 crafting the petition with the Consumer Advocate?

17 A Not that I am aware of.

18 Q By comparison, was a copy of the ENRON petition
19 provided to the Philadelphia Inquirer prior to October 7?

20 MR. CLEARFIELD: Objection; relevance.

21 JUDGE CHESTNUT: I think that's a proper question.
22 I am going to allow the objection.

23 BY MR. CRAIG:

24 Q Since its introduction and opportunity for
25 consideration, has Senator Fumo indicated to you or to your

1 company his support for the ENRON petition?

2 MR. CLEARFIELD: Your Honor, I am going to object
3 again. This is not relevant. This is not going to elicit
4 relevant testimony. It means before the Commission this is
5 going to be a stand or fall on the basis of the evidence.

6 It's not going to affect whether there were or
7 weren't support for the ENRON petition or whether or not
8 the members of the House of Representatives do or do not
9 support --

10 MR. CRAIG: The point for consideration I would hope
11 the Commission would make is what sort of consumer support
12 for the petition exists.

13 JUDGE CHESTNUT: That's a matter to be determined
14 whether there's support of the plan or the modification or
15 theory. Why don't you move on, Mr. Craig.

16 MR. HERSHEY: Your Honor, if I may, that's also a
17 matter of evidence.

18 JUDGE CHESTNUT: Are you okay, Mr. Hershey?

19 MR. HERSHEY: Yes. It's an evidentiary question, as
20 well. The question is ENRON has put forth its plan as
21 being in the best interests of consumers and the issue is
22 are there any -- we'd like to hear on the record not as a
23 matter of briefing in some -- from the parties, are there
24 any consumer groups that support it.

25 JUDGE CHESTNUT: If there are, those groups will

1 make their support known.

2 MR. CLEARFIELD: They have already. For example,
3 the environmentalist groups.

4 JUDGE CHESTNUT: So why don't you move on, Mr.
5 Craig.

6 MR. CRAIG: I'll drop that line of questioning. I
7 am striking out here.

8 BY MR. CRAIG:

9 Q Would you please identify the name of the counsel
10 you refer to -- I am now going to refer to your rebuttal
11 testimony.

12 A Okay.

13 Q On page 16, line 6. Relied on counsel of the
14 firm Wolf, Block --

15 MR. CLEARFIELD: And --

16 MR. CRAIG: There was an utterance?

17 JUDGE CHESTNUT: I think he was trying to complete
18 the name of the firm.

19 MR. CLEARFIELD: Utterance withdrawn.

20 JUDGE CHESTNUT: Try to restrain yourself, Mr.
21 Clearfield.

22 MR. CLEARFIELD: I'll try, Your Honor.

23 JUDGE CHESTNUT: It's not clear what law firm.

24 BY MR. CRAIG:

25 Q You said counsel will be made, to the best of

1 your knowledge, be made available by ENRON for cross
2 examination during the hearing this week?

3 MR. CLEARFIELD: Your Honor, I object. That's a
4 statement in the testimony that forms the basis for Mr.
5 Kean's testimony there; standard statement that references
6 the fact that it's a statement by a witness is based on
7 advice of counsel, and will be briefed and Mr. Craig can
8 respond to that discussion in the brief.

9 JUDGE CHESTNUT: Well, I don't -- I know where you
10 are going with this but I don't think it's really worth
11 your time. You didn't subpoena. Did you ask for a
12 subpoena?

13 MR. CRAIG: I haven't --

14 JUDGE CHESTNUT: Through that counsel.

15 MR. CRAIG: I haven't had an opportunity.

16 JUDGE CHESTNUT: You could have. It was filed
17 Wednesday. So why don't you move on.

18 MR. CRAIG: I understand that, you know, parties in
19 this case here represented by three or four law firms are
20 very responsive and able to pick up very quickly and find
21 supporters, et cetera.

22 I do not have that ability. The point I would like
23 to make, and obviously I won't be able to make this, is
24 that all references in Mr. Kean's testimony referring to a
25 counsel who is not available for cross examination should

1 be stricken under the Pennsylvania hearsay rule.

2 JUDGE CHESTNUT: Stop. Let's correct this. There
3 is no counsel who is not available for cross examination
4 because there is no counsel who was subpoenaed and refused
5 to appear.

6 MR. CRAIG: I asked Mr. Kean whether or not the
7 counsel would be available.

8 MR. CLEARFIELD: May I interject, Your Honor?

9 JUDGE CHESTNUT: That's a --

10 MR. CLEARFIELD: That is a standard statement.

11 There are statements of this type throughout the testimony,
12 for example, of PECO. It is not presented for the truth of
13 the matter. It is presented to indicate Mr. Kean's state
14 of mind and the basis for his statement.

15 So it is not hearsay and it is not appropriate for
16 further interrogation. Even if it were, it would be the
17 subject of attorney/client. It will be presented in
18 brief.

19 If it's not, then that testimony obviously would be
20 given no weight but as I am sure you are aware, it is a
21 standard language in pre-prepared testimony to indicate the
22 basis for a legal position.

23 It's not presented for the truth of the legal
24 position, obviously, and Mr. Craig is fully within his
25 right to argue about that in brief.

1 JUDGE CHESTNUT: Mr. Shields, did you have a
2 statement?

3 MR. SHIELDS: I am going to have to chime in here to
4 protect the interests of the Office of Trial Staff in this
5 proceeding and similar proceedings.

6 We often do provide that exact language, and the
7 express purpose for that is to distinguish between the
8 expert witnesses' reliance upon his or her expertise and
9 where appropriately they had relied and moved forward based
10 upon representations of other experts as to the law which
11 will be briefed.

12 The difficulty here, as in most PUC proceedings, is
13 that there is an inevitable overlapping of the expert
14 witness' expertise as it relates to the law as it applied
15 to the regulations and the operation of public utilities.

16 So essentially, for the very reason articulated by
17 counsel in his objection, I would have to agree that the
18 language is appropriate. It's not necessary to provide
19 counsel and that any questions directed to that endeavor
20 should be prohibited. Thank you.

21 JUDGE CHESTNUT: Mr. Craig, if you want to rephrase
22 your question, you certainly may. I mean, you can make it
23 clear that ENRON chose what witnesses to present in this
24 proceeding. By --

25 MR. CRAIG: Your Honor, I think that's self

1 evident. The point I am trying to make it is ENRON. Mr.
2 Kean's testimony has, at least on eight different
3 occasions, throughout, have bold assertions separated by
4 simply the phrase "based on the advice of counsel" and the
5 Pennsylvania courts have been very clear in asserting that
6 testimony in the nature of an expert opinion is not
7 admissible unless that expert rendering the opinion is
8 available for cross examination.

9 And in this case, Mr. Kean is effectively putting
10 into evidence conclusions which are those of an out of
11 court declarant who is now not subject to cross
12 examination.

13 If they want to assert these statements, then a
14 legal brief is the appropriate mechanism for their
15 assertion, not simply Mr. Kean saying certainly the Choice
16 Plan is consistent with the spirit of the act, according to
17 a counsel who I can't even find out if he's admitted to
18 Pennsylvania even if they read the transcript following the
19 consideration of the act or how familiar they are with the
20 act.

21 JUDGE CHESTNUT: Well, Mr. Craig, I don't think you
22 understand, although I thought Mr. Shields and Mr.
23 Clearfield both did a good job of explaining it and the
24 probative weight that's given to this kind of testimony.

25 I mean that happens not because of the regulatory

1 nature but because witnesses tend to address ultimate
2 issues which are based on a statute and that's why it
3 happens. So why don't you just move on, like I said, if
4 you want to.

5 MR. CRAIG: That's it.

6 JUDGE CHESTNUT: If you want to ask your question a
7 different way, that would be appropriate. I did not think
8 it was in the way you stated it.

9 MR. CRAIG: I think I'm done.

10 (Whereupon, a brief recess was taken.)

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1 (Recess taken.)

2 JUDGE CHESTNUT: Mr. Hershey, I guess you are
3 next on the list.

4 MR. HERSHEY: I am going to pass.

5 JUDGE CHESTNUT: Okay. Does that mean that
6 you are going to go later, or that you are giving
7 up your right to --

8 MR. HERSHEY: Oh, no. I am not giving it up.
9 We will see what happens in the meantime.

10 JUDGE CHESTNUT: Well, I just don't want to
11 forget to call your name again.

12 MR. HERSHEY: Oh, I won't be shy.

13 JUDGE CHESTNUT: Okay. Mr. Steinmetz?

14 CROSS EXAMINATION

15 BY MR. STEINMETZ:

16 Q Good morning, Mr. Kean. I am Steve
17 Steinmetz, with the Office of Consumer Advocate.

18 On Page 14 of your rebuttal testimony,
19 around lines 10 through 13, you state that the
20 situation in which ENRON, as the PLR, could adjust
21 the rates above the cap from a breach or
22 non-performance of the PPA with PECO. Do you see
23 that?

24 A Uh-huh, yes.

25 Q At the bottom, you say, "The consumers

1 bear the same risks under the partial settlement."

2 What do you mean by that?

3 A Well, what I mean is that in our role, and
4 in getting the service from PECO, we are proposing
5 contracts, contracts that lay out the terms and
6 conditions that if PECO were in the role of serving
7 as the PLR directly would be a matter of what the
8 statute provides, as well as what the Commission
9 were willing to allow, and to the extent that there
10 are, you know, a disastrous scenario, something
11 that potentially bankrupts PECO, or a set of, you
12 know, increases in fuel prices, for example, you
13 know, catastrophic increases and the like, PECO
14 would presumably make filings or make proposals
15 under the statute in order to be able to -- in
16 order to be able to recover those costs.

17 In our proposal, we have really, I think,
18 eliminated several of those options by specifying
19 in advance in the contract what the terms and
20 conditions, including price terms and conditions of
21 the purchase would be, but in the event that the
22 contract was violated, in the event that PECO
23 doesn't perform, and in the event that we are not
24 able to recover the money from PECO as a result of
25 their non-performance, for example, in a bankruptcy

1 situation, then we have reserved the right to go
2 into adjust the sales rates accordingly, if -- and
3 actually, there is one further caveat, and that is
4 that if we are unable to obtain power from the
5 market at a price at or below that which would have
6 been provided under the power purchase agreement.

7 Q Now, in your rebuttal testimony, you
8 indicate that PECO has failed to provide a true-up
9 mechanism to protect customers from the over
10 recovery of stranded costs?

11 Is that correct?

12 A Yes.

13 Q And on Page 13 of your rebuttal testimony,
14 you claim that the Choice Plan provides substantial
15 additional benefits to customers, including, on
16 line 16, returning excess recoveries of CTCs due to
17 lower growth in PECO's service territory to
18 consumers, while simultaneously insulating
19 customers from any additional CTC charge due to
20 load decline.

21 Do you see that?

22 A Yes.

23 Q Now, perhaps I am confused, but does your
24 ITC short fall agreement also apply to CTCs
25 collected pursuant to your contingency Choice Plan

1 in Attachment B?

2 A No. The short fall agreement is in effect
3 in the event of securitization, and what this
4 section that you cited in my testimony is getting
5 to is that under our proposal, in the event that
6 load grows in PECO's service territory, and there
7 are additional recoveries as a consequence of that
8 load growth that at the end of those recoveries are
9 accounted for every year, and if at the end of that
10 period there are excess recoveries, excess
11 recoveries due to that load growth, those
12 recoveries would be returned to consumers.

13 Q I understand, but you are talking about
14 CTCs, and you say that CTC charges -- consumers
15 would be protected from a lower than expected
16 growth through a return of -- basically, my
17 question is: Should the CTCs in lines 16 through
18 18 of your rebuttal testimony be changed to ITCs?

19 Would that be more correct?

20 A Well, I don't believe so, because it could
21 be -- well, it would be ITCs in the event that
22 there is securitization.

23 There are CTCs that would be in effect prior
24 to securitization.

25 My understanding again is that when you

1 securitize, you create the intangible transition
2 property that the ITCs are designed to recover.

3 Q But would the CTCs -- would consumers be
4 protected from an increase in CTCs due to load
5 decline, or is that just ITCs, pursuant to the ITC
6 short-fall agreement?

7 A Actually, the CTC charges that we have
8 proposed that would be in effect, for example, in
9 the event that there is not securitization, those
10 go into effect, and they remain in effect until
11 such time as they are securitized, so there is not
12 -- I don't believe there is any adjustment for CTCs
13 in the event that there is load decline under our
14 proposal.

15 Q So you don't have a CTC reconciliation
16 provision in your plan?

17 A Well, we have a reconciliation provision
18 once securitization take place.

19 Q So under Contingency Plan B in your
20 attachment, Exhibit B, there is no CTC
21 reconciliation provision included in this
22 contingency plan?

23 A Well, the contingency plan is a place
24 holder plan that applies until securitization takes
25 place.

1 Once securitization take place, those
2 true-ups kick in.

3 If you are asking if in the interim CTCs
4 are annually reconcilable, the answer to that is
5 no.

6 Q And if no securitization is possible at
7 all, and your plan I believe reverts to your
8 contingency plan, Attachment B, there would be no
9 CTC reconciliation provision?

10 A I believe that's correct.

11 Q Okay. Have you entered into your ITC
12 short fall agreement yet --

13 A No.

14 Q -- with any party?

15 A No, we have not.

16 Q Do you notice how much it will cost?

17 A No. I do not know.

18 Q Do you know how it will be paid for?

19 A How it would be paid for?

20 Q Yes. Once you find out how much it will
21 cost, how do you recover the costs associated with
22 the ITC short fall agreement?

23 A I think that I would have to defer that
24 question to Witness Fastow.

25 Q So you do not know if the costs associated

1 with the ITC short fall agreement are currently
2 included in the ITC stream in Attachment A?

3 A Again, I would have to defer the question
4 to Witness Fastow.

5 Q Do you know if your ITC, I guess now,
6 reconciliation provision is based upon a
7 company-wide reconciliation or a class-specific
8 reconciliation?

9 A Actually, I'm not sure if it's company
10 wide or class specific.

11 Q You would have to ask that to Mr. Fastow
12 again?

13 That is a pretty important point, sir.

14 A I think I can probably provide you the
15 answer to that question.

16 Q Okay. I guess we are going to have to go
17 on in either event.

18 MR. STEINMETZ: I would like to request an
19 on-the-record data request, a company-wide request
20 specific.

21 MR. CLEARFIELD: We will provide it.

22 MR. STEINMETZ: Thank you.

23 MR. HERSHEY: Is it possible to get that over
24 a break?

25 MR. CLEARFIELD: We will discuss it and see

1 if we can provide it.

2 MR. HERSHEY: I mean, that is fairly central
3 to the testimony.

4 MR. CLEARFIELD: We will make our best
5 efforts to provide it as soon as we can.

6 We may need to discuss it with Mr. Fastow
7 before we provide it to --

8 JUDGE CHESTNUT: Well, if you can see over
9 lunch whether or not you can provide it, I think --
10 I will rely on that you will use your best efforts
11 to get it as soon as possible.

12 MR. CLEARFIELD: Thank you.

13 BY MR. STEINMETZ:

14 Q Mr. Kean, are you familiar with the ENRON
15 deal with Delaware Valley Health Care Council?

16 There was a story set out on the front
17 page of the Business Section last week.

18 A I am aware of it generally. I am not
19 familiar with its individual conditions.

20 MR. STEINMETZ: Your Honor, I would like to
21 have this marked as OCA Cross Examination Exhibit
22 No. 1.

23 JUDGE CHESTNUT: It will be so marked.

24 (Thereupon, OCA Cross Examination Exhibit 1
25 was marked for identification.)

1 MR. STEINMETZ: May I approach the witness?

2 JUDGE CHESTNUT: Certainly.

3 JUDGE RAINEY: Mr. Steinmetz, may we have a
4 copy, please?

5 MR. STEINMETZ: I'm sorry.

6 BY MR. STEINMETZ:

7 Q Is this article correct, that the ENRON
8 deal could provide the Delaware Valley Health Care
9 Council savings of 20 percent or more, indicated in
10 the first paragraph there?

11 A Again, I am not familiar with the terms
12 and conditions of the --

13 Q Is it possible --

14 A -- of the agreement. Well, I am not
15 familiar with the terms and conditions of the
16 agreement, so I am really not going to be able to
17 answer questions about it.

18 I am aware that there was a transaction,
19 but I don't -- I am not familiar with its
20 individual terms and conditions.

21 Q Well, could you please read on the first
22 two lines of the second paragraph?

23 That is the deal between ENRON and --

24 A Right.

25 Q Could you read it out loud, please?

1 JUDGE CHESTNUT: No, he doesn't have to read
2 that.

3 It is already --

4 MR. STEINMETZ: Okay.

5 JUDGE CHESTNUT: -- part of the Exhibit 14.

6 BY MR. STEINMETZ:

7 Q Okay. Well, is it possible that this
8 deal, what the Philadelphia Inquirer says is true,
9 that this deal isn't based on lower electric rates;
10 rather, ENRON has agreed to advise the council's
11 150 members on ways to save the company money by
12 cutting consumption?

13 A Again, without being familiar with the
14 specific terms and conditions of the arrangement, I
15 really can't answer your question.

16 Q Could you answer that question subject to
17 check?

18 JUDGE CHESTNUT: No. He has already said he
19 doesn't know.

20 BY MR. STEINMETZ:

21 Q Do you have another witness who could
22 answer the question in the room, that would be --

23 A I suppose you could ask the other
24 witnesses.

25 I don't know. I don't know that the other

1 witnesses have any direct knowledge of the terms
2 and conditions of this particular arrangement.

3 MR. STEINMETZ: Could I get an on-the-record
4 data request from ENRON to confirm the facts in the
5 first two paragraphs of this article?

6 MR. CLEARFIELD: Well, you know, I'm not sure
7 I understand the relevance of this.

8 We can --

9 MR. STEINMETZ: Well, the relevance is, I
10 think, pretty clear, in that a big part of ENRON's
11 case is PECO's over recovery of stranded costs, and
12 what we are showing here is, you know, ENRON has
13 entered into a deal where they are offering a
14 twenty percent reduction without lowering rates,
15 and it is due to conservation, and my point is that
16 obviously, with the reconciliation provision,
17 somebody is going to have to make up that
18 short-fall in ITT collections.

19 MR. CLEARFIELD: Well, Your Honor, we are
20 stringing all kinds of suppositions together, and
21 just because we do that doesn't create fact.

22 It states that the article, itself, merely
23 indicates that the party that entered into the
24 agreement thought that it -- quote -- "could
25 provide energy savings of twenty percent or more."

1 It doesn't indicate who is providing them.

2 It doesn't indicate how they are provided.

3 Mr. Kean said he doesn't know, he isn't

4 familiar with --

5 MR. STEINMETZ: He says that ENRON struck a
6 deal.

7 MR. CLEARFIELD: Excuse me.

8 JUDGE CHESTNUT: Don't interrupt him, Mr.
9 Steinmetz.

10 MR. CLEARFIELD: I am not trying to be
11 argumentative, or not trying to be helpful, but at
12 this point I am just concerned that at this late
13 date that we are not going to go able to provide
14 additional information with respect to this
15 contract that would be probative, and that we would
16 be able to put it on the record without additional
17 information.

18 MR. HERSHEY: Your Honor, the core of the
19 ENRON position certainly, as it is stated publicly,
20 as well as in its testimony, is that the partial
21 settlement is a bad deal for consumers because of
22 the risk of over collection, and the other parties
23 have put on the record specifically, and Dr.
24 Silverman did it in his testimony, that there is at
25 least as great a risk of under collection, and that

1 that risk is borne by PECO under that partial
2 settlement.

3 This is the witness who is vice president for
4 governmental affairs, who has stated that it is his
5 job to deal with public policy and governmental
6 contacts within a particular jurisdiction.

7 It is a fair question.

8 He said that he doesn't know it, but it is
9 certainly a fair question to ask if there are other
10 ENRON witnesses in this room who could answer a
11 question which goes to the very core of these
12 issues in the room, and I don't know how one can
13 state that this is straying far from the ENRON case
14 here.

15 MR. STEINMETZ: Well, Your Honor, I am not
16 asking for, you know, the intricate details of the
17 contract between the Delaware Valley Health Care
18 Council and ENRON.

19 I am just asking if the general concept that
20 they can provide 20 percent savings without a
21 reduction in rates, but rather by cutting
22 consumption and financing equipment without buying
23 it is possible and is in fact --

24 JUDGE CHESTNUT: Well, actually that wasn't
25 your on-the-record data request.

1 I thought your on-the-record data request was
2 to have the company confirm whether the first two
3 paragraphs of this article were accurate --

4 MR. STEINMETZ: And that's basically --

5 JUDGE CHESTNUT: -- and I think that's an
6 appropriate request, and I will direct ENRON to
7 respond to that.

8 MR. CLEARFIELD: We will do that.

9 MR. STEINMETZ: Thank you.

10 1234: We will do so, Your Honor, or we will
11 attempt to do it.

12 BY MR. STEINMETZ:

13 Q Now, can't customers who sign up with
14 ENRON's conservation service as an EGS avoid the
15 CTC amount, or excuse me, the ITC amount totally
16 for that portion of its lowered consumption under
17 the partial settlement, and PECO can't come back
18 and increase that customer's ITC rate?

19 A I'm sorry. You are going to have to back
20 up a little bit.

21 Q Sure. My point is, basically, under the
22 partial settlement, that customer who has a twenty
23 percent reduction in rates avoids that percentage
24 portion of its ITC, and under the partial
25 settlement, PECO can't come back and actually

1 increase the ITC rate to make up for the short
2 fall? Would that be --

3 A Okay. Your representing to me what the
4 agreement provides for?

5 Q Yes. I mean, you have already claimed
6 that there's no reconciliation provisions in the
7 partial settlement.

8 MR. CLEARFIELD: Your Honor, if this is a
9 hypothetical, then he might make it a little easier
10 to answer.

11 I am confused about what twenty percent
12 reduction we are talking about.

13 JUDGE CHESTNUT: Let me just clarify so I
14 make sure --

15 MR. STEINMETZ: Sure.

16 JUDGE CHESTNUT: -- I understand your
17 question, which is that if any customer reduces
18 their usage, then they avoid the CTCs or ITCs
19 associated with that use?

20 Isn't that the point that you are making?

21 MR. STEINMETZ: That's correct.

22 BY MR. STEINMETZ:

23 Q And under the partial settlement, PECO
24 could not come back and increase the ITC rate to
25 make up for the short fall?

1 A I believe that to be an accurate
2 assessment of the PECO partial settlement, that if
3 you implement conservation measures, you avoid
4 stranded cost recovery charges.

5 Q And these customers would also avoid the
6 variability of T&D and generation charges for those
7 kilowatt hours avoided through conservation,
8 correct?

9 A Yes, to the extent they would avoid per
10 unit charges.

11 Q That's correct.

12 A That's based on the energy consumed.

13 Q So you would agree that there is quite an
14 incentive to conserve and lower consumption?

15 A I think that it is probably the same
16 incentive that there is today, to reduce, to reduce
17 usage and consumption conservatively.

18 If you consume less, you end you up paying
19 less for your electricity.

20 Q Well, isn't it true that under today's
21 rate based rate of return environment, if there was
22 a serious loss in load, it is conceivable -- and
23 PECO's earnings started to suffer, it is
24 conceivable that PECO could come back and increase
25 its rates?

1 Isn't that correct?

2 A I don't know whether they could or
3 couldn't increase them on a customer-specific
4 basis.

5 I would assume that --

6 Q The company would still get some
7 advantage?

8 A -- you would still get some advantage
9 under even today's system from conserving.

10 MR. CLEARFIELD: Are we talking about -- just
11 for clarification, are we talking about when the
12 rate caps under the Act are in place, or are we
13 talking about prior to the implementation of the
14 rate caps that are in the competition?

15 MR. STEINMETZ: I guess he mentioned today.

16 MR. CLEARFIELD: I thought you --

17 JUDGE CHESTNUT: Well, I thought your
18 question was prior.

19 MR. STEINMETZ: Yes, I guess my question was
20 prior, under the traditional rate of return
21 regulation, but he stated that there are still some
22 incentives.

23 That is fine.

24 BY MR. STEINMETZ:

25 Q There is also a quote in the article from

1 Mr. Boonin.

2 It states that the whole industry will
3 probably move in this type of direction for
4 commercial industrial accounts over the next
5 decade.

6 Could you agree with that statement?

7 A I'm not sure what exactly was intended
8 there.

9 I do believe that there will be,
10 particularly as markets are opened up and become
11 competitive, part of what is going to be offered is
12 not simply the commodity, but also investments in
13 energy efficiency equipment and the like.

14 There will be an effort, I believe, to
15 conserve on bills, not just on rates, which is part
16 of the reason why it is important.

17 An important element of our proposal is to
18 unbundle both the billing and collection services,
19 because it is that that really provides us a
20 vehicle for -- for additional value-added services
21 in the competitive marketplace.

22 I mean, I agree that particularly as the
23 market opens up, there's going to be increasing
24 emphasis on making these kinds of investments and
25 making service offerings which will allow customers

1 to save on their bill, not just on their rates, if
2 our plan is approved.

3 Q Mr. Kean, on Pages 37 and 38 of your
4 rebuttal, you talk about ENRON's proposed default
5 service, and you compare it to that of the partial
6 settlement.

7 Do you see that?

8 A Page 37 and 38?

9 Q Yes, generally. Okay. Now, is it true
10 that no matter what the market price for energy
11 turns out to be in any particular year, under the
12 ENRON plan, ENRON's default customers or PLR
13 customers, if they do not choose, would be required
14 to pay the generation credit set out in either
15 Attachment A or Attachment B to your testimony?

16 A The generation credits are the price for
17 the commodity under the proposal, and they are the
18 -- the generation cost that goes into the
19 calculation of the rate caps.

20 Those rates are not adjusted down except
21 as the competitive market offers those, offers
22 reductions off of those rates.

23 Q So is that a yes?

24 A Well, I'm not sure what your question was
25 asking exactly.

1 Q My question is: Customers who are PLR
2 customers of ENRON, under the ENRON plan, would be
3 required to buy energy at the generation credit,
4 and not the market rate, if the market rate
5 happened to be lower?

6 A Well, again, when you say "required to
7 buy," there is --

8 Q If they choose not to choose -- excuse me.

9 A Okay. If they chose not to choose and
10 stay on the PLR service, the PLR has a set of
11 generation credits, which would be the price at
12 which a consumer under that service would pay for
13 electricity.

14 Q And this contrasts with the possibility
15 within the partial settlement of a lower generation
16 price, should the market price of energy go below
17 the generation caps, as set out in Table A?

18 A Well, it is not -- it is not clear to me
19 that the opportunity is as clear as all that in the
20 partial settlement.

21 As I look at the partial settlement, it
22 appears to leave a fair amount of discretion to
23 PECO in terms of specifying on an annual basis what
24 it believes the competitive market price to be, so
25 I am not sure that it is as automatic as all that,

1 but it actually tracks the market price.

2 I think our proposal gets at this issue in
3 a couple of ways.

4 One is, in the event the contingency plan
5 is in effect, and the securitization under the
6 choice plan is not in effect, it provides for the
7 bidding of the PLR service, so by putting those
8 bids in, you get a prevailing market price for that
9 service, and also, we are proposing in this
10 proceeding a set of rate caps that are lower than
11 what are proposed in the partial settlement, and we
12 are competitively bidding, if you will, for the
13 right to serve in that PLR role, so again, I'm not
14 sure that's as clear as you say, that that -- that
15 PECO, under the partial settlement, would be really
16 forced to discount their prices as automatically as
17 you seem to make it sound.

18 Q Not forced, but there is the possibility
19 that if the market price was dramatically lower
20 than the generation credit set out in Table A of
21 the partial settlement, it is conceivable that the
22 PLR customers under the partial settlement could be
23 paying a lower market price than the generation
24 credit in Table A? Is that correct?

25 A Well, it is conceivable. I will say yes.

1 Q Thank you.

2 A It is conceivable, but again, by way of
3 explanation, it is not clear at all that the
4 process that would result in bringing that price
5 down is a very automatic one.

6 It may be like pulling teeth.

7 It may be like litigating, so while it is
8 conceivable, while it is possible, I'm not sure how
9 likely it is.

10 Q These generation credits set out in
11 Attachment A and Attachment B to your rebuttal
12 testimony are higher than the generation credits
13 provided in Table A of the partial settlement in
14 the early years?

15 Is that correct?

16 A Yes.

17 Q Thank you. So default customers who are
18 the cannot shop or are unable to shop will be
19 limited to ENRON's higher generation credits no
20 matter how low the market rate may go -- is that
21 correct -- absent your competitive PLR --

22 A A -- go ahead I'm sorry.

23 Q -- you know, excluding the competitive PLR
24 proposal that I am just now really becoming aware
25 of, and I didn't really see too which of that in

1 your testimony.

2 Frankly, default customers who cannot shop or
3 are unable to shop will be limited to the higher
4 generation credits no matter how low the market
5 rate mate go under the ENRON plan? Is that
6 correct?

7 A You say do not shop or cannot shop?

8 Q That is correct?

9 A The answer is yes. The generation credits
10 are higher than the generation credits under the
11 partial settlement, but the rate caps, the overall
12 rate caps, the bottom line for the consumer is
13 lower, because the discounts are substantially
14 greater than what are provided in the partial
15 settlement.

16 Q And this would include customers in 1999,
17 who aren't even eligible to shop because they were
18 not chosen as part of the first group of the
19 transitional phase-in? Is that correct?

20 A Yes, but they would of course be getting
21 the benefit of the deeper discounts, the larger
22 rate discounts.

23 Q And this would also include customers who
24 are unable to contract with an EGS because of
25 credit problems or for whatever reasons?

1 A Yes, and I will just stay with the same
2 qualification --

3 Q That's all right.

4 A -- and that is that the discounts would be
5 substantially deeper than what they would face
6 under the partial settlement.

7 Q Now, is ENRON serving residential
8 customers in the pilot program that PECO is
9 starting currently?

10 A I'm sorry. That, I don't know.

11 Q You don't know if they are serving any
12 customers?

13 MR. CLEARFIELD: We can provide that
14 information.

15 A We can provide that.

16 Q I assume you don't know what the
17 generation price --

18 A Hold on one second.

19 I'm sorry. Go ahead.

20 Q Do you know what generation price ENRON is
21 serving its customers in Southeastern Pennsylvania
22 currently?

23 A No, I do not.

24 Q Could you agree, subject to check, that it
25 is three cents?

1 It is easy to find out.

2 A Subject to check, yes.

3 Q So does ENRON intend to raise these pilot
4 customers to the approximately 4.02 cents per
5 kilowatt hour residential generation credit on
6 1-1-99?

7 A The generation credits that are in our
8 attachment would go into effect on the terms that
9 we have laid out in there.

10 To the extent those generation credits are
11 higher than the market price, though, the market
12 will bring that price -- will bring those prices to
13 consumers down by switching.

14 To the extent consumers switch, they will
15 get the advantage of the benefit of a lower
16 generation price.

17 To the extent that they don't switch, and
18 our plan goes into effect, and the generation
19 credits go into effect, the generation component
20 that consumers pay will be that which is set forth
21 on the attachment to my testimony, but again, the
22 rate, the total rate that consumers pay will be
23 substantially lower under the ENRON plan than under
24 the partial settlement.

25 Q So for customers who can't shop -- strike

1 that.

2 Mr. Kean, am I correct that the ENRON plan is
3 still contingent upon a finding that ENRON or EEPSI
4 is not a public utility, even as regards to the
5 provider of last resort?

6 A Yes. We have proposed and asked the
7 Commission to make the determination that it is not
8 a public utility, and have -- but we have agreed,
9 obviously, to the terms and conditions that the PLR
10 service would be provided under for the Commission
11 approval, so I mean, the Commission will be saying
12 what our obligations are as a PLR, even if they are
13 not calling us a public utility.

14 Q But under your interpretation of the ENRON
15 plan, ENRON would not be required to adhere to any
16 provisions of the Public Utility Code, such as
17 Chapter 11, Chapter 15, Chapter 21, or Chapter 33?

18 A No. I mean, that's not true. I mean, the
19 Commission can determine, and we have made a
20 proposal what terms and conditions our service
21 would be provided under, and we have also made
22 allowance in there for Commission regulation of
23 EGSS and the like.

24 It is not that the terms and conditions of
25 the Public Utility Code don't apply.

1 It is just that the obligations which we
2 stated for ENRON specifically in this proceeding,
3 the Commission will decide, you know, whether the
4 obligations that we have proposed and proposed on
5 ourselves are sufficient, you know, to satisfy
6 them.

7 Q So is it your testimony that the
8 Commission could say, "You will be governed by
9 Chapter 15 of the Public Utility Code"?

10 A No. My position is that the Commission
11 can take into account whatever the underlying
12 policies are, and we think we have served
13 underlying poles of the Public Utility Code.

14 I am not talking specifically about
15 Chapter 15, because I am not familiar with it
16 specifically, but the Commission can take into
17 account the obligations that it wants us to be
18 subject to, the obligations that we have agreed to
19 be subject to, and it can impose those on us by
20 approving our choice plan.

21 They can do that without us being a public
22 utility.

23 Q And what recourse would the Commission
24 have for any breach of the terms of the agreement?

25 A Oh, well, I mean, we would be subject to a

1 Commission order, a Commission order that we are
2 obliged to live up to in the proceeding.

3 You the mean if ENRON were to violate the
4 terms and conditions of the order approving --
5 approving our proposal?

6 Q Well, more specifically, for instance,
7 Chapter 15 requires that a public utility provide
8 efficient, safe and reasonable service, and is it
9 your testimony that -- obviously that ENRON would
10 not have to live up to that type of language?

11 A No. Our plan does provide efficient,
12 safe, and reliable service.

13 It does it through contract and through
14 rate schedule proposals that we are filing for
15 Commission approval in this case.

16 Q Okay. That's all I have. Thank you, Your
17 Honor.

18 JUDGE CHESTNUT: Mr. Bonney?

19 MR. BONNEY: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. BONNEY:

22 Q Good afternoon, Mr. Kean. I am Paul
23 Bonney, counsel for PECO.

24 You are not an officer or employee of
25 ENRON Energy Services and Power, Inc, are you?

1 A No, I am not.

2 Q Let me refer to that company as EESP as a
3 short name, if that's okay.

4 A Okay.

5 Q There is no officer of EESP testifying in
6 this proceeding?

7 Is that correct?

8 A I believe that's right. Yes, I believe
9 that's right.

10 I think in our data about we did identify
11 who were the officers.

12 I don't believe any of those are officers
13 who are testifying here.

14 Q You don't have a degree in economics or
15 finance, do you?

16 A No, I don't.

17 Q Who is the chairman of EESP? Is it Lou
18 Pai?

19 A Actually, I would have to look at the
20 responses.

21 MR. CLEARFIELD: Do you want that now, Your
22 Honor, or --

23 MR. BONNEY: Yes.

24 THE WITNESS: Okay.

25 BY MR. BONNEY:

1 Q I believe it is also listed under license
2 filing.

3 A Okay. I don't have that with me. Do you
4 have that data request to direct me to, or I will
5 just look for it.

6 MR. BONNEY: If it is okay with counsel, I
7 will approach the witness, Your Honor?

8 MR. CLEARFIELD: Certainly.

9 MR. CLARK: Right here.

10 BY MR. BONNEY:

11 Q I am showing you a copy of EESP's filing
12 with the --

13 A Okay.

14 Q -- Pennsylvania Commission for License to
15 be an Electric Generation Supplier, and one of the
16 exhibits shows the directors and officers, and it
17 lists Lou Pai --

18 A Lou Pai.

19 Q -- if I am pronouncing that correctly, as
20 chairman and chief executive officer? Is that
21 correct?

22 A That is what it shows.

23 Q Is he not the chairman and chief executive
24 officer of the company?

25 You said that is what it shows. Do you

1 disagree with that?

2 A Yes. No, I don't disagree with it. I
3 have no reason to disagree with it.

4 Q How many other ENRON entities is Mr. Pai
5 an officer of, if you know?

6 A I don't know.

7 Q Do you know if he is an officer of any
8 other entities?

9 A I don't know. I assume yes, but I don't
10 know how many other entities he is an officer of.

11 Q But you do know that he is an officer of
12 other entities?

13 A Yes.

14 Q Is he an officer of ENRON Power Marketing,
15 Inc?

16 A I would have to look in the records to
17 determine which entities Mr. Pai is an officer of.

18 MR. BONNEY: Your Honor, if I may approach
19 the witness?

20 JUDGE CHESTNUT: Certainly.

21 BY MR. BONNEY:

22 Q I show you ENRON Power Marketing, Inc's
23 filing with the Commission as well.

24 A Yes, it shows him as an officer.

25 Q Okay.

1 A Hold on one second. Yes. For ENRON Power
2 Marketing.

3 Q He is an officer of many ENRON entities,
4 isn't he?

5 A You know, it depends on what you mean by
6 "many."

7 I would have to go look to see how many
8 entities he is an officer of.

9 Q Any ball park? You have no idea?

10 A I don't have any idea.

11 Q More than five?

12 A I don't know.

13 Q ENRON Energy Services Power has applied to
14 FERC for approval of -- to become a marketer, as it
15 is normally called?

16 Is that correct?

17 A That's correct.

18 Q And ENRON Power Marketing already holds
19 that position as a wholesale marketer, correct?

20 A That's right.

21 Q Do you know whether ENRON has applied for
22 FERC approval of the interlocking directors of
23 ENRON Energy Services Power and ENRON Power
24 Marketing?

25 A I know that we have made filings regarding

1 interlocking officers and directors in the past,
2 but I -- I could not tell you, because I don't
3 know, what those filings are with regard to those
4 two entities, if any.

5 Q Do any of the officers of EESP hold solely
6 that position, or do all of them also hold other
7 positions with ENRON?

8 A Could you show me --

9 Q Certainly.

10 A -- the list here?

11 Q Yes.

12 A Your question again was: Do any hold
13 those solely?

14 Q Do any of these people have as their only
15 job with ENRON being an officer of EESP?

16 A I -- I don't know. I don't know if there
17 is anyone who is solely an officer of EESP.

18 Q Are you familiar with these people? Do
19 you know who they are?

20 A I know --

21 Q I don't mean to make you go through each
22 one.

23 A I know -- certainly I know most of them,
24 nearly all.

25 Q The ones that you know, do they also hold

1 other ENRON positions?

2 A And again, I just don't know. I don't
3 know.

4 I don't know how many other positions they
5 might hold, if any.

6 Q Now, on Page 2 of your direct testimony,
7 you originally stated that ENRON Energy Services
8 Power was organized for the specific purpose of
9 submitting the October 7th petition and for
10 providing -- or applying to be the provider of last
11 resort in PECO service territory?

12 Is that true?

13 A Yes. Of course that testimony has been
14 amended.

15 Q Well, that is what I want to ask you
16 about.

17 A Okay.

18 Q What has changed since you filed your
19 direct testimony to make you want to amend your
20 testimony in that regard?

21 A I don't know that anything has changed. I
22 put the testimony together.

23 The entity EESPI was already in existence,
24 and so we decided to use it, and it had been
25 recently created, so we decided to use it as the

1 vehicle for making the provider of last resort
2 petition.

3 What I was clarifying in the amendment
4 today is that that was not necessarily the original
5 reason it was set up.

6 It had been set up to be a retail energy
7 service provider in the ENRON Corp. family, so it
8 wasn't just organized for the purpose of being the
9 provider of last resort.

10 Q What made you believe that it was?

11 A Discussions while we were preparing the
12 choice plan.

13 It was clear from those discussions it had
14 been recently organized, had been recently formed,
15 and we had been talking about the choice plan right
16 about the same time that we were putting this
17 application together at the Federal Energy
18 Regulatory Commission for EESP to become a marketer
19 under FERC authority.

20 Q So when you filed your direct testimony,
21 you thought that the specific purpose for which it
22 was organized was for the purpose of submitting the
23 plan, and to become the provider of last resort?

24 A Yes, I did.

25 Q But now you realize that was inaccurate?

1 Is that what your testimony is?

2 A That's right.

3 Q So am I correct that it is EESP's
4 intention to act as a generation supplier, and not
5 just a provider of last resort in PECO's territory?

6 A You mean, would EESP be providing
7 competitive service as well?

8 Q What I mean: Is it going to act as an
9 electric generation supplier, as that term is used
10 in the statute?

11 MR. CLEARFIELD: Well, I am going to object
12 with respect to the reference to the statute.

13 If you want to rephrase the question --
14 BY MR. BONNEY:

15 Q Are you not familiar with the term
16 "electric generation supplier"?

17 MR. CLEARFIELD: I have an objection pending,
18 Your Honor, and I would like to finish that.

19 I object to that question and ask that it be
20 rephrased to remove the reference to the specific
21 definition in the statute. I wouldn't object, but
22 I don't want Mr. Kean to answer with respect to a
23 definition he doesn't have before him and may not
24 be familiar with.

25 MR. BONNEY: We haven't established if he is

1 familiar with it or not, Your Honor, so I think the
2 objects is premature.

3 MR. CLEARFIELD: Well, Your Honor --

4 JUDGE CHESTNUT: Well, I think you should lay
5 a foundation for the testimony.

6 BY MR. BONNEY:

7 Q Are you familiar with the term "electric
8 generation supplier," as used in the Pennsylvania
9 Competition Act?

10 A Yes.

11 Q Am I correct that it is EESP's intention
12 to act as an electric generation supplier in
13 Pennsylvania?

14 A Yes, and it has applied for that status.

15 Q And it is not EESP's intention to act
16 solely as a provider of last resort in PECO's
17 territory?

18 Is that correct?

19 A Well, I guess I can't imagine it
20 performing any role other than that, and that if
21 ENRON were to provide, as we would expect to,
22 competitive service offerings outside of the PLR
23 service, we would do through so -- do so through a
24 separate entity, a separate ENRON affiliate, and
25 not as EESP.

1 Q So then what was the purpose of filing for
2 an electric generation supplier licensed with the
3 Pennsylvania Commission on behalf of the EESP, if
4 it doesn't intend to exercise that?

5 A Well, first of all, I can't say, because I
6 don't know whether EGS status would be required to
7 be a PLR, but that is -- that is one possibility.

8 It is also the case that we had originally
9 certainly reserved the right to sell as EESPI or as
10 another entity outside of the provider of last
11 resort role, but as you know, in amending our
12 proposal in the rebuttal testimony, we are proposed
13 a standard of conduct that would govern the
14 relationship between EESP as a default provider and
15 any other entity at ENRON that was providing a
16 retail service.

17 Q Under the tariff that you have proposed in
18 the ENRON Choice Plan, is the default service
19 provider defined to be the same as an electric
20 generation supplier, if you know?

21 A That I don't know without checking.

22 Q Would you agree that the provider of last
23 resort has an obligation to serve?

24 A I think that's -- that's a legal term. It
25 certainly has an obligation, and those obligations

1 include serving customers, but to the extent you
2 mean something, you know -- you mean something in
3 the statute specifically, obligation to serve, I am
4 not rendering an opinion on that.

5 Certainly we will have obligations, and
6 those will include obligations to serve customers.

7 Q In your opinion, is that obligation to
8 serve that would apply to EESP as provider of last
9 resort different from the obligation that's
10 traditionally attached to fixed wire providers?

11 MR. CLEARFIELD: Your Honor, I am going to
12 object, because I think it calls for a legal
13 conclusion at this point.

14 MR. BONNEY: Your Honor, Mr. Kean answered a
15 specific discovery request on this point, and he
16 didn't object to it as being a legal question at
17 that time.

18 JUDGE CHESTNUT: That doesn't matter --

19 MR. CLEARFIELD: It doesn't, Your Honor.

20 JUDGE CHESTNUT: -- but on the other hand, I
21 will allow the witness to give his understanding on
22 the basis that it really, as a legal conclusion,
23 has no probative weight.

24 He is not acting as an attorney in this
25 proceeding.

1 MR. BONNEY: Your Honor, does that mean that
2 there is no probative weight to be attached to all
3 of his references to legal issues in the testimony?

4 JUDGE CHESTNUT: To the extent that he relies
5 on advice of counsel, that is actually correct. I
6 mean --

7 BY MR. BONNEY:

8 Q Am I correct, Mr. Kean, that you answered
9 interrogatories, specifically PECO 16-1, if you
10 have that?

11 If you don't, I can show you a copy of it.

12 A Okay. Your question?

13 Q In the second sentence in the answer to
14 that, did you state that the obligation to serve
15 may not be the same obligation to serve that is
16 traditionally attached to fixed wire providers?

17 A Yes.

18 Q Here you are referring to the obligations
19 as a provider of last resort?

20 A Yes, that's right.

21 Q In your opinion, would the Commission have
22 any oversight or authority to regulate EESP's
23 obligations as provider of last resort under the
24 ENRON plan? And I am not looking for a legal
25 opinion.

1 A Yes.

2 Q What would that oversight be after the
3 plan is approved?

4 A Well, the Commission is approving the plan
5 in an order that would -- that would bind us as the
6 PLR, bind EESP as the PLR to comply with that
7 order, and in the event that -- in the event of a
8 failure to comply, the Commission would presumably
9 take action.

10 Q So the extent of the Commission's
11 oversight would be to enforce the contract and plan
12 that you have put before them now?

13 They have no further authority than that?

14 A Well, yes. The Commission has authority
15 under the marketer affiliate standards under their
16 generic rule-making requirements.

17 I mean, to the extent that there are
18 changes made in regulation of the electric industry
19 in Pennsylvania, those could have effects and
20 impacts on ENRON as PLR as well.

21 I am just not sure what you mean by your
22 question, it can have no control over, or authority
23 over.

24 Q Would the extent of the Commission's
25 oversight and authority be as broad as it is for,

1 say, PECO.

2 MR. CLEARFIELD: Your Honor, again I think
3 that this is a question that calls for a legal
4 conclusion.

5 If it is clear that Mr. Kean is being asked
6 for his opinion and not a conclusion that would be
7 binding in terms of a legal requirement of code,
8 then I wouldn't object.

9 MR. BONNEY: That is what I am asking.
10 Thanks for the clarification.

11 A I don't know that the -- that the
12 Commission's authority would be broader or narrower
13 over -- over the EESP, depending on -- I mean,
14 there is a fair amount of specificity in the
15 proposal that we have made and how that service is
16 going to be provided.

17 It is in some respects less flexible than
18 the obligation and oversights that a utility is
19 faced with when it comes in and makes periodic
20 amendments to what its terms and service conditions
21 are, so I can't say equivocally that it would be
22 narrower or greater authority over EESP than it
23 would be over PECO in this context.

24 Q Why is it that EESP does not want to be
25 declared a public utility?

1 A I think that they are -- I think the
2 concern is, and I am giving you my view not as a
3 lawyer, but as someone who is working on putting
4 the proposal together -- the concern is that there
5 may be provisions of the code that would apply to
6 public utilities that would not be appropriate to
7 EESP, that would be unnecessarily duplicative, or
8 just inapplicable.

9 Q What provisions are you referring to?

10 A I can't sit here and catalog them for you.
11 All I can tell you is that the concern would be
12 that since EESP is not a traditional asset-owning,
13 you know, wires company, providing service as a
14 natural monopoly in the state, that because it is
15 not that kind of entity, provisions of the code
16 might not make sense when applied to EESP.

17 Q In your opinion, in your non-legal
18 opinion, at the end of the transition period, 2008
19 could the Commission require EESP to continue to be
20 the provider of last resort?

21 A No.

22 Q EESP was formed on September 15th, 1997,
23 correct?

24 A I don't know that for sure.

25 Q Do you know -- you don't know when it was

1 formed at all?

2 A No, I don't know when it was formed for
3 sure, but I can make that subject to check.

4 I'm sorry. Could you give me the date?

5 Q September 15th.

6 A Is it in the application? Is it in the
7 application?

8 Q No, I don't think it was.

9 Did EESP have the intention, as of
10 September 15th, of applying to this Commission to
11 be the provider of last resort in PECO service
12 territory?

13 A Did EESP have the intention?

14 No. I -- I do not believe so.

15 Q When did it first form that intention?

16 A I can't say exactly. It would have been
17 leading up to the filing of the Choice Plan in
18 October, but I don't know specifically whether the
19 decision was made that that would be the entity
20 proposing to serve as the provider of last resort.

21 Q So is it your testimony that ENRON did not
22 begin work on the Choice Plan until October?

23 A No. That's -- no. ENRON, at least in
24 general terms, began looking at an alternative to
25 the partial settlement once the partial settlement

1 was announced, but I -- your question earlier, I
2 believe, was to when did we decide that EESP would
3 be the entity that would serve in the role, and I
4 believe that decision was made later than September
5 15th.

6 Q So just to be clear, you are saying that
7 you formed EESP, but didn't have a specific
8 intention of using that entity as the provider of
9 last resort when you formed it on September 15th?
10 Is that correct?

11 A Well, now, we -- we formed EESP to be the
12 retail marketer of electric power, okay, for ENRON,
13 and in forming that, we did anticipate that EESP
14 might end up serving as provider of last resort, or
15 potentially even having some sort of a franchise in
16 some part of the country, and we wanted to make
17 sure that when we filed it with the Federal
18 Regulatory Commission that we had included those
19 possibilities in our filing, but your question
20 again, whether we had that, had in mind
21 specifically using EESP in our application as the
22 provider of last resort on September 15th, I don't
23 believe we did.

24 Q ENRON Power Marketing is already an ENRON
25 entity in Pennsylvania acting as a retail power

1 marketer, in fact, providing that service in the
2 pilots, correct?

3 A Yes.

4 Q So the intention when you formed EESP was
5 to form another identical company?

6 A Not -- not necessarily identical. ENRON
7 Power Marketing is set up primarily as a wholesale
8 provider of electric power.

9 Now, it does sell at retail, because we
10 did not have another entity at this time within the
11 organization to do that until we formed EESP, but
12 we decided as a company that we would have within
13 ENRON an entity that's primary focus was wholesale,
14 sale of electric power, and that would be EPMI, and
15 that we would also have an entity whose primary
16 focus was the retail sale of electric power, but
17 until that corporate organization, that corporate
18 structure and the appropriate authorizations could
19 be obtained, we have used EPMI as a retail entity
20 where -- where retail markets are open.

21 Q EESP is a wholly-owned subsidiary of ENRON
22 Energy Services, Inc, which in turn is a
23 wholly-owned subsidiary of ENRON Corp, correct?

24 A Yes.

25 Q And ENRON Power Marketing is a

1 wholly-owned subsidiary of ENRON Capital and Trade
2 Resources, which is a wholly-owned subsidiary of
3 ENRON Corp?

4 A Yes.

5 Q Has ENRON applied to the SEC for issuance
6 of a no action letter in connection with the
7 question of whether or not the formation of EESP or
8 its operation of a provider of last resort in
9 PECO's service territory will subject ENRON to the
10 Public Utility Holding Company Act?

11 A No, not to my knowledge.

12 Q ENRON Power Marketing will have no role or
13 obligation in connection with the Choice Plan? Is
14 that correct?

15 A Not necessarily to -- to the extent that
16 ENRON Power Marketing serves as an EGS, providing
17 competitive service, it will have a role to that
18 extent, but it would not be the provider of last
19 resort.

20 Q EESP has no experience selling power? Is
21 that correct?

22 A Yes. EESP is a recently formed entity. I
23 mean, the individuals who are shown as officers in
24 the list you showed me previously certainly have
25 that experience, but, well, I guess I don't

1 understand your question.

2 When you say the corporation doesn't have
3 the experience --

4 Q Does EESP have any customers?

5 A EESP does not have any contracts for sale
6 of electric power that I am aware of.

7 Q Does it have any customers?

8 A Not that I am aware of.

9 Q Has it sold any kilowatt hours of
10 electricity?

11 A Not that I am aware of. Again, there is
12 an entity set up to become a retail marketer of
13 electric power.

14 Until retail markets open, it is -- you
15 know, it's hard to make sales.

16 Q ENRON Power Marketing is making the sales
17 in PECO's territory right now, correct?

18 A I believe that's right.

19 Q EESP will be a public utility under the
20 Federal Power Act? Is that correct?

21 A Yes, to -- yes, to the extent that it
22 makes wholesale sales of electric power, which is
23 the authorization they are seeking from the
24 Commission.

25 Q EESP is not a member of PJM? Is that

1 true?

2 A I believe that's correct.

3 Q EESP has no assets? Is that correct?

4 A I don't know.

5 Q What assets are you aware of that EESP
6 holds?

7 A I just don't know what assets it holds.

8 Q You don't know whether it has none, or 100
9 million dollars in cash?

10 A I don't know what assets EESP holds.

11 Q Has there been any evidence provided or
12 information about EESP's assets provided to the
13 Commission in this proceeding?

14 A The only -- the only thing that we have
15 stated about EESP's financial wherewithall is our
16 proposal that the Commission, in its order, set
17 forth appropriate financial support to be required
18 of EESP in its provider of last resort role.

19 Q Do you have a copy of your answer to PECO,
20 interrogatory number 10-5?

21 A I think I do.

22 Q Okay. Am I correct that in this response,
23 you indicate that ENRON Energy Services Power has
24 no Pennsylvania assets?

25 A That's right. There is a legal objection,

1 and then -- and then the answer none is set forth,
2 yes --

3 Q EESP --

4 A -- to the question about Pennsylvania
5 assets

6 Q EESP has minimal capitalization? Is that
7 correct?

8 A I believe that's right, but I would have
9 to -- have to check.

10 I simply don't know it sitting here right
11 now, what its capitalization is today.

12 Q And I would refer you to interrogatory
13 10-4?

14 A Yes, and I assume that that answer is
15 still correct.

16 Q Well, you provided the answer, correct?

17 A That's right.

18 Q And it states that EESPI has minimal --

19 A Yes, and I assume that answer is still
20 correct.

21 Q Do you know of anything that would make
22 you doubt whether that's correct?

23 A I -- I have no way of knowing one way or
24 another, but --

25 Q Well, then, how did you know to answer

1 this question?

2 What did you look at to answer this
3 question?

4 A Well, look. All I am saying is that when
5 this answer was prepared, it had minimal
6 capitalization.

7 I would assume that that's still the case
8 today. I don't know of any reason to doubt that it
9 is still the case today.

10 MR. CLEARFIELD: If it would change, we
11 would --

12 THE WITNESS: Yes.

13 MR. CLEARFIELD: -- update it.

14 BY MR. BONNEY:

15 Q EESP has no business address in
16 Pennsylvania, correct?

17 A If you want to refer me to a specific
18 interrogatory response, it might expedite it.

19 Q I don't think I have one.

20 A If we did, I believe we have just stated a
21 Houston address.

22 Q EESP owns no facilities in Pennsylvania or
23 elsewhere? Is that true?

24 A That's correct.

25 Q There is just no chart which describes

1 EESP's organizational structure?

2 Is that correct?

3 A Well, you showed me a chart earlier that
4 set forth officers and directors, but to the extent
5 you mean an organizational chart that shows
6 accountability for different individuals, the
7 answer is not to my knowledge.

8 Q EESP has no employees? Is that correct?

9 A To my knowledge, well, I am not aware that
10 we have transferred employees who are working on
11 retail electric sales to EESP as a formal matter.

12 What I want to point out, though, is, to
13 the extent that you mean, does ENRON have, or does
14 ENRON not have people who are working on retail
15 sales of electric power, the answer is that ENRON
16 has many people who are working on the retail sales
17 of electric power.

18 I just don't --

19 Q Excuse me. I didn't ask that at all. I
20 asked: Does EESP have any employees?

21 MR. CLEARFIELD: Your Honor --

22 MR. BONNEY: That is a yes or no question.

23 Either they do or they don't. That's --

24 A Well --

25 Q That's all I am asking.

1 A I don't know that they do. I suspect that
2 they don't, because I suspect that the people who
3 are working on retail sales right now have not been
4 transferred.

5 Q May I direct your attention to PECO
6 interrogatory number 12-6?

7 Do you have that?

8 A Yes, I do.

9 Q And in this, you answered, in response to
10 a question, "How many people does ENRON Energy
11 Services Power, Inc. employ as of October 7, as of
12 today," and you said, "None"?

13 A That's right, and again, the same answer.
14 I mean as of the date the answer was provided.

15 We will update these.

16 I mean, to the extent that employees are
17 moved over, we will update these, but as of the
18 time the question was answered, there were no
19 employees.

20 Q And as of today, there are no employees,
21 correct?

22 A To the best of my knowledge.

23 Q So is it your testimony that if EESP were
24 to become the provider of last resort in PECO's
25 territory, it would own or operate no facilities

1 for providing or furnishing electricity to
2 customers?

3 A If the Choice Plan were approved?

4 Q Yes.

5 A If the Choice Plan were approved, and EESP
6 was the provider of last resort, we would staff it,
7 capitalize it, and get whatever facilities may be
8 necessary for it to serve in that function
9 appropriately.

10 Q So is your answer to that no or yes?

11 MR. CLEARFIELD: I am going to object,
12 because I think Mr. Bonney is using a phrase in the
13 Public Utility Code, and the definition of "public
14 utility," he hasn't identified that.

15 MR. BONNEY: I'm not sure that I was required
16 to do that, Your Honor.

17 MR. CLEARFIELD: Excuse me, Your Honor. Your
18 Honor, I would like to just finish my objection.
19 As a courtesy, I think that is appropriate.

20 MR. BONNEY: Well, Your Honor, I would like
21 to strike it, because he is going to indicate an
22 answer to the witness, which I certainly hope he
23 does not.

24 JUDGE CHESTNUT: He is allowed to finish his
25 objection. I am sure --

1 MR. BONNEY: I hope that he doesn't coach the
2 witness.

3 JUDGE CHESTNUT: -- he won't stoop to
4 something like that, I am sure.

5 MR. CLEARFIELD: I was objecting to the form
6 of the question, Your Honor, because I think it
7 called for a legal conclusion, because Mr. Bonney
8 was using a term of art that is in the Public
9 Utility Code.

10 MR. BONNEY: I am not asking for a legal
11 conclusion, Your Honor.

12 I am asking for a factual answer about
13 facilities in our territory.

14 JUDGE CHESTNUT: I think the witness --
15 well, I will direct the witness to answer the
16 question.

17 BY MR. BONNEY:

18 Q Just to be clear, I will repeat the
19 question: Is it your position that if EESP is to
20 become the provider of last resort in PECO's
21 territory under the ENRON Choice Plan, it would own
22 or operate no facilities for providing or
23 furnishing electricity to customers, and I believe
24 your answer was, yes, it would?

25 A I am not -- I am not making any

1 determination as to whether those facilities would
2 be jurisdictional facilities under the Act or
3 otherwise.

4 My point is that if we are fulfilling this
5 road of provider of last resort, that role is
6 provided to us, we will do what we need to do in
7 order to be able to serve that role.

8 Whether that means employees, or whether
9 that means facilities in a broad sense, not
10 necessarily a narrow legal sense, or otherwise, we
11 will -- we will do what we need to do to serve that
12 role appropriately.

13 Q But the PUC will have no authority over
14 what you do to serve that role other than what is
15 set forth in your plan?

16 Is that correct?

17 A Well, I guess again let me refer back to
18 the questions that you asked before on that.

19 I mean, the Commission has authority over
20 us. They can approve or not approve the plan.

21 Their order is an order to order us to
22 comply with the terms and conditions that we have
23 laid out in our proposal in our Choice Plan, and I
24 assume that they will use their legal authority to
25 make sure that we live up to that plan, the

1 provisions of it.

2 Q Does EESP currently have any recourse to
3 the assets of any other ENRON entity, including its
4 parent, ENRON Energy Services, Inc, and its
5 grandparent, ENRON Corp.

6 A Would you say what you mean by "recourse
7 to the assets"?

8 Does it have a -- oh, well. Go ahead.
9 Tell me what you mean.

10 Q What do you mean by "recourse," as that
11 temple is commonly used?

12 A Well, to my knowledge, there is no
13 arrangement that was in place that gives EESP some
14 right to those, to those facilities.

15 What we have -- or I'm sorry. To those
16 assets.

17 What I have, what we have indicated in our
18 filing is that ENRON would provide financial
19 support to EESP in the event the Choice Plan is
20 approved, so --

21 Q Would you?

22 A -- I don't know whether "recourse" means
23 the first or the second, but that is my answer,
24 whichever it means.

25 Q Would you specifically identify what

1 suitable financial recourse you are referring to or
2 arrangements?

3 A I don't specifically identify it, because
4 I believe that the course of things here will be
5 that the Commission will say what it feels that it
6 needs in terms of suitable financial support.

7 Q And you will accept --

8 A I can't --

9 Q -- whatever they say?

10 A Not necessarily. Not necessarily, but at
11 least we would have some indication of what the
12 Commission is looking for that, you know, we could
13 work something out.

14 Q EESP is backed by the full faith and
15 credit of ENRON Corporation?

16 Is that correct?

17 A Backed by the full faith and credit? Can
18 you explain to me what you mean by that term?

19 Q You don't understand what the term "full
20 faith and credit" means?

21 A I don't understand it in this context.

22 Q What is your understanding of the term in
23 any context?

24 A Oh, I can't give you an answer in just any
25 context.

1 If you can ask me or tell me what you mean
2 by "full faith and credit" --

3 Q Well, let me ask it more generally.

4 A Yes.

5 Q Is EESP backed at all in any way by ENRON
6 Corp?

7 MR. CLEARFIELD: Your Honor, I think it has
8 been asked and answered, the question.

9 JUDGE CHESTNUT: The witness can answer the
10 question.

11 A As a subsidiary of ENRON Corp, and as the
12 entity that is making an application to this
13 Commission, and it has the full faith and credit of
14 ENRON Corporation to follow through on the
15 commitments that are being made in this proposal,
16 if it were to be approved, and just to clarify,
17 when we put the Choice Plan together,
18 notwithstanding the fact that it was in a
19 subsidiary entity that was making the filing, we
20 went to and obtained ENRON Corp board approval to
21 go forward, go forward with that proposal, to make
22 that commitment and be willing to follow through on
23 it, so to that extent, yes, it does have full faith
24 and credit.

25 Q In what form does that full faith and

1 credit take?

2 Where do I see that? Where do I go to
3 look for that?

4 It is not presented in your filing, is it?

5 A I don't know that I can point you to a
6 page or line.

7 Q Assume that EESP is now the provider of
8 last resort, that the ENRON plan has been approved.

9 Who would be the contact during an
10 emergency, if the Pennsylvania Energy -- Emergency
11 Management Agency had an issue that they wanted to
12 raise with ENRON, as a provider of last resort?

13 A I don't know the answer to that question.

14 Q Do you indicate an individual in your
15 license application with the Commission that
16 fulfills that role?

17 A I would have to look at the application.

18 I have a copy, if you want to refer me to
19 it.

20 Q Yes. I am looking at page 2, carry over
21 from Page 1.

22 A This is for EESP, EESP?

23 Q Yes. The license indicates Sean Holmes, a
24 logistics coordinator in Houston? Is that correct?

25 A I'm sorry. I'm sorry. What page are you

1 on?

2 You are on the application, itself,
3 correct?

4 Q Yes. Page 2.

5 A The top of Page 2?

6 Q At the top of page two, there is a
7 question that carries over from the bottom of Page
8 1.

9 A Yes, yes. It shows Sean Holmes.

10 Q Do you know whether he is familiar with
11 PECO's electric generation supply system?

12 A I have never asked him --

13 Q So you don't know?

14 A -- so I don't know.

15 Q Now, in its reply to PECO's answer to
16 ENRON's October 7th petition, ENRON stated that it
17 contends that encouraging out-of-state companies
18 into the Pennsylvania electric market is symbolic
19 of Pennsylvania's overall business policy of
20 encouraging non-Pennsylvania companies to relocate
21 their headquarters and operating plants in
22 Pennsylvania.

23 Just to be clear, ENRON doesn't intend to
24 relocate its headquarters or any operating plants
25 in Pennsylvania, does it?

1 A There's no plan to locate headquarters or
2 operating plants in Pennsylvania that I am aware
3 of.

4 Q Mr. Kean, I want to ask you some
5 questions, so I understand the position that ENRON
6 is taking before the Commission in this proceeding
7 on some of the critical questions. ENRON

8 filed testimony in June of this year in
9 this proceeding? Is that correct?

10 A I would have to look, because that is
11 something that --

12 Q This summer sometime?

13 A Yes. This summer sometime.

14 Q But the specific date is not critical to
15 my question.

16 A Yes. My direct testimony was filed on
17 June 20th.

18 MR. HERSHEY: Could you keep your voice up,
19 please?

20 A My direct testimony was filed on June 20th.

21 Q What position did ENRON take at that time
22 on the amount of stranded recovery that the
23 Commission should grant PECO in this proceeding?

24 A I don't know that we included testimony on
25 stranded cost levels specifically.

1 I don't recall any testimony on stranded
2 cost levels specifically.

3 Q What position did ENRON take on the retail
4 market prices that would prevail during the
5 transition period under the act in that testimony
6 in June?

7 A I don't recall that we took any position
8 on that in our testimony in June.

9 Q Witnesses appearing on behalf of ENRON
10 submitted testimony in opposition to the partial
11 settlement on September 29th?

12 Is that correct?

13 A This is --

14 Q This is the next face of the proceeding,
15 if you will.

16 A I believe that's right. I don't know
17 which witnesses, or I have not reviewed the
18 testimony that was submitted on the position.

19 Q Really?

20 A Not recently.

21 Q But you have previously reviewed it?

22 A Yes.

23 Q Did that testimony propose alternative CTC
24 recovery streams in generation credits?

25 MR. CLEARFIELD: Your Honor, the testimony

1 speaks for itself.

2 I'm not sure I understand the point.

3 THE WITNESS: Yes.

4 MR. BONNEY: Your Honor, the point is, ENRON
5 has sponsored at least a handful, if not eight or
6 nine positions on some of these critical questions,
7 and I want to request Mr. Kean if he is familiar
8 with those, and then ask him which one ENRON is
9 sponsoring in this proceeding.

10 MR. CLEARFIELD: That's an incorrect
11 characterization of ENRON's contribution.

12 JUDGE CHESTNUT: The fact --

13 MR. BONNEY: I am trying to establish a
14 foundation, Your Honor.

15 JUDGE CHESTNUT: The fact of the filing of
16 the testimony will speak for itself in terms of
17 what was filed and what the testimony said, but I
18 think Mr. Bonney is certainly entitled to probe
19 what was filed, and how or if it is consistent with
20 the testimony filed here.

21 MR. CLEARFIELD: Very well.

22 BY MR. BONNEY:

23 Q Did the testimony that ENRON in part
24 sponsored on September 29th propose alternative CTC
25 recovery streams and generation credits? And by

1 "alternative," I mean alternative to the partial
2 settlement.

3 A I don't know without looking at the
4 testimony specifically.

5 Q You don't remember that?

6 A I remember that we took issue with the
7 partial settlement and with the generation credits
8 specifically that the partial settlement provided
9 for, but I couldn't sit here without looking back
10 at the testimony and tell you precisely what that
11 position was.

12 Q So I take it that ENRON is not taking that
13 as the position in this proceeding?

14 MR. CLEARFIELD: Objection. Argumentative.

15 MR. BONNEY: I am just trying to understand
16 what position they are taking, Your Honor.

17 They filed inconsistent testimony, and I am
18 asking the senior vice president, who is appearing
19 as a policy witness on behalf of ENRON, to explain
20 what their position is in this case.

21 MR. CLEARFIELD: The testimony --

22 MR. BONNEY: If he is rejecting earlier
23 testimony, that is relevant to our brief.

24 We don't have to brief it if they are not
25 going to be advancing it.

1 MR. CLEARFIELD: The testimony is not
2 inconsistent.

3 Mr. Bonney is fully aware that there is no
4 purpose or no point to this exercise.

5 MR. BONNEY: Your Honor, the witness said in
6 September --

7 JUDGE CHESTNUT: Stop. Okay. That is
8 enough.

9 MR. BONNEY: It is completely consistent,
10 Your Honor.

11 JUDGE CHESTNUT: Please continue with your
12 questions, but don't take up too much time.

13 I think this is a pretty marginal area, in
14 light of the issues you really do have to address.

15 MR. BONNEY: Your Honor --

16 JUDGE CHESTNUT: The questions are --

17 MR. BONNEY: -- the critical questions in
18 this case are what --

19 JUDGE CHESTNUT: No. I don't want to hear
20 any arguments, Mr. Bonney.

21 We are running kind of late here.

22 BY MR. BONNEY:

23 Q Am I correct that MAPSA also submitted a
24 schedule of CTCs and generation credits on
25 September 29?

1 A I believe -- I believe they did.

2 Q And they differed from those that ENRON
3 submitted on September 29?

4 A I don't recall without going back to look.

5 Q Do you know whether those are different
6 from what was submitted on October 7th with the
7 ENRON Choice Plan?

8 A I couldn't tell you how they were
9 different.

10 I would be surprised if they were
11 precisely the same, but I couldn't tell you how
12 they were different.

13 Q So ENRON is not now at this point
14 endorsing those prior CTC and generation credits
15 that were previously submitted on September 29th?

16 A Wait. I didn't say that.

17 Q That is what I am asking.

18 A ENRON -- ENRON has made a filing in this
19 proceeding, the Choice Plan, as well as modified by
20 the rebuttal testimony.

21 We believe that the generation credits,
22 for example, that were set forth in that filing are
23 within the testimony that's been submitted in this
24 case.

25 There are lots of witnesses who have

1 submitted testimony on what those rates are.

2 We believe that the strip of generation
3 prices that we have proposed is reasonable and
4 ought to be adopted by the Commission.

5 However, we put those strips together,
6 keeping in mind the testimony that had been filed
7 in the proceeding, but also the need to accommodate
8 certain consumer interests as well.

9 We wanted to produce greater rate
10 reductions than those that were proposed by PECO.

11 We wanted to provide for the unbundling of
12 distribution costs and pro-competitive tariff
13 provisions, so we were operating within -- within
14 certain constraints, and we devised a generation
15 strip that we believed was supported, and that is
16 what we are advancing in this proceeding right now.

17 Q Which of the five or so generation strips
18 that you have proposed are you now asking the
19 Commission to approve?

20 MR. CLEARFIELD: Objection. There is no
21 foundation for the notion that there's five or so.

22 Mr. Kean has explained exactly why --

23 MR. BONNEY: All right. I will withdraw the
24 question.

25 BY MR. BONNEY:

1 Q Which generation strip are you now asking
2 the Commission to approve?

3 A The ones that are set forth in the
4 attachments to my testimony, my rebuttal testimony.

5 Q And you are not asking the Commission to
6 approve the other generation strips that have been
7 previously proposed? Is that correct?

8 A Well, we are proposing to the Commission
9 that they accept our plan with our generation
10 strips.

11 Q So the answer is --

12 A To the extent --

13 Q -- you are not?

14 A To the extent that they are different,
15 yes. The answer is that we are proposing the set
16 that is attached to my testimony.

17 Q And not others?

18 A To the extent that they are different, our
19 proposal is to use the ones that are attached to my
20 testimony.

21 Q By your testimony, you mean not your
22 direct testimony, but --

23 A The rebuttal testimony.

24 Q Okay. What market price studies did ENRON
25 examine in deriving the values of generation

1 credits that are proposed in the October 7th
2 submission?

3 A We have replied relied on our expert
4 witnesses who are witnesses in this proceeding, and
5 who submitted testimony in this proceeding, to
6 review those, review those generation strips.

7 Q You are referring to Mr. Slater, Dr. Bohi,
8 and Mr. Oliver?

9 MR. CLEARFIELD: I'm sorry. I missed that.
10 Was this on the October 7th petition? Was that
11 part of the question?

12 Your Honor, may I ask whether --

13 JUDGE CHESTNUT: Mr. Bonney?

14 MR. CLEARFIELD: -- you can have it read back
15 or restated?

16 MR. BONNEY: That was my question. I wasn't
17 sure if you were asking me or the witness.

18 MR. CLEARFIELD: I'm sorry.

19 THE WITNESS: I'm sorry. Could you restate
20 the question?

21 BY MR. BONNEY:

22 Q The people that you referred to in your
23 prior answer are Mr. Slater, Dr. Bohi, and Mr.
24 Oliver, correct?

25 MR. CLEARFIELD: I would like to --

1 MR. BONNEY: Your Honor, I would really like
2 Mr. Clearfield not to coach his witness, and he is
3 about to do that, Your Honor.

4 It is a simple question. There is no
5 confusion about it, as far as I can tell.

6 Mr. Kean just referred to witnesses.

7 I am asking him: Are the witnesses he
8 referred to Mr. Slater, Dr. Bohi, and Mr. Oliver?

9 JUDGE CHESTNUT: I don't think he used the
10 word "witness," did he? I thought --

11 MR. BONNEY: Or experts.

12 JUDGE CHESTNUT: Experts --

13 MR. BONNEY: Either way.

14 JUDGE CHESTNUT: -- but I don't think
15 "witnesses."

16 MR. BONNEY: They are experts, then.

17 JUDGE CHESTNUT: But I don't see that there
18 is a problem with the question.

19 Were you just going to ask for clarification?

20 MR. CLEARFIELD: Yes, Your Honor. I wasn't
21 sure whether we were still back question of the
22 October 7 petition, or whether we were moving off
23 of that.

24 MR. BONNEY: Dan, why don't you answer the
25 question? Okay?

1 JUDGE CHESTNUT: Oh, Mr. Bonney.

2 MR. BONNEY: I already answered it. I
3 already clarified it.

4 We were talking about the October 7 petition.

5 MR. CLEARFIELD: Your Honor, I am simply
6 trying to make sure I understand.

7 I am not trying to coach the witness.

8 JUDGE CHESTNUT: Okay, Mr. Clearfield. Thank
9 you very much.

10 Mr. Kean, do you remember the question that
11 is outstanding?

12 Do you understand the question that is
13 outstanding?

14 THE WITNESS: I would like to have it read
15 back, if it's possible.

16 MR. BONNEY: I can repeat it, Your Honor.

17 JUDGE CHESTNUT: Sure.

18 BY MR. BONNEY:

19 Q Are the witnesses that you are talking
20 about in your prior answer -- at least that is the
21 one you --

22 A No. That prior question is the one that I
23 want to go back to.

24 MR. BONNEY: Okay. Please, then, will you?

25 (Discussion off the record.)

1 BY MR. BONNEY:

2 Q Let me repeat the question, if that would
3 help.

4 What market price studies did ENRON
5 examine in deriving the CTC values in generation
6 credits that are proposed on Pages 20 and 23 of the
7 ENRON October 7 position, and I believe your answer
8 was the experts that you relied on in this case?

9 A We consulted with experts and certainly
10 looked at the testimony that had been filed in the
11 proceeding, and I believe there was another
12 witness, Mitnick, who filed testimony in the
13 proceeding as well, but there were lots of
14 witnesses who filed testimony on what the
15 generation prices ought to be in the case.

16 From my perspective, in looking at the
17 plan and making sure that the plan was the kind of
18 plan that we want to file, I was looking to make
19 sure that we -- that we fell within -- certainly
20 within the scope --

21 MR. BONNEY: Your Honor, I am going to ask
22 that he stop at this point.

23 I asked him what studies he relied upon, not
24 for clarification about some other argument.

25 Maybe we can move more quickly through this.

1 BY MR. BONNEY:

2 Q Did Mr. Mitnick perform his own market
3 price analysis in this case?

4 A I don't know.

5 Q But that's who you relied upon in deriving
6 the CTC values and generation credits that you
7 proposed?

8 A We relied on the views of a number of
9 experts, including experts who provided testimony
10 in the case.

11 I am not in a position to represent
12 whether he did his own analysis, without going back
13 and looking at the testimony, whether he did his
14 own analysis, or whether it was derived from other
15 analyses that were performed in the case.

16 Q Who were the other experts that you
17 consulted at that time in preparing the October 7th
18 filing --

19 A Oh, in preparing the filing?

20 Q -- and in particular the generation
21 credits that you proposed?

22 A I apologize. In preparing the filing, we
23 were looking to find a set of generation credits
24 that would fit with the market, that would allow
25 competition in the marketplace, and would still

1 permit us the ability to allow a double discount.

2 We did not, to my knowledge, contact at
3 least several of the witnesses, and I believe it
4 would be Oliver Slater and Bohi, until after the
5 filing was prepared.

6 Q So the only expert that you consulted in
7 deriving the generation credits in the ENRON Choice
8 Plan was Mr. Mitnick, or were there other experts
9 that you were referring to?

10 A Well, again, I did not do all the -- all
11 the reviewing of the market price information that
12 went in support of the generation credits.

13 I know that that -- that we certainly
14 looked at those, looked at the testimony in the
15 case, and we also asked the people who price our
16 sales transactions whether they felt they could
17 live with the generation credits that were proposed
18 in the filing, but we were trying to have a
19 generation strip that matched market prices or
20 projections of market prices, as well as satisfy
21 the other constraints in our proposal, which is
22 being able to offer double discounts and other
23 benefits, so I -- I mean, the answer is not as
24 clean as saying, you know, "Here is an expert who
25 did this study, and it matches exactly with this

1 set of generation credits."

2 It is simply not that clean.

3 Q You were asked in discovery to provide
4 copies of the analysis, your analysis that
5 supported the derivation of these generation
6 credits in the October 7 filing, and I am referring
7 to PECO 15, number ten, and you provided no such
8 analysis?

9 Is that correct?

10 A Right. I don't think there were -- to my
11 knowledge, there were no written analyses.

12 Q It was just people talking about what the
13 prices should be?

14 A Yes. I don't recall seeing any written
15 analyses at all.

16 Q So that your testimony is --

17 A I don't think that --

18 Q -- that the generation credits that you
19 proposed in the October 7th petition were based on
20 no written analysis?

21 A Yes. I mean, certainly we can look to see
22 if there were any written analyses, but I believe
23 we have looked to see if there were.

24 My recollection, having been in the room
25 when we talked about it -- and this is not that

1 unusual; I mean, our people are called upon to
2 price transactions all the time -- is that we
3 talked about generation prices, generation prices
4 that would work for them in the marketplace, and
5 that discussion was oral.

6 I don't recall seeing anything written.

7 Q At Page 8 of her testimony, ENRON witness
8 Miss Lopez says that to develop the CTCs and
9 generation credits set forth in the October 7th
10 filing, she was advised generally as to the market
11 price for competitive generation, and in response
12 to an interrogatory question, No. 18-8, she says
13 that she was so advised in early September by
14 personnel working under your direction.

15 MR. CLEARFIELD: Let him get it before him,
16 the document.

17 MR. BONNEY: Okay. I apologize.

18 MR. CLEARFIELD: I'm sorry, Paul. What was
19 the reference?

20 MR. BONNEY: No. 18-8.

21 MR. CLEARFIELD: The testimonial reference?

22 MR. BONNEY: Oh, this is Miss Lopez, Page 8.

23 THE WITNESS: Which lines are you looking at?

24 MR. BONNEY: I am looking at lines eight
25 through thirteen of Miss Lopez's testimony.

1 THE WITNESS: Yes.

2 BY MR. BONNEY:

3 Q So is it correct to say that she was
4 advised by personnel working under your direction
5 in early September?

6 A I'm sorry. Are you looking at -- are you
7 looking at a data response, or are you looking
8 at --

9 MR. CLEARFIELD: Yes.

10 A -- testimony because --

11 Q I am looking at two things here, testimony
12 at Page 8, Miss Lopez's, and your response -- or
13 her response, I mean, to PECO interrogatory 18-8.

14 A Okay. And could I see that response?

15 Q Sure. And it does indicate that she was
16 the witness for this, and not you.

17 A Yes. Okay. And your question again?

18 Q And she indicates here that she was
19 advised by personnel working under your direction
20 in early September of 1997 regarding the
21 development of these generation credits --

22 A Uh-huh.

23 Q -- and she was asked to review and analyze
24 PECO's proposed CTC rates and revenue included in
25 the partial settlement and develop alternate

1 generation credits and CTC/ITC rates that would
2 produce the effect intended by ENRON in its Choice
3 Plan?

4 A Yes.

5 Q Is that correct?

6 A To the best of my knowledge, that's
7 correct.

8 Now, again, as I said earlier, you know, we
9 were operating it within a number of constraints
10 and taking a number of things into account in order
11 to develop the generation credits, so it was based
12 on, you know, expert testimony in the case, and
13 some of it was based on internal discussions over
14 what the prices would be, and a large part of it
15 also was based on making sure that we made a
16 proposal that was superior to the partial
17 settlement in terms of rate reductions and the
18 like, so all --

19 Q Her analysis --

20 A -- those things were being done under my
21 direction and --

22 Q Her analysis did not reflect Mr. Mitnick's
23 testimony, though, did it, because he didn't file
24 that until September 29th, right?

25 MR. CLEARFIELD: Your Honor, I am going to

1 object.

2 I am going to object, because he is now
3 asking what Mrs. Lopez's analysis was.

4 JUDGE CHESTNUT: No. He said under his
5 direction.

6 MR. BONNEY: Under his direction.

7 MR. CLEARFIELD: But he doesn't --

8 JUDGE CHESTNUT: No. That's enough.

9 MR. BONNEY: He doesn't know what is going on
10 under his direction, Your Honor.

11 MR. CLEARFIELD: Oh, come on. Your Honor --

12 JUDGE CHESTNUT: That's enough.

13 BY MR. BONNEY:

14 Q The analysis that you directed be done in
15 September of this year regarding the generation
16 credits that should be put into the ENRON Choice
17 Plan did not reflect Mr. Mitnick's testimony,
18 because it wasn't even written yet? Is that
19 correct?

20 A I did not specifically direct her to look
21 at any individual's testimony that I can recall.

22 You know, if you want, if you want further
23 detail, I suggest you ask Witness Lopez, but --

24 Q As far as you know, she didn't look at any
25 market price analysis?

1 Is that true?

2 A I don't know that to be true.

3 Q And you don't know it to be false, either?

4 A Well, I don't -- again, you would have to
5 ask Witness Lopez what specifically she looked at.

6 Q Besides the analyses presented in this
7 case and the general knowledge of PJM, as you
8 described it, ENRON has conducted no other analyses
9 or projections of market prices in PECO's service
10 territory or in PJM?

11 Is that correct?

12 A I believe ENRON, to the extent that it
13 refers to EESP, is correct.

14 I don't know if there are other --
15 certainly I have not seen any other analyses or
16 studies.

17 I couldn't say unequivocally whether there
18 are any somewhere in the building.

19 Q Would you look at your response to PECO
20 number 11-17?

21 I'm not sure if you have this, as it has
22 been supplemented twice by agreement with counsel.

23 MR. CLEARFIELD: Your Honor, if I could just
24 clarify, I think that was a supplemental response,
25 or a second supplemental response.

1 MR. BONNEY: Yes.

2 MR. CLEARFIELD: Is that the one to which Mr.
3 Bonney is referring?

4 MR. BONNEY: Yes. Yes, Your Honor.

5 (Discussion off the record.)

6 BY MR. BONNEY:

7 Q Do you have that question?

8 A Yes, I do. I don't have -- if there is a
9 supplement to it, I don't think I have that.

10 Q Maybe I could just shortcut this. In the
11 supplement that I discussed with counsel, there is
12 a statement that says ENRON has in its possession
13 no other projections of market prices in PECO's
14 service territory or in PJM.

15 Just to clarify, you are talking about
16 ENRON Energy Services Power?

17 A Yes, yes. I don't know whether -- whether
18 in ENRON Corporation there might be other
19 projections and market prices in the territory.

20 Q They haven't been provided to PECO in any
21 event, have they?

22 A I don't know.

23 MR. CLEARFIELD: Your Honor, we have objected
24 to questions that go beyond ENRON Energy Services
25 Power.

1 MR. BONNEY: Not to my knowledge, Your Honor.
2 I haven't heard that objection.

3 MR. CLEARFIELD: Well, we have.

4 BY MR. BONNEY:

5 Q Am I correct that ENRON Energy Services
6 Power has not studied, analyzed, or quantified the
7 cost that it expects to incur to sell and deliver
8 power to retail customers in PECO's territory?

9 A Is there a specific data request you are
10 referring to?

11 Q Yes. Number 11-24.

12 A I don't think I have that one. Do we have
13 a copy of that?

14 Q I do right here, if that would be easier.

15 MR. CLEARFIELD: I have got it. That's
16 there.

17 BY MR. BONNEY:

18 Q I apologize again. This is not your
19 question, but it is Mr. Slater's, identified as the
20 witness's answer.

21 (Discussion off the record.)

22 A Well, I am not the sponsoring witness on
23 the interrogatory, but I am not aware of any such
24 studies or analyses.

25 Q Just a couple of quick questions on this

1 line -- and that's all I had with that.

2 Thank you.

3 As we have discussed, in the testimony
4 that you filed Wednesday, you submitted a new
5 schedule of ENRON's proposed CTC/ITC values and
6 generation credits, correct?

7 A Yes.

8 Q They are set forth in Attachment A to your
9 rebuttal testimony?

10 A Yes. They are set forth in A and B,
11 actually, one for the securitization.

12 MR. CLEARFIELD: Wait until the plane goes
13 over. I'm sorry. I couldn't hear the answer.

14 Could you repeat it?

15 THE WITNESS: They are in -- the answer, the
16 new generation credits are in Attachments A and B,
17 one for the full securitization case, and one for
18 the contingency case.

19 BY MR. BONNEY:

20 Q Who among the ENRON witnesses in this
21 proceeding explains the derivation of those revised
22 figures?

23 A I can explain generally what we were
24 trying to accomplish.

25 Q I am asking, in the testimony that's been

1 filed, who explains the derivation of those?

2 A Well, I believe it is explained at least
3 generally in my testimony.

4 It is also explained --

5 Q What reference in your testimony are you
6 referring to?

7 A Well, I would have to go back to look, but
8 I know that I talk, for example, about the need to
9 accommodate questions and concerns that have been
10 raised by the parties in the proceedings that the
11 generation flows were too low in the out years, you
12 know, and that the CTC charges under the ENRON
13 proposal, or rather, the stranded cost recovery
14 charges under the ENRON proposal were too high in
15 the later years, so I talk about that element of
16 it.

17 I believe there are specific proof of
18 revenue sheets that are attached to the testimony
19 of Witness Lopez.

20 The other witnesses in the case -- I
21 testified to market prices, also have some role in
22 the derivation of those.

23 Q ENRON did not have available to it any new
24 market price projections or analysis that would
25 cause it to revise those CTC values and generation

1 credits, did it, but the rather it was for the
2 reasons that you just stated?

3 A It did not have -- not to my knowledge.
4 Did not have new analyses or studies?

5 Q Correct.

6 A Not to my knowledge.

7 Q Let's take a look for a second at
8 Attachment A, the figures under generation credit
9 for, let's say, 2001.

10 Now, the figure you had in your original
11 direct testimony a couple of weeks ago was, I
12 believe, 3.54 cents per kilowatt hour, and now it
13 has been revised to 3.61?

14 Is that correct?

15 A For 2001, 3.54, and now it is 3.61,
16 correct.

17 Q Why precisely did you choose 3.61? Why,
18 for example, did you not choose 3.57?

19 A Again, the answer is, we were trying to
20 articulate a set of generation credits which we
21 believed would -- were good projections of market
22 prices that would facilitate the entry of
23 competitors into the marketplace and would allow us
24 to satisfy certain other constraints that we were
25 operating under in order to ensure that our

1 proposal was an attractive one to consumers, and by
2 that I mean, you know, we wanted to ensure that we
3 ended up with the right level of rate reductions,
4 that we were able to double, or at least double the
5 rate reductions that were proposed in the partial
6 settlement, whether you are talking about full
7 securitization, or in the contingency case.

8 If you are asking, is there a specific
9 study that calculates to the hundredth of a cent
10 each of the items in this list, and says that
11 absolutely, unequivocally, 3.61 cents, not 3.62 or
12 3.60 is the market price, the answer is no.

13 Q As I understood the answer you just gave,
14 these figures aren't based solely on market price
15 projections?

16 They are based on other variables or
17 factors?

18 Is that your testimony?

19 A We wanted to make sure that they comported
20 with market price projections that had been
21 proposed or filed in this case, but we also wanted
22 to make sure that our proposal again would generate
23 the proper discounts and the proper opportunity for
24 competitive service to be provided.

25 MR. BONNEY: Your Honor, I do have some more,

1 but perhaps -- it is late -- it is a good time to
2 break for lunch.

3 JUDGE CHESTNUT: Why don't we take a break
4 for lunch, and I am concerned about the pace of
5 this proceeding.

6 We have a lot of witnesses scheduled. Mr.
7 Clark?

8 MR. CLARK: I have one from out of town who
9 won't be available tomorrow or Wednesday.

10 If Mr. Biewald could be maybe moved up from
11 eight, that might help that at least as well.

12 JUDGE CHESTNUT: Yes. I am sure you can work
13 that out as to who goes when, and we will
14 accommodate people here, but I really would like
15 everyone to think about picking up the pace here,
16 so that everybody has a chance to do their cross.

17 We will resume at 2:00 o'clock.

18 - - -

19 (Thereupon, at 1:38 o'clock PM, a luncheon
20 recess was taken.)

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1 (The hearing reconvened at 2:10 p.m.)

2 JUDGE CHESTNUT: Prior to the lunch break,
3 Mr. Bonney was doing cross-examination.

4 Mr. Bonney, are you prepared to proceed?

5 MR. BONNEY: Yes. Thank you, Your Honor.

6 **CONTINUED CROSS-EXAMINATION**

7 BY MR. BONNEY:

8 Q. Mr. Kean, I want to ask you a couple of
9 questions about the Power Purchase Agreement and also
10 at Page 36 of your rebuttal testimony, which I
11 believe refers to that as well.

12 A. Page 36.

13 Q. Looking, in particular, at Line 14, here
14 you state that the PPA is a full-requirements
15 contract. Do you see that?

16 A. Yes.

17 Q. By that do you mean that under the Power
18 Purchase Agreement Enron would be obligated to
19 purchase and PECO would be obligated to sell power to
20 meet all of the needs of the default customers of
21 PECO's service territory?

22 A. There are two kinds of default customers.
23 There are those who are -- I think it's in the
24 contract defined as transitional default customer.

25 MR. DWORETZKY: Louder, please.

1 A. I'm sorry. There are two kinds of default
2 customers that are defined in the filing as well as
3 the agreement. There are transitional default
4 customers as well as standard default service
5 customers.

6 In the case of the transitional default
7 service customers, Enron would be buying and PECO
8 would be selling all of the requirements of those
9 customers. It's a different answer in the event of
10 the standard default service customers.

11 Q. For the standard default service
12 customers, Enron has an option to purchase that power
13 from PECO; is that right?

14 A. At a market price, yes. Enron would not
15 have to purchase the power from PECO, but if it does,
16 it would have to pay the market price. Yes.

17 Q. So, by full requirements, were you
18 referring only to the transitional default service
19 customers?

20 A. Yes.

21 Q. And you would agree, would you not, that
22 it's not a full-requirements contract with respect to
23 the standard default service customers?

24 A. Well, in the sense that Enron does not
25 have the obligation to buy for that set of customers

1 under the contract.

2 Q. Am I correct that it's Enron's position
3 that utilities should have the opportunity to fully
4 recover investments which are stranded as a result of
5 the introduction of a truly open and competitive
6 market?

7 A. Yes. That's correct.

8 Q. Would you agree that, all else equal, the
9 lower the market price the higher PECO's generation
10 stranded costs will be?

11 A. When you say all else being equal, I'm not
12 sure what all is embedded in that. It does seem to
13 me that if you look at -- If you look at the prices
14 that are being paid for generation in the market
15 today, it's not simply a matter of subtracting the
16 commodity price for generation from the embedded cost
17 of different assets.

18 People seem to be willing to pay more,
19 i.e., assets seem to be less stranded in this part of
20 the country because of the price that customers are
21 willing to pay for generation assets. So I guess I
22 can't unequivocally agree to your suggestion.

23 Q. I just want to real quickly follow up on
24 something that Mr. Craig was asking you. In
25 particular, your testimony at Pages 39 to 40

1 regarding conditions to the Choice Plan.

2 How, specifically, do you define material
3 adverse change in PECO's financial position? Here,
4 in particular, I'm looking at Page 40, Lines 12 to
5 13.

6 A. Well, material adverse change is a
7 relatively common term in contractual arrangements
8 and financing arrangements, as you know. It has a
9 definition in the custom and usage of parties to
10 transactions and to be determined by a court or by
11 lawyers for the parties.

12 In terms of what the specific elements of
13 it would be in this instance, I mean I can't lay them
14 all out. Certainly it's easy to postulate an extreme
15 case that would constitute a material adverse change.
16 You know, a nuclear accident, a major problem that
17 would cause a serious problem for PECO, that would be
18 a material adverse change.

19 But, again, I want to clarify. It seems
20 to me that if that sort of event happened, even to
21 PECO under its partial settlement, there would be
22 similar problems. I mean I don't see anywhere in the
23 settlement where PECO would be restricted from
24 dealing with disaster scenarios like that as well.

25 Q. Would you include in the definition of

1 material adverse change downgrading of PECO's bonds?

2 A. You know, I would have to talk with
3 counsel to understand better the definition.

4 Q. So your testimony is this term, material
5 adverse change, which is a condition to the plan, is
6 not defined?

7 A. No. I'm saying that it has a definition.
8 It has a customary meaning in these transactions. I
9 cannot explain that meaning to you in detail here.

10 Q. And no witness is going to do that in this
11 proceeding for Enron; is that correct?

12 A. I don't know. I don't know if we have a
13 witness who could testify to that in this proceeding.

14 Q. In your direct testimony at Pages 29 to
15 30, you suggested that PECO's financial integrity
16 would not be adversely affected if your October 7th
17 plan was to be implemented. Is that still your
18 opinion?

19 A. Can you give me a specific reference here?

20 Q. Yes. Pages 29 to 30. This is your direct
21 testimony.

22 A. Oh, the direct. I'm sorry.

23 Q. I'm sorry. My question, just to be clear,
24 is referring to the October 7th plan, not your plan
25 as revised.

1 A. All right. My belief is, if PECO under
2 our proposal, the original Choice Plan--it's 5.461
3 billion paid up-front--has an opportunity to compete
4 in the market and make of itself what it will in that
5 market, it should not hurt the financial integrity of
6 PECO. It will be up to PECO to make sure that it
7 continues to be a viable and competitive entity, but
8 it would be getting an up-front payment of \$5.461
9 billion too.

10 Q. Have you performed any analysis of that,
11 other than the testimony you just gave?

12 A. No, I don't have any separate analysis of
13 it. I mean it does seem to me that, if a company is
14 making a transition to a competitive market, it's not
15 going to be able to look forward and say, Here is
16 what my revenues are going to be exactly. Rather,
17 what those revenues turn out to be and what the
18 financial integrity turns out to be will be up to the
19 company, in large part, based on its ability to
20 compete.

21 Q. You made reference to PECO being paid
22 up-front. That payment isn't coming from Enron to
23 PECO, is it? Enron is not going to write a check to
24 PECO; is that correct?

25 A. PECO gets -- Let's see. Are you talking

1 specifically or asking specifically what happens to
2 those proceeds?

3 Q. No. I'm asking does Enron pay PECO the
4 \$5.46 billion that you just referenced?

5 A. The mechanics of the securitization plan,
6 my understanding is that PECO gets the benefit of the
7 \$5.461 billion as a payment upon securitization.

8 Q. That wasn't my question. My question was,
9 Does Enron pay PECO \$5.461 billion under the Enron
10 Choice Plan?

11 A. Under the Choice Plan, it could be Enron.
12 It could be an SPV or ultimately could be a
13 bondholder who purchases bonds.

14 Q. Under your revised plan, Plan B that you
15 filed last Wednesday, PECO would not necessarily
16 receive the full amount of its stranded costs since
17 September 1, 1998, correct; for example, if
18 securitization has a legal impediment?

19 A. If there's a legal impediment to
20 securitization, of course, that applies to the
21 partial settlement as well. What our contingency
22 plan is designed to do is to still give consumer
23 discounts even if there are legal impediments and to
24 provide CTC revenues to PECO until such time as we
25 are able to securitize and make the up-front payment.

1 In my testimony in the attachments, we describe how
2 that would work.

3 Q. Please turn to Page 37 of your rebuttal
4 testimony, Lines 16 to 17.

5 A. Yes.

6 Q. Here I think your position is that default
7 customers are not treated unfairly under the Enron
8 Choice Plan because the generation credits they pay
9 are calculated to be market based. Is that a fair
10 characterization of your testimony?

11 A. Right.

12 Q. Just to be clear, are you saying here that
13 the generation credits you propose in the attachments
14 to your rebuttal testimony are equal to your best
15 projection of market prices?

16 A. What I'm saying is that the generation
17 credits are supported by testimony in the case on
18 market prices. They're designed to be market
19 responsive and market based.

20 Q. If it turns out that the generation
21 credits you set forth on Attachment A are, indeed,
22 the market prices that customers can achieve in the
23 market, customers would not have any incentive to
24 switch from provider of last resort service. Isn't
25 that true?

1 A. No, that's not necessarily true.

2 Q. As far as market price goes, putting aside
3 other factors.

4 A. I don't think you can put aside other
5 factors. Are you asking would they have a price
6 incentive for switching? If the price is the same in
7 any event -- Actually, I'm not even sure you can say
8 that completely.

9 You can't say that they have no incentive
10 to switch from PLR service even if the market price
11 happens to be equal to the generation strip, because
12 there could be a whole host of offerings by EGSs in
13 the competitive marketplace that might make it
14 attractive to switch even if the price were the same.

15 Q. If it were the case that these prices set
16 forth in Attachment A under the generation credit
17 column were, indeed, the market prices that occurred
18 in the market over the years, customers would not
19 have an incentive to migrate to alternative suppliers
20 because of the price effects; is that correct?

21 A. Well, again, you can't just look at price
22 effects. There will be an awful lot of other things
23 being offered. If you mean if there's no difference
24 in the price does the customer have an incentive to
25 switch based on price, the answer is, no, the

1 customer doesn't have an incentive to switch based on
2 price.

3 The question leads to the implication that
4 that would be the only consideration. It might not
5 be the only consideration.

6 Q. In fact, didn't you design these
7 generation credits to be higher than market to
8 encourage customers to switch to alternative
9 suppliers because of price considerations?

10 A. We certainly want the price to be high
11 enough that customers can do better by switching.

12 Q. So, if a customer can do better on price
13 alone by switching, then those customers that remain
14 as provider-of-last-resort customers are not
15 receiving the best price they can obtain, by
16 definition; correct? They could do better by
17 switching?

18 A. They could do better by switching. I mean
19 if the market price is below the price -- If the
20 market price turns out to be below the price set
21 forth in our generation credits, then customers would
22 do well to switch and get the additional savings.

23 Q. In fact, you designed the generation
24 credits that you set forth in your table to encourage
25 customers to do just that?

1 A. We certainly designed the generation
2 credits not to stifle competition in the early years.
3 There is certainly a large consequence with setting a
4 generation credit that is below the market, but we
5 intended and designed those generation credits to be
6 market responsive.

7 I mean there's a big down side in having
8 them be too low, because you stifle competition
9 altogether. But we intended them, nevertheless, to
10 be market responsive.

11 Q. By market responsive, what do you mean?

12 A. Indicative of the market as you can see,
13 as best you can see it from today.

14 Q. So the prices that you designed are equal
15 to, as best as you can project right now, the market
16 prices; and at the same time, you expect actual
17 market prices to be lower to encourage migration. Is
18 that your position?

19 A. I believe that there will be migration off
20 of the default service in our proposal because the
21 generation credits will allow room for competitors
22 who can do better, who can reduce their costs, to
23 come in and get customers.

24 Q. So, if a customer remains as a
25 provider-of-last-resort default customer and there

1 were market prices that were better available in the
2 prevailing market, isn't it true that Enron would not
3 be purchasing from PECO at prevailing market prices
4 and recovering just its costs from those provider-of-
5 last-resort customers; rather, they would be charging
6 above-market prices and recovering those costs from
7 customers?

8 A. If I understand your question, in that
9 example Enron would be paying PECO an above-market
10 price as it comes out down the road and charging
11 consumers above market price.

12 Q. Am I correct that in the New Hampshire
13 pilot commodity rates at retail fell to 2.1 cents per
14 kilowatt hour?

15 A. I don't recall the exact -- I don't
16 remember the exact number, but it was in that general
17 area.

18 MR. BONNEY: Your Honor, if I may approach the
19 witness.

20 BY MR. BONNEY:

21 Q. I have an excerpt from a presentation you
22 gave in June of '96. I'm referring to this statement
23 right there.

24 A. Yes.

25 MR. CLEARFIELD: Do you recognize that as

1 yours?

2 A. Yes. That's mine.

3 BY MR. BONNEY:

4 Q. Included in this presentation is the
5 statement that commodity rates at retail fell to 2.1
6 cents per kilowatt hour in the New Hampshire pilot;
7 correct?

8 A. In that pilot, at that time, in that
9 market, yes.

10 Q. Mr. Kean, how much profit will Enron make
11 if its Choice Plan is approved and securitization
12 goes through as Enron has proposed?

13 A. Less money than PECO under the partial
14 settlement. But it is difficult to say with
15 precision without knowing what interest rates would
16 be at the time and other factors, whether load, in
17 fact, does or doesn't decline or whether it
18 increases. It's very difficult to calculate without
19 knowing all the variables.

20 Q. Is it your statement that you have not
21 quantified your expected profit?

22 A. We have looked at or at least I am
23 familiar with analyses that show what we would earn
24 in the event of certain assumptions; most recently,
25 right in advance of preparing the amendments to our

1 Choice Plan.

2 MR. BONNEY: Your Honor, if I may approach
3 again.

4 BY MR. BONNEY:

5 Q. I'm showing you an interrogatory prepared
6 by Mr. Fastow.

7 A. I'm sorry. Did you ask me about on PLR or
8 securitization? I thought you asked on
9 securitization.

10 Q. I asked it all under the Enron plan.

11 A. Okay.

12 Q. I didn't distinguish between -- I believe
13 I didn't. I didn't mean to distinguish between
14 provider of last resort and securitization, but I am
15 assuming in the question that securitization goes
16 through.

17 A. You are assuming that securitization goes
18 through?

19 Q. Yes.

20 A. In that event, we would expect to earn --
21 Although, there is no guarantee of earnings under the
22 proposal with respect to, specifically, the provider
23 of last resort. What we pay PECO for that service we
24 pass through to consumers. It is a pass-through for
25 us. It is not something that we have an incentive to

1 keep in place or an incentive to earn on or, rather,
2 that we have an opportunity to earn on.

3 Q. I don't mean to be standing over you.

4 A. That's all right.

5 Q. I want to ask you a question about this.

6 As far as securitization goes, are you saying now
7 that you do have a quantification of how much profit
8 Enron will make if securitization goes through under
9 the revised Enron plan?

10 A. I don't have such a quantification.

11 Q. Has it been performed?

12 A. There was a quantification performed in
13 order to evaluate what our exposure would be under --
14 I mean very recently performed to evaluate what our
15 exposure would be under the revised Choice Plan.

16 Q. Have you provided that information to
17 PECO?

18 MR. CLEARFIELD: Your Honor, I'm going to
19 object. That would be, at this point, business
20 proprietary. It is the same type of information that
21 PECO has refused to provide to us with respect to the
22 analysis that they have made with respect to the
23 partial settlement.

24 JUDGE CHESTNUT: Thank you. But I don't think
25 he's actually asked for it yet.

1 Have you?

2 MR. BONNEY: No.

3 BY MR. BONNEY:

4 Q. In Interrogatory 11-19, am I correct that
5 PECO asked, How much profit does Enron Energy
6 Services Power, Inc. expect to make if the Choice
7 Plan is adopted, and how much does Enron Energy
8 Services Power expect to make if the Choice Plan is
9 not adopted?

10 The answer given by Mr. Fastow is, with
11 respect to the securitization, Said profit cannot be
12 quantified at this time.

13 A. That's right. That's right. It can't be
14 quantified.

15 Q. Did the question also ask to provide
16 copies of all documents in the possession of Enron or
17 its consultants or advisors that contained this
18 requested information?

19 A. Yes, it does. I'm not aware of any such
20 document.

21 Q. So the analysis that was done of the
22 profit was done in someone's head or on paper?

23 A. I believe it was done electronically. I
24 mean I believe --

25 Q. So you have an electronic version of it

1 but not a paper version?

2 A. I'm not sure there is an electronic
3 version that remains.

4 Q. It was done in someone's head or
5 electronically?

6 A. It was originally done electronically.

7 MR. CLEARFIELD: Again, Your Honor, the
8 testimony was that there are a variety of
9 assumptions.

10 JUDGE CHESTNUT: Excuse me. Mr. Clearfield, I
11 don't think there's anything outstanding for you to
12 object to at this point.

13 MR. CLEARFIELD: I would object to this
14 continuing line, Your Honor.

15 JUDGE CHESTNUT: Well, you can't do that. You
16 can object to specific questions as they're made.

17 MR. BONNEY: Your Honor, I would ask that the
18 testimony of this witness regarding the profits that
19 it makes be stricken from the rebuttal testimony and
20 from the direct testimony, because we asked in
21 discovery for the analysis that Enron had done of
22 this and they said that said profit cannot be
23 quantified. We asked for documents that contain
24 this.

25 Apparently, some analysis has been done.

1 I'm not sure from the witness's answers whether it
2 was done in someone's head, done on paper, done
3 electronically, still exists, et cetera.

4 But what I am sure of is that they have
5 not told us how much profit they expect to make and
6 say that they can't.

7 JUDGE CHESTNUT: The motion is denied. I
8 actually had not heard you ask for it here.

9 BY MR. BONNEY:

10 Q. How much profit does Enron expect to make if
11 the Choice Plan is approved under the various
12 conditions and scenarios that you've examined, any
13 ballpark?

14 A. You can't quantify it without having a set
15 of conditions. I can't calculate it in my head here.

16 Q. Under the conditions that you analyzed
17 internally. \$100? \$1 million? \$1 billion? Any
18 rough idea?

19 A. I believe that we calculated the potential
20 to earn -- Again, I have to put the proper prefaces
21 on this. This is assuming a lot of things, including
22 that there is no load decline, which could mean that
23 we would earn nothing, actually lost money on the
24 transaction.

25 But we used a calculation, from my

1 recollection, that took a look at interest rates at
2 the maximum levels set forth in the Attachment 4,
3 assumed flat load growth, and ended up with a
4 calculation that was slightly above \$100 million.

5 Q. Was that the only set of conditions that
6 you analyzed?

7 MR. CLEARFIELD: Your Honor, I'm going to
8 object again. PECO has consistently refused to
9 provide any comparable analysis on a claim that it's
10 business proprietary. Detailed questions with
11 respect to this that go beyond this I think are
12 objectionable.

13 It's unfortunate, at least, that we have
14 been put in a position where Mr. Bonney is asking for
15 this data. Mr. Kean is being forthcoming. Yet,
16 consistently over and over again we have asked for
17 the same kind of analyses from PECO, and they have
18 been consistently refused.

19 MR. BONNEY: I'll move on, Your Honor. I
20 don't have a question outstanding.

21 BY MR. BONNEY:

22 Q. Is it your expectation that load will
23 decline during the transition period in the PECO
24 service territory?

25 A. We don't expect it to decline, but we do

1 take the risk under our proposal in the event it
2 does.

3 Q. What investment will Enron have made under
4 the Choice Plan or what service will Enron have
5 provided to earn the \$100 million in profit that you
6 mentioned?

7 A. Well, there are a number of -- I mean,
8 first of all, we put a better proposal on the table.

9 Secondly, we are proposing in our plan to
10 take on, essentially, the same risk or, actually,
11 greater risk than PECO proposed to take on and doing
12 it at a much smaller margin. In other words,
13 assuming you ever have calculated what your recovery
14 amount or over-recovery amount is, I mean you can
15 compare the charges. You can compare under any
16 variety of scenarios, compare our stranded cost
17 recovery proposal to the partial settlement proposal,
18 and you end up with a lower number, just a lower
19 recovery, under our proposal every time.

20 So we're taking what was a risk under the
21 partial settlement and making it riskless in the
22 sense that you get paid, or PECO, rather, gets paid
23 5.461 billion up-front. And we're willing to do that
24 while providing additional rate discounts and some
25 other benefits to customers. So we put a better plan

1 on the table. We took on the same risk and did it at
2 a better price. We took on additional risk,
3 actually, and did it at a lower price.

4 Q. So it's your testimony that Enron Energy
5 Services Power has more risk than PECO in the Enron
6 Choice Plan, has more risk than PECO does in the
7 partial settlement?

8 A. Well, we have, I believe, the same risk
9 with respect to load decline that PECO faces.

10 Q. How about operation and investment in
11 nuclear plants? Same risk?

12 A. I'm not making a comment on risks that
13 PECO continues to take by virtue of its facilities.
14 I'm talking about the risk that it's taken under the
15 stranded cost recovery mechanism that PECO has
16 proposed.

17 Q. So it's your position that, for the risk
18 that you're taking and as compensation for filing the
19 petition, you're entitled to \$100 million? Is that
20 your testimony?

21 A. We're taking on risk, and we're putting a
22 better proposal on the table, one that provides the
23 5.461 billion in stranded cost recovery to PECO and
24 provides better discounts for customers.

25 So I think, based on the risk that we're

1 taking and the value that we're delivering, it makes
2 sense for us to earn something on the proposal,
3 assuming that we can earn anything. Again, depending
4 on how things turn out, that's still open.

5 Q. Are there any analyses you've done that
6 show that you might make more than \$100 million? I'm
7 not looking for confidential, specific numbers.

8 A. You're not looking for -- I mean I
9 believe that all of the information that we've
10 prepared in that regard is confidential, to the same
11 extent that PECO assumes their information in this
12 area is confidential.

13 Q. What is the cost to Enron of the
14 investment that it's made that justifies the \$100-
15 million return? I'm just trying to get a feeling for
16 You put up how much? We know you're getting back
17 perhaps \$100 million. How much have you put in to
18 justify that amount?

19 A. When the plan goes into effect and
20 securitization takes place, Enron is, again, exposed
21 to a set of risks. Whether those risks ever pan out
22 and force the outlay of cash is an open question.
23 But, certainly, the fact that you're exposed to that
24 risk carries with it a cost.

25 In terms of actual dollar outlay, it may

1 not be a risk -- or it may not be a cost. But,
2 certainly, the risk that's being taken on is a cost.

3 Q. Is the risk that you're talking about
4 public utility service, if you know, or have you been
5 advised by your lawyers that it's public utility
6 service?

7 A. I'm sorry.

8 Q. The risk that you've been discussing that
9 you're taking on with respect to securitization, is
10 that public utility service, to your knowledge?

11 A. I'm afraid I don't understand the
12 question.

13 Q. In your view, the taking of that risk, the
14 securitization risk that you've been referring to,
15 does that constitute the provision of public utility
16 service by Enron Energy Services Power, Inc., or have
17 you been advised to that effect by your counsel?

18 A. Again, I don't know what specifically
19 you're referring to, whether you're referring to a
20 specific statutory provision or not. To answer that
21 question, I would have to consult with counsel.

22 Q. The risk that you're taking, does that
23 constitute competitive electric supply, in your
24 opinion?

25 A. Again, to the extent you're referring to

1 something specific in the statute, I don't know
2 without looking at the statute, reviewing it with
3 counsel.

4 Q. As the term is generally used, competitive
5 electric supply.

6 A. What we're doing in the proposal is we're
7 offering to be the provider of last resort and to
8 finance the recovery of stranded costs.

9 Q. I'm talking now about the risk that you
10 were discussing that you raised. Is the taking of
11 that risk, in your view, the provision of competitive
12 electric supply?

13 A. Not that specific risk, no.

14 Q. Are there any particular provisions of the
15 code that you know of or have been advised of that
16 give the Commission authority to grant you the \$100-
17 million profit that we've discussed?

18 MR. CLEARFIELD: Your Honor, I object again.
19 This is completely irrelevant.

20 MR. BONNEY: I'll pass, Your Honor.

21 BY MR. BONNEY:

22 Q. Mr. Kean, you've made a number of
23 presentations over the last few years encouraging the
24 introduction of competition in the electric markets.
25 I think you mentioned that earlier. Is that correct?

1 A. Yes.

2 Q. Hasn't a theme in those presentations been
3 that in a competitive market consumers will not only
4 benefit from lower rates but also from better service
5 and improved and innovative value-added services?

6 A. Yes.

7 Q. Would you include energy efficiency
8 services and investments in some of those service
9 offerings?

10 A. Yes.

11 Q. I want to refer to comments that Enron
12 Power Marketing filed before this Commission in
13 November of '94. This is in connection with the
14 Commission's investigation into electric power
15 competition.

16 A. Do you have a copy of those for me?

17 Q. I do. Were you involved in the
18 preparation of these comments?

19 A. I might have been, although they may have
20 been prepared by someone in my organization. I don't
21 know.

22 Q. You testified as the Enron spokesperson in
23 this proceeding; correct?

24 A. In the general restructuring proceeding?

25 Q. Yes.

1 A. Yes.

2 Q. I just want to refer you to a statement at
3 Page 6. If you could read that underlined statement,
4 please.

5 A. The certificated utility should retain its
6 obligation to serve only with respect to those
7 customers who choose to continue to receive the
8 bundled services of the utility.

9 Do you want me to read that one too.

10 Q. Yes, please, and anything else that --
11 Obviously, you haven't had a chance to look at it.
12 You can keep that. Anything else you see of
13 relevance you can --

14 A. There's a gap and then a sentence at the
15 end of the paragraph that says, An out-of-state
16 utility should be treated in the same manner as any
17 other competitor of Pennsylvania's certificated
18 utilities. It would have no duty to serve but, also,
19 would not have any right of franchise.

20 Q. You can hold onto that. I'm going to move
21 to something else. At Page 8 of your rebuttal
22 testimony, just a quick clarification about Lines 20
23 to 21.. Here you make the statement "but sellers
24 cannot provide billings directly to customers ..."
25 Is it your understanding that under the partial

1 settlement sellers cannot provide billings for
2 electric service directly to customers?

3 A. It's my understanding, subject to check,
4 that the issue is left open in the partial
5 settlement. But I'm not positive of that. I thought
6 that the issue on unbundling of those services was
7 deferred. I'm not positive.

8 Q. The partial settlement doesn't say that
9 sellers cannot provide billings directly to
10 customers, does it?

11 A. I don't know, without looking, whether it
12 provides it affirmatively one way or the other.

13 Q. Another clarification at the bottom of
14 that page and carrying over. You --

15 A. I'm sorry. I closed it now.

16 Q. Page 8.

17 A. Okay.

18 Q. Carrying over to Page 9. At the top of
19 Page 9, here you're talking about "PECO remains in
20 the PLR role with the ability to price discriminate
21 ...". Are you referring here to the requirement under
22 the partial settlement that PECO as the PLR supply
23 default customers at prevailing market-based rates,
24 as opposed to rates that are fixed?

25 A. Yes. Again, my concern with that

1 provision is it appears to me to give a fair amount
2 of discretion to PECO in terms of setting that annual
3 discount.

4 Q. Does it give any more discretion to PECO
5 than, say, Enron Power Marketing would have in
6 setting rates that it charges customers in PECO's
7 territory?

8 A. It's a little bit of a different thing.
9 You're talking about a provider of last resort that
10 might be a provider to customers that otherwise have
11 no option, and you're talking about giving the entity
12 serving them a fair amount of discretion in whether
13 to reduce prices or not.

14 Q. And a quick code of conduct question.
15 Does Enron agree that affiliates of Enron should not
16 use -- affiliates of Enron Energy Services Power
17 should not use the name, logo, service mark, or
18 trademark, or other trade name of Enron?

19 A. No. Our position is that the trademark or
20 logo associated with a regulated company should not
21 be used by a marketing affiliate. But a marketing
22 affiliate establishing -- Or a marketing company
23 establishing its own brand name would be free to use
24 that brand name for itself or for its affiliates.

25 In other words, we draw a distinction

1 between the use of the name and logo associated with
2 a monopoly company, a transition or distribution
3 company, and one that's associated with a competitive
4 enterprise.

5 Q. You were asked some questions previously
6 by Mr. Craig about your reference to counsel, and I
7 just have one question there.

8 Were you advised by counsel before you
9 filed the October 7th Enron Choice Plan that the
10 Competition Act permitted the issuance of transition
11 bonds that reached final maturity in longer than 10
12 years, as your Choice Plan proposed?

13 A. I don't know that we got advice from
14 counsel one way or the other on that point. I don't
15 recall getting advice from counsel on that point.

16 MR. BONNEY: That's all I have. Thank you for
17 your time, Your Honor.

18 JUDGE CHESTNUT: Mr. Ryan.

19 MR. RYAN: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. RYAN:

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

24 A lot of it was covered about Enron and
25 the various members of your corporate organization.

1 It will save me a lot of questions. But the
2 corporation that we call EESPI, I think, here, that's
3 the newly-formed second-tier subsidiary of Enron
4 Corporation; is that correct?

5 A. Yes.

6 Q. It is, in common terms, essentially a
7 shell corporation right now waiting to be flushed out
8 if your Choice Plan gets the blessing of the
9 Commission. Is that a fair statement?

10 A. Without necessarily accepting your
11 characterization of shell corporation, it does not
12 have certainly what it would need to do to serve in
13 that role. But it will have, would have in the event
14 the plan is approved.

15 Q. But it doesn't have assets or employees
16 right now. I think you've pretty well agreed to that
17 during Mr. Bonney's cross-examination, didn't you?

18 A. That's right, as far as I know and as of
19 the time we answered the interrogatories.

20 Q. But in your testimony in this case, at
21 least in this phase of the case, specifically in
22 Statement 1 and Statement 1-R that is before us right
23 now, when you use the word "Enron" in there, at least
24 after the first couple of pages, aren't you really
25 referring to EESPI, not Enron Corp., the multi-

1 billion corporation in Texas?

2 A. Could you show me where you're referring
3 to?

4 Q. Well, I saw it in a couple places. I'm
5 sorry. I guess I should have kept my finger on it.
6 I'm just picking this literally at random. Look on
7 Page 22.

8 A. Is this direct or rebuttal?

9 Q. That's a good question. Statement 1-R,
10 your rebuttal. Line 2, it says, "Thus, Enron should
11 be able to implement the securitization structure" --

12 A. I apologize for interrupting. The page
13 again.

14 Q. Page 22, Line 2, Line 3, Line 10. The
15 word "Enron" appears.

16 A. Right.

17 Q. All I'm just saying is, Didn't you adopt
18 the convention, basically, in doing your testimony
19 here, Statements 1 and 1-R, that you would use the
20 word "Enron" to refer to EESPI?

21 A. I believe that's generally true. If you
22 look at the beginning of the testimony, it does
23 define ESPI --

24 Q. I'm sorry. Right. I missed that.

25 A. -- as Enron. No, I don't want to say,

1 though, unequivocally that we never were referring to
2 the broader organization because, particularly with
3 the securitization proposal, there's an Enron SPV
4 involved. There are others besides the SPI that are
5 involved, so we may have been referring more
6 generally to Enron.

7 Q. That's fine. That seems to answer the
8 question that I had.

9 I'd like to focus now for a few minutes on
10 what are the changes in the Enron Choice Plan that
11 are set forth in the rebuttal testimony as a package
12 as compared to what was presented to this Commission
13 and the parties on the 7th of October when you filed
14 your petition. Let me just take you through a couple
15 points.

16 When I looked at the petition back in
17 early October, there were a couple of features that
18 kind of jumped out at me. I'm going to cover them
19 one at a time.

20 The first one was that Enron--and I think
21 that means EESPI--would replace PECO as the provider
22 of last resort. Isn't that correct?

23 A. Yes.

24 Q. That has been changed somewhat in the
25 rebuttal testimony; is that correct?

1 A. Well, yes, with an explanation. In the
2 event securitization happens, when securitization
3 happens, EESPI becomes the so-called provider of last
4 resort at the time that that takes place. The
5 proposal also contains a contingency plan, which,
6 while it still provides discounts even if there can't
7 be securitization, still provides discounts for
8 customers, it would leave PECO in the role of PLR or,
9 actually, we suggest to the Commission that they
10 consider, as other witnesses in the proceeding have
11 testified, the competitive provision of the PLR
12 service. But until that happens, PECO would remain
13 in the role as PLR.

14 Q. But Enron then, if I understood that -- I
15 was a little confused earlier when we were talking
16 about it. If I understood your answer just now, the
17 only way the option for competitive procurement of a
18 PLR, if you will, would be if you can't securitize.
19 Is that correct?

20 A. Well, except to the extent that our
21 proposal in this proceeding is a competitive offer.
22 It is an alternative offer to the proposal that PECO
23 has put forward to be PLR. We believe that with our
24 discounts and the other components that we're
25 competing for that role.

1 Q. Your colleagues, for example, in PECC,
2 they didn't have an opportunity or didn't know that
3 they could have put in a competitive bid to be the
4 PLR at that time, did they?

5 A. I don't know about that. I mean it's in
6 the statute. They could have done it as well.
7 Certainly, after we did it, they could have followed
8 on with their own proposal.

9 Q. But, in any event, there is some
10 significant change with respect to how a PLR gets
11 determined under the Choice Plan in the current
12 version of the Choice Plan as compared to the
13 original one filed October 7th; is that correct?

14 A. Yes. That is an important difference.

15 Q. We talked a little bit about this Power
16 Purchase Agreement that you prepared that you want
17 PECO to enter into if you become the provider of last
18 resort. Is that still an essential element of the
19 revised Choice Plan, at least if it turns out that
20 Enron becomes the provider of last resort?

21 A. Yes, as you stated it, in the event that
22 Enron becomes PLR. Otherwise, the contract doesn't
23 go into effect until Enron becomes the PLR.

24 Q. In that plan, that contract that you
25 proposed, which I think was attached to the petition

1 back in October, have you changed any of the terms of
2 that as part of revising the Choice Plan in the
3 rebuttal testimony filing?

4 A. Other than effective date, not to my
5 knowledge have we changed any other terms. In other
6 words, it wouldn't go into effect until the time that
7 we became PLR, and I'm not sure if it was written
8 that way originally.

9 Q. With respect to that Power Purchase
10 Agreement, do you have any reason, sitting here
11 today, to feel more optimistic about the chances of
12 PECO voluntarily agreeing to sign that Power Purchase
13 Agreement than was obvious after they filed an answer
14 to your petition back in October?

15 A. Well, certainly PECO hasn't been clamoring
16 for the opportunity to sell us power under that
17 proposed agreement. However, I think we -- By
18 addressing the concerns that various parties raised
19 with our original Choice Plan, our intent was to
20 increase its likelihood ultimately of acceptance and
21 getting an order from the Commission that would
22 direct the parties to do what they need to do,
23 including everything in the proposed agreement.

24 That's why, for example, we did put in
25 place a fall-back set of discounts in the event we

1 couldn't securitize or in the event there was a legal
2 impediment.

3 We made the plan better in response to
4 concerns that parties raised. As a consequence, we
5 think we made it more likely for the plan to go
6 through and for the contract to be entered into.

7 Q. Is the Power Purchase Agreement attached
8 to that original petition and as modified by the date
9 changes an essential feature to your being appointed
10 as the PLR? In other words, without having an
11 agreement like that in place, can EESPI take on PLR
12 responsibilities in Pennsylvania in the PECO
13 territory?

14 A. Well, we, frankly, did not even evaluate
15 buying the power from somewhere else or not having a
16 Power Purchase Agreement. The reason, frankly, is
17 that we didn't think that it would be acceptable to
18 the Commission for us to cause the disruptions to
19 employment at PECO that would be associated with us
20 sourcing our power from elsewhere.

21 There's a second reason. That is the
22 concern that, in the event that not all of the load
23 in PECO's service territory can be served without
24 some of PECO's generation being on line, we needed to
25 have the ability to be able to call on that

1 generation.

2 The short answer to your question is we
3 didn't even evaluate an alternative, to my
4 recollection, other than entering into the contract
5 with PECO.

6 Q. If there were any option or alternative to
7 be evaluated, it would have to be purchases in the
8 market, wouldn't it? You don't have generation
9 assets in this part of the country, do you?

10 A. It would have to be purchases in the
11 market or the purchase of generation.

12 Q. Another major feature that was in the
13 original petition and I think is still in the revised
14 one was the execution of what I've been calling the
15 MBC contract. You want to, essentially, take over
16 the metering, billing, and collection functions but
17 hire PECO and its equipment and people to perform
18 those functions for you under a contract; is that
19 correct?

20 A. A contract with PECO to provide those
21 services, right.

22 Q. Did that arrangement get changed in any
23 way in the rebuttal testimony?

24 A. No. Although, again, it does not go into
25 effect until securitization takes place.

1 Q. I think it's the last feature I want to
2 focus on now. It's certainly not the only change.
3 At this moment, I mean.

4 The feature that called for the
5 securitization proposal to produce the 5.4 billion
6 stranded cost, that was an essential feature of your
7 original petition filed in October, wasn't it?

8 A. Yes.

9 Q. Have you changed that? I don't want to
10 ask you all the details. Let me put it the other
11 way. Isn't it correct that you've made some
12 significant changes in your proposals with respect to
13 securitization in the revised plan that was
14 circulated to the rest of us last week as compared to
15 the October 7th initial plan?

16 A. Well, yes. We've made some changes,
17 including, for example, addressing the concern that
18 was raised about gross receipts taxes. I don't know
19 if this is within the scope of your question, but
20 also to address the concerns with parties that our
21 plan was contingent or conditional. We had a
22 contingency plan that would provide discounts even in
23 the event that there wasn't securitization. So I
24 don't know that you could look at that as a change to
25 securitization. It was certainly a significant

1 change to the plan.

2 Q. There were some other changes, and I'm
3 going to ask a question or two about some others. Is
4 it safe to say--and I think you may have answered
5 this in someone else's questions earlier--that the
6 plan you want the Commission to look at and put its
7 blessing on if you prevail in this proceeding is the
8 revised plan, the one that was outlined in the
9 rebuttal testimony of you and your witness? Is that
10 correct?

11 A. Actually, we could perform and live with
12 either the original Choice Plan or the revised Choice
13 Plan. We put the revised Choice Plan together not
14 because it was a better plan for Enron but because it
15 responded directly to some concerns that parties had
16 raised in the proceeding.

17 Q. Any of the concerns about the taxability
18 aspects of some of your securitization proposals and
19 things like that, didn't they play a part in your
20 decision to recast the securitization proposal, for
21 example?

22 A. Yes. We were definitely trying to make
23 the proposal better in response to concerns about it.
24 I just want to make sure I understand your question.
25 If you're asking, you know, would we live under the

1 original plan or are we really saying, No, no, no, do
2 this plan now --

3 Q. Which plan do you want to have approved?
4 Which one do you want approved? Plan A and Plan B,
5 which is your favorite?

6 A. I think that the revised plan is the plan
7 that we would prefer to have approved.

8 Q. Don't you think that some of the concerns
9 that you were addressing in those revisions may have
10 had some validity, and that's why you revised the
11 plan; is that correct?

12 A. That's true. Certainly some of them did.

13 Q. Now, one of the features that kind of
14 jumped out at me when I looked at your rebuttal
15 testimony -- And I will acknowledge not being an
16 expert on it. It seemed to me there was something
17 new in that testimony that didn't appear in the first
18 plan. That is, you made some fairly significant
19 changes in the T & D rates that PECO charges. Is
20 that correct?

21 A. Yes.

22 Q. When you do that, don't you generate some
23 revenues that can be used to help fund some other
24 parts of the plan, revenues that you didn't have
25 available to you to fund your double discounts, for

1 example, in your first version of the plan?

2 A. Yes, that's true. Well, by properly
3 allocating the costs that don't belong in T & D to
4 the functions to which they do belong, what we're
5 really doing is fixing the T & D rates, fixing them
6 at a level that's consistent with testimony in the
7 proceedings and the like.

8 Now, your question, though, does that mean
9 that there is an additional ability to provide
10 discounts as a consequence? The answer is yes. In
11 fact, we did provide further and additional discounts
12 in the securitization plan. In addition, we also
13 provided greater discounts than PECO proposed in the
14 contingency plan. That is the non-securitization
15 case.

16 Q. In the original plan as filed on October
17 7th, you didn't touch the T&D rates at all, did you?

18 A. Right. We just reserved the right to make
19 a further evaluation.

20 Q. But you weren't counting on revenues freed
21 up, if you will, by those kind of reductions when you
22 came forward with your original choice?

23 A. There is no plan that we did not use T & D
24 rates.

25 Q. I'm trying to speed it up for the judges

1 here. On Page 6 of your rebuttal testimony, you're
2 kind of giving the overview. You've listed a whole
3 bunch of changes you've made. I may repeat some of
4 them. At the top of that page, Lines 1 and 2, you
5 say, "In many cases, Enron makes these clarifications
6 and enhancements by using proceeds that Enron
7 otherwise would have received in connection with its
8 securitization plan."

9 Aren't some of them being made with
10 proceeds that PECO would have received from the T & D
11 rates that were contained in the initial -- that were
12 accepted by your company, let's say, in the initial
13 Choice Plan or incorporated in the partial
14 settlement?

15 A. Yes. Lowering the T & D rates does help
16 enable the additional discounts, but the T & D rates
17 ought to be lowered in any event. They ought to be
18 accurate T & D rates. They should not be overstated
19 T & D rates.

20 Q. But that wasn't a concern of yours on
21 October 7 when you filed the original Choice Plan?

22 A. I'm not sure that we focused on it enough,
23 other than reserving our right.

24 Q. Would you agree that in your rebuttal
25 testimony your combined T & D rate now would be 2.37

1 cents per kilowatt hour for the system as a whole?

2 A. The combined T & D rate --

3 Q. I think it's in your Attachment A.

4 A. Yes. That's where I'm looking. You're
5 saying the combined T & D rate is 2.37 cents on a
6 system average basis?

7 Q. On a system average, that's correct.

8 A. On a system average basis, yes.

9 Q. In the partial settlement and implicitly
10 at least in your original Choice Plan, the combined
11 T & D rate on an average basis would have been .0311,
12 or 3.11 cents per kilowatt hour; is that correct?

13 A. I have to look. If you need me to do
14 that, I can.

15 Q. Actually, I think the best place to see it
16 may be on Mr. Boonin's exhibit, DMB-7, attached to
17 New Energy Ventures.

18 A. Do you need me to confirm this?

19 Q. Will you accept it subject to check?

20 A. Yes.

21 Q. Now I have a mathematical question. Would
22 you agree that the difference between those two --
23 I'm sorry. Do you want to take the time to look at
24 it?

25 MR. CLEARFIELD: We actually have Mr. Boonin's

1 actual testimony.

2 A. Yes. Their T & D rate is 3.11 cents.

3 BY MR. RYAN:

4 Q. Would you agree that the difference
5 between those two, in other words, what we thought it
6 was going to be that you were going along with back
7 in October and what you're now proposing, is 7.4
8 mills per kilowatt hour?

9 A. 7.4 mills. Yes, .74 cents.

10 Q. Now, in terms of average revenue per
11 kilowatt hour that PECO gets under its bundled rates,
12 my recollection is that's almost 10 cents a kilowatt
13 hour. I think it's actually .0995 per kilowatt hour,
14 the average revenue per KWH. A T & D difference, a
15 reduction of 7.4 mills would translate into 7.44
16 percent of the total average revenue for PECO.
17 That's just simply the 7.4 mills divided by the 9.95
18 cents average revenue. Can you accept that subject
19 to check?

20 A. What you're doing, essentially, is taking
21 the difference in the T & D rates and saying that it,
22 as a percentage of the overall total rates, equals
23 7.44 percent?

24 Q. That's right.

25 A. Okay.

1 Q. If we shift that 7.4 mills from
2 transmission and distribution to generation, doesn't
3 that give Enron and other competitors, I guess, a
4 larger generation rate cap with which to pay for --
5 Let me back off.

6 If we shift that 7.4 mills from T & D to
7 generation doesn't that have the effect of giving
8 Enron a larger generation rate cap with which to pay
9 for the generation credits and CTC charges that are
10 in its Choice Plan without violating the rate cap
11 overall by law?

12 A. It doesn't exactly work that way. You
13 can't make the sort of one-for-one trades.

14 Q. Is that the effect?

15 A. Well, no, not necessarily, because your
16 question implies a certain assignment of the savings
17 on T&D over to the generation credit.

18 What we did, in point of fact, is looked
19 at a set of generation credits that had to meet a
20 market base test, and we looked at making sure that
21 we could still provide the discounts that we
22 originally proposed, if not more, and stay within the
23 other caps that the partial settlement had set forth.

24 We made those numbers. We looked at those
25 numbers in a variety of different scenarios until we

1 got one that worked, that we thought would work and
2 be attractive to the Commission.

3 It's not the case that you can simply say
4 there's less revenue in T & D and that was moved over
5 to expand the generation credit and the like. Do you
6 see my point?

7 Q. I think so, but I'll read it in the
8 transcript, and maybe I will do better.

9 Would you look at Attachment A to your
10 rebuttal testimony?

11 A. Yes.

12 Q. The rate reductions that you show--and
13 they're in the far right column--for the years 2001
14 through 2003 range from 12.44 percent down to 7.44
15 percent, do they not?

16 A. Yes.

17 Q. If you look at those compared to what the
18 discounts would be, the rate reductions would be in
19 the partial settlement, would you agree or accept
20 subject to check that the rate reductions you have in
21 that final column are 7.44 percent greater each year
22 than those that are contained in the partial
23 settlement, where the discounts were 5.0, 2.0, and
24 then zero?

25 A. Yes, that's the difference between the two

1 numbers. That's the percentage difference between
2 the two.

3 Q. Hypothetically speaking, if the Commission
4 were to take the partial settlement and set the T & D
5 rates at 2.37 cents per kilowatt hour, rather than
6 what we thought we bargained for and we thought we
7 had done a good job--maybe we didn't--the rate
8 reductions for the years 2001 and 2003 would be the
9 same under that revised partial settlement, with that
10 assumption I just made, as they are under the revised
11 Choice Plan, wouldn't they?

12 A. Yes. But, again, there are lots of things
13 going on in coming up with the set of numbers that we
14 used, including the need to respond to criticisms of
15 the parties regarding the level of generation costs
16 in the out years as well as the level of the ITC and
17 CTC throughout the period. So we were making these
18 numbers work together to fit all the constraints.

19 Q. Would you look at Attachment B in your
20 exhibits.

21 A. Yes.

22 Q. If I understand Attachment B, it's an
23 attempt to summarize the parameters of your
24 contingency plan that would apply if no
25 securitization takes place. Is that an accurate

1 description?

2 A. Yes.

3 Q. Now, the contingency plan discounts that
4 are shown on Attachment B for the period from 1998
5 through 2000 are 14.45 percent for each of those
6 three years?

7 A. Yes.

8 Q. And they reflect the impact of the lower
9 T & D rates that you have proposed in your revised
10 Choice Plan; is that correct?

11 A. Yes, they do.

12 Q. At least within the rounding. Aren't
13 those discounts 7.44 percent greater than the ones
14 that are contained in the partial settlement zero
15 securitization scenario, which was a seven-percent
16 discount as opposed to a 10-percent?

17 A. I believe that's true when you're
18 comparing the seven and the 14.45 percent. It's not
19 clear to me what happens under PECO's proposal after
20 you get through the seven-percent discount -- I'm
21 sorry, under the partial settlement after you get
22 through the seven percent. In other words, what the
23 discount levels are after that.

24 Q. Let's look now back to your Attachment B
25 and consider the years 2001, 2002, and 2003. Look at

1 the very right-hand column for the rate reductions.

2 A. Yes.

3 Q. Aren't those reductions in each case there
4 exactly 7.44 percent greater than the partial
5 settlement scenario we just talked about?

6 A. Again, for those years it's not clear to
7 me under the partial settlement what the percentage
8 discounts exactly are, so I can't make the comparison
9 for those last three years.

10 Q. Well, let's look at the last period, 2002
11 and 2003. If we assume that the discounts under the
12 partial settlement are zero --

13 A. Would have been zero --

14 Q. -- that would be true, wouldn't it?

15 A. Yes.

16 Q. If we had been able to bargain or convince
17 PECO to cut its T & D rates the way you decided to do
18 it in your rebuttal testimony after having not done
19 it initially, wouldn't we come out about the same
20 place that we said, and your double discounts don't
21 look like they're quite as double, do they?

22 A. That's not right. In addition, we lowered
23 the stranded cost recoveries associated with the
24 plan. In addition to granting greater discounts, we
25 also provided for a generation credit that would

1 allow for competition throughout the period in the
2 settlement.

3 So you can't simply say that the discounts
4 or the benefits came from cutting T & D rates. They
5 also came from the fact that our receipts under the
6 stranded cost recovery mechanism are lower than
7 PECO's, substantially lower.

8 Q. You did gain a pretty good amount of
9 revenue by cutting the T & D rates, didn't you?

10 A. Under our proposal, the consumers gain
11 significantly under cutting the T & D rates.

12 Q. I'm sure they would.

13 MR. RYAN: Thank you, Your Honor. I have no
14 further questions.

15 JUDGE CHESTNUT: OTS.

16 MR. SHIELDS: Thank you, Your Honor.

17 **CROSS-EXAMINATION**

18 BY MR. SHIELDS:

19 Q. Good afternoon, Mr. Kean. My name is
20 Charles Daniel Shields. I'm with Kenneth Mickens,
21 one of the OTS co-prosecutors in this case.

22 I would like you to turn to Page 4 of your
23 direct testimony, if you would, please. Do you see
24 the sentence beginning at the end of Line 21 where
25 you characterize the Choice Plan, what Enron calls

1 the Choice Plan?

2 A. Yes.

3 Q. And am I correct you note that the Choice
4 Plan takes what you call positive features of the
5 partial settlement; is that correct?

6 A. Yes.

7 Q. Am I correct that when you say positive
8 features you mean certain figures or terms that were
9 agreed to by PECO in considering having settled with
10 the parties who are signatories to that; is that
11 correct, certain of those terms?

12 A. Yes. Certain of those features -- There
13 were certain features of the PECO partial settlement
14 that were positive.

15 Q. Including identification of stranded
16 costs; is that correct?

17 A. Well, actually, it's not clear to me
18 whether that was a positive or a negative feature.
19 We're not really taking a position on whether 5.46
20 billion is the right number or an excessive number or
21 an under-collecting number.

22 JUDGE CHESTNUT: Mr. Kean, would you remember
23 to keep your voice up. People are gesturing in the
24 back.

25 A. Should I repeat the answer?

1 JUDGE CHESTNUT: Could you briefly summarize?

2 A. Yes. It's not clear to me that the 5.46
3 billion was a positive or a negative feature of the
4 partial settlement. It was a number, and it was a
5 number that we used in developing our plan. But
6 whether that was excessive in terms of true stranded
7 costs or whether it was under-recovering stranded
8 costs, we have not taken a position.

9 BY MR. SHIELDS:

10 Q. You would acknowledge that's a number
11 different than what the Company's litigated claim
12 was; is that correct?

13 A. That's certainly true. It was a
14 substantially greater claim.

15 Q. Essentially, then, in constructing your
16 plan, you took certain components and, as you say,
17 built on them -- certain components from a settlement
18 and built on them to construct your plan; is that
19 correct?

20 A. Yes. By building on that, trying to
21 enhance it in the process.

22 Q. Did you or your counsel endeavor to
23 determine whether the Pennsylvania Public Utility
24 Commission in any other prior proceeding had accepted
25 this particular methodology, that is, one party

1 plucking certain components out of a settlement,
2 constructing it as part and parcel of its own
3 position?

4 A. I just don't remember that ever coming up.
5 I mean we looked at our proposal as an alterative
6 proposal to what the partial settlement was.
7 Certainly in my experience people make alternative
8 proposals in regulatory context all the time. I
9 don't know that we --

10 Q. Given that response, you don't know
11 personally whether or not this type of scenario had
12 occurred and been accepted by the Pennsylvania Public
13 Utility Commission before; is that correct?

14 A. Yes. We did not talk to counsel about
15 that.

16 Q. Just so I understand and can briefly
17 characterize your testimony, to the extent that any
18 of the parties here today or during the course of
19 these hearings this week have questions about the
20 overall motivation, the overall time frame, the
21 overall reasons for constructing what's called the
22 Enron Choice Plan, you're the person to talk to; is
23 that correct?

24 A. I oversaw putting the plan together. I
25 mean if you have a specific question about a motive

1 I'll answer it.

2 Q. And you would agree with me that Enron is
3 entitled to put this plan forth before the
4 Pennsylvania Public Utility Commission by virtue of
5 its participation in this proceeding; is that
6 correct?

7 A. I'm not sure if it's by virtue of -- When
8 you say by virtue of --

9 Q. As a formal party, as a formal party in
10 this proceeding.

11 A. Either by that or by the fact that there's
12 a provision in the statute that allows for a petition
13 for the provider of last resort, which is how the
14 proposal was filed and then consolidated with the
15 PECO proceeding.

16 But I'm not sure where you're going with
17 by virtue of. Certainly we feel like we have the
18 right to make this proposal in this proceeding.

19 Q. Obviously. I'm trying to understand what
20 you perceive to be the nature of that right. That's
21 the extent of my question. Let me do it this way.

22 Obviously, at some point in time in the
23 past, Enron decided, for whatever reason, that it
24 wanted to become involved in perhaps providing
25 electric generation to Pennsylvania jurisdictional

1 customers; is that correct?

2 A. Yes.

3 Q. Arguably, that was made at some point near
4 the time that Enron discovered that the Pennsylvania
5 legislature was anticipating creating a system
6 whereby Enron could participate as an electric
7 generator-supplier; is that correct?

8 A. We'd been looking at the market I think
9 even before the legislature was actively considering
10 the proposal. But I mean, yes, we've been looking
11 forward to the opportunity to serve Pennsylvania
12 utility customers.

13 Q. Enron, obviously, acknowledges that
14 however this proceeding regarding PECO or any of the
15 other now Pennsylvania jurisdictional electric
16 utilities -- Whatever the Commission ultimately
17 decides, I assume that Enron is at that point going
18 to participate under those Commission requirements.
19 Is that correct, or is that not correct?

20 A. You know, depending on what those
21 requirements turn out to be, we would have to make an
22 evaluate whether we can compete in the marketplace.
23 That's why it's so important that we get a set of
24 rules here in place now that are pro-competitive and
25 that are actually open to competition.

1 Q. All right. Let me ask you this question.
2 If hypothetically, as a result of this proceeding,
3 the Commission was to in fact approve the partial
4 settlement and summarily reject Enron's proposal,
5 will Enron participate in Pennsylvania as an electric
6 supplier?

7 A. I can't say that we will. I mean we would
8 evaluate it at that time based on that outcome.
9 Certainly the proposals will make it far more
10 difficult for competitors to participate in the
11 market in Pennsylvania.

12 Q. So, then, Enron's commitment to provide an
13 electric service to Pennsylvania jurisdictional
14 customers is based upon whether or not Enron is
15 satisfied with how the Pennsylvania Commission
16 conducts its affairs and resolves this and other
17 proceedings; isn't that correct?

18 MR. CLEARFIELD: Your Honor, I'm going to have
19 to object. I don't --

20 JUDGE CHESTNUT: No. I think you're going a
21 little far there, Mr. Shields.

22 MR. SHIELDS: I agree. I am, Your Honor.
23 I'll withdraw the question.

24 JUDGE CHESTNUT: Okay. Thank you.

25 BY MR. SHIELDS:

1 Q. Turning to the time frame, if I understand
2 your response to Mr. Bonney on behalf of PECO, you
3 testified that Enron began to formulate its proposal,
4 plan, however you want to characterize it, after it
5 received formal service, notification of the fact
6 that a partial settlement existed. Is that correct?

7 A. I don't know if it was linked to service,
8 but after we became aware of the partial settlement.

9 Q. Can we infer from that that Enron had not
10 proposed or was not anticipating to propose a plan at
11 that point in time?

12 A. Well, the plan that we had proposed was
13 different, which basically we were proposing that the
14 Commission adopt pro-competitive terms and conditions
15 for the market in Pennsylvania. We didn't put
16 forward, though, a plan to act as provider of last
17 resort, for example, until we became aware of the
18 partial settlement.

19 Q. If I understand your response, you're
20 referring to your then at that time litigation
21 position. Is that correct, or something else? What
22 are you referring to?

23 A. Yes, our litigation position in the case,
24 in the restructuring case.

25 Q. So you changed your litigation position,

1 altered it, in response to the petition for partial
2 settlement; is that correct?

3 A. I don't know that we changed our
4 litigation position. We made a proposal that we felt
5 was superior to the partial settlement and that we
6 believed the Commission ought to approve. I mean I'm
7 not -- I'm not sure you can say we changed our
8 litigation position.

9 Q. The point being, though, that the proposal
10 was after you found out about the partial settlement.
11 Is that correct?

12 A. When we put the proposal together after
13 the partial settlement was provided to us.

14 Q. How did that occur? I mean did Enron say,
15 Look here, there's a partial settlement, we better
16 come up with some plan in response? Is that
17 essentially what happened?

18 A. No. Here's exactly how it occurred. We
19 looked at it, and it looked to us --

20 Q. Why don't you answer my --

21 A. No. I have --

22 MR. SHIELDS: I'll withdraw the question, Your
23 Honor, and I'll restate the question.

24 A. I want to answer his question.

25 JUDGE CHESTNUT: No, no. That's okay. Thank

1 you.

2 BY MR. SHIELDS:

3 Q. When Enron discovered that there was a
4 partial settlement on the table amongst all the
5 parties, did Enron take into consideration or did
6 Enron look at who the signatories were to that
7 partial settlement?

8 A. Did we look at who the signatories were?

9 Q. Right.

10 A. Yes.

11 Q. At that time did Enron analyze the
12 likelihood of success of the partial settlement based
13 upon who were the signatories to that partial
14 settlement?

15 MR. CLEARFIELD: Your Honor, this is just
16 irrelevant. The partial settlement and the Enron
17 Choice Plan, the entire case will be before the
18 Commission.

19 JUDGE CHESTNUT: I know your point that the
20 partial settlement should be adopted because it has
21 an array of parties who signed it. But, you know,
22 that's argument. Getting some admission out of him
23 in terms of who signed what, when, and what they
24 considered isn't really going to advance your case.

25 MR. SHIELDS: May I respond to counsel's

1 remarks?

2 JUDGE CHESTNUT: No. I'll let you ask the
3 question, but don't pursue it anymore. It's not
4 really going to get you there.

5 THE WITNESS: I'm sorry. Could I have the
6 question back?

7 JUDGE CHESTNUT: Did you want to restate your
8 question, Mr. Shields, or move on or --

9 MR. SHIELDS: I can't have an opportunity
10 to respond to counsel. Is that what you're saying,
11 Your Honor?

12 JUDGE CHESTNUT: I didn't sustain his
13 objection, so I don't see why you would.

14 MR. SHIELDS: That's right. Thank you.
15 That's correct.

16 BY MR. SHIELDS:

17 Q. When Enron discovered that a partial
18 settlement had been submitted, did it take into
19 consideration in deciding whether or not to formulate
20 a plan who the participants were in that partial
21 settlement?

22 A. Did we take into account who the
23 participants were? Certainly we were aware who the
24 signatories were. I don't know what you mean by take
25 it into account.

1 Q. You've testified that there were various
2 motivations for Enron to present its plan; isn't that
3 correct?

4 A. Yes.

5 Q. My question to you now is, Was one of the
6 motivations Enron's perception that there was a
7 substantial likelihood of success and approval by the
8 Commission of the partial settlement by virtue of who
9 the parties were to that settlement?

10 A. No. I think that, based on who the
11 parties to that settlement were, we decided that to
12 make our voice heard we would have to put a better
13 proposal on the table. That motivated us to make the
14 filing.

15 MR. SHIELDS: I'll accept that, Your Honor.

16 BY MR. SHIELDS:

17 Q. Is it Enron's position that any potential
18 electric generator-supplier, had they fully
19 participated in this proceeding, could have presented
20 a responsive plan to the partial settlement?

21 A. Could anybody have filed?

22 Q. I'll be happy to repeat the question.

23 A. I think any party could have made a filing
24 to become the provider of last resort, could have
25 petitioned in the manner that Enron did.

1 Q. All right. Thank you. I'm referring
2 specifically to electric --

3 A. I mean the likelihood that they could have
4 been able to perform in that role may, obviously,
5 vary from one to another. If you're asking is it our
6 view that anyone could have come in and made such a
7 proposal, had the opportunity to make such a
8 proposal, the answer is yes.

9 Q. Hypothetically, there could have been 14,
10 15, 18, 20 similar plans similar to Enron's that the
11 Commission would have had to entertain in addition to
12 the partial settlement; isn't that correct?

13 A. Well, the Commission had the discretion
14 whether to consolidate our plan with the partial
15 settlement proceeding. I guess I can't say what the
16 Commission would have done if it had multiple offers.

17 Q. Let me phrase it this way. If,
18 hypothetically, there were 15 plans in addition to
19 the Enron plan, would Enron have opposed those
20 parties being entitled to have consolidation and an
21 opportunity to present their testimony and
22 cross-examination?

23 MR. CLEARFIELD: Your Honor, I'm going to
24 object. This is just speculation. It's argument.
25 It's irrelevant.

1 JUDGE CHESTNUT: I don't see any foundation
2 for it at all.

3 If you can give a brief answer, why don't
4 you do that.

5 A. I don't know how to respond to the
6 question because he's asking what we would have done
7 in a set of circumstances that haven't turned out to
8 be the case. I don't know how to answer the
9 question.

10 BY MR. SHIELDS:

11 Q. If I understand, you're not qualified to
12 respond to that hypothetical.

13 A. I didn't say I wasn't qualified to
14 respond. You're laying out a scenario here that I
15 can't just make up an answer on the spot to it.

16 Q. If, hypothetically, another electric
17 generator-supplier had presented a plan identical to
18 that proposed by Enron in this proceeding, would
19 Enron support approval of that plan if under this
20 hypothetical Enron had not presented the same plan?

21 JUDGE CHESTNUT: Mr. Shields, you know --

22 MR. SHIELDS: Your Honor, I'm prepared to
23 establish the relevancy of that question.

24 JUDGE CHESTNUT: I just don't see any
25 foundation for it. I mean a hypothetical has to have

1 some grounding in reality. The fact is no other
2 party did present a plan here.

3 MR. SHIELDS: I'm prepared to present an
4 offer of proof.

5 JUDGE CHESTNUT: Go ahead.

6 MR. SHIELDS: We would represent that Enron,
7 by virtue of this witness's and other witnesses'
8 testimony, are making the representation that they
9 have, among other things, the customers of PECO's
10 interests at heart, among other things.

11 If in fact that statement is true and if in
12 fact that is a representation by this witness as to
13 one of the motivations for Enron putting forth this
14 plan, then I think I'm entitled to investigate
15 whether or not that is, in fact, an altruistic
16 interest of this company or whether they have other
17 reasons unstated in this testimony for --

18 JUDGE CHESTNUT: First off, I don't think
19 you're correctly characterizing the testimony if
20 you're stating that they were being altruistic in
21 developing the plan.

22 The testimony that I read has always been that
23 this is to benefit the customers, as well as Enron,
24 as well as the economy in general. If I mis-
25 understood that, I would appreciate Mr. Clearfield

1 letting me know.

2 MR. CLEARFIELD: No, Your Honor, you haven't.

3 MR. SHIELDS: Your Honor, the witness is
4 entitled to respond in that manner.

5 JUDGE CHESTNUT: Now that you've given your
6 offer, why don't you go on with your next question.

7 MR. SHIELDS: So the objection is sustained?

8 JUDGE CHESTNUT: A new line of questions. How
9 is that?

10 MR. SHIELDS: Okay.

11 BY MR. SHIELDS:

12 Q. So, if I understand Enron's position, the
13 best case scenario is that on December 11th Enron's
14 plan is accepted, the partial settlement is rejected
15 by the Commission, and that the Commission orders
16 PECO and others to perform pursuant to the proposals
17 in the Enron plan. Is that correct?

18 A. We are asking the Commission to approve
19 our proposal. If they do, that will be a good day.

20 Q. That's your best case scenario; isn't that
21 correct?

22 A. I don't know that it's the best case
23 scenario. As I understand the statements of the
24 Commission in this proceeding, the Commission could
25 also fashion its own proposal from the record. I

1 can't sit here and say that there wouldn't be
2 elements of that that would actually -- I can't say
3 that there wouldn't be elements of that that would
4 actually be enhancements to the outcome from our
5 perspective.

6 Q. You would agree that the worst case
7 scenario from your perspective would be for the
8 Commission to accept the partial settlement and
9 reject the Enron plan on December 11th?

10 A. Well, that would be a bad day. I don't
11 know if I could say that that's a worst case scenario
12 either.

13 Q. Was it the intention in filing the Enron
14 plan to ensure that either the Enron plan or the
15 partial settlement or some Commission adaptation of
16 those be the most favorable result rather than full
17 litigation of the case?

18 A. I don't understand the question, please.

19 Q. I'll try to simplify it. From Enron's
20 perspective, where does the scenario of denial of
21 both the Enron plan and the partial settlement fit in
22 under a best or worst case scenario vis-a-vis full
23 litigation of the case, from Enron's perspective?

24 A. I apologize. I don't understand what
25 you're asking. Are you asking are we trying to get

1 our plan approved or not?

2 Q. Am I correct you've identified certain
3 best and worst case scenarios, and you also mentioned
4 a Commission adaptation of one plan as opposed to
5 other?

6 A. I did not identify best and worst case
7 scenarios. You identified them, and I disagreed that
8 they might or might not be the best or worst case.

9 Q. Let me phrase it this way. Where does
10 full litigation of this proceeding stand in Enron's
11 hierarchy compared to a Commission extrapolation of
12 the plan and the partial settlement? Is it more
13 favorable or less favorable?

14 JUDGE CHESTNUT: Mr. Shields, I have to ask
15 you to clarify something. What do you mean by full
16 litigation? Are you anticipating hearings other than
17 --

18 MR. SHIELDS: It's a hypothetical
19 question. It goes back to what their intention was
20 at the time of submitting the plan.

21 JUDGE CHESTNUT: I'm sorry, but I just don't
22 -- Could you rephrase it or clarify it?

23 MR. SHIELDS: Certainly.

24 BY MR. SHIELDS:

25 Q. Was it Enron's intention at the time of

1 submitting the plan to remove the possibility of full
2 litigation of this proceeding?

3 A. No. To remove the possibility of full
4 litigation? No. Our only intent in submitting the
5 plan was to put on the table a plan that we thought
6 could get approved by the Commission and would offer
7 a better set of benefits for consumers than the plan
8 they were otherwise looking at and would open up the
9 market to competition. That was our intent, end of
10 story.

11 We want our plan approved. We asked for our
12 plan to be approved. We meant it when we asked for
13 it. We mean it now. We want our plan to be
14 approved.

15 Q. If your plan isn't approved, how does
16 Enron intend to proceed?

17 MR. CLEARFIELD: Your Honor --

18 A. We'll decide at that time. It could be
19 any number of different outcomes. I mean the
20 Commission could fashion its own plan. We don't know
21 what that plan would look like until the Commission
22 does it.

23 MR. CLEARFIELD: I'm just confused.

24 MR. SHIELDS: I have one more question.

25 JUDGE CHESTNUT: He's already answered it.

1 MR. SHIELDS: I have one more question.

2 BY MR. SHIELDS:

3 Q. So one of the possibilities of Enron's
4 response to a hypothetical denial of its plan would
5 be not to participate and provide electric service in
6 Pennsylvania; isn't that correct?

7 A. Not necessarily. I mean if the Commission
8 denied Enron's plan but, nevertheless, there were a
9 set of terms and conditions--let's say it picked up
10 the terms and the conditions for the plan relating to
11 a competitive marketplace--that would create an
12 environment in which we could compete.

13 Then we have other elements of our plan.
14 If it's rejected, it's just not possible to --

15 Q. If, hypothetically, those particular terms
16 and conditions that you just referenced, whatever
17 they may be, were not included, doesn't the
18 possibility exist that Enron may just pick up its
19 briefcases and head out of Pennsylvania; isn't that
20 correct?

21 A. If the rules are set so that competitors
22 can't enter, then Enron may not enter.

23 MR. SHIELDS: No further questions.

24 JUDGE CHESTNUT: Let's go off the record for a
25 second.

1 (Discussion off the record.)

2 JUDGE CHESTNUT: Mr. Kleppinger.

3 MR. KLEPPINGER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. KLEPPINGER:

6 Q. Good afternoon, Mr. Kean. My name is Dave
7 Kleppinger. I represent the Philadelphia Area
8 Industrial Users Energy Group.

9 Are you familiar with the provision in the
10 Competition Act that allows for flexible pricing and
11 flexible rates?

12 A. I would like to look at it again, but
13 certainly I've read it before.

14 MR. KLEPPINGER: Your Honor, I'm just showing
15 the witness Section 2806(h), which is labeled
16 Flexible Pricing.

17 A. Okay.

18 BY MR. KLEPPINGER:

19 Q. Mr. Kean, in EESP's capacity as an
20 electric generation supplier, does EESP plan on
21 offering flexible pricing and flexible rates?

22 A. I'm sorry. Give me the entity again.

23 Q. EESP, as in its capacity as an electric
24 generation supplier. Just so you know where I'm
25 headed with this, I'll ask you the same question then

1 in its capacity as the provider of last resort, if
2 your answers would differ.

3 A. Okay. The Enron entity, as I indicated in
4 changes to the testimony earlier, could be someone
5 other than EESPI. The Enron entity that is the
6 competitor, EGS, within the state of Pennsylvania,
7 would presumably offer flexible pricing as market
8 conditions required.

9 Q. And would it also offer negotiated
10 contract-based rates?

11 A. Yes. It would be an arm's length
12 negotiation in a free and open market.

13 Q. Now, in the capacity as a provider of last
14 resort, which, if I understand the Choice Plan at
15 this point, EESP would be the provider of last resort
16 under a securitization scenario at least. Correct?

17 A. Yes.

18 Q. In the capacity as the provider of last
19 resort, would EESP offer flexibly priced rates?

20 A. As provider of last resort, EESP offers a
21 set of rates that are attached to the petition. It
22 does not include the ability to, as provider of last
23 resort, discount off of those rates.

24 I just want to make one further
25 clarification. That is that certain contracts that

1 preexisted between PECO and individual customers
2 under the Choice Plan would continue in effect until
3 the customer opted out. To the extent that those
4 contracts are out there, they would remain in effect.

5 Q. Under those types of contracts, is it your
6 concept that the -- Let me just back up a second.
7 It's your understanding currently that those
8 contracts are between the end-use customer and PECO
9 currently?

10 A. Yes.

11 Q. Would those be assigned to EESP as the
12 provider of last resort to stand in PECO's shoes?

13 A. Special contracts negotiated between PECO
14 and individual customers would remain between PECO
15 and those individual customers.

16 Q. Enron Power Marketing has also applied to
17 the Commission to be an electric generation supplier;
18 correct?

19 A. Yes.

20 Q. In Enron Power Marketing's capacity as an
21 electric generation supplier, will it offer flexibly
22 priced rates?

23 A. Yes, as it needs to meet the market.

24 Q. It will also offer, then, negotiated
25 contract-based rates?

1 A. Yes.

2 Q. Now, do you have the October 7 Enron
3 petition?

4 A. Yes, I do.

5 Q. I'm asking you these questions in your
6 capacity, what's on your testimony, as the overall
7 policy witness. If you need to refer any of them to
8 Mr. Kingerski, let me know.

9 At Exhibit 1 of that petition after all
10 the tariff pages, there is a block of information
11 that's labeled Proposed Treatment of Miscellaneous
12 Riders, PECO Energy Company, Electric Delivery
13 Service Tariff. It looks like this.

14 A. Yes.

15 Q. Do you have that? I'm still under a
16 little bit of confusion as to the Choice Plan's
17 treatment of these riders and how it's been modified
18 between the direct testimony and the rebuttal
19 testimony. So the ones that are of interest to my
20 client I would like to clarify.

21 With respect to the cooling thermal
22 storage HT rider, the recommended action originally
23 was to eliminate that rider from PECO's tariff. Is
24 that still the recommendation?

25 A. I'm afraid I would have to refer that

1 question to Witness Kingerski. I mean I know we have
2 answered interrogatories on these points in addition
3 to his rebuttal testimony, but I couldn't go through
4 rider by rider for you and tell you the new outcomes.

5 Q. Would you know whether or not in EESP's
6 capacity as a provider of last resort, or whatever
7 other Enron entity it may become, whether that entity
8 would continue to offer the cooling thermal storage
9 HT rider even if it's not in PECO's tariff?

10 A. Again, I'll have to refer that question.

11 Q. The next one is the curtailment HT rider.
12 Is it still the proposal to reprice the credit
13 contained in the curtailment HT rider as reflected in
14 the Recommended Action column on this exhibit?

15 A. Again, I'll have to refer that question.

16 Q. If I have any other questions like on the
17 employment and economic recovery rider, the night
18 service HT rider, the large interruptible load rider,
19 the economic efficiency rider, and the capacity
20 reservation rider, would you not be the appropriate
21 witness for those questions?

22 A. I can tell you generally what we try to
23 accomplish with respect to special contracts, but I
24 can't take you through each individual rider.

25 Q. And Mr. Kingerski would be the witness to

1 ask those questions?

2 A. Yes.

3 MR. KLEPPINGER: That's all I have, Your
4 Honor.

5 JUDGE CHESTNUT: Mr. Dworetzky.

6 **CROSS-EXAMINATION**

7 BY MR. DWORETZKY:

8 Q. I'm going to stay over here, Mr. Kean, if
9 that's acceptable.

10 If I understand the Enron plan correctly,
11 if the Commission were to modify its submission or to
12 approve it with modifications, Enron would have the
13 right to consider whether it wished to proceed under
14 those modifications?

15 A. Yes.

16 Q. I'd like to ask what Enron's intention
17 would be with respect to one type of modification.
18 If the Commission were to determine that the level of
19 stranded costs contemplated in the Enron plan was too
20 high and consequently was to modify your proposal so
21 as to reduce stranded costs and, therefore, reduce
22 the amount of the transition bonds and were to lower
23 the CTC and ITC strip accordingly, the other
24 adjustment they would make would be to increase the
25 generation credit under the proposal; correct?

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